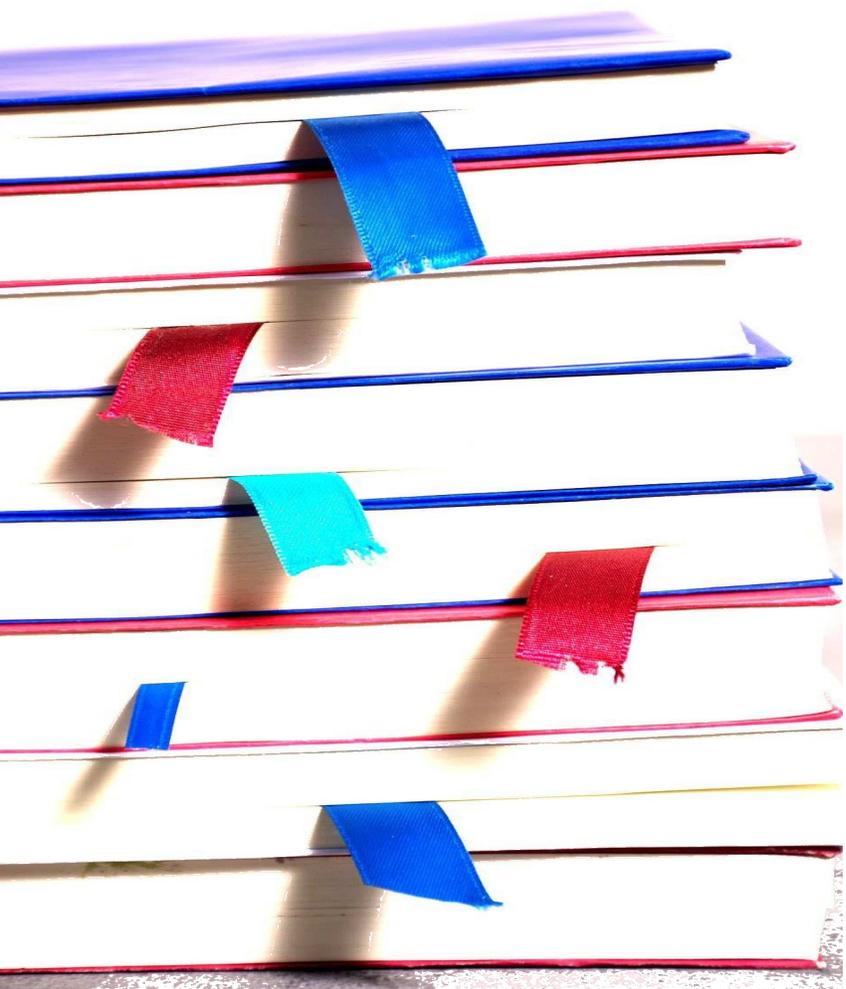




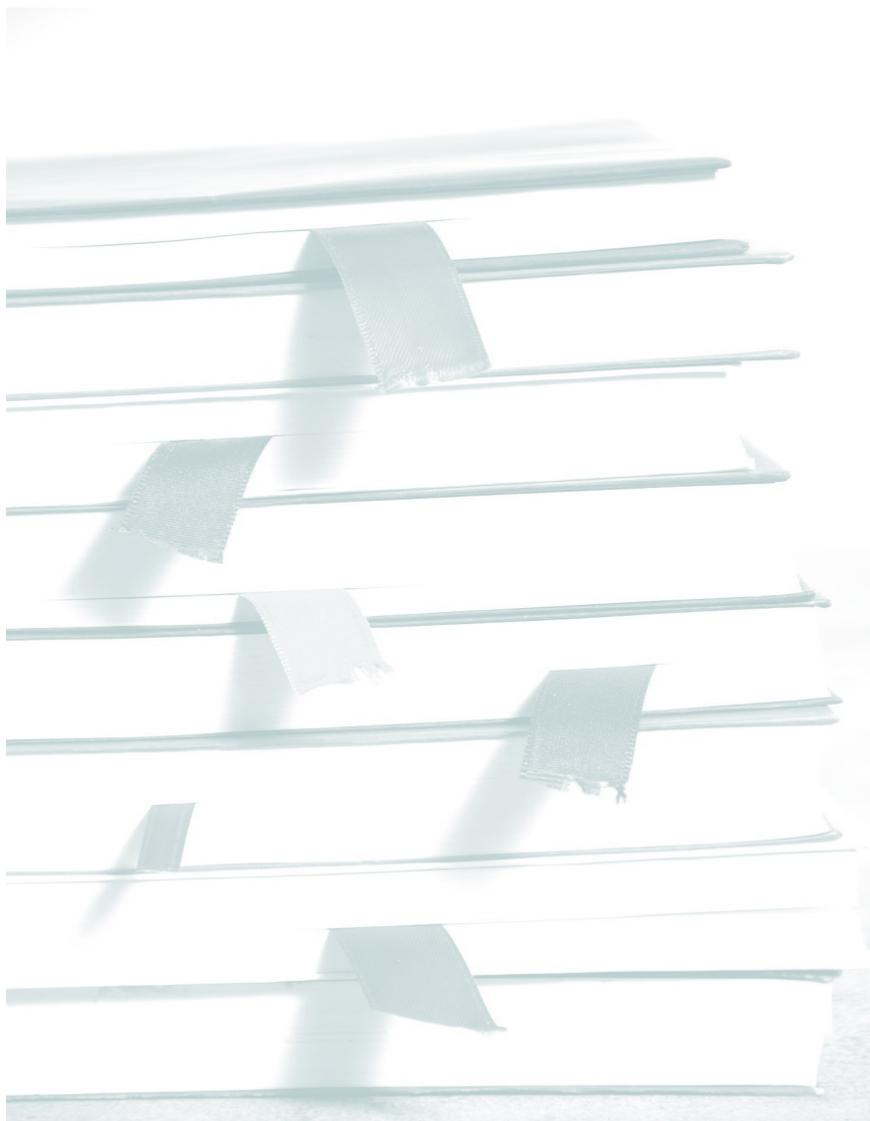
REPUBLIC OF ALBANIA  
**Constitutional Court**

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

*Decisions September-October 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 September and October 2025.*

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

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

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**Principle of the rule of law – Regarding the freedom of economic activity in relation to the principles of proportionality, equality before the law and principle of non-discrimination – Normative act having the force of law**

### **KEY WORDS**

*Medical profession/  
Proportionality of the measure/Discretionary power of the authority/  
Public entity with financial autonomy/  
Disciplinary offence/  
Public healthcare system/  
Hospital autonomy*

**The autonomy and independence of the Order of Physicians does not preclude the State to exercise its supervisory powers in spheres concerning the public interest.**

## **Trade Union of Health Service Employees, Order of Physicians of Albania (*freedom to practice the medical profession*) – Judgment No. 58, of 15.10.2025**

### *Facts*

The Assembly enacted Law No. 123 of 25 September 2014 “*On the Order of Physicians in the Republic of Albania*”, and subsequently, the Council of Ministers enacted Normative Act No. 2/2024 “*On some amendments and additions to Law No. 123/2014 ‘On the Order of Physicians in the Republic of Albania’*”. By Law No. 94/2024, the Assembly enacted the normative act having the force of law. The amendments concerned the powers of the Order of Physicians, the criteria for and termination of membership, the obligations of its members, the conditions for practicing the profession, the bodies of the Order, the responsibilities of the National Council, the functions of the regional councils, the disciplinary committees, disciplinary measures and judicial appeal, as well as the competence of the National Council regarding the Code of Ethics and Medical Deontology. Council of Ministers Decision No. 85 of 05 February 2025, “*On the composition, organization and functioning of the Disciplinary Commission and the Appeal Commission*”, laid down the rules regarding the composition, organization, and functioning of the Disciplinary Commission and the Appeal Commission, the conduct of a fair trial for the examination of claims of disciplinary offences, and the adoption of disciplinary measures applicable to physicians practicing in public and non-public health institutions in the Republic of Albania. The Trade Union lodged an application with the Court seeking the repeal of the normative act or, in the alternative, the repeal of specific articles thereof, or a declaration of a legislative omission regarding the possibility for physicians employed in hospital structures possessing full financial autonomy to choose between a full-time or part-time employment relationship, as well as regarding the entitlement to supplementary payment for physicians opting for an exclusive employment relationship with a public hospital structure. The other applicant, namely – the Order of Physicians, lodged an application with the Court seeking the repeal of the normative act and of the Council of Ministers Decision No. 85. Therefore, the Meeting of Judges decided on the joinder of the cases.

### *Court’s Assessment*

*Regarding the principle of the rule of law* – The Court has stated that the State exercises its functions not only through its institutions but, to a certain extent, also through other non-public entities which are entrusted by law with specific public functions. Although the Order of Physicians is a legal entity governed by public law and established by law, it exercises powers that have a direct impact on the fulfilment of the state social objectives in the sphere of healthcare. This implies that it performs functions of a public nature, and consequently, a system of self-regulation and self-governance must be guaranteed in its regard. The Court holds that the involvement of the competent ministry in the organization and operation of the disciplinary commissions of the Order of Physicians, as well as in the approval process of the Code of Ethics, constitutes a reasonable and proportionally justified measure of state interference. This form of interference is grounded in the public of Physicians. Such involvement does not impair the functional independence of the Order but seeks to strike a balance between professional autonomy and public accountability in safeguarding the public interest. Thus, the Court concludes that the institutional framework established under the challenged normative act does not amount to an unjustified interference with the autonomy of the Order of Physicians. Rather, it functions as a supervisory mechanism intended to fulfil the state’s constitutional duties in ensuring the high standards of healthcare. In this context, the Court finds the applicant’s claims of a violation of the principle of the rule of law to be ill-founded.

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## REVIEW OF NORMATIVE ACTS

**The very balance between the public interest and the individual right is safeguarded through compliance with the physician's obligations vis-à-vis the public institution and the rules concerning conflict of interest, without the need for prior authorization from the competent authority.**

**Any interference affecting the exercise of the right to practice a profession must be based on clear, accessible, and predictable norms, in order to enable the individual (the physician in the instant case) to know in advance the disciplinary consequences of his actions or omissions.**



*Freedom of economic activity in relation to the principles of proportionality, equality before the law, and principle of non-discrimination –*

*Regarding the 30% limitation on monthly working hours –* The Court, in respect of this claim of the applicants, did not reach the required majority for a decision following the deliberations. Therefore, the claim for a violation of the freedom of economic activity due to the imposition of the 30% limitation on monthly working hours is dismissed.

*Regarding the obligation to seek authorization from the competent authority to practice the medical profession in a non-public healthcare institution –* The Court emphasizes that, insofar as the exercise of professional activity in a non-public healthcare institution does not impede the performance of duties within the public institution and does not give rise to a conflict of interest, there are no constitutional grounds to make such activity conditional upon the granting of an administrative authorization. The absence of an obligation to provide a reasoned decision and the lack of an effective remedy render the authority competence discretionary, and hence fails to provide the necessary procedural safeguards. Furthermore, the Court finds that the restriction imposed by such provision fails to satisfy the requirement of proportionality between the public interest of guaranteeing the highest health standards and the freedom to practise the medical profession by physicians. On the one hand, the law provides for the possibility of dual employment for physicians, while on the other hand, it confers upon the competent authority a discretionary power that, in practice, renders the exercise of such right elusive.

The requirement to obtain prior authorization from the competent authority is of such a nature that, in practice, it may lead to the complete deprivation of the right to practice the profession in the non-public healthcare sector, thereby rendering such restriction disproportionate in relation to the legitimate aim pursued. Thus, the Court finds that the applicants' claim regarding a violation of their freedom of economic activity is well-founded.

*Regarding the violation of the right to work and to exercise a profession in relation to the principle of proportionality –* The Court considers that such provision fails to meet the standard of clarity and predictability of the law. The amended wording of Article 17 of Law No. 123/2014, insofar as it provides for the disciplinary measure of revocation of the professional license, does not satisfy the constitutional standard of clarity and predictability. Furthermore, the Court finds that – the inclusion in the normative act of the disciplinary measure of permanent license revocation, without specifying clear and precise criteria governing its application, exceeds the nature of a penal sanction and thus, it inherently violates the right to work and to practise a profession. In this regard, the applicants' claim is deemed to be well-founded. Therefore, the Court holds that letter "d" of paragraph 1 of Article 17 and the final sentence of paragraph 3 of the same Article, as amended by Article 10 of the normative act, shall be repealed.

*Regarding the claim of a violation of Article 101 of the Constitution –* With respect to the claim concerning the violation of Article 101 of the Constitution, on grounds that the normative act was enacted in the absence of the requisite conditions of necessity and urgency, the Court, following deliberations, did not reach the required majority for a decision. Therefore, the Court decided to reject such claim.

### *Decision-making*

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

**Conflict of competence – Principle of periodic renewal of the Constitutional Court – Principle of duration of the constitutional judge term of office – Principle of constitutionality**

### KEY WORDS

*Constitutional loyalty/ Constitutional reform/ Transitory provision/ Transitional regime/ Appointing body/ Duration of term of office/ Ideal termination and start of the term of office/ Mechanism for partial renewal (rotation)/ Renewal intervals/ Venice Commission/ Constructive functional interpretation*

**Under the transitional regime, pursuant to Article 179 (3) of the Constitution, the duration of the constitutional mandates of judges appointed/elected into office is not subject to the provisions of the permanent constitutional regime governed by Articles 125 (3) and 129 of the Constitution.**

## **The President of the Republic of Albania (interpretation of constitutional provisions enshrining the principles of partial periodic renewal and duration of the constitutional judge term of office) – Judgment No. 60 of 16.10.2025**

### *Facts*

By Decision no. 84 of 23 December 2024, the Court decided to declare the termination of the office term of the constitutional judge elected for the partial term ending in 2025, pursuant to the transitory provision under Article 179 (3) of the Constitution. For the purposes of this decision, the Court did also address the manner in which the appointing bodies should act in the event that the Court itself is not set in motion in the exercise of such competence, as well as the interpretation of the constitutional provision governing the transitional regime for the periodic renewal of its composition.

Following the notification of such decision, the President, in his capacity as one of the three appointing authorities, lodged an application with the Court seeking the declaration of the end of the term of office of the constitutional judge whose replacement felt into his competences. Based on the Court's interpretation in the aforementioned decision, the President inherently sought the resolution of the conflict of competence created between his office and the Court, arising from the latter's failure to declare the end of the constitutional judge's term of office, hence preventing the President from exercising his constitutional competence as an appointing body. He also requested a final interpretation of the constitutional norms.

### *Court's Assessment*

Noting that the President had submitted two requests, which constituted distinct constitutional matters, the Court held that the request concerning the declaration of the end of the constitutional judge's term of office was to be examined separately, since it concerned proceedings of a declaratory nature and as such were to be conducted without litigants' participation and required no adversarial hearing.

As for the request on the resolution of the conflict of competence, the Court held that *prima facie* it appeared that a dispute between the constitutional bodies, namely between the President and the Court, did exist which stemmed from a divergent understanding of Article 179 § 3 of the Constitution. This was further corroborated by the interested party, the Assembly, as one of the three constitutional appointing bodies, which, for its part, had applied a different interpretation when it had declared the remainder of the office term for the judge whose appointment felt within its competences. In essence, this conflict had arisen from the application of two concurring constitutional principles, namely – the principle of partial periodic renewal of the Court by one-third every three years, and principle of the duration of the term of office of a constitutional judge. Therefore, the resolution necessitated a final interpretation of the constitutional provisions concerning the interaction of such principles.

With regard to the interpretation and application of the provisions enshrining such constitutional principles, the Court held that the transitional regime, provided by the transitory provision – Article 179 (3) of the Constitution, was applicable to all office terms of constitutional judges serving at the time of its adoption.

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## REVIEW OF NORMATIVE ACTS

**With a view to implementing the constitutional principle of the partial periodic renewal of the Court, has been taken into consideration the nexus between the termination of the predecessor judge's term of office and the (ideal) start of the new judge's tenure. This is also reflected in the provisions of Article 86 (4) of the Court's Organic Law, which stipulates the timeline for the renewal of the Court's composition: the first renewal of one-third in 2025; the second renewal of one-third in 2028; and the third renewal of one-third in 2031. Throughout this transitional regime, the start of the Constitutional Court judge's term of office coincides with the date declared – or which should have been declared – exclusively by the Court, and not by any other constitutional body - regarding the end of the constitutional term of office of the judge whom he or she succeeds.**



By means of such provision, the founding fathers of the Constitution intended to guarantee the regular renewal of the Court's composition, a principle enshrined in Article 125 (6) of the Constitution. In respect of judges, subject to the transitional regime pursuant to Article 179 (3) of the Constitution, this principle prevails over the principle of the duration of the term of office – which is limited in time *ab initio* – since, it constitutes the sole interpretation that would guarantee the primary objective of the transitional provision of Article 179 (3) of the Constitution. The stipulation within the transitional provision of two terms of office shorter than nine years, namely those expiring in 2025 and 2028 – serves to safeguard the principle of regular renewal.

With a view to implementing the constitutional principle of the partial periodic renewal of the Court, it appears that the founding fathers of the Constitution took into consideration the nexus between the termination of the predecessor judge's term of office and the (ideal) start of the new judge's tenure, a fact also reflected in the provision of Article 86 (4) of the Court's Organic Law. Although such provision does not explicitly stipulate the end of a constitutional judge's term of office, with regard to the timeline for the renewal of the Court's composition, according to which the first renewal of one-third takes place in 2025, the second renewal of one-third in 2028, and the third renewal of one-third in 2031, during the transitional regime the start of the constitutional judge's term of office coincides with the date declared, or that should have been declared exclusively by the Court and not by any other constitutional body, of the end of the office term of the judge whom he or she succeeds.

The provision, within the scheme for the renewal of the Court during the transitional regime, allowing for the possibility that a constitutional judge might hold office for a duration shorter than the nine-year constitutional term, is constitutionally valid and has been accepted by the founding fathers of the Constitution, reflecting the latter's own constitutional concept, with the aim of guaranteeing the principle of partial periodic renewal. Such interpretation does not abrogate the nine-year term of office but links its implementation, as a comprehensive process, to the Court's renewal periods.

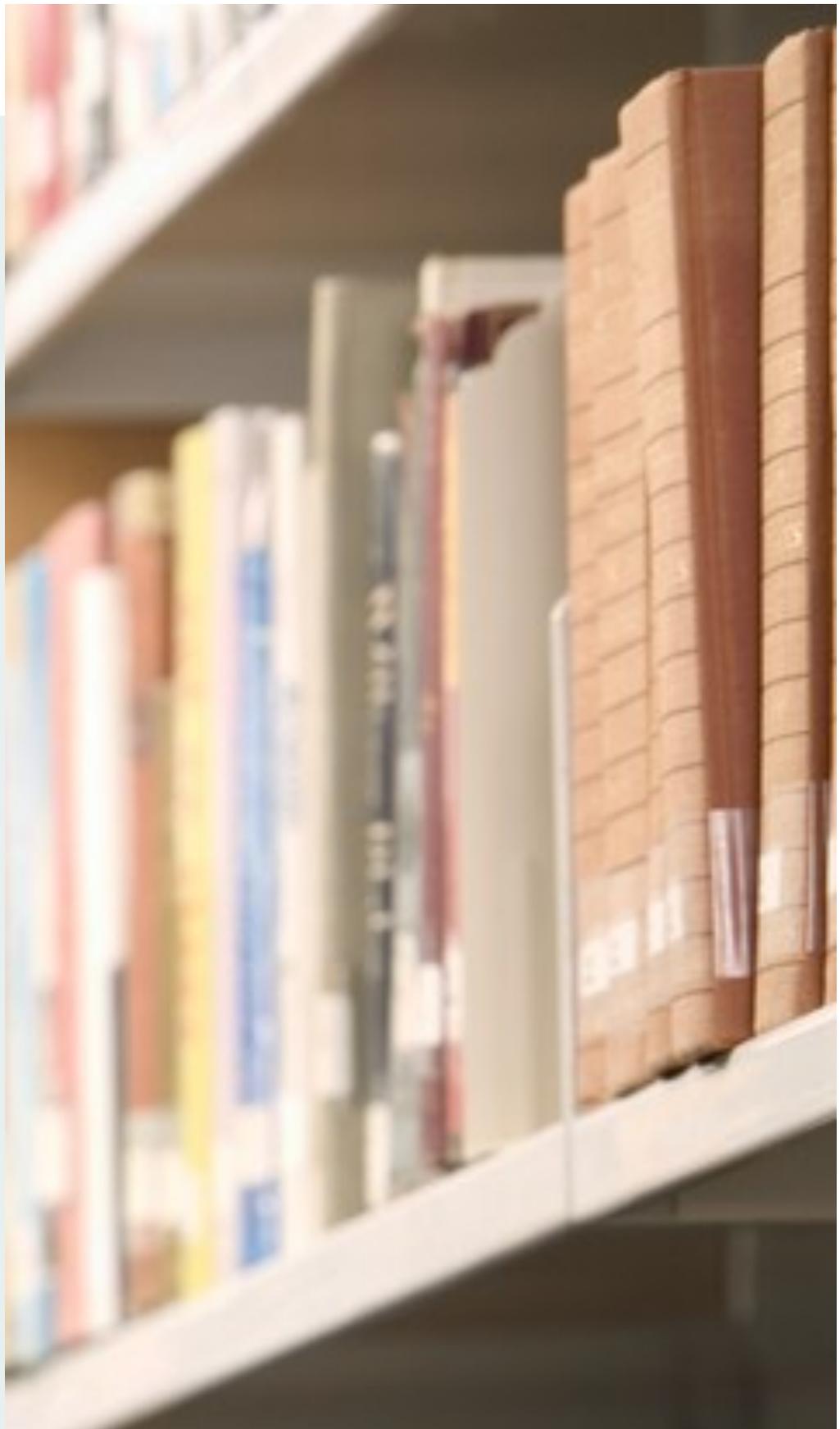
In conclusion, the Court held that the sole method for resolving the conflict of competences was to declare the end of the term of office of the constitutional judge appointed by the President (the applicant), which given the declaratory nature of the matter, was to be examined separately.

In conformity with its interpretation of constitutional norms, the Court further held that the Assembly must take the necessary measures to ensure the partial renewal of the Court in 2025, by re-announcing the procedures for the election of the new Constitutional Court judge that fell within its competences.

### *Decision-making*

The Court decided, unanimously, that: the competence to declare the end of a constitutional judge's mandate lies exclusively with the Court itself, and only after its decision on the matter the appointing body may exercise its power of appointment/election. It also decided to examine separately the request seeking a declaration of the end of the constitutional judge's mandate.

The Court, by majority vote, decided on the interpretation of Article 179 (3) of the Constitution.



## Principle of equality before the law and principle of non-discrimination

### KEY WORDS

*Vehicles/ / Category of vehicles/ Driving license/ Road traffic rules/ Age limit for driving a vehicle/ Irregular driving of vehicles/ Article 291 of the Criminal Code/ Road Code*

**Determining whether a legal regulation is objectively justified is not merely a simple legal issue, but also requires a factual assessment. The distinctions, as well as the reasons arguing for or against them, must be weighed against each other, leaving the final decision to the competent authority, in accordance with its criteria. The choice of solution is the prerogative of the relevant authority, since each case has its own specific features.**

**The Court considers it necessary to emphasize that, pursuant to Article 54 of the Constitution, young people are entitled to special protection by the State, a principle which is also reflected in the adoption of positive measures to protect them from actions capable of directly entailing consequences for their lives and future.**

## Korça Court of First Instance of General Jurisdiction (*validity of category B driving license conditional on the driver's age of 21*) – Judgment No. 49, of 24.09.2025

### Facts

The Prosecutor's Office at the referring court registered criminal proceedings against citizen T.B. for the criminal offence of "*Irregular driving of vehicles*", provided for by Article 291 of the Criminal Code, which stipulates that "*driving vehicles or other motorized means [...] without the relevant driving license shall be punishable by imprisonment from ten days up to three years*". While driving a motorcycle, citizen T.B. collided with a vehicle. The vehicle driven by citizen T.B. fell within category A1 of motorcycles, and citizen T.B. held a category B driving license, which, according to Article 123, point 2, letter "ë" of the Road Code, "*is valid within the national territory for driving three-wheeled road vehicles with a power exceeding 15 kW, as well as category A1 motorcycles, provided that the license holder is at least 21 years old*". Since he was 20 years old, citizen T.B. did not hold the relevant driving license. During the proceedings, he argued that although he held a category B driving license, he was capable of driving his category A1 motorcycle. He further argued that driving school instructors had considered his request to obtain a category A1 driving license unnecessary because he already held a category B license. In these circumstances, citizen T.B. requested the referring court to stay of proceedings and to refer the matter to the Constitutional Court for a ruling on the constitutionality of Article 123, point 2, letter "ë" of the Road Code. The referring court decided to stay the proceedings in the case and applied to the Constitutional Court.

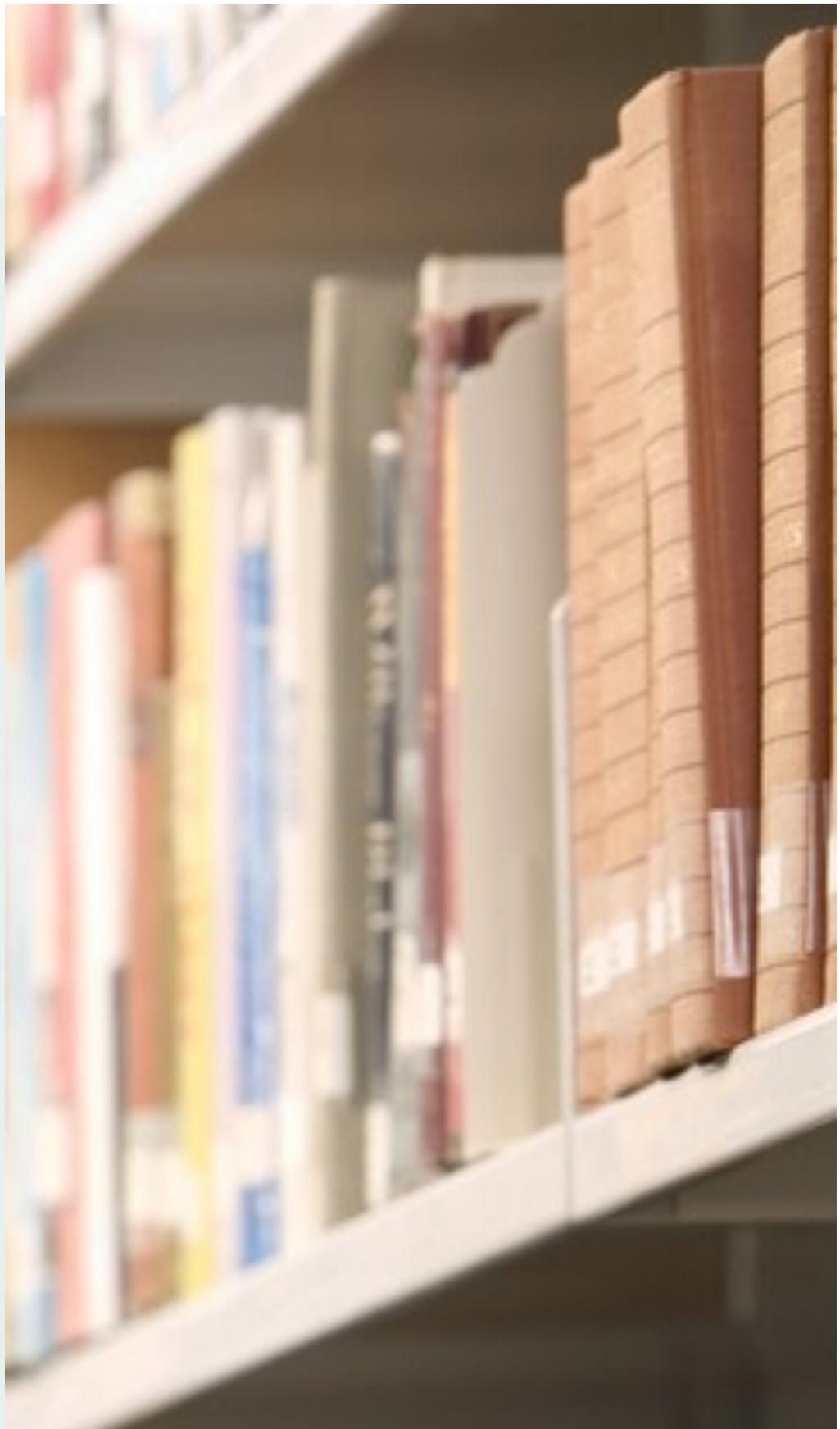
### Court's Assessment

*Regarding the violation of the principle of equality before the law and the principle of non-discrimination* – The referring court claimed that the provision treats motorcycle drivers unequally compared to drivers of other vehicles, it is incompatible with European legislation, it constitutes unreasonable discrimination, and that there is no reasonable and objective justification for restricting the driving of motorcycles to the age of 21, given that motorcycle drivers undergo the same test for obtaining a category B driving license, possess good knowledge of road traffic rules, and demonstrate very good driving skills for driving category A1 motorcycles as well. In this case, persons in similar situations are treated differently by the law. The aforementioned provision, in its second paragraph, sanctions the prohibition of discrimination, while the third paragraph embodies a limitation of this right, but only if there is a reasonable and objective justification. The interested entity, namely – the Council of Ministers, claimed that the imposition of the age requirement of 21 years served a public interest directly linked to road safety, involving not only the protection of life but also the health and physical safety of individuals. The Court found that the legislature, by imposing a minimum age limit for driving category A1 vehicles – which is three years higher than the minimum limit for driving category B vehicles, intended to increase not only the level of maturity in assessing and avoiding potential risks in traffic, but also to ensure 1-3 years of experience for those who obtained a category A1 driving license at or near the minimum age limit (18-21 years).

In this context, the Court holds that in the present case, such interference by the legislature had a reasonable, suitable and objective justification – therefore, the referring court's complaint is unfounded.

### Decision-making

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



## Right of substantive access to a court – Right to property

### KEY WORDS

*Land allocated for use/ Overlap of property/ Heirs/ Law No. 7501/1991/ Law No. 7698/1993/ Former Commission for Restitution and Compensation of Property/ Former Land Distribution Commission/ Land ownership title / Lawfulness of acts*

**The Court reiterates that the review of compliance with the constitutional standards of a fair trial lies with the ordinary courts, and pre-eminently with the High Court. As a court of law, its role is indispensable. It is vested with all requisite instruments and jurisdiction to assume an active role, one that extends beyond the law in the pursuit of justice – thereby effectively guiding the decision-making process of the lower courts.**

**In the context of the right to a fair trial and in application of the principle of subsidiarity, the High Court, in its capacity as a court of law, should have provided a final substantive response to the applicants' claims regarding the dispute at hand. Accordingly, the absence of a position on the part of the High Court regarding the main issues of the dispute – infringed the applicants' right of substantive access to that court in respect of their complaints concerning the violation of the property rights.**

## Drita Puleja, Gani Qatipi, Luljeta Qatipi, Gazmir Qatipi, Dorina Qatipi, Florian Qatipi (*conflicting judgments concerning the determination of the dispute*) – Judgment No. 46, of 18.09.2025

### Facts

By Decision No. 220/1995 of the Tirana Commission for Restitution and Compensation of Property, the applicants were granted the right to ownership to a plot of land of 5,000 m<sup>2</sup>, pursuant to the provisions of the Law on Restitution and Compensation of Property. In 1993, such plot of land, in accordance with the Law on Land, was allocated for use and subsequently transferred in ownership to the third parties, namely – the heirs of the citizen Nj.Sh. Therefore, the latter filed a lawsuit with the court challenging the Tirana Commission for Restitution and Compensation of Property decision regarding the plot of land. Meanwhile, the applicants – within the same proceedings, filed a counterclaim seeking the return of the plot of land. The case proceedings commenced in 1996 and the case was examined three times at first instance (in 1996, 2000 and 2002); six times in second instance (in 1997, 1998, 2000, 2003, 2007 and 2015); and 5 times in the High Court (in 1997, 1999, 2004, 2014 and 2024). At the conclusion of the proceedings, the ordinary courts ordered the partial annulment of the Tirana Commission's decision in so far as it restored the plot of land to the applicants (decision of the Court of First Instance of 2002), thereby recognizing their right to compensation in one of the forms provided for by law (decision of the Court of Appeal of 2015). Whereas, the High Court decided not to accept the applicant's appeal. Therefore, the applicant lodged an individual constitutional complaint with the Court.

### Court's Assessment

*Regarding the violation of substantive access related to property rights* – The Court found that, by Decision No. 966/1999, the High Court had issued binding directions to the lower courts concerning the assessment of the lawfulness of the land ownership titles and the acts of the Tirana District Council Land Commission, due to inconsistencies in their content.

Such directions were reiterated in High Court Decision No. 1118/2004. At the final retrial, the Court of Appeal, while recognizing the applicants' property rights, held that: (i) given that the plaintiffs were the lawful owners of the property under Law no. 7501/1991, the Tirana Commission should not have ordered its restitution as vacant land, but should have ordered the compensation of the former owner's heirs in one of the forms provided for by law; and that (ii) the applicants could not lodge a simple action for recovery of possession without first seeking the invalidity of the administrative act. The Court, while assessing the Court of Appeal's decision, finds that the latter does not appear to have addressed the issues raised by the applicants and highlighted by the High Court in Decision No. 966/1999 – concerning the lawfulness of the land ownership title and the acts of the Tirana District Council Land Commission, which constituted the merits of the dispute at hand. Therefore, the High Court, faced with a legal situation in which the lower courts (and the Colleges of the High Court itself) had delivered conflicting judgments and had failed to address – despite their legal obligation – the implementation of the directions given by the High Court concerning the lawfulness of the acts allocating land for use and in ownership, as well as the acts of the Tirana District Council Land Commission, does not appear to have provided a conclusive response to the applicants' claims.

### Decision-making

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

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

## Right to a fair trial

### KEY WORDS

*Judicial expenses/ Rectification of the Decision/ Two-month time-limit*

**The Court emphasizes that, in principle, the issue of representation costs in constitutional proceedings concerning an individual complaint constitutes an integral part of the fair trial. Therefore, a refusal to reimburse such costs risks placing an unjustified restriction on the individual's right of access to a court, within the meaning of Article 42 of the Constitution.**

**With regard to the entity liable for the reimbursement of representation costs, the Court notes that the nature and subject matter of constitutional proceedings differ from those of ordinary proceedings. In the latter, judicial expenses are charged to the litigating parties at the discretion of the ordinary court. By contrast, in constitutional proceedings, the individual seeks to protect fundamental rights infringed as a result of the acts of public authorities – which includes the acts of ordinary courts that resulted in the violation of his fundamental rights. Consequently, liability in such proceedings lies with the State itself.**

## Tom Dedaj (*clarification and rectification of the Constitutional Court's decision following the approval of judicial expenses*) – Judgment No. 47, of 18.09.2025

### Facts

On 9 July 2024, the applicant lodged an individual constitutional complaint with the Constitutional Court, seeking a finding of a violation of the right to a hearing within a reasonable time regarding the adjudication of his case by the Tirana Administrative Court of First Instance, as well as the repeal of the Court of Appeal's decision that had rejected it. Following the referral of the case for review in a plenary session on the basis of the case file, the applicant, through his legal representative, filed additional submissions claiming, *inter alia*, the award of costs and expenses to be paid by the High Prosecutorial Council, the General Prosecution Office, and the Prosecution Office of Dibër.

By Decision no. 4 of 21 January 2025, the Court declared the application admissible. It also found a violation of the right to a hearing within a reasonable time, and ordered the Tirana Administrative Court of First Instance to review the applicant's case with priority. However, the Court did not rule on the claim concerning costs and expenses. Therefore, regarding this claim, the Meeting of Judges, on 24 June 2025, decided to refer the case for examination in a plenary session on the basis of the case file.

### Court's Assessment

The Court conducted a preliminary analysis of several legal issues pertaining to: (i) the time-limit for submitting a claim for judicial expenses in the constitutional proceedings – namely, whether such a claim may be submitted together with the individual constitutional complaint, during the proceedings until the delivery of the judgment, or at any time, provided that it is submitted no later than two months from delivery of the judgment; (ii) the criteria and documents serving as the basis for determining the amount of legal representation costs; and (iii) the entity liable for the costs of legal representation in the event the claim is upheld: (a) the interested entity who was a party to the judicial proceedings conducted before the ordinary courts; (b) the interested entity that issued the judicial decision or the act of public authority that is repealed by the Court; (c) the Ministry of Finance, given that the law charges the Council of Ministers, through the competent bodies of the state administration – with ensuring the enforcement of the Court's decisions; (iv) the manner, time-limits, and procedure for the enforcement of the award for legal representation costs.

The Court notes that Law no. 8577/2000 does not expressly provide for a specific time-limit within which the applicant may submit a claim for legal representation costs, but merely stipulates “*if requested by the applicant*”. In the Court's assessment, this implies, *firstly*, that a ruling on costs is set into motion only by a formal request from the applicant and, *secondly*, that such a request may be submitted together with the individual constitutional complaint until the Court declares the hearing closed. Taking into consideration that the constitutional complaint was lodged by the applicant himself, who possesses sufficient training and experience to comprehend the case, as well as the fact that the constitutional proceedings concluded by Decision no. 4/2025 were not complex, the Court evaluates the legal representation costs at the amount of 50,000 Albanian lekë (ALL). The obligation to pay this amount is charged to the Ministry of Finance.

### Decision-making

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

\* A copy of this Judgment shall be attached to Constitutional Court's Judgment no. 4 of 21 January 2025, rectifying the operative part as follows “*The applicant's representation expenses in the amount of 50,000 (fifty thousand) ALL shall be charged to the Ministry of Finance.*”

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

## Principle of equality of arms and adversarial proceedings – Standard of a reasoned judicial decision

### KEY WORDS

*Reopening of proceedings by the European Court of Human Rights/ Main intervention/ Assessment of evidence/ Expert report/ Failure to reach a quorum/ Restitution and compensation of property*

**The High Court held that each party to the proceedings must be afforded equal opportunities to present his case and must not enjoy an advantage over the other party, but a fair balance must be struck between them.**

**The decisions of the ordinary courts do not appear to have any deficiencies, absence or insufficiency of reasoning, or logical defects. Furthermore, while courts are not obliged to provide a detailed response to every claim, it is evident from the content of their decisions that they addressed the essential issues of fact and law – relevant to the resolution of the dispute before them.**

## *Astrit Meli (violation of the principle of equality of arms and the standard of a reasoned judicial decision) – Judgment No. 48, of 22.09.2025*

### *Facts*

The applicant filed a request for the recognition and restitution of a plot of land, which was rejected. The claimed plot of land had been recognized and restored to former owners, awarded as physical compensation, alienated in favor of several interested parties, and site and building permits had been issued for two buildings on that property. In these circumstances, the applicant filed a lawsuit with the court seeking recognition

of his ownership, the annulment of the decisions concerning the restitution and compensation of the property, and a declaration of invalidity regarding all transactions involving such property. The interested entity, B.M., filed a request for main intervention and a lawsuit seeking recognition of the property title of the heirs of M.M., his father. The Vloja District Court rejected the applicant's claims as ungrounded and accepted the lawsuit of the main intervenor. Following the complaint and the appeal lodged by the applicant, the decision of the Vloja District Court was upheld and the appeal was declared inadmissible. Therefore, the applicant and the interested entity, N.K., lodged constitutional complaints against such decisions. The Court decided not to admit the case of the interested entity, N.K., for examination in a plenary session, whereas regarding the applicant, it decided to reject the complaint since the required quorum was not reached. Consequently, the applicant lodged an application with the ECtHR complaining of a denial of access to a court, the failure of the Court to provide a reasoned decision because the statutory majority of five judges had not been reached, a lack of reasoning in the decisions of the lower courts, a breach of the principle of equality of arms and of the requirement of a reasonable time. The ECtHR found a violation of the applicant's right to a reasoned decision by the Constitutional Court but found no violation regarding the lack of access to the Constitutional Court. Thus, the applicant lodged another individual constitutional complaint with the Court seeking the reopening of proceedings, as well as the repeal of the decision of the Constitutional Court and of the lower courts.

### *Court's Assessment*

*Regarding the violation of the principle of equality of arms* – The applicant claimed that the failure to admit essential evidence during the proceedings, as well as the failure to provide a response regarding that evidence, had violated the principle of equality of arms by the courts. The Court observes that the court of first instance granted every request made by the applicant for evidence and admitted all documentary evidence submitted by him. It is not for the court to take an active role in this regard – rather, the burden of proof lies with the parties, that have to substantiate their claims. The applicant did not demonstrate any contradiction in the documentary evidence of the parties that would have required the intervention of the courts of fact for its resolution within the meaning of the legal provision referred to by him. The argument that the court confused its role with that of the expert, by basing its decision solely on the expert's findings, cannot serve to call into question the observance of the principle of equality of arms. The applicant was afforded equal opportunities to present evidence and to submit his arguments regarding the facts, evidence, and legal assessments of the case. Therefore, his claim concerning the violation of the principle of equality of arms is ill-founded.

*Regarding the violation of the standard of a reasoned judicial decision* – The applicant claimed that the reasoning of the courts of fact's decisions was deficient, as well as irrational. He also claimed that the courts of fact had not provided reasoned responses to his claims, and based their conclusions solely on the expert's findings. In addition, the courts – in their decisions, distinguished the applicant's evidence from that of the main intervenor. The fact that both the applicant and the main intervenor based their claim to property title on documents of the same type, which offered data of the same nature (the surface area and boundaries of the property), does not render the reasoning of the courts of fact contradictory, in so far as they noted that, in reaching their conclusions regarding the main intervenor's claims, they had also relied on other evidence. The decisions of the ordinary courts provide sufficient reasoning regarding the establishment of the facts of the case and the application of the law, and this assessment of the facts and subsequent application of the law do not appear to be manifestly erroneous, such that no reasonable court could ever have made. Therefore, the applicant's complaint regarding the violation of the standard of a reasoned judicial decision is ill-founded.

### *Decision-making*

The Court decided, by majority vote, to accept the claim for the reopening of the proceedings, and to reject the claim regarding the violation of the principle of equality of arms and of the standard of a reasoned judicial decision.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right of access to a court – Standard of a reasoned judicial decision**

## **KEY WORDS**

**Notification of the hearing/ Public notification/ Error/ Restitution and compensation of property/ retrial/ Notification of the date and time of the hearing**

**The right of access to a court guarantees to individuals whose rights were violated to apply to a court which will hear their claims and render a judgment following a fair and public hearing. This individual right includes not only the right to set into motion judicial proceedings but also the right to obtain a final resolution of the dispute at hand, since access to a court must be effective and not merely formal.**

**Declaring the recourse inadmissible by relying solely on a *de plano* examination of the case and on the limited reasoning that the grounds of appeal were not provided for by law, without a reasoned response to the complaint of a constitutional nature, calls into question the observance of the right of access to that court, which includes, *inter alia*, the applicant's right to a reasoned response to all of his claims.**

## **Kostandin Xholli (lack of notification of the date and time of the hearing before the Court of Appeal) – Judgment No. 50, of 25.09.2025**

### *Facts*

The applicant filed an application with the Elbasan District Court for the certification of the legal fact of ownership over a plot of land located in the village of Gjinar, Elbasan. The court decided to certify the legal fact of ownership. Thus, the applicant filed a request – seeking recognition of ownership, with the Elbasan Regional District Office for the Restitution and Compensation of Property, which was not granted by the latter. Following an appeal lodged with the Agency for the Restitution and Compensation of Property (currently ‘the Agency for Treatment of Property’ – ‘*the ATP*’) in Tirana, the decision of the Elbasan Regional District Office for the Restitution and Compensation of Property was upheld. Therefore, the applicant challenged such decisions in court. The Elbasan District Court decided to accept the claim, repealed the decisions of the Elbasan Regional District Office for the Restitution and Compensation of Property and of the former Tirana Agency for the Restitution and Compensation of Property, and recognized the applicant's property right. Such decision was reversed by the Durrës Court of Appeal, and the case was remanded for retrial to the court of first instance. In the retrial proceedings, the Elbasan District Court decided to dismiss the claim as manifestly ill-founded. Following the applicant's appeal, the Durrës Court of Appeal decided to uphold the decision of the first-instance court, and following the recourse, the High Court decided to declare it inadmissible. Therefore, the applicant lodged an individual constitutional complaint with the Court.

### *Court's Assessment*

*Regarding the violation of the right of access to a court related to the standard of a reasoned decision* – The applicant claimed that he had not been informed of the date and time of the hearing before the Court of Appeal due to a failure to notification in accordance with the Code of Civil Procedure (CCP). In circumstances where it appears that the applicant was not present at the hearing held before the Court of Appeal and the fact that he raised this complaint before the High Court, it was the latter's duty to verify the merits of this complaint of a constitutional nature, in so far as physical presence in judicial proceedings is directly linked to the safeguards of the other procedural rights of the parties in terms of the right to a fair trial. Referring to the complaints submitted to the High Court regarding the violation of the right to be notified and heard before the Court of Appeal, the latter, in the exercise of its function, should have adopted an express position in this regard. The failure to address in the decision the grounds submitted by the applicant in the ‘Claims’ document, lodged following the publication of the date of the hearing before the High Court, and the failure to provide a reasoned response thereto, notwithstanding that those grounds were manifestly of a constitutional nature, entails a violation of the right of access to a court. The High Court stated that, the case had been examined in the presence of the parties to the proceedings, whereas, as established from the case file and the very content of the Court of Appeal's decision, the proceedings before that court had been conducted in the absence of both parties. This erroneous finding in the High Court's decision is such as to call into question the observance of the right to a fair trial, as well as the standard of a reasoned decision. Therefore, the Court finds that the applicant's claims regarding the violation of the right of access to a court, linked to the standard of a reasoned decision in the High Court, are well-founded.

### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to a hearing within a reasonable time – Right to equality before the law – Right to a hearing by an impartial tribunal**

### **KEY WORDS**

**Direct interest/ Redress of the alleged right/ Unfulfilled criterion/ Disclosure of information/ Objective impossibility**

**The Court held that the applicant lacks standing *ratione personae* regarding the individual constitutional complaint, since he failed to demonstrate a direct and individual interest in initiating constitutional proceedings.**

### **Bardhyl Ibra (*finding of a violation of the constitutional right to a fair trial*) – Judgment No. 51, of 25 September 2025**

#### *Facts*

The applicant filed a complaint with the Administrative Court of First Instance of Tirana against the former High Council of Justice (currently the High Judicial Council), the Minister of Justice, and the General Directorate of Civil Status, seeking the disclosure of information requested by him regarding the identity of a judge. Following the decision to declare the complaint inadmissible on the grounds that the request failed to fulfil the formal filing requirements, the applicant lodged an appeal with the Administrative Court of Appeal.

In the meantime, he filed a request with the High Court seeking a finding of a violation of the right to a hearing within a reasonable time. The Administrative College of the High Court rejected such request, holding that the standard of adjudication within a reasonable time is not infringed where the court is faced with an objective impossibility.

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

#### *Court's Assessment*

The Constitutional Court considers that, in the present case, it appears that the applicant availed himself of all the legal remedies, pursuant to Articles 399/1 et seq. of the Code of Civil Procedure, with the aim of securing the acceleration of proceedings by the Administrative Court of Appeal and obtaining a reasoned decision regarding the grounds of his appeal. In these circumstances, insofar as the examination of the applicant's case by that court has been concluded – implying that the objective pursued by the applicant through such legal remedies has been achieved – the Court finds that the applicant no longer has a legal interest in these constitutional proceedings. Thus, the criterion regarding the applicant's interest in initiating constitutional proceedings is not deemed to be fulfilled. Given that he has received a final ruling from the Court of Appeal, the alleged right he sought to protect through these proceedings is considered to have been redressed. Therefore, the Court held that the applicant's request must be rejected.

#### *Decision-making*

The Court, decided, unanimously, to reject the application.

## Right to a fair trial

### KEY WORDS

*Enforcement of a judgment/ Request for acceleration of proceedings/ Reasonable time requirement/ Conservative seizure/ Complexity of the case/ Additional observations/ New circumstance/ Compensation/ Non-pecuniary damage/ Costs and expenses*

**The Constitutional Court has emphasized that it does not act as a court of fourth instance; accordingly, the decisions of the courts of ordinary jurisdiction are not called into question, except where their findings may be regarded as arbitrary or manifestly unreasonable.**

## **“Private Bailiff Office Arb” Ltd. Company (Violation of the right of access to a court in relation to the standard of a reasoned judicial decision) – Judgment No. 52, of 07.10.2025**

### Facts

The applicant company, “Private Bailiff Office ARB” Ltd. Company, signed a service contract with KESH (Albanian Power Corporation) for the provision of bailiff services regarding the enforcement of Decision no. 9031, dated 13 September 2012, of the Tirana District Court, concerning the issuance of an execution order for tax sales invoices pursuant to that execution order. Following the notification for voluntary execution, the applicant company issued an order for the imposition of a conservative seizure on second tier banks. Therefore, the applicant company brought an action before the Tirana District Court against the Bank of Tirana, seeking compensation for pecuniary and non-pecuniary damage caused by culpable actions, as well as lost profits and statutory interest accrued until the date of the enforcement of such decision. Following the rejection of the claim by that court, the applicant company lodged an appeal with the Court of Appeal, which upheld the decision of the first-instance court.

On 14 September 2017, the applicant company lodged an appeal with the High Court against such decision. Subsequently, on 14 December 2020, the applicant company filed a request with that court seeking a finding of a violation of the reasonable time requirement and acceleration of the proceedings, pursuant to Articles 399/1–399/12 of the Code of Civil Procedure. On 21 December 2020, the Chancellor of the High Court informed the applicant company that the request had not been signed by a lawyer, a requirement stipulated in Article 474 of the Code of Civil Procedure. Consequently, on 30 December 2020, the applicant company lodged a request with the High Court seeking a finding of a violation of the reasonable time requirement and the acceleration of the proceedings – such request was signed by both the company and a lawyer. Following this request, on 1 April 2021, the applicant company was notified of the joinder of the two cases and that they were pending examination. Then, on 21 April 2021, the applicant company lodged an application with the Constitutional Court, seeking a finding of: a violation of the right of access to a tribunal established by law; a violation of the reasonable time requirement and the acceleration of the proceedings in the civil cases of 2017 and 2020; and the lack of an effective remedy for the finding of a violation, compensation, and the acceleration of the aforementioned proceedings. On 1 November 2021, the Court decided to reject the request concerning the unreasonable length of proceedings before the High Court, as unfounded.

Thus, on 7 March 2022, the applicant company lodged an individual constitutional complaint with the Court seeking the repeal of the High Court’s decision, which had decided not to admit the case for examination, notwithstanding the fact that it constituted a new circumstance.

On 24 February 2023, the applicant company submitted additional observations to the High Court regarding its appeal. Furthermore, on 25 April 2024, it lodged a request with the same court seeking: a finding of a violation of the reasonable time requirement and the acceleration of proceedings; a finding of victim status throughout the judicial proceedings; and compensation for damage resulting from the violation of the reasonable time requirement. Following the notification regarding the formal deficiencies of the request – namely the absence of the representative lawyer’s signature and the power of attorney – the Civil College of the High Court, examining the matter with priority, pursuant to Article 399/7, paragraph 3 of the Code of Civil Procedure, decided to discontinue the examination of the request for a finding of a violation and the acceleration of the proceedings.

*( continues on page 17)*

## INDIVIDUAL CONSTITUTIONAL COMPLAINT



Meanwhile, regarding the applicant company's appeal, the Civil College of the High Court declared it inadmissible, reasoning that it did not raise grounds falling within the scope of Article 472 of the Code of Civil Procedure. Moreover, on 24 December 2024, the applicant company lodged another individual constitutional complaint with the Court challenging the High Court's decision which had discontinued the examination of the request for a finding of a violation. It further sought a finding of a lack of an effective remedy, a finding of victim status, and compensation in accordance with the law.

Thus, on 5 March 2025, the Court decided to pass the case for examination in a plenary session on the basis of the case file. On 25 February 2025, the applicant company lodged an individual constitutional complaint with the Court also challenging the High Court's decision which had declared its appeal inadmissible; the Court decided to admit this case for examination in a plenary session on the basis of the case file. On 7 October 2025, the Court ordered the joinder of the two aforementioned applications, given that they were interconnected.

### *Court's Assessment*

*Regarding the violation of the right of access to a court in relation to the standard of a reasoned judicial decision* – The Court finds that the arguments on which the High Court based its position do not appear to be arbitrary, irrational, or contradictory. Furthermore, such decision does not appear to be ambiguous regarding its content or the assessment of the grounds raised before that court by the applicant company. Thus, the decision of the Civil College does not call into question the observance of the right to a fair trial, specifically regarding the right of access and the requirement for a reasoned decision. The mere fact that the applicant company's appeal was declared inadmissible is not sufficient, from a constitutional perspective, to cast doubt on the judicial proceedings conducted before the High Court.

In this regard, the Constitutional Court finds that the applicant company's claims concerning the violation of the right of access to a court, in relation to the standard of a reasoned judicial decision, are unfounded.

### *Decision-making*

The Court decided, unanimously, to reject the application.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

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

## **KEY WORDS**

**Enforcement order/  
Request for acceleration  
of proceedings/  
Reasonable time  
requirement/  
Conservative seizure/  
Complexity of the case**

**Although the case may have presented complexity during its examination by the courts of fact, the proceedings before the court of law cannot be said to present the same elements of complexity.**

**The Court also referring to the European Court of Human Rights jurisprudence concerning several cases against Albania, considers that the overall length of the proceedings in the present case alone constitutes sufficient grounds for finding an excessive length of proceedings.**

**Therefore, the applicant's constitutional right to a hearing within a reasonable time has been violated.**

## **“Private Bailiff Office Arb” Ltd. Company (violation of the right to a hearing within a reasonable time due to excessive length of proceedings before the High Court) – Judgment No. 53, of 09.10.2025**

### *Facts*

The applicant company, “Private Bailiff Office ARB” Ltd. Company, signed a service contract with KESH (Albanian Power Corporation) for the provision of bailiff services regarding an enforcement order. Following the notification for voluntary execution, the applicant company issued an order for the imposition of a conservative seizure on second tier banks. Subsequently, the applicant company filed a lawsuit against the bank, claiming that the non-enforcement of the execution order had damaged its established commercial reputation. The Tirana District Court rejected the lawsuit; such decision was upheld by the Court of Appeal following an appeal by the applicant company. No decision has yet been delivered regarding the applicant company’s appeal of 13 February 2019. On 26 March 2021, the applicant company submitted a request with the High Court for a finding of a violation of the reasonable time requirement and the acceleration of proceedings. Meanwhile, on 10 June 2021, the applicant company lodged a constitutional complaint with the Constitutional Court, seeking a finding of a violation of the reasonable time requirement, the acceleration of the civil proceedings, and the examination of the request for a finding of a violation of the reasonable time requirement. By Decision No. 39 of 9 December 2021, the Constitutional Court rejected such application. Consequently, the Civil College of the High Court rejected the request for the acceleration of the proceedings. On 18 July 2022, the applicant company lodged another individual constitutional complaint with the Constitutional Court seeking the repeal of such decision and an order requiring the High Court to re-examine the request. The Constitutional Court decided not to admit the case for examination in a plenary session. Therefore, on 25 April 2024, the applicant company filed a request with the High Court for a finding of a violation of the reasonable time requirement and the acceleration of the proceedings in the civil case. The High Court rejected such request, and thus, on 24 December 2024 the applicant company lodged a constitutional complaint with the Constitutional Court.

### *Court’s Assessment*

*Regarding the reasonable time of proceedings* – The Court finds that the proceedings have lasted approximately eleven years, noting that approximately six years have passed since the case was registered with the High Court, and no decision has yet been delivered. Furthermore, the Court in the light of the specific circumstances of the case, examined the criteria established by the constitutional law concerning: (i) *the conduct of the applicant*; (ii) *the complexity of the case*; (iii) *the conduct of the authorities*; and (iv) *what is at stake for the applicant*. The Court found that the applicant company did not contribute to the delays in the proceedings. With regard to the complexity of the case, the subject matter of the proceedings is of a civil nature and, having regard to the nature of the proceedings before the High Court, the Court considers that albeit the case may appear to present elements of complexity, this did not affect the length of the proceedings before that court. Regarding the conduct of the authorities, the Court finds that the case was assigned to the judge rapporteur A.K, however, it does not appear that a date has been set for the examination of the appeal, and the case is currently at the preliminary review phase. The Court considers that the length of proceedings regarding the case at hand is related to the workload in the High Court due to the justice reform. With regard to what is at stake for the applicant, the Court notes that, as reasoned by both the court of first instance and the court of appeal, it was not established that the applicant company has suffered pecuniary damage as a result of the defendant’s actions. Therefore, the Court considers that the case at hand is of such a nature that the applicant company’s interest is not significantly prejudiced by the excessive length of proceedings.

However, the failure of the High Court to examine the case after six years has violated the applicant’s 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 hearing within a reasonable time**

## KEY WORDS

*Employment relations/ Termination of the employment contract/ Justified grounds/ Compensation/ Acceleration of proceedings/ Reasonable length of proceedings/ Vital personal interests*

**The Court, referring to the jurisprudence of the European Court of Human Rights, notes that a long period of inactivity cannot be regarded as reasonable. Furthermore, parties to civil proceedings which do not require any special priority treatment are nonetheless entitled, under Article 6, paragraph 1 of the ECHR, to a hearing within a reasonable time; for this purpose, they are not required to demonstrate that they have suffered any specific or additional prejudice resulting from procedural delays.**

## **Bahrije Lluka (violation of the right to a hearing within a reasonable time due to excessive length of proceedings before the High Court) – Judgment No. 54, of 09 October 2025**

### *Facts*

The applicant, employed as a nurse at the Puka Hospital Service Directorate, ceased her employment relations with that institution in 2016 following the termination of her employment contract due to restructuring. Subsequently, the applicant lodged a claim with the Tirana Administrative Court of First Instance, seeking a declaration of the invalidity of the administrative acts concerning the unjustified termination of her employment contract, her reinstatement in her position, and an order compelling the defendant (the employer) to pay compensation in accordance with the provisions of the Labour Code. That court, having declared a lack of jurisdiction, transferred the case to the Shkodra Administrative Court of First Instance. The latter partially upheld the claim, ordering the defendant to pay the plaintiff compensation equivalent to two months' salary for failure to comply with the notification procedure, while rejecting the other claims. Following an appeal, the Administrative Court of Appeal ordered the defendant to pay the applicant compensation for seniority equivalent to eleven and a half months' salary and upheld the rest of the decision. Later, in 2019, the applicant lodged an appeal with the High Court.

In 2023 and 2024, while her case was still pending, the applicant filed a request with that court seeking a finding of a violation of the reasonable time requirement and the acceleration of the proceedings. Such request was rejected by the Civil College. Therefore, in 2025, the applicant lodged an individual constitutional complaint with the Court.

### *Court's Assessment*

*Reasonable time of proceedings*– The Court found that the overall length of the proceedings up to this stage amounts to over nine years, thus exceeding the two-year time limit for adjudication, as stipulated in the Code of Civil Procedure and the ninety-day time limit provided for in Law no. 49/2012 on Administrative Adjudication. Subsequently, the Court examined the specific circumstances of the case in the light of the criteria established by constitutional jurisdiction concerning: (i) the conduct of the applicant; (ii) the complexity of the case; (iii) the conduct of the authorities; and (iv) what is at stake for the applicant.

Regarding the applicant's conduct, the Court found that she did not contribute to the delays in the proceedings; she submitted complete evidence and did not lodge any request for the postponement of the hearing. With regard to the complexity of the case, the subject matter of the proceedings concerns the employment relations and compensation for damage. Given the social and financial consequences involved, this constitutes a vital personal interest for the applicant, who is a pensioner; therefore, the case must be treated with priority. Regarding the conduct of the authorities, the Court observes that a long period of inactivity cannot be regarded as reasonable where the sole justification for the delay is the justice reform and the resulting caseload of judges. While such factors of a general nature may be taken into consideration to an appropriate extent in assessing the length of proceedings in a particular case, they cannot, *per se*, justify such delays. With regard to what is at stake for the applicant, the Court deems that the risk to the applicant's interests has been substantiated and proven, considering the fact that she is a pensioner and of advanced age. Having regard to the period of six years during which the case has been pending examination before the High Court, the Court finds that there has been a violation of the right to a hearing within a reasonable time within the meaning of Article 42 of the Constitution. In conclusion, in view of these circumstances, the Court held that the applicant's claims are well-founded, finding a violation of the right to a hearing within a reasonable time and ordering the High Court to examine the case with priority. The Court also accepted the claim for costs and expenses submitted by the applicant in the individual constitutional complaint, in accordance with the tax invoice, in the amount of ALL 25,000.

### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right not to be convicted on the basis of unlawfully obtained evidence – Right of defense – Principle of no punishment without law (*nulla poena sine lege*) – Principle of presumption of innocence – Right to obtain the attendance of witnesses**

### KEY WORDS

*Reasonable time of proceedings/ Expert report/ Deliberation chamber/ Length of proceedings/ Reopening of proceedings/ Ne bis in idem/ Impartial tribunal/ Counsel of one's own choosing/ Court-appointed counsel/ Declaration of guilt by public authorities/ Civil and criminal liability/ Examination of witnesses*

**The Court finds that, contrary to the applicant's claims, the reasoning of the lower courts does not appear arbitrary from a constitutional perspective. As a matter of fact, the applicant was objectively in a position, particularly with the assistance of his counsel, to comprehend the content of the criminal provisions regarding acts or omissions that would render him not only criminally but also civilly liable, under the Code of Criminal Procedure.**

### **Kastriot Ismailaj (*criminal conviction for fraud and money laundering*) – Judgment No. 55, of 10.10.2025**

#### *Facts*

The applicant established several companies in Albania. In his capacity as partner and legal representative of one of them, he concluded a two-year contract with the "Distribution System Operator" JSC (*Operatori i Sistemit të Shpërndarjes-OSSH*) for the collection of outstanding debts and interest from OSSH debtors that had exceeded the 90-day period. Meanwhile, the Tirana Prosecution Office initiated two criminal proceedings against the applicant for the commission of the criminal offence "Laundering of the proceeds of crime" under Article 287 of the Criminal Code, since it was suspected that, through the accounts of the companies established and administered by him, he had carried out financial transactions lacking economic rationale, involving funds suspected to originate from illegal criminal activity. Prosecution decisions to discontinue these cases were subsequently annulled by the General Prosecution Office and were joined with another criminal proceeding initiated against the applicant for the commission of the criminal offences "Fraud" and "Laundering of the proceeds of crime," in cooperation, more than once, as stipulated in Articles 143(2) and 287(2) of the Criminal Code. Subsequently, the Tirana District Court, at the conclusion of the trial, found the applicant guilty of the charged offences and sentenced him to 11 years' imprisonment. Furthermore, the court ordered the confiscation in favor of the State of the corresponding sums in dollars, euros and Albanian lek in the applicant's bank accounts. Following the applicant's appeal, the Tirana Court of Appeal upheld the district court's decision, while the Criminal College of the High Court rejected the applicant's appeal. Therefore, the applicant lodged an individual constitutional complaint with the Court.

#### *Court's Assessment*

*-Regarding the violation of the right not to be convicted on the basis of unlawfully obtained evidence* – The Court noted that the applicant's claims concerning the testimonies of citizens A.S., S.H. and O.K. related, in essence, to the reliability of the witness evidence rather than to the existence of grounds for incompatibility as provided for in Article 156, letter "ç", of the Code of Criminal Procedure (CCP).

As regards the claim concerning the incompatibility with the status of witness of the citizen R.K., a jurist and defense counsel for DIA (Debt International Advisory) and OSSH (Distribution System Operator) at the International Court of Arbitration, the Court found that not only does it not appear that he acted in the capacity of counsel for the applicant in the proceedings against the latter, but neither was he compelled to testify against his will during the trial.

As regards the claims concerning the unlawful obtaining of evidence on the ground that the applicant was not present during the seizure of documents, the Court held that such claims were constitutionally unfounded.

With regard to the applicant's claims that the so-called "Master Data Cleaning" project was obtained without a seizure record and that the prosecutor's seizure decision was missing from the case file, as well as the claim that the email attached to the "P.&P." document submitted at the hearing by the prosecution had been fabricated, the Court found that the applicant had failed to demonstrate, from a constitutional perspective, that this evidence had had a decisive impact on his conviction.

In light of the above, the Court held that the applicant's claims concerning the violation of the right not to be convicted on the basis of unlawfully obtained evidence were unfounded.

*(continues on page 21)*

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**According to the case-law of the European Court of Human Rights, the admission of testimonies obtained during the investigative stage as evidence does not inherently violate Article 6, paragraphs 1 and 3 (d) of the Convention. Although the conviction of a defendant based solely or to a decisive extent on testimonies given during the investigative stage by witnesses whom he has had no opportunity to examine at the trial, entails a limitation of his defense rights – the absence of a witness at the trial cannot be considered, *per se*, a breach of the right to a fair trial, provided that there is other evidence supporting his statements and the conviction is not based on the testimony of the absent witness as the sole or decisive evidence.**



– *Regarding the violation of the right of defense* – The Court observed that the District Court had taken the necessary measures to strike a balance between the applicant's right to defend himself during the trial and the proper administration of justice. Furthermore, the applicant's claims concerning the violation of the rights of defense were examined by both – the Court of Appeal and the High Court, which provided reasoned grounds for their dismissal. In the Court's assessment, the position taken by the ordinary courts does not appear arbitrary from a constitutional viewpoint, insofar as during the proceedings the applicant was afforded the opportunity to have adequate time and facilities for the preparation of his defense, both through counsel of his own choosing and through court-appointed counsel. Therefore, the Court held that the applicant's claims concerning the violation of the rights of defense and the right to have adequate time for the preparation of the defense were unfounded.

– *Regarding the violation of the principle of the presumption of innocence* – The Court observed that, having regard to the context of the circumstances in which the General Prosecution Office responded via press releases, as well as the fact that the materials in the case file do not indicate that the ordinary courts commenced the proceedings with the preconceived idea that the applicant had committed the criminal offence or regarded him as guilty before the final judgment on his guilt was delivered, the statements by the prosecuting authority did not appear to have had a decisive impact on the final outcome of the criminal proceedings against the applicant. Thus, the applicant's claim concerning the violation of the principle of presumption of innocence resulting from the publication of press releases by the prosecuting authority is unfounded.

– *Regarding the violation of the principle of no punishment without law (nulla poena sine lege)* – The Court noted that the applicant had received a reasoned response regarding his claims concerning the violation of the right not to be held guilty of a criminal offence which did not constitute a criminal offence under the law, referring to the civil-law nature of the relationship between the parties as the ground for the infringement of such constitutional right. In its analysis of the judicial decisions, the Court deemed that the applicant was objectively in a position, particularly with the assistance of his counsel, to comprehend the content of the criminal provisions regarding the acts or omissions that would render him not only criminally but also civilly liable, under the Code of Criminal Procedure. Therefore, the applicant's claim concerning the violation of the right not to be held guilty of a criminal offence which did not constitute a criminal offence under the law was unfounded.

### *Decision-making*

The Court decided, unanimously, to reject the application.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

### Right of access to a court – Standard of a reasoned decision

#### KEY WORDS

*Non-bank financial institution/ Company under administration/ Administrators' decisions/ Special law/ Enforcement order/ Enforceable title/ Restoration of the time-limit/ Res judicata*

**The Court considers it necessary to reiterate that a decision of the Court of Appeal is considered final in terms of enforceability, but it does not constitute a final decision having the force of *res judicata* if the parties have exercised ordinary remedies.**

**Thus, in formal terms, *res judicata* entails the impossibility of challenging a judicial decision through ordinary remedies, including an appeal to the High Court.**

**The Court found that the course of action taken by the ordinary courts in the impugned proceedings resulted in the applicants failing to obtain a final response regarding their claims concerning the (in)validity of the enforceable titles and, consequently, the bailiff's actions, thereby infringing their right of access to a court.**

### **“Siontis” S.A. Company, “Design and Construction Siontis” S.A. Company, Christos Siontis (Kristos Siontis) (violation of the right of access to a court concerning the standard of a reasoned decision and remand of the case to the Administrative Court of Appeal for further proceedings) – Judgment No. 56, of 10.10.2025**

#### *Facts*

The applicants were debtors to the non-bank financial institution “Gjallica,” against whom the Tirana court issued enforcement orders, based on decisions by the company’s administrators which were classified as enforceable titles. During the enforcement proceedings, the Elbasan Bailiff’s Office imposed a seizure on the vehicles and machinery of the third applicant, notwithstanding the fact that he was himself a creditor in separate enforcement proceedings. Therefore, the third applicant challenged the seizure measure and requested stay of execution of the enforceable title, the annulment of the administrators’ decisions, and an order compelling the bailiff service to execute the decision in his favor. All three applicants submitted a request to the Durrës Court of Appeal for the restoration of the time-limit for filing a lawsuit. The Court of Appeal also accepted the main claims of the third applicant and decided a joinder of the applications; however, following examination, it rejected such claims. Subsequently, the High Court reversed such decision and remanded the case to the Administrative Court of Appeal for further proceedings, which severed the claims, adjudicating the restoration of the time-limit separately from the merits of the case. The request for the restoration of the time-limit was rejected, and therefore the High Court discontinued the proceedings regarding such claim. Meanwhile, the claims regarding the merits of the dispute were rejected at both levels of jurisdiction. Thus, the applicants have lodged an individual constitutional complaint with the Constitutional Court.

#### *Court’s Assessment*

*Regarding the jurisdiction *ratione materiae* concerning the claim of a violation of the right to a hearing by an impartial tribunal* – The Court held that the participation in the Administrative College of the High Court which examined the applicants’ appeal, of two judges of that court who had sat on the panel that previously examined their appeal in the proceedings for the restoration of the time-limit for filing the action, does not *a priori* entail a violation of the principle of impartiality, as any party may set into motion the same court and the same judges in respect of different matter. Consequently, this complaint by the applicants is manifestly ill-founded.

*Regarding the violation of the right of access to a court in relation to the standard of a reasoned decision* – The Administrative Court of Appeal rejected the applicants’ lawsuit without an examination on the merits, on the grounds that it was time-barred, basing this on a judicial decision which had not only failed to become final and acquire the force of *res judicata* – due to an appeal filed by the applicants – but it was also subsequently reversed by the higher jurisdiction court. This position of the Administrative Court of Appeal was upheld by the High Court, even though the latter had, moreover, repealed that very judicial decision, considering it as an impediment to the examination of the lawsuit on the merits (Decision No. 49/2016 of the Administrative Court of Appeal) and therefore, such case had been discontinued. Thus, the High Court failed to act in accordance with its function as a court of law, within the meaning of Article 141 of the Constitution, by failing to review the application of the law by the court of appeal, and, moreover, in light of its own previous decision.

#### *Decision-making*

The Court decided, unanimously, to accept the application.

## Right to a fair trial

### KEY WORDS

*Judicial expenses/ Rectification of the Decision/ Two-month time-limit/ Articles 80 and 28 of Law No. 8577/2000/ Article 14(4) of the Regulation*

**With regard to the entity liable for the reimbursement of legal representation costs, the Court notes that –in constitutional proceedings, the individual seeks to protect fundamental rights infringed as a result of the acts of public authorities – which includes the acts of ordinary courts that resulted in the violation of his fundamental rights. Therefore, liability in such proceedings lies with the State itself.**

## Elton Qyno (*Clarification and rectification of the Constitutional Court’s Decision following the approval of judicial expenses*) – Judgment No. 57, of 14.10.2025

### Facts

On 14 June 2024, the applicant lodged an individual constitutional complaint with the Constitutional Court, seeking the repeal of the court decisions authorizing the personal searches and searches of premises (home and workplace) and the seizure of the material evidence (items and computer data). He also requested – the repeal of the prosecutor’s decision on the seizure of two mobile phones, as well as the destruction of all copies of the data extracted from the seized devices.

In the submissions made prior to the public hearing attended by the parties, the applicant, through his legal representative, sought the reimbursement of legal representation costs in the event that the individual constitutional complaint was accepted.

By Decision No. 21 of 22 April 2025, the Court decided to accept the application in part, repeal the court decisions which had authorized the seizure of computer data extracted from the evidence seized during the search of the applicant’s home and workplace. It also ordered the destruction of the computer data seized pursuant to such decisions. On 28 May 2025, the applicant lodged another application with the Court seeking the rectification of the Decision No. 21/2025 regarding legal representation costs.

### Court’s Assessment

The Court notes that the applicant’s claim for judicial expenses was submitted within the time-limit, since it was lodged prior to the decision accepting the individual constitutional complaint. As regards the amount, taking into consideration the fact – that the constitutional proceedings concluded by Decision No. 21/2025 were relatively complex – that the case concerned a challenge to court decisions at the criminal investigation stage – the number of hearings held before the Court and the fact – that some of them were public hearings attended by the parties – the applicant’s lack of legal training and experience to understand the case (being a journalist by profession), as well as the number of complaints accepted by the Court, the Court assesses the legal representation costs at the amount of 200,000 ALL (Albanian lekë). The obligation to pay this amount shall be charged to the Ministry of Finance.

### Decision-making

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

\* A copy of this Judgment shall be attached to Constitutional Court’s Judgment No. 21 of 22 April 2025, rectifying the operative part as follows “*The applicant’s representation expenses at the amount of 200,000 (two hundred thousand) ALL shall be charged to the Ministry of Finance*”.

### Right to a fair trial – Principle of legal certainty

#### KEY WORDS

*Early retirement pension/ Military personnel of the Armed Forces/ Applicable law/ Calculation of the amount of pension/ Deterioration of the financial situation/ Limitation on the amount of benefit/ Arbitrariness in the application of the law*

**The principle of legal certainty does not operate in isolation – rather it is inherently linked to the protection of acquired rights, the preservation of legal continuity, and the requirements of clarity and foreseeability in the regulation of legal relations, as well as the observance of legitimate expectations.**

**Regarding the principle of legal certainty, the Court has stated that it also encompasses the prohibition of the retroactive effect of legal norms, which implies that it is impossible to adjudicate, under the legal norms in force, human conduct, legal facts or legal relations that occurred prior to the entry into force of these norms.**

### *Isuf Dashi (violation of the right to an early retirement pension due to the different courts' interpretation of the applicable substantive law) – Judgment No. 59, of 16.10.2025*

#### *Facts*

The applicant, an active officer of the Armed Forces since 1982, who was transferred to the reserve on 01 September 2004, and following receipt of a transitional payment, received an early retirement pension for length of service until 2006.

By a decision of the Berati Regional Directorate of Social Insurance, he was awarded an early retirement pension in the amount of 16,480 (ALL) per month, payable from 1 September 2006, pursuant to Law No. 8087 of 13 March 1996 “*On supplementary social insurance of the military personnel of the Armed Forces of the Republic of Albania*”.

The applicant applied to the Berati Regional Directorate of Social Insurance, requesting the recalculation of the pension, but the Directorate stated that the calculation and recalculation of the early retirement pension were in accordance with the law, as well as Decision No. 2 of 18 February 2013 of the Constitutional Court (*hereinafter the Court*). Thus, the applicant filed a lawsuit with the court seeking the revocation of the decision of the Berati Regional Directorate of Social Insurance, the recalculation, and the re-determination and payment of the amount of the early retirement pension from 1 September 2006 until he met the requirements for an old-age pension, as well as the payment of arrears between the pension amount under Law no. 9210/2004 and the pension actually paid, together with late payment interest from 1 September 2006 until the enforcement of the judicial decision. The Vlora Administrative Court of First Instance decided to accept the lawsuit. Following the appeal, filed by the Berati Regional Directorate of Social Insurance, the Administrative Court of Appeal decided to reverse the decision – thus, rejecting the applicant’s lawsuit. Following the applicant’s appeal, the Administrative College of the High Court decided to declare it inadmissible. *Therefore*, the applicant lodged an individual constitutional complaint with the Court.

#### *Court’s Assessment*

*Regarding the violation of the right to a fair trial, in relation to the principle of legal certainty* –The Court considers that the early retirement pension for length of service is granted according to the nature of the work of military personnel, who, following the interruption of their career, whether voluntarily or involuntarily, find it difficult to obtain employment of a level comparable to the functions they previously exercised; for this reason, the legislature provided for the creation of a system of supplementary benefits to guarantee the maintenance of a comparable standard of living and economic status for the military personnel of the Armed Forces. In this regard, the entitlement to an early retirement pension for length of service is protected by the principle of legal certainty. Furthermore, the Court finds that the Administrative Court of Appeal did not examine the lawfulness of the relevant contested administrative act on the basis of the legal and factual situation existing at the time such act was performed, nor did it calculate the pension amount in accordance with the requirements of the legal provisions in force for that period – therefore, the Court holds that the decision of the Court of Appeal does not appear to have satisfied the requirements of a fair trial. In addition, the Court also observes that the provisions of the law, as well as its interpretation by the courts, do not appear to have been analyzed by the High Court, nor is it stated why the law identified by the administrative court of first instance is considered applicable in the present case, whereas that identified by the Court of Appeal is inapplicable. The High Court does not appear to have addressed the grounds raised in the appeal regarding the applicable law in the present case. Therefore, the Court finds that the applicant’s claim regarding a violation of the right to an early retirement pension, due to the unreasonable interpretation of the law, with regard to the period from 1 September 2006 to 30 June 2009, is well-founded.

#### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

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

### **KEY WORDS**

*Residence legalization permit (ALUIZNI), State Cadastre Agency/ “vital personal interests”/ priority treatment*

**The Court has emphasized that Article 48 of Law No. 49/2012 “On the administrative courts and the adjudication of administrative disputes”, as amended, provides for a thirty-day time-limit for the examination of a case by the Administrative Court of Appeal, whereas the Code of Civil Procedure (CCP), by the 2017 amendments, in the set of rules on remedies for a finding of a violation of the right to a hearing within a reasonable time, has set a one-year time-limit for the conclusion of second-instance administrative proceedings (Article 399/2, point 1, letter “a” of the CCP). This implies that, formally, the adjudication of the case before the Administrative Court of Appeal has exceeded the statutory time-limit.**

### **Hismet Drazhi (violation of the right to a hearing within a reasonable time due to excessive length of proceedings before the court of appeal) - Judgment No. 61, of 21 October 2025**

#### *Facts*

The applicant lodged a claim with the Administrative Court of First Instance, seeking an order compelling the Agency for Legalization, Urban Planning and Integration of Informal Areas/Constructions (ALUIZNI) (currently the *State Cadastre Agency – SCA*) and its Local Directorate to legalize his “residence” building and to issue a legalization permit.

Such claim was upheld by the court, but was subsequently appealed by the State Cadastre Agency. While the proceedings were pending before the court of appeal, the applicant filed a request for a finding of a violation of the reasonable time requirement, which was rejected by the Administrative College of the High Court. Therefore, the applicant lodged an individual constitutional complaint with the Constitutional Court concerning the same subject-matter.

#### *Court’s Assessment*

*Regarding the violation of the right to a hearing within a reasonable time* – the Court notes that the object of the proceedings initiated by the applicant concerns the failure to finalize the legalization process for his residence and the issuance of a legalization permit. Concerning the nature of the case, albeit not directly related to vital personal interests, based on objective grounds – namely that the residence constitutes the applicant’s sole asset, and also considering his age as an old-age pensioner – it appears that these grounds are specific and sufficient to demonstrate that the applicant’s interest is significantly at stake by the length of proceedings.

Having regard to the period of seven years and three months during which the proceedings have been pending before the Administrative Court of Appeal, the Court finds that there has been a violation of the right to a hearing within a reasonable time, pursuant to Article 42 of the Constitution.

Consequently, the decision of the High Court is repealed, and the Administrative Court of Appeal is ordered to examine the case with priority.

#### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to a fair trial – Standard of a reasoned judicial decision in relation to the right of substantive access**

### KEY WORDS

*Premeditated murder/ Restoration of the time-limit/ Fair trial/ Article 420/1 of the CCP (Code of Criminal Procedure)/ Appeal/ De plano reasoning/ Enforcement of the decision/ Reopening of the proceedings/ The presumption “nemo censetur ignorare legem”/ Arbitrary application of the law*

**Having regard to the importance of the proper administration of justice pursued by Article 420/1 of the CCP, balanced against the interests of the applicant, who initiates the proceedings, the Court notes that the ordinary courts’ interpretation of Article 420/1 of the CCP is not arbitrary from the constitutional perspective.**

### **Fatos Metushi (violation of the right by the courts regarding the restoration of the time-limit for lodging an appeal) – Judgment No. 62, of 23.10.2025**

#### *Facts*

In 2000, the Fier District Court sentenced the applicant to twenty-five years’ imprisonment for the criminal offence of premeditated murder, following a trial held in absentia.

The judgment became final and therefore, an execution order was issued. The applicant was arrested in Greece and extradited to Albania, where he was notified by the Albanian authorities of the enforcement of the judgment. He filed a request with the District Court seeking the restoration of the time-limit for lodging an appeal against his conviction, claiming that the criminal proceedings and the trial had been conducted in breach of the Code of Criminal Procedure (CCP). Consequently, the court declared the request inadmissible on the grounds that it had not been accompanied by the appeal itself, a formal defect which, under Article 420/1 of the CCP, entailed its inadmissibility. The Vlores Court of Appeal upheld such decision, finding it to be lawful and in compliance with statutory provisions. The applicant filed an appeal with the High Court and consequently submitted additional grounds. The Criminal College of the High Court declared the appeal inadmissible, holding that the lower courts’ decisions had been based on a correct interpretation and application of the law. Regarding the complaints raised in the supplementary grounds of appeal concerning the courts’ rejection of his request for the re-examination of the final decision, the College considered that they could not be examined as they pertained to a separate set of proceedings. Thus, the applicant lodged an individual constitutional complaint with the Court.

#### *Court’s Assessment*

*Regarding the violation of the standard of a reasoned judicial decision in relation to the right of substantive access* – Analyzing the judicial decisions vis-à-vis the legal provisions of Article 420/1 of the Code of Criminal Procedure, the Court notes that the ordinary courts’ dismissal of the request for the restoration of the time-limit for lodging an appeal was the result of the applicant’s failure to comply with the statutory requirements. The Court also considered that – the applicant was in a position, if need be with the assistance of a legal counsel, to foresee the consequence of the dismissal of the request for the restoration of the time-limit for lodging an appeal, pursuant to the aforementioned provisions of the CCP, due to his failure to attach thereto the appeal against the judgment on the merits. Furthermore, contrary to the applicant’s claims, the relevant courts duly reasoned their decisions, providing a reasoned response regarding the legal grounds for the dismissal of the request for the restoration of the time-limit, namely the failure to attach thereto the appeal against the criminal judgment, which constituted a mandatory requirement for the examination of the merits of the claims. Thus, the Court held that the applicant’s complaints regarding the violation of the right of substantive access to a court, in relation to the standard of a reasoned judicial decision, were ill-founded.

#### *Decision-making*

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

### Right to a fair trial

#### KEY WORDS

*Fatal road traffic accident/ Legal heirs / Albanian Insurance Bureau/ Insurance company/ Notarized Declaration/ Unifying Decision No. 12/2007/ Pecuniary and non-pecuniary damage/ Article 511 of the Civil Code/ Article 610 of the Civil Code*

**The Court held that the High Court's reasoning, which on the one hand acknowledged that the case concerns a damages award in a non-contractual relationship and, on the other hand, relied on provisions governing contractual relationships to resolve the matter, renders its decision contradictory.**

### **Uljana Jeshili, Erind Jeshili, (award for damages for the loss of life of a family member) – Judgment No. 63, of 23.10.2025**

#### *Facts*

*The applicants are the legal heirs of the deceased E.J. (the spouse and the son), who lost his life in a road traffic accident. The insurance company INSIG, delegated by the Albanian Insurance Bureau, recognized the event as an insured incident and offered the applicants a monetary amount as compensation for the damage suffered. The applicant accepted such amount and signed a notarized declaration stating that she had no further financial claims against the insurance company. Several years later, the first applicant filed a lawsuit before the court, seeking the difference between the actual pecuniary damage and the non-pecuniary damage. The first-instance court rejected such lawsuit, holding that the obligation had been extinguished, pursuant to Article 511 of the Civil Code. The Court of Appeal held that this decision was erroneous, reasoning that an agreement that excludes or limits in advance the liability of the person at fault is invalid, with reference to the provisions of Article 610 of the Civil Code. The Court of Appeal also found that the amount paid by the insurance company covered only pecuniary damage and that non-pecuniary damages should also have been added to such amount, in accordance with Unifying Decision No. 12/2007. Furthermore, the High Court found the Court of Appeal's reference to Article 610 of the Civil Code to justify the invalidity of the notarized declaration to be erroneous, thereby upholding the decision of the first-instance court. Therefore, the applicants lodged an individual constitutional complaint with the Court.*

#### *Court's Assessment*

*Regarding the violation of the right to a fair trial – The Court found that the High Court erred in assessing the facts regarding the notarized declaration signed by the first applicant, by evaluating its content as a means of extinguishing the obligation arising from contractual relations, with reference to Article 511 of the Civil Code. The notarized declaration does not specify which obligation of the interested party as debtor was extinguished, nor in what amount or measure this obligation was extinguished by a remission of debt by the creditor (the first applicant). The Court held that the objection to the amount of the compensation in these cases must be determined by the court also with regard to the amount of the obligation, and that only its fulfilment could be capable of extinguishing the obligation.*

*Therefore, the High Court's interpretation of the law, in the case at hand, lacks analysis from the perspective of both facts and law, rendering it manifestly unreasonable or arbitrary.*

#### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to a fair trial – Right to summary proceedings – Right to a reasoned decision – No punishment without law – Equality before the law – Principle of non-discrimination**

### KEY WORDS

*Assessment of evidence/ legal certainty/ non-discrimination/ legal classification of the criminal offence/ summary proceedings/ sentence/ arbitrary application of the law/ no punishment without law (nullum poena sine lege)*

**The Court does not act as a fourth instance – however, it intervenes when an error of law or fact by the courts of ordinary jurisdiction is so manifest that no reasonable court could ever have made it, or is such as to render the proceedings unfair.**

**The Court deems that the manner in which the prosecutor's office and subsequently the courts of ordinary jurisdiction acted – having had full legal scope to guarantee the applicant the right to summary proceedings – resulted, in essence, in a violation of the effective safeguards against arbitrary punishment within the meaning of the constitutional right of *nullum poena sine lege* (no punishment without law).**

## **Renato Sina (no punishment without law due to refusal of summary proceedings in the sentencing) – Judgment No. 64, of 09.10.2025**

### *Facts*

A dispute arose between the applicant and his father, on the one hand, and brothers T.S. and E.S., on the other – as a result of the injuries received, citizen E.S. passed away a few days later. The Prosecutor's Office at the Court of First Instance for Serious Crimes charged the applicant and citizens P.S. and T.S. with the criminal offence of attempted murder due to family relations, committed in complicity (at that time the victim had not yet passed away), an offence sentenced to not less than twenty years of imprisonment or life imprisonment. Following the completion of the investigations, the Prosecutor's Office requested that the case be sent for trial only in respect of the applicant, on the charge of "murder due to family relations", committed in complicity; for the purpose of establishing the legal classification of the offence, it presented as evidence the birth certificates of the applicant, his father, and the victim. Consequently, at the request of the Prosecutor's Office, the criminal case was transferred for trial to the Court of First Instance for Serious Crimes, which scheduled a hearing for 27 July 2017. At that hearing, the applicant's defense counsel requested: a declaration that the court lacked subject-matter jurisdiction; the reclassification of the criminal offence as having been committed in self-defense; and summary proceedings. This hearing was postponed twice (not by the applicant), and at the hearing of 2 November 2017 the court decided to reject the request for summary judgment, holding that Law no. 35/2017, amending Article 403, point 2 of the Code of Criminal Procedure, had already entered into force.

In conclusion, the first-instance court decided, *inter alia*, to find the applicant guilty of 'intentional murder', under Article 76 of the Criminal Code, and sentenced him to twenty years' imprisonment. Following appeals by the Prosecutor's Office and the applicant, the Court of Appeal for Serious Crimes decided to reverse the decision only with regard to the sentence, hence reducing it. Following an appeal, the Criminal College of the High Court declared it inadmissible, since it did not rely on any of the grounds provided for by Article 432 of the Code of Criminal Procedure. Therefore, the applicant lodged an individual constitutional complaint with the Court.

### *Court's Assessment*

*Regarding the violation of the principle of no punishment without law (nullum poena sine lege)* – The Court considered it appropriate to reiterate the effects of the summary proceedings concerning the sentence. The choice of the summary proceedings, as a procedural rite, affects the length or type of sentence imposed by the court – thus, such procedural right directly affects the substantive right of no punishment without law (*nullum poena sine lege*). The Court notes that, albeit the prosecutor's office and the courts of ordinary jurisdiction had full legal scope to guarantee the applicant the right to summary judgment during the criminal proceedings – their actions resulted, inherently, in a violation of the effective safeguards against arbitrary punishment within the meaning of the constitutional right of *nullum poena sine lege*. In this regard, the Court found that the applicant's claims concerning the violation of the principle of *nullum poena sine lege* are well-founded. Therefore, it holds that the decision of the High Court must be repealed, since, based on its powers as a court of law, it is in the appropriate position to examine the applicant's complaint and remedy the errors of the lower courts.

The Court, reiterating that the review of compliance with constitutional standards for a fair trial also falls within the jurisdiction of the ordinary courts, and in particular of the High Court, which possesses all the means and powers to perform a role that goes beyond the law and aims at justice, considered it unnecessary to proceed to an analysis of the other claims submitted by the applicant regarding the criminal proceedings, including those concerning Article 403, point 2 of the Code of Criminal Procedure, as amended, in so far as the case will be re-examined by the High Court. In summary, the Court held that the application was partly well-founded, and therefore accepted it.

### *Decision-making*

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