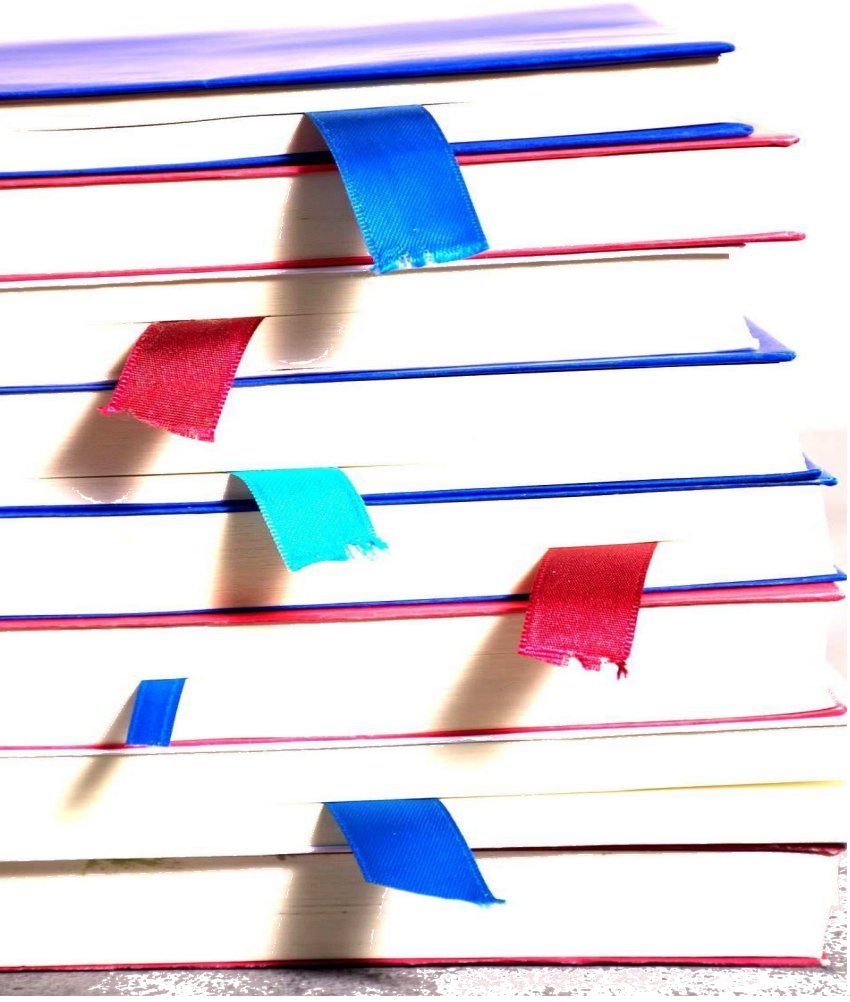
REPUBLIC OF ALBANIA

Constitutional Court

Periodical Newsletter

of the Constitutional Court

Decisions January-February 2024



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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 January and February 2024.

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

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

CONTENT

The right to education— The right to work – Principle of legal certainty

KEY WORDS
Medical students/ cost of studies/ agreement/ special treatment/ diploma/ fulfilment of employment obligation/ priority employment

Contrary to the principle of legal certainty, legal provisions providing that students, in case of signing the agreement, do not have the right to be awarded the diploma, which is transferred from the institution of higher education to the health institution where the student will be employed and which is issued only upon "fulfilment of employment obligations", have introduced new obligations and rules of which the students were not informed about or did not previously agree. The selected formula also interferes with the constitutional right to accept and choose the place of work, as provided by Article 49 of the Constitution, since student's will to ensure the means of living, with work chosen or accepted by oneself, is violated. This intervention does not meet the criterion of proportionality, as it is not appropriate in relation to the urgency of the legislative intervention in terms of its expected effect.

A group of the members of the Parliament and a group of students of the Faculty of Medicine (*law of medical students*) - no. 1, of 25.01.2024

Facts

The Parliament enacted law no. 60/2023 "On special treatment of students who follow the second cycle of integrated study program "General Medicine" in public institutions of higher education". The law provides the mechanism through which students attending the public institutions of higher education are offered a special treatment, which, includes employment once they complete their studies, after signing an agreement with the competent ministry for education, the competent ministry for health, as well as the public institution of higher education. According to the agreement, the student shall work in the medical profession after completing the studies, respectively, not less than five years, three years and two years in health institutions in the Republic of Albania, which means the official transition of the diploma from the public institution to the health institution where he/she is employed until "fulfilment of employment obligations" according to these deadlines. The student who refuses to sign the agreement shall pay the total fee of the cost of studies. The applicants objected such legal provisions as incompatible with the Constitution.

The Court`s Assessment

The right to education related to the principle of legal certainty — The contested provisions have affected the legal situation of medical students in these aspects: (i) the obligation to sign an employment agreement; (ii) shall such an agreement be signed, the student is not provided with the diploma, which is kept by the health institution where he/she is employed, and is issued after "fulfilment of employment obligations"; (iii) in case of not signing the agreement, the full costs of studies are paid. Such changes negatively affect the legal situation of medical students, both with respect to students who are already attending the Faculty of Medicine, as well as the incomers, who neither had previous awareness of the situation, nor did they accept it at the moment they decided to compete at that faculty. The worsening of a student's legal situation, through the introduction of new obligations and rules, which they did not know about and did not accept beforehand, does not comply with the principle of legal certainty.

The right to work - The contested provisions, which set up a period of employment obligation after completing the studies, limit the students' constitutional right to choose the workplace. In terms of the proportionality test, in relation to the circumstances that dictated it, the selected scheme is harsher than necessary to achieve the intended aim. Forcing students to choose between signing the agreement or not , with the consequence that, in case of signing, the diploma is officially transferred to the health institution where they are employed up until "the fulfilment of employment obligations", has led to a complete denial of the right to choose the place of work, according to the conditions and criteria that the students were familiar with and accepted at the moment they initiated their studies or competed for this purpose.

Decision-making

The Court held, by a majority of votes, to admit the application in part (three judges partly had dissenting opinions).

Review of international agreement prior to ratification – International agreement related to territory and human rights and freedoms (of migrants) – Authorization to issue the plenipotentiary power and the right to sign

KEY WORDS
Negotiation/ ratification/ territory/ physical and jurisdictional aspect of territory / rights of migrants / power of attorney/ migration flows/ third countries/ unrewarded areas

The Migration Protocol does not provide rules that affect the territorial integrity of the Republic of Albania in favour of the Italian state and does not contain any provisions relinquishing Albanian's State jurisdiction over its territory. The Italian State`s exercise of jurisdiction is defined in order to fulfil its obligations with regard to migration and asylum with a view to guarantee migrants' rights deriving by international law. Nevertheless, due to the rank of Protocol in the hierarchy of legal acts, it does not exclude the jurisdiction of the Albanian State at the constitutional and convention level in protecting the fundamental human rights and freedoms. Even though it is an international agreement, ratified by law by the Assembly, the Protocol is not included in the category, provided for in article 121, point 1, letters "a" and "b", of the Constitution, and thus the authorization to issue the plenipotentiary power to negotiate and sign belongs to the Government (the Prime Minister).

A group of the members of the Parliament (*Protocol with Italy*) – judgment no. 2, of 29.01.2024

Facts

The Protocol "On strengthening the cooperation in the field of migration" of the Italian Republic and the Council of Ministers of the Republic of Albania was signed in 2023. Its purpose was to manage migratory flows from third countries, where the Albanian State provides the Italian State the right to make free use of two areas for a period of 5-10 years. In such areas, the Italian side can create structures for the reception of migrants, whose number cannot be higher than 3000 people. They shall be managed by the Italian authorities, according to Italian and European legislation, and disputes that may arise between them and the migrants will be subject exclusively to Italian jurisdiction.

The Court`s Assessment

The Court, referring to the nature of the claims, reviewed the Protocol on Migration in three aspects: (i) whether it constitutes an international agreement that has to do with the territory of the Albanian state, with regard to letter "a" of point 1 of article 121 of the Constitution; (ii) whether it constitutes an international agreement that deals with fundamental human rights and freedoms with regard to letter "b" of point 1 of article 121 of the Constitution; therefore (iii) the authorization and signature provided by the Prime Minister for issuing the plenipotentiary power to the negotiating group fulfil the constitutional requirements for the negotiation and signing of this act. This assessment determines then, whether it violates the basic rights and freedoms of foreigners (migrants), guaranteed by the Constitution and the international law that is binding upon the Republic of Albania.

The Court, with regard to *the letter "a" of point 1 of article 121, of the Constitution*, assessed that the Protocol on Migration, in *the physical aspect of the territory*, does not define or change the territorial integrity of the Republic of Albania, since, fundamentally, it does not change or sets its borders, thereby preserving intact all the elements of the territory in the physical aspect; and that, in the jurisdictional aspect of the territory, it does not change the territorial jurisdiction of the Albanian state in relation to the Constitution, the ECHR and ratified international agreements; the Albanian state continues to exercise its jurisdiction even during the time that the act will be applicable; it allows that in a part of the Albanian territory, in addition to the Albanian jurisdiction, the jurisdiction of the Italian authorities is exercised exclusively for asylum issues.

The Court held that the Protocol on Migration is a bilateral agreement on the assignment of duties between the Albanian and Italian authorities on issues of migrants and the subgroup of asylum seekers, which aims to avoid a jurisdictional vacuum and responsibilities for their fundamental rights and freedoms, and thus the relinquishment of the jurisdiction to the Italian authorities on the issues of migrants and asylum seekers has been necessary.

Regarding *letter "b" of point 1 of article 121 of the Constitution,* the Court assessed that the Protocol on Migration does not create new fundamental constitutional rights and freedoms, nor does it introduce additional restrictions on existing human rights and freedoms, beyond those that are provided by the Albanian legal order. The Prime Minister has the authority to grant the authorization to issue the plenipotentiary power for the negotiation and his signing of the Protocol on Migration, based also on the Treaty of Friendship and Cooperation between the Italian Republic and the Republic of Albania of 1995, which based on article 180 of the Constitution, constitutes a framework agreement, providing the necessary grounds for the Protocol to be signed by the Government.

Even though, it is an international agreement ratified by law by the Assembly, the Protocol on Migration is not included on the category of international agreements provided for by article 121, point 1, letter "a" and "b", of the Constitution, consequently the authorization for the issuance of plenipotentiary powers for negotiation and its signature belongs to the Government (Prime Minister).

Decision-making

The Court held, by a majority of votes, to declare the Protocol as compatible with the Constitution and to allow its ratification by the Assembly (four judges had dissenting opinions).

The right to be informed on the state of the environment and its protection

KEY WORDS
Environment/ state of the environment and its protection/ healthy environment/ environmental concerns/ public consultation/ projects affecting the environment/ Aarhus Convention/ directives/ national identity/ social objectives/ individual act/ freedom of economic activity

Lack of public consultation process during the enactment of law no. 38/2021, has violated the procedure, since the participation of the public in the first phase of the project and construction of the Skavica Hydro Power Plant (HPP) project was not guaranteed, in accordance with the provisions of Article 56 of the Constitution and Articles 6 and 8 of the Aarhus Convention, which define the state's obligation to inform and guarantee the effective participation of the public in activities that may have consequences on the environment. Nevertheless, even at the current phase of the project, the possibility of effective exercise of public participation on access to information on the state of the environment, as a premise in guaranteeing a fair and transparent decision-making process by public authorities, still exists.

Association "Opposition to the Skavica Dam", Association "On Protection of the Properties and of the Environment of Black Drin Basin's", Albanian Helsinki Committee (*Skavica case*) – judgment no. 3, of 30.01.2024

Facts

The parliament enacted law no. 38/2021 in order to determine the special procedure for negotiation and execution of the contract for the project and construction of the Skavica Hydropower Plant. According to this law, the contract for the realization of the project is divided into two phases, where the first phase includes preliminary work activities that will enable the company to present a proposal to the contracting authority for the second phase contract, which consists of project implementation and construction of the Skavica Hydropower Plant. The applicants (a group of associations) claimed that the construction of Skavica HPP violates a number of constitutional rights and freedoms.

The Court`s Assessment

The right to be informed on the state of the environment and its protection – Governmental bodies have violated the right to be informed on the state of the environment and its protection, even though international acts provide the obligation to inform the public throughout the entire process. The procedure of the approval of law no. 38/2021 took place without public consultations, without taking into consideration the opinion of the community living in that area, with the status of the public concerned, as well as without evaluating the impact of the project on environment and the respective rights related to it. However, considering the fact that project is still in the first phase of implementation, in compliance with the requirements provided for by article 56 of the Constitution and the Aarhus Convention, violations found by the Court during the procedures before the law was approved can still be repaired through public participation in activities and access to information related to the various phases, following the development and implementation of the project, as well as during the decision-making process. Before undertaking any initiatives affecting the environment and other fundamental rights related to it, starting from the early phases of the project, the State has the obligation to inform the public, especially the public concerned, regarding the steps that will be undertaken; to enable public access to information on the project`s research results and reports, their findings on the possible effects, the foreseen measures to reduce such effects, the decision-making procedure and the reasons behind such decision, as well as to submit comments, information, and analysis or opinions that are relevant for the public.

Decision-making

The Court unanimously held that there had been a violation of the right of access to information on the state of environment and its protection in the procedures of the approval of law no. 38/2021 and ordered the public authorities to correct this violation.

Principle of legal certainty with regard to the right to private property and the principle of proportionality – Principle of hierarchy of norms

KEY WORDS
Private property/ expropriation/ cadastral category/ mandatory implementation of the decisions of the Constitutional Court and ECtHR

Even though the law has limited the expropriated subjects' right to benefit from indexation, it has not worsened their situation. With regard to the period from the moment of the publication of the compensation decision to its execution, the subjects have the duty to complete the necessary documentation in order to exercise their right to financial compensation. With regard to the period from the moment when the decision is final and executable, when the state's obligation to implement it also arises, the subjects benefit from indexation according to the bank interest rates until the moment of its execution. While indexation according to inflation constitutes a minimum guarantee, on the other hand, the state is not released from its obligation to deal with previous delays towards the subjects. The testing of the implementation of all possible formulas provided by law, in accordance with the formula limitations provided in Beshiri and others *v*. Albania, proved that the obligations specified by the ECtHR are met, therefore there is no violation of the right to property.

The Muslim Community of Albania (*Property Act*) – judgment no. 5, of 13.02.2024

Facts

In 2015, the Parliament enacted law no. 133/2015 ""On the Treatment of Property and Finalization of the Property Compensation Process". The Property Act and the by-laws on its implementation have been subject to constitutional review and the Court has expressed its position on decisions no. 1, of 16.01.2017 and no 4, of 15.02.2021. In 2022, the Parliament enacted law no. 77/2022, which has brought about changes to the Property Law, and subsequently, the Council of Ministers approved decision no. 313/2023, which amended its decision no. 223/2016 on the establishment of rules and procedures for the evaluation and execution of final decisions on property compensation and distribution of financial and physical funds for the compensation of properties. These acts were contested in Court by the applicant, who claimed they violated constitutional rights and principles.

The Court`s Assessment

Principle of legal certainty with regard to the right to private property and principle of proportionality – Change of the indexation period due to inflation, through the replacement of the words *"receiving the compensation"* to *"publication date"* is based on law, it serves a public interest and does not violate the principle of proportionality. The changes in Article 7 of the law do not oppose ECtHR's judgment in *Beshiri and others v. Albania* and the Court`s judgment no. 4/2021, concerning compliance with the minimum threshold of 10% of the total value of the property, which is estimated according to the current cadastral category. The new provisions contribute to further guarantees, as they ensure a compensation higher than the minimum threshold of 10%, thus preserving 10% as the minimum compensation standard provided by ECtHR. When the changes in the cadastral category have negatively affected the value of the property, the lawmaker has guaranteed that, where the property value at the moment of expropriation is higher than 10% of its current value, the expropriated subject shall be compensated according to the value of the cadastral category at the time of expropriation, in order to guarantee the minimum standard as provided by ECtHR.
Principle of hierarchy of norms – The Council of Ministers amended its decision no. 223/2016 within its competence provided for by the Property Act.

Decision-making

The Court held, by a majority of votes, to reject the application (two judges had dissenting opinions).

Locus Standi of the referring court - Identification of applicable law

KEY WORDS
Criminal liability/ subject matter/ambiental interception of communications/ judge a quo/ cumulative criteria

Special Court of Appeal against Corruption and Organized Crime (*subject matter of the special court*) - Meeting of Judges` judgment no. 29, of 14.02.2024

Facts

The case concerns an application brought before the referring court by a citizen who denounced, among others, special judges and prosecutors for committing criminal offences, such as "Abuse of power" and "Failure to report a crime". The referring Court assessed that articles 14 and 53 of law no. 95/2016 are incompatible with Article 135, point 2, of the Constitution, as they determine that special judges and prosecutors will be investigated and tried by the Special Prosecutor's Office (SPAK) and the special courts for criminal offenses that are under the jurisdiction of the ordinary courts.

Assessment of the Meeting of Judges

Locus Standi of the referring court - identification of the applicable law criterion -The referring court is reviewing criminal charges against special judges and prosecutors for the criminal offences provided by articles 186, 248 and 300 of the Criminal Code, during the investigation of a `s case against the charging person for the criminal offence provided by article 328 of the Criminal Code, where the special courts have jurisdiction pursuant to article 135, point 2, of the Constitution. The criminal charges of the denouncing person were not brought due to the special status of the judges and prosecutors, but because of their acting or failure to act in his criminal process, which, according to the provisions of article 9, point 1, of law no. 95/2016, falls within the jurisdiction of the special courts. The purpose of Article 53 of no. 95/2016 is to convey information and evidence on violations of the security conditions on trust and confidentiality committed by officials of the special courts or SPAK, as well as to start, on the basis of such report, an investigation against these officials, and it is not related to the review of the case by the judge *a quo*. Article 14 of law no. 95/2016, claimed as unconstitutional, does not provide the subject matter competence of the referring court, hence it does not impede such court from reviewing the case before it. The referring court has not managed to identify the applicable law or to determine the factual, current and direct connection between the provision contested as unconstitutional and the solution of the case before it.

Decision-making

The Meeting of Judges held, by a majority of votes, not to review the case in plenary session (three judges had dissenting opinions).

Legal certainty principle - The right to no punishment without law – Principle of proportionality – Reasoning of decisions

KEY WORDS
A child in conflict with the law/ life sentence/ summary proceedings/ unifying or equivalent interpretation / legitimate expectations/ fourth degree/ arbitrary interpretation

The existence of two different High Court decisions with regard to summary proceedings in cases of minors in conflict with the law for offences punishable by life imprisonment, cannot lead to legitimate expectations for the implementation of such procedure as long as there is no unifying or equivalent decision of the High Court in this regard. The court`s assessment that summary proceedings could not be applied in such cases, was in accordance with the provisions of the Criminal Procedure Code and the Juvenile Criminal Justice Code.

Florjan Gega (*summary proceedings in case of a minor)* - judgment no. 4, of 31.01.2024

Facts

The applicant, a minor in conflict with the law, was charged with "Murder under qualifying circumstances", as provided by article 79/1, letter "a", of the Criminal Code. The preliminary hearings judge rejected applicant's defense request for summary proceedings, holding that article 403/2 of Criminal Procedure Code forbids such proceedings for offences, such as in applicant's case, punishable by life imprisonment. The case was adjudicated by way of ordinary proceedings. The applicant pleaded guilty and was sentenced to 12 years in prison. The Court of Appeal found the judgment to be just, holding that applicant's claims for the rejection of the summary proceedings were unfounded. The Criminal College of the High Court rejected the appeal, holding that the applicant had not raised any points of law, as provided by Article 432/1 of Criminal Procedure Code.

The Court`s Assessment

Principle of legal certainty - Although in two different cases the High Court has held different opinions with regard to summary proceedings in cases of children in conflict with the law, this cannot give applicant legitimate expectations of its application, since the Supreme Court has not made a unifying or equivalent interpretation in this regard. In such cases, where there is no unifying or equivalent decision for the implementation of summary proceedings for minors in conflict with the law for offences punishable by life imprisonment, the expectations of the applicant for summary proceedings by the High Court are unfounded.

The right to no punishment without law related to the principle of proportionality, with regard to the reasoning of the decisions - Although the courts of general jurisdiction have concluded that summary proceedings could not be applied in the applicant`s case, the High Court`s interpretation of the law does not seem arbitrary to the extent that it can be considered that the applicant has been punished without law or that the sentencing was disproportionate.

Decision-making

The court held, by a majority of votes, to reject the application (two judges had dissenting opinions).

The right to a fair trial within a reasonable time

KEY WORDS
The right to property/ staying of proceedings/ criminal procedure/ maximum investigating period/ extending the time limit of investigations/ victim of a criminal offence/the court`s reasoning of its decision/the victim of a criminal offence

Taking into consideration the reasonable time of investigation of criminal offences, as provided by the Civil Procedure Code, and the maximum investigating period, pursuant to the Criminal Procedure Code, it is important that the prosecutor exercises his power to register the name of the person who is attributed with the criminal offence, in the register of criminal offences. This does not imply the possibility of avoidance or negligence in this regard, but is an added responsibility of the prosecutor in order to ensure an objective, fair, effective and efficient investigation. In his criminal complaint the applicant has identified the persons who, according to him, committed the criminal offense and based on the fact that the preliminary investigation continued more than 3 years, its duration cannot be considered normal in the context of the circumstances of the criminal proceedings.

Erdi Prifti (unreasonable length of criminal proceedings) - judgment no. 6, of 15.02.2024

Facts

The applicant is a plaintiff in the civil judicial process, which, following a court decision, was suspended until the final proceedings of the criminal case initiated by the applicant himself for the criminal offense "Forgery of documents", as provided by article 186, point 1, of the Criminal Code, with regard to some evidence presented in the trial by the defendant. Given that the criminal process was still ongoing, the applicant filed a motion with regard to finding of a violation of the reasonable time of investigation, due to the fact that it impeded the continuation of the civil process. The Court of First Instance rejected the application, holding that the case of the applicant, a plaintiff/victim of a criminal offence, is still in the investigation phase, therefore not included in the provisions of article 6 ECHR. The applicant lodged an application with the Court with regard to the finding of the violation.

The Court `s Assessment

The right to a fair trial within a reasonable time
The prosecution office has not brought any information about the state of the criminal proceedings, even though there have been more than 3 years since its registration. The criminal proceedings exceed the reasonable time of investigation as provided by the Civil Procedure Code. As a result, the civil case where the applicant is a party is still under review by the Court of First Instance for more than 3 years. The Court assessed the case based on the established reasonable time criteria. It held: *i) The applicant`s conduct* - The applicant has acted in compliance with procedural rights and does not seem to have caused delays to the process. *ii) Complexity of the case* - Due to lack of information from the prosecution office, the investigation does not seem complex as it regards the verification of forgery of the two written acts. *iii) The authorities conduct* – The prosecution office, in the capacity of the competent body for conducting investigation, has not argued applicant`s claims. In relation to the civil process, the perspective is not hopeful in terms of time proximity when the applicant, in the civil process, will have a final verdict on the claimed subjective right. When rejecting applicant's claim on finding of a violation of the reasonable time requirement, the court did not take into consideration applicant's legitimacy with regard to the relevant questioned rights as well as the potential infringement of his legal rights which he indented to protect through such application. Consequently, the reasoning of such a decision casts doubts. *iv) the importance of the applicant`s possible damages* - The extension of the investigation period and the overall extension of procedures is important in terms of the possible damages to the applicant, both as a victim of the criminal offence and as a party in the suspended civil judicial process.

Decision-making

The Court unanimously held to admit the application.

The right to be tried by a court established by law

KEY WORDS
Customs administration / customs check point / disciplinary measure /civil service /burden of proof / restatement of the facts / different assessment of evidence

Reaching a conclusion on the evidence contrary to the assessment of the two lower courts does not comply with the nature of proceedings in the High Court. The latter has provided the facts of the case with regard to the disciplinary responsibility of the applicant and the consequences of his actions or inactions and, on this basis, has decided on the merits of the case, thus providing a different assessment of evidence contrary to the assessment of the courts of facts.

Klodian Çani (*dismissal from the civil service*) - judgment no. 7, of 20.02.2024

Facts

The applicant was employed in the customs administration. After information from the Investigation Directorate of the General Directorate of Customs "On the criminal referral to the General Prosecutor" regarding acting or failure to act of the staff of Kakavija Customs, the Disciplinary Commission initially decided to suspend the applicant from duty which was followed by the disciplinary measure of "Dismissal from the Public Service". The applicant lodged an application with the Court to repeal the decision, return him to office and pay back salary. The Administrative Court of First Instance of Tirana accepted the claim, a decision that was upheld by the Administrative Court of Appeal. On the basis of the defendant`s recourse, the Administrative College of the High Court, in its chambers, changed these decisions and rejected the application.

The Court`s Assessment

The right to be tried by a court established by law - The High Court has determined itself the facts of the case with regard to the disciplinary responsibility of the applicant and the consequences of his acting or failure to act and, on this basis, decided on the merits of the case, making a different assessment of evidence from the two courts of fact, which is not in compliance with the nature of proceedings of that court. The High Court based its assessment that the applicant`s actions constitute a serious breach of functional duties on the effect that the prosecutor`s decision to dismiss the criminal proceedings has on the administrative process, while the courts of fact, even though they referred to such written evidence, tied it to the lack of proof of the disciplinary violation and the consequences that ensued in that case, taking into consideration that the burden of proof in this regard falls on the employing public body. Even though the High Court stated that the courts of fact did not correctly interpret and implement the provisions of the Criminal Procedure Code, it has not identified any fact accepted or proven by them, and furthermore, it did not provide the reason for the interpretation and implementation of the material law in relation to any specific contractual obligation violated by the applicant or any concrete elements on the basis of which such decision was grounded, despite the fact that dismissal from the civil service is the harshest measure, thus it has to be considered as the last alternative by the employing public body.

Decision-making

The Court, unanimously, held that the application should be admitted.

Principle of presumption of innocence – Principle of equality of arms - The standard of reasoning of the judicial decision

KEY WORDS
Insurance fraud/ invalidity pension/ old age pension for miners/ suspension of probation/ nature of procedural violation/ comparison of data of the documents

Even though it should have reviewed the case in detail in terms of factual and legal perspective, the Court of Appeal did not review and analyze essential evidence, which according to the applicant, would prove his innocence. The way the Court of Appeal acted in relation to the consequences for the applicant, even by not reasoning why the circumstances and the evidence favouring the applicant should not be considered, casts doubts on the fulfilment of the principle of the presumption of innocence. The High Court did not state a concrete view with regard to this claim, despite the fact that it is constitutional in nature and it is not clearly unfounded.

Pjetër Gjoni (*criminal proceedings for insurance fraud*) - judgment no 8, of 20.02.2024

Facts

The Regional Directorate of Social Insurance Shkodër filed criminal charges against the applicant, claiming that he has unfairly received an old - age pension, since he did not meet the legal requirements. The Prosecution Office started criminal proceedings against the applicant for the criminal offence "Insurance Fraud", provided by article 145 of Criminal Code. The Court of First Instance of Shkodër found the applicant not guilty, as there was no proof that he committed the criminal offence, which he has been accused of. The Appeal Court of Shkodër, after partially reopening the judicial investigation, decided to change the decision and sentenced the applicant to 6 months' imprisonment, as well as suspending the 2– year imprisonment sentence. Regarding the applicant`s recourse, the Supreme Court decided to reject it due to lack of legal grounds.

The Court`s Assessment

On the claim of violation of the principle of presumption of innocence with regard to the standard of reasoning of the judicial decision – The Court of Appeal, although empowered by law to review the case in detail in terms of factual and legal perspective, did not review and analyze essential evidence, which according to the applicant, would prove his innocence. Even though it has stated that the register of the former Shkodër Geological Enterprise regarding the section pertaining to applicant, it is completely falsified, it has not argued who falsified it and how it came to the possession of a document that was administered by the Regional Directorate of Social Insurance Shkodër, itself. The court sufficed itself with finding this document as falsified based only on deletions or corrections and based on a comparison with the data of the register of former agricultural cooperatives, but it has not compared such document with the data of other relevant documents which seem not to be in accordance with it, or even the data of other documents apparently not contrary to the register (booklets of work records and public assistance certification). The way in which the Court of Appeal acted in relation to the consequences for the applicant, even by not reasoning that the circumstances and the evidence favouring the applicant should not be considered, casts doubts on whether the principle of the presumption of innocence is respected, as well as the principle of equality of arms.

Although the claim of a violation of the principle of presumption of innocence was raised in recourse and was reflected in the decisions of Criminal College of the High Court, it did not state a view, despite the fact that the claim is constitutional in nature and it is not clearly unfounded.

Decision-making

The Court, unanimously, held that the application should be admitted.

The right to a fair trial and public hearing – Principle of legal certainty – The standard of reasoning of the decision – The right to a fair trial by a court established by law – The principle of equality of arms and the adversarial principle

KEY WORDS
Null and void action/ fictitious contract/ unifying decision/ diametrically opposed decisions/ burden of proof/ review in chambers

Despite the fact that the courts of fact have reasoned in a diametrically opposite way with regard to the validity of the contract and the High Court reviewed the case in a judicial session in chambers, the parties have been consistently informed of the proceedings, they were also given the opportunity to be heard through written submissions and objections and in the end the High Court has addressed the merits of their claims. Even though the High Court reviewed two legal issues with regard to the absolute invalidity of the contract, they were not discussed at its initiative but constituted causes of the lawsuit and were debated by the parties at both levels of the trial, and also the recourse had claims about the interpretation of the law in this regard. Even though the High Court mentioned new arguments that were not raised by the Court of Appeal, it did not redetermine the facts. The reasoning of the decision is grounded on the basis of reference to the evidence administered by the lower courts.

Albert Sino, Aurel Baçi (*invalidity of sale and purchase agreement for shares*) - judgment no. 9, of 27.02.2024

Facts

The case is about the sale of 60% of the shares in a company operating within the television industry by its founder and sole partner, involving the two applicants. Following the founder's demise, the legal heirs lodged an application with the court to declare the complete nullity of the transaction, which, as they claimed had been done without the approval of the founder's wife and under fictitious circumstances. Initially, the lower court dismissed the claim, on the grounds that the contract is conclusive evidence of the applicants' ownership and the lack of proof regarding collusion or unlawful conduct. However, the Court of Appeal subsequently overturned this decision, ruling in favour of the plaintiffs, this court determined that the contract was legally fictitious, drafted in order to comply with the provisions of Article 20 of Law no. 9742/2007, which restricts any single entity from owning more than 40% of a media organization. Furthermore, it found that the payment terms agreed upon were unrealistic for the applicant, as well as lack of proper documentation to prove such payment. Consequently, the High Court rejected the applicants' recourse, affirming that the contract was absolutely void due to its fictitious nature.

The Court`s Assessment

The right to defense and to be heard – Despite the diametrically opposed stances taken in the two decisions, the High Court informed the parties regularly and addressed the merits of their claims. Furthermore, the High Court did not discuss legal issues of which the parties were unaware or did not have the opportunity to debate. The review of the case in chambers does not imply the lack of a hearing.

Principle of legal certainty with regard to the standard of reasoning of the decision - Even though the contract had the force of law, the essence of the trial pertained to its validity. While with regard to the claim that the Supreme Court should have referred to a unifying decision of the Joint Colleges, the Court assessed that, notwithstanding the absence of such reference in resolution of the specific case, the High Court complied with article 92/ç of the Civil Code, thereby imparting meaning to its provisions concerning fictitious legal actions. The High Court`s interpretation does not appear arbitrary or unreasonable.

The principle of a court established by law - Despite introducing new arguments in its decision that were absent in the Appeal Court's proceedings, the High Court did not thereby alter the factual findings or reach a different conclusion from that of the Court of Appeal. Moreover, the High Court did not change the burden of proof with regard to the fictitious nature of the applicant`s contract (the defendants in the trial).

The principle of equality of arms and the adversarial process - The applicants were not disadvantaged vis-à-vis the plaintiff; they were given equal opportunity to present their claims and evidence.

Decision-making

The court held, by a majority of votes, to reject the application (two judges had dissenting opinions).

Personal freedom - Principle of retroactivity of a favorable criminal law

KEY WORDS
Personal freedom/ more favorable criminal law / criteria of individualized sentencing/ punishment ranges

The Criminal College assessed that a favourable criminal law should have been implemented, but it considered the sentence imposed on the applicant appropriate since it did not exceed the limits provided by the new law, despite the fact that the courts of fact had provided an intermediate penalty for one offense and the minimum sentence for the other. Determining the appropriate level of punishment within statutory boundaries is a legal matter, hence the High Court should have applied the law in effect at the time of case review, individualizing the sentence for each offense the applicant was convicted of, thus ensuring that the punishment not only complies with the limits provided by the favourable criminal law, but even with the court's criteria for individualizing sentences as applied by the courts of fact.

Kujtim Kllogjeri (retroactive favourable criminal law) - judgment no. 10, of 28.02.2024

Facts

The applicant, who is an administrator in a construction company, was accused of taking the assets of many people under conditions of good faith. Through active illegal actions, he also managed to deceive many others who were promised work visas against payment. The first-instance court found him guilty of the criminal offenses "Fraud" with serious consequences and "Fraud" to the detriment of several persons, provided by article 143/2 of the Criminal Code, sentencing him, in joinder of the penalties, with 12 – years of imprisonment. This decision was upheld by the Court of Appeal. The Criminal Panel of the High Court did not accept the applicant's recourse, on the grounds that no violations are found of the implementation of the favourable material law with the consequence of aggravating the defendant`s position.

The Court`s Assessment

The right to personal freedom related to the principle of the retroactive application of a favourable criminal law - With the entry into force of law no. 36/2017, paragraph 2 of Article 143 of the Criminal Code was amended, providing for more lenient punishment measures. In the conditions where the review of the applicant's case in the High Court was carried out at the time when the favourable criminal law had entered into force, as well as considering that the determination of the measure of punishment for committing a criminal offense in accordance with the range of punishment provided by the law is a legal issue (not an issue of facts), that court should have applied the law in force at the time of the review of the case, individualizing the punishment for each of the offenses of which the applicant was convicted and making sure that his punishment was not only not in excess of the measure of punishment provided by the favourable criminal law, but also in accordance with the criteria of individualization of the punishment applied by the courts of fact.

Decision-making

The Court, unanimously, held that the application should be admitted.

The right to a fair trial within a reasonable time - Effective remedies in speeding up the proceedings – Non-exhaustion of legal remedies

KEY WORDS
Employment relationship/ flexibility/ excessive formalism/ overall length of proceedings/ effective remedy/ due diligence/ formal application/ preventive and remedial measures/ subsidiarity

In terms of the right to a fair trial, the effective remedy for finding of violations and speeding up procedures lies within the jurisdiction of the ordinary courts. The Constitutional Court's role is limited to providing remedies for violations committed by these courts in cases when they are unable to rectify the violation themselves, specifically when the legal remedy proves ineffective. It is important to note that a decision from the Constitutional Court does not serve as the ordinary prerequisite for seeking compensation. Before seeking compensation of damages, individuals must timely utilize preventive or expedited legal remedies, in accordance with the provisions of the Civil Procedure Code and the subsidiarity principle. The formal lodging of a complaint with the High Court cannot be deemed adequate for exhausting legal remedies prior to initiating constitutional proceedings.

Ledina Mandija (unreasonable length of proceedings in the Court of Appeal and the High Court) - judgment no. 11, of 28.02.2024

Facts

The applicant, who previously served as a lawyer in the State Advocacy Office and subsequently as a State Advocate in the Office for Counselling and Inter - Ministerial Coordination, lodged an application with the court following her dismissal from office, seeking the absolute nullity of the dismissal orders, reinstatement, and compensation for unpaid wages. The Administrative Court of the First Instance of Tirana partially admitted the lawsuit, a decision that was later overturned by the Administrative Court of Appeal due to serious procedural irregularities. Consequently, the case was remanded to the Court of First Instance. The applicant submitted a recourse to the Supreme Court against this decision. After the announcement of the appeal review date, the applicant lodged an application to the High Court for the finding of a violation of the right to a fair trial because of the excessive length of proceedings. The Criminal Panel of the High Court dismissed the requests, the applicant's case had ended, thus the application no longer had an object. The applicant lodged an application with the Constitutional Court, claiming violations of the right to a trial within a reasonable time by the Administrative Court of Appeal and the High Court, as well as the ineffectiveness of the new legal remedies provided by the Criminal Procedure Code.

The Court`s Assessment

During the time when the applicant's case was before the court of appeal, despite having two available legal remedies - namely, the constitutional appeal and the application pursuant to Articles 399/1 et seq. of the Code of Civil Procedure, she did not duly pursue these procedural avenues. The applicant submitted her request to the High Court only after the notice of her case's review in chambers was published on the court's official website. This submission was purely formal, and not even the applicant herself had any expectations regarding its effectiveness in speeding up a process that was already scheduled. The mere formal submission of a request to the High Court cannot be deemed sufficient in terms of exhausting legal remedies prior to initiating a constitutional review. Failure to exhaust legal remedies in a timely manner and, moreover, failure to demonstrate the ineffectiveness of these remedies does not entitle one to subsequently submit claims in the Constitutional Court at the conclusion of the entire judicial process, reasoning about the total length of time.

Decision-making

The court held, by majority of votes, that the application should be rejected (one of the judges had a dissenting opinion).

The right to effective complaint - The right to defense - The standard of reasoning of the court`s decision

KEY WORDS
Lawyer appointed under power of attorney by family members/ unauthorized lawyer/ formalist approach/ narrow interpretation/ formal elements of recourse/ defendant`s will

The High Court, in compliance with its role and function has all the scope to interpret the legal requirements for the formal elements of a recourse in order to guarantee the right of substantive access.
Despite the provision of point 3 of article 48 of the Criminal Procedure Code, which allows the choice of a defender by a relative when the person did not make the choice himself, interpreted also by the Joint Colleges of the High Court, the latter has not addressed the case with regard to this legal provision. The High Court did not accept the recourse of the defender chosen by the applicant's mother. making a formal check of the power of attorney, without verifying whether this choice reflected the applicant`s full free will.

Kudret Barjamaj (recourse signed by the defendant with power of attorney granted by family members)– judgment no. 12, of 28.02.2024

Facts

The applicant was investigated and adjudicated under the standard trial procedure, under the security measure “Prison arrest”, for the criminal offences of “Attempted murder under aggravating circumstances ", "Disturbance of public peace", and "Manufacture and illegal possession of firearms and ammunition", provided by articles 79, letter “dh”, 274 and 278, paragraph 5 of the Criminal Code. During the proceedings at the district court and that of appeal, the applicant was initially represented by a privately retained lawyer and subsequently by a court-appointed lawyer. The recourse to the High Court was pursued through an attorney acting under a power of attorney from the applicant's mother. The Criminal College of the High Court declined to accept the recourse because it was submitted by an attorney acting under power of attorney from the applicant's mother, thereby lacking proper authorization. The Criminal College also reasoned that the recourse did not raise any points provided by Article 432 of the Criminal Procedure Code.

The Court`s Assessment

The right of access related to an effective appeal and the standard of reasoning of the judicial decision - The High Court has taken a formalistic stance and did not make any attempt to verify whether or not the selection of the defense attorney by applicant’s mother was in accordance with his will.
Nevertheless, the Criminal College has gone beyond the formal criterion for the admissibility of the recourse, calling into question the substantive criterion set out in the recourse of grounds provided by the procedural law, and further determining whether or not they were clearly unfounded. Upon reviewing the contents of the recourse, the Court finds that it included claims of a constitutional nature, primarily concerning violations of the right to defense during trial in the ordinary courts and the individualization of punishment. With regard to the right of defense, considering the circumstances of the concrete case, the Court emphasizes its significance and effectiveness for the defendant during the criminal process and the responsibility that the defense attorney chosen according to the person's will should bear, as well as the one assigned by the court, in ensuring the right to a fair trial.
Decision-making

The Court, unanimously, held that the application should be admitted.

The right of access to court – The standard of reasoning of the judicial decision – Principle of impartiality in proceedings

KEY WORDS
Review of the court`s final decision/ life imprisonment/ new evidence

Anton Arapi - judgment no. 1, of 09.01.2024

Facts

The applicant was convicted of criminal offenses under Articles 78-25, 78-25-22, and 278/2 of the Criminal Code, resulting in a life imprisonment sentence. Subsequently, he filed an application for the review of the final decision. The court of first instance declined to accept the application, citing its failure to meet the conditions specified in Article 450, point 1, of the Criminal Procedure Code, and therefore found it legally unsubstantiated. The Court of Appeal upheld the decision of the first instance court, while the Criminal College of the High Court refused to accept the recourse, noting that it did not satisfy any of the grounds specified in Article 432 of the Criminal Procedure Code.

Assessment of the Meeting of the Judges

The right of access to court in connection with the standard of reasoning of the judicial decision – The High Court`s decision is presented in a regular form and clear content. Its constituent parts are closely interconnected, unified, and harmonious, devoid of any overt or latent contradictions. The limited reasoning of the High Court's decision is in accordance with the court's standards for such decisions, thereby meeting the criteria for the standard of reasoning of a judicial decision. Similarly, lower courts have comprehensively reviewed, analyzed, and evaluated the applicant's claims concerning the appeal of the court's final decision.

The principle of impartiality at trial – The allegation of bias against one of the judges of the court of first instance is unfounded, as there is no reasonable and justifiable suspicion in this regard.

Decision-making

The Meeting of the Judges held, by a majority of votes, not to pass the case for review in plenary session (two judges had dissenting opinions, while one judge expressed a concurring opinion).

The right to a fair trial - Reasonable time - Principle of proportionality - Principle of equality before the law and non-discrimination

KEY WORDS
Fine/ executive title/ abuse of the right to the individual constitutional complaint/ burden of proof

"Elgakoti" ltd company., Bardhyl Ibra - judgment no 5, of 12.01.2024

Facts

The Meeting of Judges of the Constitutional Court imposed a fine of 100,000 ALL on the applicants for abusing the right to lodge an application, The Bailiff's Office was tasked with executing this fine for the account of the state budget. Subsequently, the Bailiff's Office initiated execution of the executive title. In response, the applicant filed an application with the Court seeking the suspension of the decision of a fine by the Meeting of Judges, as well as the declaration of its invalidity as an executive title. Additionally, they seek the repeal as unconstitutional of the expression in article 31/ c, point 1, of law no. 8577/2000.

Assessment of the Meeting of the judges

Standing ratione personae and exhaustion of legal remedies - The claim concerning the failure to adjudicate the case within a reasonable time is of a general nature, and the applicants have not specifically identified the adjudication to which it pertains, despite bearing the burden of proof in this matter. Nevertheless, the Court addressed the applicants' requests within the statutory three-month period stipulated by Law No. 8577/2000. Regarding the claims about the executive title, the applicants have not exhausted the effective legal remedies available to them under the procedural legislation for protection against execution of the executive title in the courts of ordinary jurisdiction. Concerning the request for repeal of the legal provision, Article 31/ c of Law no. 8577/2000 directly applies to them.

Standing ratione temporis - The application was submitted through postal service more than five months after the delivery of the contested decision. The applicants have not provided any evidence or arguments demonstrating compliance with the legal deadline for submission of the request. The request for repeal of the content of the legal provision was filed outside the statutory four-month period.

Decision-making

The meeting of Judges held, unanimously, not to pass the case for review to the plenary session.

Standard of reasoning of a judicial decision — The right of access to court

KEY WORDS
Personal liability of the magistrate / disciplinary proceedings/ special commission

Erion Çerekja (complaint against the magistrate) - judgment no. 33, of 22.02.2024

Facts

The applicant, who is the plaintiff in a judicial process, filed a complaint with the High Judicial Inspectorate against the judge who examined the appeal of the decision to overturn the request for conservative sequestration, and also against the judge who examined the request for exclusion of the judge who adjudicated the merits of the case. The High Judicial Inspectorate decided to archive the complaint, and the applicant appealed this decision to the High Judicial Council. The High Judicial Council refused the appeal. The applicant then turned to the Constitutional Court to challenge those decisions.

Assessment of the Meeting of the Judges

Standing ratione personae - The administrative process initiated by the applicant/ complainant aimed to verify the disciplinary liability of a magistrate. As such, this process is of significant public interest and does not solely pertain to the applicant's individual rights. As to the latter, the legislation provides the applicant with the right to appeal decisions made by the High Judicial Inspectorate to a quasi-judicial body, such as the special commission established at the High Judicial Council, as a means of transparency and to enhance the responsibility of the organs that administer the justice system. The applicant's role as a complainant in this procedure does not transform the issue of the magistrate's personal responsibility into a matter solely concerning the applicant's personal interests. Finally, it should also be stressed that the applicant submitted a complaint to the High Justice Inspectorate because of a judicial process regarding property rights, thereby making his rights and interests subject to that adjudication.

Decision-making

The Meeting of the Judges held, unanimously, not to pass the case for review to the plenary session.

Mandatory implementation of the Constitutional Court`s decisions - The right of access – The standard of reasoning of a judicial decision

KEY WORDS
Request for review of application/ return of a case to the Supreme Court for retrial/ trial in chambers

Rrajmond Toptani (return of a case for retrial by the Constitutional Court) - judgment no. 37, of 28.02.2024

Facts

The applicant is the legal heir of expropriated subjects who obtained an asset from their father's second marriage. The decision of the Commission on Restitution and Compensation of Property that recognized this property to the applicant was challenged in court by one of the heirs from the testator's first marriage, who presented as evidence a court decision declaring the latter's sales to the wife from the second marriage invalid. The court accepted the application. Subsequently, after this evidence was declared falsified, the applicant lodged a request with the High Court for the review of the final decision, which was not accepted by the Supreme Court. After becoming aware of some other evidence, the applicant lodged another request with the High Court, which was dismissed again. This decision was challenged in the Constitutional Court, which in 2014 decided to repeal and remand the case to the High Court. In 2015, the High Court again decided not to accept the request for review, a decision which was repealed by the Constitutional Court in 2017. In the retrial, the High Court decided not to accept the request for review.

Assessment of the Meeting of the Judges

The standard of mandatory implementation of the Court's decisions related to the right of access and the standard of reasoning of a judicial decision –The Constitutional Court decided to send the case for retrial to the High Court in 2017 because the case should have been reviewed in a plenary session, in order to analyse the causes of the review in their essence. However, after the amendments in the civil procedural legislation, the competence of the chambers (the meeting room) has changed, and a request for review can be examined there on the basis of the acts, hence without the presence of the parties. This adjudication is not merely a formal finding of the legal causes claimed in the request, but consists in the assessment of these causes and whether they are grounded through analysis of the court`s file materials. Pursuant to the duties assigned by the Constitutional Court, the High Court has notified the parties directly, providing them with the opportunity to submit their claims, thus ensuring the right of access. Furthermore, the decision of the High Court fulfils the standard of reasoning of the decision.

Decision-making

The Meeting of the Judges held, unanimously, not to pass the case for review to the plenary session.