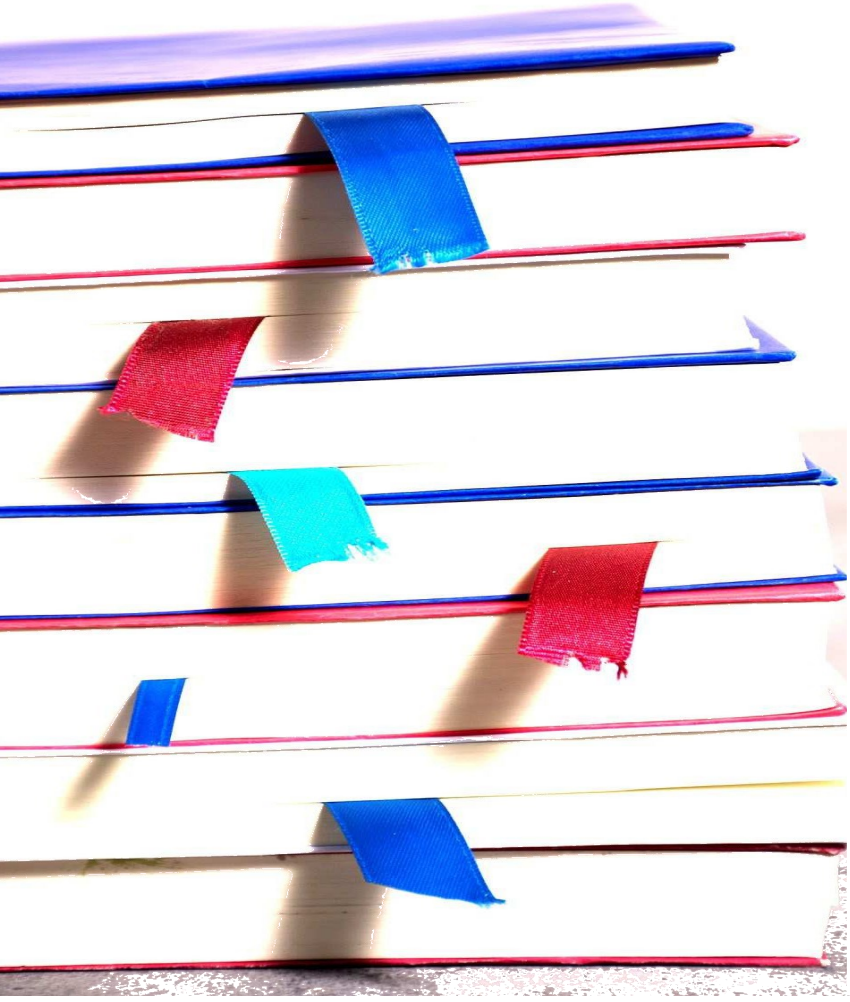
REPUBLIC OF ALBANIA

Constitutional Court

Periodical Newsletter of the Constitutional Court

Decisions March –April 2024



Periodical Newsletterof Decisions
No 2, March -April 2024

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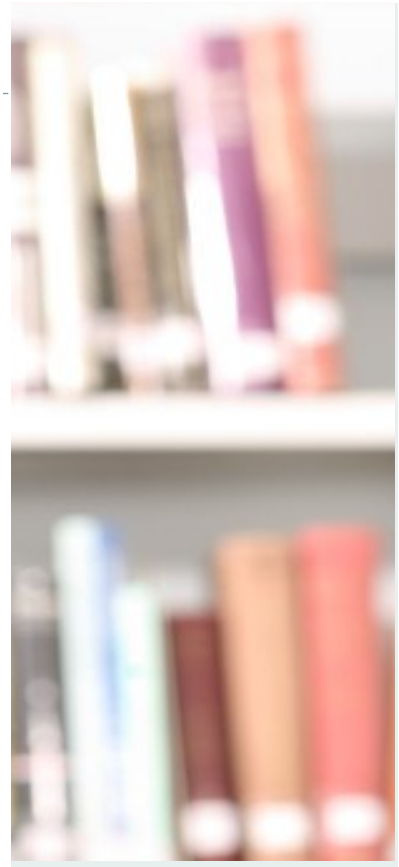

INTRODUCTION

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 its Periodical Newsletter of judgments. This newsletter presents a summary of cases and respective judgments, decided between March and April 2024.

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

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

CONTENT

National identity and cultural heritage – Rule of law principle – Principle of the hierarchy of legal acts

KEY WORDS

A agreement for administration/ indirect administration/ approving law/ foundation/Paris Convention/ primary role/ cultural heritage zone/ cultural landscape/ Park of Butrint

The provisions of the Agreement of Administration, according to the model of indirect administration, guarantee the primary role of the State, because they do not provide and do not permit the state to be divested of ownership. The rights and competences that have been given to the Foundation for the Management of Butrint in no case exceed those of an ordinary administration of property and do not contain elements of sovereignty that belong to the State.

No fewer than one fifth of the deputies of the Assembly *(Agreement for Administration of the Park of Butrint) – judgment* no. 34, of 24.04.2024

Facts

An Agreement for the Creation of a Foundation for the Management of Butrint was entered into between the Ministry of Culture and the Albanian American Development Foundation, by means of which the Foundation was given the exclusive right and obligation to administer indirectly the cultural property, the National Park of Butrint. Based on law no. 27/2018, the agreement was approved by the Assembly by law no. 50/2022.

The applicant addressed the Court claiming that, the acts which constitute the object of the application violate several constitutional principles.

The Court's Assessment

Jurisdiction of the Court - Law no. 50/2022, like every other law, is not exempt from constitutional control in the meaning of the content of Article 131, point 1, letter "a" of the Constitution. So far as concerns the Agreement of Administration that is attached to law no. 50/2022, although we are not before an act of a general nature, it has taken on for this reason a formal overlayer with law. The Court also has jurisdiction based on the constitutional nature of the claims set out in the application, as one of the determinative elements of constitutional jurisdiction.

Violation of national identity and cultural heritage in connection to the principle of rule of law and the hierarchy of legal acts – In implementation of the Constitution and of the Paris Convention, law no. 27/2018 has provided several models of administration of cultural property in public ownership, which may be direct and indirect, and it has also permitted the carrying out of the administration by not-for-profit legal persons. But while the property passes to the not-for-profit legal person for administration, the title of ownership remains with the State in every case. This model is permitted by article 3 of the Constitution and by the Paris Convention. The role of the state to protect and guarantee national properties and universal ones is not exercised only through their administration by State bodies/institutions, but also through finding forms and models of administration that guarantee the preservation and conservation of those properties and prohibit their degradation or damaging. The provisions of the Agreement of Administration guarantee the exercise of the primary role of the State and are supported on the position that the activity of the Foundation and its competences are related to the function of administering cultural assets, without exceeding or changing such competences, so long as the Foundation is not exempted from the fulfilment of all legal obligations that every other entity has, whether state or public, according to the legislation. In the viewpoint of article 17 of the Paris Convention, the Foundation also performs the role of collecting donations for the purpose of protecting the cultural and natural heritage.

Decision-making

The Court rejected the application by majority vote (four judges had dissenting opinions).

Principle of legal certainty – The right to private property – Principle of proportionality

KEY WORDS

Restitution of property/ compensation for property/ legal certainty/ right to private property/ proportionality/ decision of the European Court of Human Rights/ *res judicata*

The amendments of law no. 77/2022, made by the legislator follow the position of the European Court of Human Rights in the case *Beshiri and others. v. Albania* and Court`s decision no. 4/2021. In every case of the financial assessment of the Court`s final decisions, they guarantee the minimum threshold of 10% of the property's value, calculated according to its current cadastral category.

National Association of Expropriated Persons "Pronësi me Drejtësi" *(amendments to the Property Law)* - Meeting of the Judges`judgment no. 89 , of 30.04.2024

Facts

With regard to the execution of the European Court of Human Rights decision (year 2020) of case *Beshiri and others. v. Albania* and the Court`s decision no. 4, of 15.02.2021, the legislator enacted law no. 77/2022 on some amendments and additions to the Property Law, no. 133/2015. In applying this law, the Council of Ministers approved decision no. 313/2023.

The applicant challenged such acts to the Court, claiming that their provisions violate the principle of legal certainty, the right to private property as well as the principle of proportionality.

Assessment of the Meeting of the Judges

Principle of legal certainty in connection with the right to private property and the principle of proportionality – With regard to the claims on the provisions of law no. 77/2022, the Meeting of Judges holds that the applicant has failed to determine the violated constitutional rights, as a result of giving to the Council of Ministers the powers stipulated by article 3 of the law. With regard to article 4, the claims are clearly unfounded. Furthermore, such provisions constitute additional guarantees for the preservation of the land fund made available to the Property Treatment Agency for the physical compensation of expropriated subjects. The provisions of Article 6, point 2, are related to issues regarding the implementation of law by the bodies involved in the process. Moreover, in instances when, from the application of such procedure, case by case, the beneficiary entities have claims for violations of their rights, they can address the ordinary courts. With reference to article 9, point 1, 2 and 3, of law no. 77/2022, the claims have not been argued in the constitutional viewpoint.

With regard to the Council of Ministers' Decision no. 313/2023, the applicant`s claims that such decision violates the right to trial within a reasonable time and the right to effective legal remedies, have not been argued in the constitutional aspect. The claims that the Council of Ministers' decison does not permit the right of appeal is not supported in the constitutional aspect, since such right is guaranteed both by article 42 of the Constitution as well as the legislation in force and can be restricted only according to the criteria provided by article 17 of the Constitution.

In so far as it concerns the claims about articles 1, point 1 and 2, points 1 and 2 of law no. 77/2022, as well as Council of Ministers' Decision no. 313/2023, they are *res judicata*, since the Court has taken a position in connection with them in Decision no. 5, of 13.02.2024. The amendments made by the legislator in law no. 77/2022, are in compliance with the position of the ECtHR held in the case of *Beshiri and others. v. Albania,* as well as decision no. 4/2021 of the Court. In every case of the financial assessment of the final decisions, they guarantee the minimum threshold of 10% of the property's value, calculated according to its current cadastral category/line.

Decision –making

The Meeting of the Judges held, by a majority of votes, not to pass the case for review to the plenary session (one judge had a dissenting opinion).

Presumption of innocence. Right to an effective appeal

KEY WORDS

Suspension of prison sentence/probation service/term of probation/ conditions and obligations during probation period/ appealed sentencing decision

In the meaning of the principle of the presumption of innocence, a person convicted by decision of the court of first instance is considered innocent until his guilt has been proven by a final judicial decision.

A criminal decision of the first instance court that has suspended execution of the sentence cannot be put into execution in a case when the convicted person has appealed, if the principle of the presumption of innocence and the right to a substantive effective appeal is not guaranteed for him.

The Court of First Instance of General Jurisdiction, Dibër *(repeal of article 59, point 4, second sentence of the Criminal Code)* – judgment no. 20, of 03.04.2024

Facts

The prosecution office of Dibër submitted a request in court for revoking the suspension of a prison sentence given to citizen D. D., because the latter, according to a reference from the Probation Service, had not met the conditions and obligations during the time of probation. The prison sentence (suspended) had been appealed by citizen D. D. to the Court of Appeal. The referring court held that article 59, point 4, second sentence of the Criminal Code (CC) and articles 22, point 1, letter "b" and 37 of law no. 79/2022 are in conflict with article 30 of the Constitution and article 6, point 2 of the European Human Rights Convention, and consequently it suspended the trial of the case and put into motion an incidental control of the norm.

The Court's Assessment

A decision to suspend the execution of an imprisonment sentence and to place the person found guilty on probation is within the competence of the court, without excluding the court of first instance. Providing for an almost immediate execution of such a decision, the court of first instance seems not to take into consideration that it (the decision) can be appealed and potentially changed by the higher court. The almost immediate execution of a decision of the court of first instance for the suspension of execution of an imprisonment sentence puts the person in the conditions of fulfilling such alternative sentence of imprisonment, precisely those restrictions on rights and freedoms that arise from putting him on probation, notwithstanding that in the constitutional sense he continues to be considered not guilty since that decision has not become final. On the other hand, the sentence of imprisonment given by the court of first instance, the execution of which has not been suspended, does not charge the convicted person with fulfilling the respective obligations towards the State, since such decision has not become final.

The text of article 59, point 4, second sentence of the CC also casts doubt on the principle of legal certainty, because it creates ambiguity and a lack of clarity in connection with the consequences of an executable judicial decision.

Decision- making

The Court held, by a majority of votes, the partial acceptance of the application, repealing the second sentence of point 4 of article 59 of the Criminal Code (three judges had partial dissenting opinions).

Legal standing criteria for setting in motion the incidental control by ordinary courts

KEY WORDS:

Execution of foreign criminal decision/ extradition/ prescription of the sentence/ principle of reciprocity/ Convention on Extradition/ Fourth Additional Protocol of (ECHR)/ lack of unification/ legal reservein the international norm

The High Court has raised the constitutional issue without clearly identifying the applicable law. The claims and issues that are addressed have as purpose to guide the High Court on how to act in a specific situation. Such claims bear a resemblance to requests for formulating advisory opinions on how the referring court should act, which does not fall within the constitutional jurisdiction.

The High Court *(judicial control over the constitutionality of letter "ë" of Article 491 of the Criminal Procedure Code)* - Meeting of Judges` judgment no. 46, of 12.03.2024

Facts

On the basis of the request of the Ministry of Justice of the Republic of Italy for the extradition of the Albanian citizen B.B. alias B.I., from the Republic of Albania to that of Italy, the prosecutor's office at Tirana District Court has submitted a request to the court for the approval of the extradition permit. Tirana District Court has approved the permission of the extradition, a decision that has been changed by Tirana Court of Appeal, which decided not to accept the request for extradition, after having assessed as grounded the claims regarding the prescription on sentence execution, and in accordance with the Albanian law. The High Court, set in motion by the prosecutor's recourse, has suspended the case proceedings and addressed the Court for judicial control over the constitutionality of letter "ë" of Article 491 of the Criminal Procedure Code.

The Court's Assessment

Legal standing of the referring court – The constitutional issue at hand is based on theoretical premises regarding the (in) applicability of legal norms with different legal powers, while the High Court does not seem to have casted doubts on the applicability of Article 10, paragraph 2, of the European Convention on Extradition (ECE), the Fourth Additional Protocol due to the latter being self-executable. As long as such an exhaustive analysis is missing in the High Court`s decision, it is the responsibility of the latter, within its constitutional competence, to determine whether in such a case the provisions of the ECE are not self-executable, thus, reaching the conclusion that the only applicable provision is letter "ë" of Article 491 of the Civil Procedure Code, and determining that there are no other interpretations of it, compatible with the constitutional principles. Only after the referring court has concluded that there is only one applicable provision, which can only be interpreted in such a way as to call into question its constitutionality, making it impossible to apply it for solving the case, can the Court set in motion the incidental control of the legal norm.

Decision-making

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

No punishment without law

KEY WORDS:

Minor at the time of commission of the criminal offence/ reduction of the sentence/ punishment without law/correction of a material mistake/review of a decision/ essential amendment of a decision

Even though the judicial procedures of the proceeding on the merits that found the applicant guilty and sentenced him seem arbitrary, because it is a matter of permitting obvious mistakes from the legal aspect that lead to a "denial of justice", the decision of the High Court is not open to doubt in the aspect of the manner in which it interpreted article 14 of the Criminal Procedure Code.

Taking account of the fact that its decision divested the applicant from the right to correct the criminal decision through the means chosen by him, the High Court identified the existence of another possibility for a review of the criminal conviction decision.

Viktor Ymeraj (*legal remedies for correction of failure of the courts to apply article 51 of the Criminal Code)* – judgment no. 13, of 07.03.2024

Facts

In 2001, the applicant was sentenced to 25 years' imprisonment by the court of first instance (decision on the merits) for several criminal offences. During that proceeding, the applicant was *in absentia* and the fact that he was a minor when he committed the criminal offence was not pointed out. Consequently, the determination of the sentence was not in compliance with Article 51 of the Criminal Code (CC). Such sentence became final as it was not appealed.

Following the execution of the decision, the applicant engaged in three separate judicial proceedings, to reduce the amount of the sentence by one half, more concretely, with regard to, (i) nullification of the sentence; (ii) review of the decision; (iii) correction of a material mistake in the final decision, on the basis of Article 114 of the CC.

The constitutional process was put into motion by the applicant to contest the judicial decisions with regard to the review of the request for correction of the material mistake. In that proceeding, the court of first instance rejected the application with the reasoning that the failure to apply article 51 of the CC in the decision on the merits is not a material mistake, while the court of appeal changed the decision, applying Article 51 of the CC, with the reasoning that its application is an obligation and not a right of the courts.

The Criminal College (of the High Court) reversed the decision of the Court of Appeal, leaving the decision of the court of first instance in force, reasoning that the illegality of the sentence cannot be resolved through the procedure of correction of a material mistake, but only by challenging such decision through an appeal or a request for its review.

Following such decision, the applicant submitted a second request with the ordinary court for the review of the case, a process that was ongoing at the time of the review of the constitutional complaint.

The Court's Assessment

Principle of no punishment without law – The Court found that during the judicial process on the merits, in 2001, held in the absence of applicant, neither the lawyer nor the prosecutor pointed out the fact that he was a minor at the time of commission of the criminal offence, nor did the court itself verify the age of applicant at that time, with regard to the application of Article 51 of the CC. In the judicial proceeding regarding the correction of the material mistake, the applicant's right was recognized -by a final decision of the court of appeal- for a reduction of the sentence in compliance with Article 51 of the CC. Consequently, he gave up every other means of appeal that he had used up to that time.

Even though the mistake of the ordinary courts in the execution of the criminal law in the proceeding on the merits, was considered to be of such a nature as to put into question the compatibility of the applicant's sentencing decision with the Constitution as well as the European Convention on Human Rights, the Court held that it is not its competence to re-determine the facts of the case or the manner by which the ordinary courts interpret and apply the law. Referring also to the High Court`s recommendations, the applicant has put into motion a judicial proceeding (the fourth one) through which he has asked for a review of the on-the-merits decision, where the ordinary courts and the prosecutor's office should show proper care to enable the reparation of the violation of applicant's constitutional rights, precisely with regard to the principle of no punishment without law.

Decision–making

The Court held unanimously to reject the application.

The right to private property – The right of access to court – Standard of reasoning of the decision

KEY WORDS

Compensation of damage/ beginning of term for seeking compensation of damage/absolutely invalid act/ illegality and fault as conditions for seeking compensation of damage.

Even though the courts of fact had reasoned that the elements of illegality and fault of the actions of the bodies were proven on the day when the judicial decision began final,- and consequently, the three-year legal prescription term began to run on that date,- the High Court did not explain why the reasoning of the courts of fact was unfounded.

Besnik Canaj *(time period of beginning prescription of a lawsuit for compensation of extra-contractual damage – Article 120 of the Civil Code)* – judgment no. 14, of 07.03.2024

Facts

The applicant addressed the court contesting the acts of the National Urban Construction Inspectorate (Alb. acronym INUK), which had ordered the demolition of an object as constructed without a permit, as well as his punishment by a fine. The decision for demolition of the object was executed. Tirana District Court repealed the acts of INUK as absolutely invalid. The decision was left in force by Tirana Court of Appeal, and the Administrative College of the High Court did not accept INUK's recourse. The applicant brought suit in court again for the joint obligation of the interested entities to compensate the damage incurred as a consequence of their unlawful acts. The Administrative Court of First Instance decided to partially accept the lawsuit, reducing the amount of compensation requested, a decision that was left in force by the Administrative Court of Appeal. The Administrative College of the High Court changed the decisions and rejected the lawsuit, with the reasoning that the right of the applicant to seek compensation for the damage was prescribed, since more than three years had passed from the moment the object was demolished until the moment of submission of the lawsuit seeking indemnification.

The applicant lodged an individual constitutional complaint with the Court.

The Court's Assessment

The right to property in connection with the right to access and standard of reasoning of the court decision- The position held by the High Court is a formalistic standing and did not analyze cumulatively the four conditions for the existence of liability for the compensation of extra-contractual damage. At the moment of demolition of the object, two conditions were not clear for the applicant: illegality and the fault in the public body's commission of the actions. The applicant and the interested subjects/entities did not have knowledge of the illegality and fault until it was decided by a final decision, which determined that the administrative act to demolish the object was unlawful, and as such, committed with fault by the public body.

Even though the courts of fact had reasoned that the elements of illegality and fault of the actions of the bodies were proven on the day when the court`s decision became final, consequently, the legal three-year term began on that day, the High Court did not deal with that and did not explain why such reasoning of the courts of fact was unfounded. The High Court has made ineffective the applicant's right of access to seek indemnification, as a means used against the arbitrariness of the interference of state bodies with private property.

Decision-making

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

Running of the term for submitting an individual constitutional appeal – Standard of reasoning of the decision – Principle of non-discrimination – Right to earn the means of living with lawful work

KEY WORDS

Labour relation / termination of a labour contract / discrimination because of political beliefs /discrimination for religious reasons/ burden of proof/ free legal aid/ Commissioner for Protection from Discrimination

The burden of proof in connection with reasons for discrimination belongs initially to the employee, but if the latter submits some facts that support in a reasonable manner a presumption of discrimination, the burden of proof passes to the employer.

The Court has the duty of verifying whether the claimed facts exist and assessing whether the evidence submitted by the employer is sufficient to draw the conclusion that the termination of the labour relationship was not for discriminatory reasons.

Elisabeta Cara (*discrimination in labour relations)* - judgment no. 16, of 12.03.2024

Facts

The applicant was in labour relations with the Albanian Postal Service until the disciplinary measure of removal from duty was taken against her. Claiming that the labour contract was terminated in violation of law, the applicant brought suit in court for the respective indemnification, according to the provisions of the Labour Code. Her lawsuit was rejected by the Fier District Court, a decision that was left in force by the Vlora Court of Appeal, while the High Court dismissed the applicant's recourse.

The Court's Assessment

Exhaustion of effective legal remedies - Discrimination for religious reasons was not set out either in the administrative proceeding nor in the judicial processes, thus the applicant has not exhausted the available legal remedies. Discrimination for political reasons was declared only during the administrative proceeding and mentioned during the judicial ones. The applicant contested the termination of the contract for unjustified reasons based also on discriminatory reasons due to political beliefs.

Standing ratione temporis – The applicant had submitted a request for free legal aid within the four-month term, due to her economic situation, for the purpose of preparing an individual constitutional complaint, and such application had been accepted by the ordinary court. Not calculating the time during which the court examined and approved the request for free legal aid, the individual constitutional complaint is considered to have been submitted within the legal four-month term.

Standard of reasoning of the decision in connection with the principle of non-discrimination and the right to earn the means of living with lawful work – "Political beliefs" and "social condition" are among those included as reasons for unjust discrimination in labour relations (referring to articles 18 and 49 of the Constitution). Even though the courts of fact have reflected in their decision the claims about discrimination for political reasons and the counterarguments of the employer, - in the reasoning, they sufficed themselves with the conclusion presented by the employer in that the applicant had acted with serious fault, not implementing her contractual obligations.

The courts should have analysed expressly whether the facts presented by the applicant served sufficiently to shift the burden of proof on discrimination to the employer, and the latter should have afterwards proved that there was no causal link between the applicant's social condition as well as her political beliefs and the unfavourable treatment claimed by her. In the meantime, the High Court as well did not hold an expressed position, even though the claimed reason has a constitutional nature.

Decision-making

The Court decided, by majority of votes, to accept the application (four judges had dissenting opinions).

The right of access – Personal liberty

KEY WORDS

House arrest/ exceeding the term of the security measure/ extinguishment of the security measure

Even though in its decision, the High Court found that applicant raised claims that have to do with the incorrect interpretation of the criminal procedure law by the special courts for extinguishing the personal security measure because of expiration of the legal time periods, it did not give an answer to them, leaving unresolved the consequences that had to do with a fundamental constitutional right such as a restriction of liberty.

Mimoza Margjeka (*restriction of liberty due to a personal security measure*) – judgement no. 17, of 13.03.2024

Facts

The applicant was proceeded against for the criminal offence of passive corruption, and the first instance Court for Corruption and Organised Crime (Alb. Acronym GJKKO) gave her the security measure of "House arrest", which was left in force by the GJKKO court of appeal and by the High Court. While the case was on retrial, the applicant sought for the measure to be extinguished because the term had been exceeded, a request that was refused by the GJKKO courts of first instance and appeal, with the reasoning that the term of the security measure "House arrest" is longer than the security measure "Prison arrest". The applicant submitted a recourse to the High Court. While the recourse was waiting to be examined, the GJKKO of first instance found the applicant guilty according to the accusation, also ordering the extinguishment of the security measure of "House arrest". This decision was left in force by the court of appeal.

In connection with the recourse on the decision of extinguishment of the measure, the High Court decided not to accept it, with the reasoning that the case was without an object because the security measure was no longer in force, and applicant had been convicted by a final decision.

The applicant addressed the Court with an individual constitutional appeal, contesting the judicial decisions rendered in the process of examination of the request for extinguishing the personal security measure, with the claim of a violation of personal liberty.

The Court's Assessment

The right of access in connection with a restriction of personal liberty – The applicant had made a recourse to the High Court to contest the interpretation that the lower courts had made of provisions of the Code of Criminal Procedure in connection with the length of time of the security measure of "House arrest" for the purpose of extinguishing it, setting out consequences of a constitutional nature. Even though the High Court resolved the issue formally, deciding not to accept the recourse, it did not make an evaluation in substance of its reasons, that is, whether or not the lower courts, because of their interpretation of the criminal procedure law, violated the applicant's personal liberty for the period when she claims she stayed beyond the term provided by law. Nor is the approach of the High Court in the concrete instance consistent with the position expressed by it in the unifying decision on the judicial practice in this respect. By not performing a control of the legal standing of the decision-making of the courts of fact, although before claims about an incorrect interpretation of the law by them, the High Court violated the applicant's right to a fair trial.

Decision-making

The Court decided unanimously to accept the application.

Right to private property – Principle of proportionality of an intervention

KEY WORDS

Mineral lease / property security measure / preventive sequestration/ conservative sequestration/ free disposition/ serious consequences/

The decisions that accepted the prosecutor's request with regard to the determination of the measure of preventive sequestration have imposed not only a restriction on their free disposition, that is, the sale of a quality of chrome and the machinery/equipment of the mine, but also the possession and use of the latter, which means that the applicant's right to property has been restricted in all its entitlements, since it cannot continue its productive and commercial activity, that is, its entire economic activity. In order to assess whether this restriction respects the constitutional criteria and those of the conventions for an intervention, the Court assesses whether it was done by law, it serves a public interest and whether it respects the criterion of proportionality.

"Kosturr Kromi" ltd. company *(the criteria of restricting the right of property by decisions imposing preventive sequestration)* - judgment no. 18, of 19.03.2024

Facts

At the end of the preliminary investigation, the prosecutor judged that there is reasonable doubt that applicant's administrator committed the criminal offence of "Fraud" and that the company had committed judicial actions that constitute criminal liability according to the law on the criminal liability of legal subjects.

On the basis of the prosecutor's request, Tirana District Court ordered the security measure of preventative and conservative sequestration set against applicant's assets, a decision that was confirmed by Tirana Court of Appeal and the High Court. The court of first instance then (district court), at applicant's request, partially revoked the measure, a decision that was confirmed by the court of appeal. At the end of the investigations, at the prosecutor's request, the court of first instance sent the criminal case to trial and rejected the applicant's request for revocation of the measure of sequestration.

The applicant addressed the Court with an individual constitutional complaint contesting the decisions that imposed the measure of sequestration on property.

The Court`s Assessment

The right to property – The contested decision was issued based on article 274 of the Criminal Procedure Code, which permits preventive sequestration to be set during a criminal proceeding, thus, the intervention to the right to property was done by law and serves a public interest. Regarding the criterion of the proportionality of the intervention, several elements are analyzed, directly related to the nature of the consequences produced by the decision imposing the measure of sequestration, more concretely -the need, effectiveness and severity of the measure. Due to the nature of the criminal offence of "Fraud", the measure of sequestration is necessary, since it helps to stop the sale of chrome and the transferring of the benefits to third persons until the end of the criminal proceeding. Even though the measure of sequestration limits the right to property, it (the measure) is appropriate and does not go beyond what is unavoidable in the view of the purpose of the criminal proceeding, and consequently it is considered to be reasonable.

With regard to the severity of the measure, it is analyzed in relation to the entitlements of the right to property: the right to possess, enjoy (including also enjoyment of the property or the right to develop it) and the right to dispose of it; therefore, in every case, such decisions should state which element of the right of ownership will be affected. Concerning the severity of the measure, at the end of the discussions, the Court did not reach the number of votes required for a decision to be taken.

Decision–making

The Court rejected the application, since the majority of votes necessary for decision-making was not reached (three judges had concurring opinions in the aspect of the final nature of such decisions).

Personal liberty – The right to be elected in relation to the principle of proportionality – Standard of reasoning of the judicial decision

KEY WORDS

Candidate for mayor / local elections/ active corruption in elections / the right to be elected / exercise of mandate/ arrest in flagrancy / prison arrest

The right to be elected extends not only over the right to be a candidate, but also the right to exercise the public function, in the case at hand-the mandate of the mayor, which is linked to taking the oath at the first meeting of the municipal council.

The restriction of applicant's personal liberty was done for a lawful purpose and it does not seem to be disproportional in relation to that purpose. Consequently, the intervention in the right to be elected also does not seem to be disproportional in relation to the situation that made it necessary in the case at hand.

Dhionis Alfred Beleri (restriction of liberty because of a personal security measure against the person declared winner in the local elections) – judgment no. 19, of 21.03.2024

Facts

The applicant was a candidate for mayor of the Municipality of Himara in the elections for local government bodies, of 14.05.2023. Two days prior to the elections, the applicant was arrested in flagrancy as a suspect for active corruption in elections, and the personal security measure of "Detention on remand" was decided against him, validated as lawful by Vlora Court of First Instance of general jurisdiction. On the other hand, that court declared the absence of subject matter competence, and the case passed for competence to the Court for Corruption and Organised Crime (Alb. acronym GJKKO) of the First Instance, which confirmed the measure. The decision was left in force the Court of Appeal for Corruption and Organised Crime and by the Criminal College of the High Court. After the local elections took place, the Zonal Commission of Electoral Administration (Alb. acronym KZAZ) and then the Central Election Commission (Alb. acronym KQZ) decided to give to the applicant the mandate of mayor of the Municipality of Himara. Notwithstanding this, the applicant did not take the oath because he was undergoing a measure restricting his liberty, "Detention on remand".

For this reason, the applicant addressed the Court with an individual constitutional complaint.

The Court's Assessment

Violation of equality before the law, the right to be elected and non-discrimination – In connection with a different position taken on a similar case, the ordinary courts determine the manner of solving a case and the application of law, in respect to the concrete case, its specificities and individuality. The argument in itself, submitted without the support of concrete evidence, does not constitute a violation of the principle of equality before the law or non-discrimination. In relation to discrimination for political reasons, it is not proven that the criminal proceeding was politically motivated.

Violation of personal liberty and the right to be elected in relation to the principle of proportionality related to the standard of reasoning of the judicial decision – The ordinary courts reasoned that a reasonable doubt exists based on evidence that the criminal offence was consumed by the applicant. They reasoned sufficiently the appropriateness and proportionality of the measure, finding that the conditions of article 228, point 3 of the Code of Criminal Procedure are cumulatively met, including the danger of fleeing and that the persons who committed the offence show high social danger. Consequently, the security measure of "Detention on remand" does not seem disproportional, in the context of the circumstances of the case.

The imposition of the personal security measure against the applicant has made it impossible for him to perform the oath procedure as mayor of the Municipality of Himara, and consequently, that measure constitutes a restriction of the applicant's right to be elected. Nevertheless, since the restriction of personal liberty was done for a lawful purpose and the restriction does not seem to be disproportional in relation to that purpose, the intervention in the right to be elected also does not seem to be disproportional in relation to the situation that made it necessary in the case at hand.

Decision-making

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

The right to a trial within a reasonable time

KEY WORDS:
Correction of material mistake/ workload of the ordinary courts/ personal and vital interests/priority in the trial order

The applicant did not submit any argument that the violation of the right to freely dispose of his property brought vital, immediate and strictly personal consequences so that to give priority to the adjudication of his case.

Arben Gjoleka *(unreasonable length of time of a court proceeding in the court of appeal)* – judgment no. 21, of 04.04.2024

Facts

The applicant addressed the administrative court for the obligation of the Local Directorate of the State Agency of Cadastre (Alb. acronym ASHK), Tirana North, to correct a material mistake in the purchase and sale contract of the property, as well as to reflect cadastral data, etc. The court accepted the lawsuit in part, a decision that was appealed by all the parties participating in the trial. The case was registered in the Administrative Court of Appeal on 04.05.2022. After one year, the applicant submitted a request to the High Court in order to find an excessive length of the trial in the court of appeal. The Administrative College of the High Court refused the request, with the argument that the failure of the court of appeal to act did not happen for subjective reasons related to abusive positions and assessments of the judge.

The Court's Assessment

On the adjudication of the case within a reasonable time– In an analysis of the particular circumstances of the concrete case, and of the criteria established by the constitutional jurisprudence, the Court held that so far as concerns the *behaviour of the authorities,* the applicant's case is waiting for more than one year and 11 months to be heard at the appeal, while the total length of procedures from the moment the lawsuit was submitted to the court of first instance, is almost three years. The length of time of the trial is related to the high workload in the court of appeal and of the reporting judge, caused by the implementation of the reform in justice.

In connection to *the relevance of what is at stake for the applicant*, his case is not related to "personal and vital" interests, since the claims have to do with the inability to make a disposition in its actual extent regarding the right of property. The time of one year and 11 months for examination of the case, in relation to the workload with which the justice system is confronted, does not give priority in order of examination, considering also the nature of the case.

Even though, the applicant has the burden of proof, he did not submit any argument that the violation of the right to dispose freely of his property has brought immediate, vital and strictly personal consequences in order for priority to be given to the trial of his case by the Administrative Court of Appeal.

Decision-making

The Court unanimously rejected the application.

Criteria of legitimising submission of an individual constitutional complaint – Standing *ratione materiae*

KEY WORDS
Punishment of the attorney with a fine/ exclusion of the attorney/ conflict of interests/ abusing with rights in the judicial process

The measure of a fine has not determined civil obligations or rights on the attorney, neither affected his reputation; consequently, the decision imposing the fine does not enter in the range of article 42 of the Constitution.

Ahmet Jangulli (punishment of the legal representative with a fine) – judgment no. 22, of 04.04.2024

Facts

Dibër District Court examined the request of the prosecutor's office to cease a criminal proceeding registered on the basis of the denunciation/report of citizen A. B. against several employees of the Municipality and of the Immovable Properties Registration Office of Bulqiza. The denouncing person was represented at trial by the applicant, lawyer Ahmet Jangulli. The prosecutor asked for the applicant's exclusion from representation due to the presence of a conflict of interests, because at the time when he exercised the duty of judge, he tried a civil property case where the denouncing person was a defendant.

The court excluded the applicant from representing the denouncing person. The applicant submitted a request on behalf of the denouncing person A. B. for the exclusion of the judge who had found the conflict of interests. The court did not accept the request, considering it as submitted by a person to whom the right does not belong, and fined the applicant by 10,000 Albanian LEK for abusing with the request. Through the applicant, the denouncing person A. B. submitted an appeal, which was rejected by Tirana Court of Appeal with the reasoning that the intermediate decision can be appealed only together with the final decision. The applicant brought a recourse to the High Court, which did not accept it.

The Court's Assessment

Standing ratione materiae – The applicant's claims are in essence related to his punishment by a fine, as a representative, a decision that is closely related to the main disposing of, i.e., the request for exclusion of the judge. Placing a fine against the applicant was a procedural measure, linked to the exercise of the court's competence to ensure a regular conduct of judicial proceedings, and more concretely, to prohibit abuse in exercising rights during a criminal proceeding. The measure of a fine has not placed civil obligations or rights on the applicant, neither affects his reputation. Based on the context of the circumstances of the case and the arguments presented by the applicant, on the nature of the fine, on the purpose for which the fine was imposed and on its amount, it is judged that it does not affect or interfere in the applicant's constitutional rights.

Decision-making

The court held, by a majority of votes, to reject the application (one judge had a dissenting opinion)

Right to be tried by a court established by law – Standard of reasoning of a judicial decision – Right to be heard – Right to be notified

KEY WORDS

Disciplinary measure against a judge/ decision of judicial council/ initial jurisdiction/ review jurisdiction/ law of the time

Jurisdiction should be seen in connection with the moment when a judicial proceeding is put into motion and conducted. The High Court was put into motion for exercising review jurisdiction for a control of the decision-making of the court of appeal in the meaning of articles 141 and 43 of the Constitution. In the concrete case, its jurisdiction is a review jurisdiction, which has been determined by the procedural means used in conformity with its constitutional competences.

Bujar Musta *(review jurisdiction of the High Court for examining a recourse against a judicial decision that examined an appeal about a judge's disciplinary measure)* – judgment no. 23, of 04.04.2024

Facts

The applicant was a judge at the Elbasan District Court, and because of the submission of several complaints from parties in a proceeding, a disciplinary proceeding started against him. The judicial council [known as the High Council of Justice at that time, Albanian acronym KLD; restructured by the 2016 amendments and now known as the High Judicial Council or KLGj] approved the disciplinary measure proposed by the Minister of Justice "*Reprimand with warning",* which the applicant appealed to Tirana Court of Appeals. The latter passed the case for competence to the Administrative Court of Appeals, which rejected the lawsuit. The Administrative College of the High Court did not accept applicant's recourse.

The applicant addressed the Court, claiming among other things that the competence to examine claims against decisions of the KLGj belongs to the Special College of Appeals (Albanian acronym KPA) and not to the High Court.

The Court's Assessment

The right to be tried by a court established by law, in connection with the standard of reasoning of the decision – The issue of jurisdiction is related to the moment when a judicial process is put into motion and is carried out. In the concrete case, the applicant's appeal against the decision of KLD was examined by the competent court, according to the law of the time. Similarly, the appeal against the decision of the court of appeal was also examined by the High Court, whose constitutional jurisdiction in the case at hand is a review jurisdiction. The constitutional changes of year 2016 did not affect or change the review jurisdiction of the High Court to examine appeals against decisions rendered by lower courts regarding the meaning and application of law by them. Exercise of such review jurisdiction by another court, including by the Constitutional Court or by the Special College of Appeals, would conflict with the Constitution.

The mere fact that the applicant did not receive a reasoned answer from the High Court for the additional claim submitted by him in connection with its jurisdiction does not make the process irregular from the constitutional point of view. Furthermore, by examining the recourse against the decision of the court of appeal, this means that the High Court has also evaluated the issue of the jurisdiction.

The right to be heard in connection with the right to be notified– During the preliminary examination phase, the High Court was put into motion by the recourse submitted by applicant, who had the opportunity to set out all his claims in connection with the contested judicial process and, following this, also in connection with the High Court's jurisdiction. The applicant is not proven to have been put in an unfavourable position compared to the other party in the process. Despite that he was not notified also through his email address, the applicant did not prove that such procedural irregularity made it impossible for him to exercise the procedural rights recognised in that phase of the case examination.

Decision-making

The Court held by majority vote to reject the application (three judges had dissenting opinions).

Right to substantive access – Standard of reasoning of the judicial decision – Principle of impartiality at trial

KEY WORDS

Promotion in duty/ ethical and professional evaluation of the judge/ serious procedural violation/ final interpretation

Since the main claim is related to the commission of serious procedural violations that affected applicant's overall evaluation, the High Court, as a court of law, should have defined "serious violations", interpreting the legal provisions in a conclusive manner.

Klodiana Veizi (process of evaluation of candidates in the procedures for promotion in duty) – judgment no. 24, of 09.04.2024

Facts

The applicant was a candidate in the procedures opened by the High Judicial Council (HJC) for promotion in duty for several vacancies in the High Court. At the end of the procedures, the HJC approved the report of applicant's ethical and professional evaluation, judging her at the overall level "very good". The applicant appealed to the Administrative Court of Appeal, which rejected the lawsuit. The Administrative College of the High Court did not accept applicant's recourse, because the reasons raised in it are not related to serious procedural violations.

The applicant turned to the Court, claiming a violation of the right to a fair trial in several of its aspects, as well as a violation of the principle of legal certainty and equality before the law.

The Court's assessment

The right to substantive access related to the standard of reasoning of the judicial decision – The applicant's major claim is related to the commission of "serious procedural violations", concretely, the failure to respect the legal and subordinate legal provisions that define the methods, indicators for the qualitative and quantitative evaluation of a judge's work, which were not applied during the evaluation performed by the HJC. The courts did not reason whether those violations claimed by the applicant are such as to be included in the concept of "serious violations" of a procedure nature, which constitute the only reason for a contestation of the evaluation process. Even though the High Court, in the exercise of its function as a court of law, had the obligation to define "serious violations" of a procedural nature, - interpreting the legal provisions in a conclusive manner, this being also linked with the space of judicial jurisdiction to control the activity of the HJC, the High Court did not reason its decision in that aspect. This absence of reasoning did not give a final solution to the applicant's case, by failing to make her access to the court effective.

Principle of impartiality at trial – as, under the condition that the case will be re-examined by the High Court, the Court did not deal with an analysis of this claim.

Decision-making

The Court unanimously accepted the application in part.

Right to a fair trial by a court established by law – Right of substantive access

KEY WORDS

Gross negligence/ pecuniary and non-pecuniary damage/ minor/ capacity to act/ legal representative/ the right to file a suit/ prescription of a lawsuit/ suspension of a lawsuit

Both the courts of fact and the High Court have ruled only with regard to the exercise by the applicants of the right to file a suit, according to the legal deadline for its submission, that is related to the prescription of a lawsuit in the case of minors, which is a prerequisite for examining the claims into their merits.

The High Court has neither assessed the evidence nor redetermined the facts of the case, but instead, by analyzing the provisions of the Civil Code, has examined the manner by which these provisions were applied by the lower courts, with regard to the legal deadline to file the lawsuit.

Lirena Demaj, Leonard Demaj (*prescription of a lawsuit in case of minors*) – judgment no. 26, of 09.04.2024

Facts

The applicant's father, an employee of the CEZ company, came into contact with the electric current while repairing a fault, as a result he passed away. About such happening, his two adult children and his wife sued the company for compensation of pecuniary and non-pecuniary damage (lawsuit that has been accepted). The applicants were not parties in the proceeding as they were minors at the time. In 2013, they filed a lawsuit in the court, claiming compensation for pecuniary and non-pecuniary damage caused by the death of their father. Vlora District Court decided to reject their lawsuit, due to prescription. Vlora Appeal Court decided to overturn such decision, on the grounds that at the time when the event occurred, the applicants were minors, the prescription`s deadline was suspended until they reached the age of majority. The High Court repealed the Court of Appeal`s decision, thus leaving into force the decision of Vlora District Court.

The Court's Assessment

*The right to a fair trial by a court established by law related to the right of substantive access – In essence of t*he decision-making of the ordinary courts lies the interpretation of the provisions of the Civil Code in relation to the prescription of a lawsuit in case of minors, a matter on which both the courts of fact and the High Court have ruled on. In overturning the Appeal`s Court decision, the High Court appears neither to have assessed the evidence nor to have redetermined the facts of the case, instead, by analyzing the provisions of the Civil Code, has examined the manner by which these provisions were applied by the lower courts, thus, by making a final interpretation as a court of law.

Decision-making

The Court held, unanimously to reject the application.

Right to a trial within a reasonable time

KEY WORDS

Physical injury/ disabled person/ causal link/ personal interest/ priority

Some matters bare a particular interest, such as, for example, compensation for damage to health, matters such as those related to the indemnification of physical injury, which should be tried with priority by the courts.

Julian Çela *(unreasonable length of time of a judicial proceedings in the High Court)* – judgement no. 27, of 11.04.2024

Facts

In 2014 the applicant suffered serious physical injury because of an explosion in the premises of his employer. Consequently, he underwent hospital and pharmaceutical interventions and treatments. In 2016, the applicant brought suit in court for the obligation of the employer to pay property and non-property damage. Tirana District Court rejected the lawsuit with the reasoning that the causal link is not proven between the actions of the employer with fault and the consequence that ensued, a decision that was left in force by Tirana Court of Appeal. On the basis of applicant's recourse, the case was registered in the High Court. The applicant addressed the High Court for finding of a violation of the length of proceedings, which was the rejected by the High Court.

The Court's Assessment

Adjudication of the case within a reasonable time – When analysing the particular circumstances of the concrete case as well as the criteria established by the constitutional jurisprudence, the Court held that so far as concerns *what is at stake for the applicant,* he has associated his right, in essence, with indemnification of the damage from the physical injuries suffered while exercising duty with the defendant (the employer). Although the applicant's case is not, by its nature, included in the category of cases that the High Court has determined should be examined with priority, taking into account not only applicant's status as a disabled person, but also his high personal interest because of the nature of this case, and also referring to the fact that the High Court has not yet undertaken any action to set the date of examination of the recourse, this case should have priority in the order of its examination.

Decision-making

The Court decided by majority vote to accept the application (two judges had dissenting opinions)

The right to be tried by a court established by law – Principle of impartiality in court`s proceedings – Standard of reasoning of the judicial decision

KEY WORDS

Outstanding jurist/ procedures for the appointment in the High Court/ candidates evaluation process / disqualification of candidate/ delegation of judges/ a partial dissenting opinion/ concurring opinion

Due to the nature of the claims submitted in the recourse, the High Court should have taken an express position with regard to the interpretation and application of article 307 of the Civil Procedure Code, thus providing its reasoned answer on the applicant's claim about applying the standard of reasoning of the judicial decision.

Kestrin Katro (interpretation of article 307 of the Civil Procedure Code) – judgment no. 28, of 11.04.2024

Facts

The applicant applied to the High Court from the ranks of outstanding jurists in the appointment procedure announced by the High Judicial Council (HJC). At the end of the verifications of the conditions and criteria of being a candidate, after it examined the report of the High Inspectorate of the Declaration and Audit of Assets and Conflicts of Interest on the asset criterion as well as the claims of the applicant, the HJC decided her disqualification and exclusion from being a candidate. The applicant lodged an application with the Administrative Court of Appeal, which rejected such application, a decision that was overruled by the High Court, remanding the case for retrial, holding that a full and comprehensive investigation was lacking, that the performance of an act of expertise was not permitted and that a reasoned answer was not given to applicant's main claims. In the retrial, after administering the act of expertise, the Court of Appeal rejected the applicant's claims, on the grounds that the asset criterion was not met, while the High Court held not to admit her recourse.

The Court`s Assessment

The right to be tried by a court established by law - A judge who took part in the judicial panel in the court of appeal had been appointed by the HJC by delegation in pursuance with its competences as well as the provisions of article 45 of law no. 96/2016, since the legal criteria were met. The judicial panel that examined the applicant's case was composed in compliance with the regulation.

The principle of impartiality in the court`s proceedings – The fact that several judges who reviewed the case in the Court of Appeal were part of the promotion procedures held by the HJC, does not constitute a sufficient circumstance, in order to cast doubts on their impartiality. With reference to article 72 of the Civil Procedure Code, the relationship of the HJC with the relevant judges is not personal, but a systemic one, therefore it cannot be included within the reasons of having an interest in the case at hand or which constitute serious grounds of partiality.

Standard of reasoning of the judicial decision – The Administrative Court of Appeal`s decision which held to reject the lawsuit, contains, in addition to the reasoning, a partial dissent and the concurring (parallel) reasoning of one judge, as well as the dissent opinion of another judge. In so far as it concerns the claim of a constitutional nature on the reasoning of the Court of Appeal`s decision, with regard to the lack of cohesion and consistency between the reasoning part and the ordering part, the High Court did not examine or deal with such claim in the reasoning part of its decision, but it solely reflected that in the introductory part of the decision. Therefore, the absence of reasoning in the Administrative College`s decision with regard to the manner of interpretation and application of article 307 of Civil Procedure Code casts doubts whether the standard of reasoning has been applied by the High Court.

Decision - making

The Court held unanimously to accept the application in part.

Right of private property – Principle of proportionality of an intervention

KEY WORDS

Contract of undertaking/ hidden asset/ product of a criminal offence/ security measure for property/ preventive sequestration

Even though a decision of sequestration has a temporary nature, it interferes in individual constitutional rights, such as that of property, an interference that continues until a potential decision for confiscation of the property is rendered. It is considered final for purposes of a constitutional control and therefore the Court evaluates whether this restriction respects the constitutional criteria of intervention, that is, whether it was done by law, for a public interest and whether it respects the criterion of proportionality.

Elda Dinaj *(criteria of a restriction of the right of property by decisions imposing preventive sequestration)* – judgement no. 29, of 16.04.2024

Facts

The right of ownership of immovable assets of a villa and site area resulted to have been passed to the applicant. The first instance Court for Corruption and Organised Crime [Albanian acronym GJKKO], imposed the measure of preventive sequestration on them, as hidden assets and a material object of laundering products of a criminal offense, in the framework of a criminal investigation against a public functionary. The GJKKO court of appeal and the Criminal College of the High Court left the decision of the court of first instance in force. The applicant addressed the Court with an individual constitutional complaint.

The Court's Assessment

The right of property – The measure of sequestration was imposed on the basis of article 274 of the Code of Criminal Procedure, which permits sequestration when there is a danger that the free disposition of an object related to the criminal offence might make its consequences for severe or cause them to last longer, so consequently the intervention in the right of property was done by law and responds to a public interest.

The measure of a preventive sequestration: (i) justifies the need of the intervention, because it aims at impeding any possible transfer of the property, for the purpose of ensuring the progress of the criminal proceeding; (ii) it is appropriate, given that remains a mean of a temporary character, which balances in a fair and reasonable manner the purpose of the criminal proceeding and the applicant's interests; (iii) it is not more severe than the objective sought to be achieved, because the restriction of the right to possess and enjoy one's property is put against the objective of preventing the further commission of a criminal offence. It appears that there is a reasonable proportionality between the decision of sequestration and the purpose pursued, and therefore the restriction of applicant's right to possess and enjoy her property is in a fair relationship with the situation that has dictated it.

Decision-making

The Court rejected the application by majority of votes (one judge had a dissenting opinion).

Right to a fair trial by a court established by law – Principle of impartiality in court`s proceedings – Standard of reasoning of the judicial decision

KEY WORDS

Loan contract/ archiving service/ binding force of Constitutional Court`s decisions / personal data/ lottery/ activity of the legal advisor/ diligence

The argument that the rapporteur judge sent the notification to invalid addresses is insufficient to prove his partiality, in the conditions when notification acts are compiled and sent by the judicial secretariat. The short period of the case review by the High Court does not constitute an argument which would prove the claim for violation of impartiality in the subjective meaning. The High Court's interpretation of procedural law does not appear to be arbitrary or to contain obvious legal errors that would compromise the fairness of proceedings.

Odise Xhelita *(High Court`s interpretation of procedural law)* – judgment no. 30, of 18.04.2024

Facts

After the early pre-payment of a loan at a commercial bank, the applicant has initially established a correspondence with the bank itself and then with the Bank of Albania, seeking intervention from the latter to implement corrective measures aimed at reducing the applied interest rates, costs, and life insurance expenses. Following the response on the corrective actions, the applicant addressed the Bank of Albania requesting a certified copy of the practice of the administrative process as well as the inspection documentation. The Bank replied that the conclusions of the administrative process have already been made available to the applicant, while communications between the Bank of Albania and the commercial bank are confidential. The applicant filed a lawsuit against the Bank of Albania, which was rejected by the Administrative Court of Appeal. The related recurse was also rejected by the High Court.

The Constitutional Court admitted the application of the applicant to repeal the decision of the High Court decision and sent back the case for re-trial. The High Court upheld the decision of the Administrative Court of Appeal. The applicant has once again addressed the Constitutional Court with an individual constitutional complaint.

The Court` Assessment

The right to a fair trial by a court established by law – The applicant's arguments are hypothetical and insufficient to support his claim, because, although he states to not possess any evidence, he reaches to the conclusion that there has been a violation of the by-lots proceeding for the assignment of judges to the case. With regard to the activity of the legal advisor, such activity has a supporting and advisory nature for the judicial functions of the bench, and is documented in acts/documents of an internal nature, which are not mandatory to be communicated to the parties.

Principle of an impartial court – The acts of notice to the parties are drafted and sent by the judicial secretariat, meanwhile the judge has the duty to verify and control their execution. The accuracy of actions taken by the judicial administration to carry out notifications is crucial in terms of the effectiveness of the trial, meanwhile, with regard to the fair trial elements, it takes on a determining value when it has not been reinstated by the responsible judge and it has eventually affected the individual`s exercise of constitutional rights. The short period of the case review by the High Court does not constitute an argument which would prove the claim for violation of impartiality, under the subjective meaning. The High Court was set in motion after the case was sent back by the Court, -and on the basis of decision no. 78, dated 30.05.2019 of the High Judicial Council, such fact gives reason for such case to be reviewed with priority. With regard to the objective impartiality, the applicant did not submit any concrete evidence to support such claim.

Standard of reasoning of the judicial decision – The High Court has explicitly responded to the applicant that the claim raised in the addendum to the recourse is inadmissible. The High Court's interpretation of procedural law does not appear to be arbitrary or to contain obvious legal errors that would compromise the fairness of the proceedings. The High Court has interpreted the law within its constitutional competences and this interpretation does not appear to be openly unreasonable. The High Court`s decision reflects the reasons presented in the addendum recourse, as well as the reasoning why this addendum recourse could not be reviewed. The High Court has reviewed the recourse on its merits and has also reasoned about the right to information with regard to the banking legislation.

Decision –making

The Court held, unanimously to reject the application.

The right to private property – Standard of reasoning of a judicial decision

KEY WORDS:

Construction without a permit/ compensation of damage/ lost profit/ *res judicata*/ prescription of a lawsuit

In the first judicial proceeding, the applicant also sought compensation of damage in the form of lost profit, accepting it in the amount set by the court, notwithstanding the manner and time period of calculating it, a decision that constitutes *res judicata*.

Agim Goga *(statute of limitation of lawsuit to seek lost profit)* – judgment no. 31, of 18.04.2024

Facts

An object owned by applicant was completely demolished, according to a decision of the Branch of the Construction Police, a decision that was later repealed by the Construction Police Directorate. The applicant objected in court to the demolition of the object, also seeking compensation of the damage caused and the lost profits. In the end, the Court of Appeal recognised the obligation of defendants to free up and deliver the site that had been occupied, to rebuild the object in its prior condition and to pay the applicant damage and lost profits. Since the obligation to pay applicant damage and lost profits was not satisfied by the defendants, the applicant turned to the court again, seeking compensation of the damage and lost profits, up to the full execution of the decision (the construction of the object). The courts of all three levels rejected the claim as *res judicata*.

The applicant submitted an individual constitutional complaint.

The Court's Assessment

Standard of reasoning of a judicial decision in connection with the right to private property – In the first judicial proceeding, the applicant also sought compensation of damage in the form of lost profits for the period from the day of demolition of the object until the execution of the judicial decision. He did not bring a recourse against the decision of Tirana Court of Appeal, by which the obligation of defendants to build the object in its prior condition was ordered, as well as to pay lost profits to applicant, accepting the lost profits in the amount determined, notwithstanding the manner and time period of calculating it. Since this decision was not contested by applicant, it constitutes *res judicata*. The applicant's claims, which in essence contest the decision of the Tirana Court of Appeal, since it has reasoned in connection with lost profits, should have been the object of an appeal remedy and then evaluation by a higher court, but not of a new complaint. The other claims about constructing the object in its prior condition are related to the execution of the judicial decision, as to which the procedural law has provided the means and procedure for its execution.

Decision-making

The Court unanimously rejected the application.

Right to be notified – Right to be heard – Right to defence

KEY WORDS:

Innocence/ free condition/ counter-recourse/ email address

The absence of notice to applicant's defence attorney about the High Court session, under the conditions that he was not able to submit claims in connection with the prosecutor's recourse, because of irregularities in the notification and furthermore when the object of the recourse is a decision that had found applicant not guilty, puts into question respect for the right to be heard and to defence in the substantive aspect.

Rezart Myslymi *(absence of notice about the examination of the recourse in the High Court)* – judgment no. 32, of 23.04.2024

Facts

The applicant was sentenced to five years' imprisonment by Fier District Court for commission of the criminal offence "Producing and selling narcotic substances". This decision was changed by the Vlora Court of Appeal, which found him not guilty. On the basis of the prosecutor's recourse, the Criminal College of the High Court reversed the decision of the Court of Appeal and left the decision of the first instance court in force.

The applicant submitted an individual constitutional complaint for a violation of the right to a fair trial.

The Court's Assessment

The right to be notified in connection with the right to be heard and the right to defence – The recourse was communicated to the applicant's father and according to the note on the receipt of communication he "*refused to sign*". The recourse was not notified personally to the applicant nor to his defence attorney according to the forms provided by the procedural provisions. So far as concerns notification of the time and date of examination of the recourse in the High Court, the lawyer does not turn out to have been notified through email. Besides the deficiencies in notification of the recourse, at the time of its submission by the prosecutor (the year 2017), the procedural provisions in force did not provide the right of a counter-recourse.

The absence of notice to the applicant's defence attorney, under the conditions when he did not have the opportunity to submit claims ahead of time in connection with the prosecutor's recourse because of the notice irregularities, and furthermore, when the object of the recourse is a decision that had found the applicant not guilty, puts into question respecting the right to be heard and to defend oneself in the substantive aspect. The applicant was unable to exercise the right of defence *vis.a vis*. the grounds of the recourse and to submit his claims in connection to the contested judicial proceeding, also under the meaning of principle of equality of arms and adversarial trial. Furthermore, on the basis of the grounds in the prosecutor's recourse, the Criminal College reversed the decision of the Court of Appeal, a decision that had found the applicant not guilty, more than five years after that decision was rendered.

Decision-making

The Court accepted the application by majority of votes (four judges had dissenting opinions).

Right of access – Standard of reasoning of a judicial decision – Right of effective defence

KEY WORDS

Contract for sale of shares/ loan contract/ jurisdiction/ arbitration clause

The question of jurisdiction and the contracts entered into between the parties, raised as a claim by the interested subject, was discussed, in essence, in the ordinary courts. The High Court did not.

Company "Energy Albania Group" ltd. company and company "MP-HEC" ltd. company (*arbitration jurisdiction)* – judgment no. 33, of 23.04.2024

Facts

The applicants signed a preliminary contract about sale of shares of one of the companies to the interested subjects/entities, according to which the resolution of every dispute would be done by arbitration in Rome. According to the same contract, the interested subject/entity made a payment in favour of the applicants. In addition, a loan contract was signed between one of the applicants and the interested subject/ entity, according to which disputes between the parties would be examined by Tirana District Court. Since the withdrawal of the interested subject/entity from the preliminary contract and the return of the sum paid as refused by the applicants, he went to arbitration, which accepted the lawsuit, obliging applicants to return the sum paid. The interested subject/entity then sought for the obligation to be fulfilled in accordance with the arbitration decision. The applicants addressed the Tirana District Court to extinguish the obligation. The Court found the absence of judicial jurisdiction, with the reasoning that it pertains to the arbitration, a decision that was left in force by the High Court, with the reasoning that the loan contract referred to the preliminary contract, which provided for the resolution of disputes only by arbitration.

The applicants addressed the Court with an individual constitutional complaint.

The Court's Assessment

The right of access related to the standard of reasoning of a judicial decision – the court of first instance and the High Court examined the matter of jurisdiction in connection to the preliminary contract and the loan contract. The High Court considered that the loan contract, by which applicants claim the arbitration clause was changed, is not valid because it was signed only by one of the applicants and was not also signed by the other company, as was the preliminary contract. The High Court did not put matters of the law up for discussion, as to which the parties did not have knowledge and which they did not have the possibility to give their opinion; on the contrary, the two courts argued that the preliminary contract refers to arbitration jurisdiction for the resolution of disputes between the parties. In the exercise of their competences, the courts interpreted the content of the contract and reached the conclusion that they are related, reasoning that the loan contract cannot be interpreted without analysing the conditions of the preliminary contract for the sale of shares.

The right to an effective defence – So far as concerning the notice to the applicants, although they had left electronic (email) addresses for contact, the notice of the date and time of holding the session does not turn out to have been communicated. However, the absence of individual notice through the email contact addresses does not turn out to have put applicants in unfavourable positions or to have had the effect of denying the right to defence, in the substantive sense, and therefore it is not enough to make the process irregular in the constitutional meaning.

Decision-making

The Court rejected the application by majority of votes (four judges had dissenting opinions).

Right to be tried by an impartial court – Right of access to trial

KEY WORDS:

Abbreviated recourse/ meeting the deadline/ full recourse/ incomplete acts/ judicial administration

As a consequence of defective actions of the judicial administration of the court of first instance in administering and transmitting the acts, an abbreviated recourse was not included in the judicial file and it was not subjected to the evaluation of the High Court, with the consequence that the full recourse was not accepted for examination.

"ILIAD 1" ltd. company (*failure to administer in the judicial file an abbreviated recourse to meet the appeal deadline)* – judgment no. 35, of 25.04.2024

Facts

In 2002, the applicant leased a site from the former Ministry of Economic Development, Tourism, Trade and Enterprise (today the Ministry of the Economy and Finance), one part of which overlapped with the site returned in 1995 to the interested subjects/entities by decision of the Commission of the Restitution Compensation of Properties of Vlora. On the lawsuit of the latter, the Vlora District Court found the lease contract absolutely invalid for that part connected to their property and its restitution to those subjects, a decision that was left in force at all the trial levels.

The applicant, being obliged to return part of the site to implement the final decisions, sought the obligation of the interested subjects/entities judicially to repay the necessary and beneficia expenses incurred for the site as well as compensation for the loss incurred and lost profits. The interested subjects brought a countersuit, seeking compensation of extra-contractual damage from the use of their property. The first instance court accepted the lawsuit in part, a decision that was left in force by the court of appeal. The Civil College of the High Court changed the decision of the court of appeal, rejecting the claim for lost profits, as well as non-acceptance of the recourse of applicant as submitted outside the legal time period. The applicant brought a constitutional complaint, claiming a violation of the right to fair trial in several of its aspects.

The Court's Assessment

The right to be tried by an impartial court - Even though information about the composition of the judicial panel was announced on the official web page of the High Court, the applicant did not submit any request for replacement of the judges with a claim about impartiality. The judges who examined the case in the High Court were previously part of the judicial panel of the same court that rendered the decision at the end of the judicial process on the merits, where the non-acceptance of applicant's recourse was decided. In that case the High Court examined only whether or not legal reasons existed in the recourse and not the merits of the dispute between the parties. Consequently, there are no doubts about partiality.

The right of access – The applicant filed the act "abbreviated recourse", delivery of which was accepted by the administration of the first instance court against a signature and official seal, for the purpose of meeting the deadline, since the decision of the recourse had not yet been reasoned. Only the full recourse was administered in the judicial file, while the abbreviated recourse is absent. When it examined the applicant's case and found only the full recourse in the file, the judicial panel of the High Court did not make a factual or legal mistake in judging that it was submitted beyond the deadline and for that reason it should not be accepted.

On the basis of the acts submitted by the applicant and the information of the Vlora Court of First Instance of general jurisdiction, the Court reaches the conclusion that the judicial administration of the court of first instance had acted irregularly, because it did not document the submission of the abbreviated recourse by the applicant in the special register, did not give notice of it to the other trial parties, and did not include it in the acts of the judicial file that was transmitted to the High Court. Those deficiencies cannot fall on the applicant, because they would create an excessive burden against the applicant.

Decision –making

The Court unanimously accepted the application.

The right to a fair trial by a court established by law

KEY WORDS:

debt relationship/ prescription of a lawsuit/ extinguishment of the right to file a lawsuit/ return for retrial

The High Court, as a court of law, has within its competence the control of the manner the law is applied, and the final interpretation of the law, on the condition that this interpretation was first carried out by the two lower courts.

Gjyste Nikolli *(High Court`s jurisdiction to reopen the proceedings when the case has not been examined on the merits in the court of appeal)*- judgment no. 36, of 30.04.2024

Facts

Citizen P.K., the legal decedent of the applicant, had given citizen K.B. treasury bonds, which he had to return within one year. The obligation was not fulfilled, and as a result P.K. filed a lawsuit against the heirs of K.B., for the return of the amount of money. Kurbin Judicial District Court rejected the claims, since it was time-barred. Tirana Appeal Court overturned the decision and send it for retrial on the basis of procedural violations, related to communication -of the plaintiff's request to reduce the object of the claim- to the defendant parties. Such decision was overturned by the High Court, which upheld the first instance court`s decision.

The applicant (as the heir of P.K.) subsequently addressed the Court with an individual constitutional complaint.

The Court`s Assessment

The right to a fair trial by a court established by law – The High Court is set into motion as to contest the decision of the Appeal Court with regard to procedural irregularities found by this court, in the court of first instance. The issue of the extinguishment of the right to file a lawsuit has not been taken into consideration by the Appeal Court, given that the court did not deal with the manner by which the provisions of the Civil Code were applied and interpreted, thus failing to provide any assessment with regard to exercise of the right of filing a lawsuit by the plaintiff. Even though the interpretation of the law with regard to exercising the right of filing and prescribing a lawsuit constitutes a matter of a legal nature, the High Court should not have ended the judicial process with a final decision, given that the Appeal Court did not reason on the prescription of the lawsuit.

Decision-making

The court decided, by majority vote, to accept the application (two judges had dissenting opinions).

Right to a fair trial by a court established by law – Right of objectivity and impartiality of proceedings – Right to be rehabilitated and/or compensated in accordance with the law

KEY WORDS

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

From the moment when he submitted a request to the High Court to find a violation of the reasonable time, until he lodged the individual constitutional complaint, the applicant no longer enjoyed the status of a judge, as a result of his dismissal from the Independent Qualification Commission, dismissal which was left in force by the Special College of Appeals. In this viewpoint, the applicant has failed to prove a direct and actual violation of his rights due to length of on-the-merit proceeding.

Ervin Trashi - Meeting of Judges` judgment no. 49, of 19.03.2024

Facts

The applicant competed for a vacant position of a judge at Vlora Court of Appeal. The High Council of Justice proposed to the President the appointment of the applicant as judge to the Court of Appeal. Given that the President did not expressed his opinion on the proposal, the High Council of Justice re-announced the vacancy. The applicant addressed the administrative court seeking for the illegality of the administrative action of the President regarding the silent dismissal of the candidacy. The court decided to reject such claim. The case was registered with the Administrative Court of Appeal on the basis of the applicant's appeal. Afterwards, he submitted a request to accelerate the trial of the case and the court scheduled a hearing on 14.09.2023.

On 03.07.2023, the applicant submitted a request to the High Court seeking violation of the reasonable time in the court of appeal, a request which the Administrative College decided to dismiss, given that the case was planned to be adjudicated by the court of appeal.

The applicant lodged an application with the Court to repeal the High Court`s decision.

The Court`s Assessment

Legal standing ratione personae – The applicant was removed from office by decision of the Independent Qualification Commission, a decision upheld by the Special College of Appeals. Hence, the Administrative Court of Appeal, -with regard to the trial on the merits decided to dismiss the case since it lacked the object of review.

Meanwhile, the Administrative College of the High Court decided not to accept the applicant`s recourse.

From date 03.07.2023 when he requested violation of reasonable time with the High Court, until date 20.12.2023,-when he lodged the individual constitutional complaint, the applicant no longer enjoyed the status of a judge. Therefore, the applicant has failed to prove the direct and actual violation of his rights, in terms of direct and actual damage/consequences resulting from the length of proceedings on the merits. Therefore, he does not have the legal standing *ratione personae* to set in motion the constitutional review.

Decision-making

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

Principle of equality before the law – Principle of non-punishment without a law – Right to be elected – Principle of proportionality

KEY WORDS

Right to be elected/ candidate for mayor/ local elections/ prison arrest/ special permission/ municipal council

Constitutional protection has a conclusive function and as such it can be applied only in connection with decisions as to which the judicial procedures have ended. An individual constitutional complaint in the case at hand is not the only means guaranteed by the legislation for the protection of constitutional rights, given that the applicant has started a judicial process with the courts of ordinary jurisdiction.

Dhionisios Alfred Beleri – Meeting of the Judges` judgment no. 57, of 03.04.2024

Facts

The applicant was arrested in flagrancy two days before the holding of the elections as being suspected of the commission of the criminal offence "Active corruption in the elections", committed in collaboration. The personal security measure of "Detention on remand" was set against him. The Central Election Commission awarded the applicant the mandate of the mayor of the municipality of Himara, so he submitted a request to obtain special permission to take part in the meetings of the Himara municipal council, which was refused by the general director of prisons. The applicant turned to the first instance court for corruption and serious crime (Albanian acronym GJKKO), which announced the lack of subject matter competence, sending the case to Durrës District Court of general jurisdiction. The High Court resolved the dispute of subject matter competence, determining GJKKO of the first instance as the competent court. Without the latter having yet finished the trial of the case, the applicant submitted an individual constitutional complaint, a matter that was passed by the College of the Court to the Meeting of the Judges for examination.

Assessment of the Meeting of the Judges

Criterion of the exhaustion of effective legal remedies—The claim of applicant that only through an individual constitutional complaint can his right to be elected can be reinstated, is ill-founded, because in this case, an individual constitutional complaint is not the only remedy that the legislation guarantees for the protection of constitutional rights, since he has started a judicial process in the ordinary courts with the same object, objection/repeal of administrative document no. 1938/2023 related to the restriction of his right to be elected. Since the applicant has subjected the claims for an objection/repeal of the act that is the object matter of the application to ordinary judicial jurisdiction, they can be subjected to constitutional control after the conclusion of the process started in those courts. The applicant has not exhausted all the effective legal remedies available before addressing the Court.

Decision-making

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

Personal liberty – Standard of reasoning of a decision

KEY WORDS

Candidate for mayor of a municipality/ local elections/ ambient surveillance/ arrest in flagrancy/ validation of arrest in flagrancy as lawful

The validation of arrest in flagrancy and the restriction of applicant's personal liberty does not turn out to have been done in violation of articles 27 and 28 of the Constitution, the provisions of the European Convention of Human Rights or the legal provisions in force. The constitutional provisions that define the time period for being heard before a judge and to have a validation of the arrest have also been respected, as well as the right of appeal and the right to have a judicial examination.

Dhionisios Alfred Beleri – Meeting of the Judges' judgment no. 72, of 08.04.2024

Facts

The applicant was a candidate for mayor of the Municipality of Himara in the region of Vlora in the local government elections. Before the holding of the elections, the organ of accusation registered a criminal proceeding accusing him of committing the criminal offence "Active corruption in elections". With the prosecutor's authorisation, the applicant was put under ambient surveillance, and later he was arrested. The arrest was validated as lawful by the court of first instance, which then sent the case to the first instance corruption and organised crime court (GJKKO) as the competent court. The validation of applicant's arrest in flagrancy was also left in force by the higher courts.

This process was contested by the applicant in the Court, and the College of the Court decided to pass it for review to the Meeting of the Judges.

Assessment of the Meeting of the Judges

Personal liberty related to the standard of reasoning of a judicial decision – The arrest in flagrancy was done respecting the procedures provided by the Code of Criminal Procedure, and the validation of the measure was examined by the courts, which determined the moment and time on the basis of which liberty was taken away, also giving arguments about the legality of the actions of the law enforcement organs. The courts of fact analysed the facts and evidence against the applicant and also analysed the respective applicable legal provisions, in relation to the conditions and criteria for a situation of flagrancy, reasoning the decisions. Referring to its role and position as a court of law, the High Court examined the claims raised in the recourse, by verifying and assessing that the decisions which validated as lawful the arrest in flagrancy and the restriction of personal liberty are fair. The ordinary courts took into account the guarantees provided by the constitutional and legal framework in this aspect, by also guaranteeing the standard of reasoning.

Decision-making

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

Right to private property – Standard of reasoning of a judicial decision

KEY WORDS

contract of joint investment/ investor/ undertaking party/ property security measure/ preventive sequestration

In the aspect of standing *ratione personae*, the individual should prove his interest, both in the procedural aspects as well as in the substantive aspect. The applicant did not raise claims against the sequestration measure, but in essence contested the ordering part of the decision according to which a part of the object is left to be used by third parties, consequently not arguing the real and direct consequences on the applicant's right of property.

"Star Construction" ltd. company – Meeting of the Judges` judgment no. 90, of 30.04.2024

Facts

The prosecution office registered a criminal proceeding against the administrator of a company for the criminal offence provided by article 143 of the Criminal Code, on the basis of a criminal denunciation by applicant. At the request of the prosecution office, Tirana District Court ordered a preventive sequestration of the object, a residential and service structure, as to which a joint investment contract for construction had been entered into between applicant and another company. Tirana Court of Appeal left the decision in force so far as concerns the preventive sequestration measure, adding that part of the residential units, the object of contracts of undertaking, should be left in the use of those who ordered them. The High Court did not accept the applicant's recourse.

The applicant brought an individual constitutional complaint to the Court.

Assessment of the Meeting of the Judges

Standing ratione personae - In its individual constitutional complaint against the sequestration decision, the applicant did not raise claims as to which its procedural and substantive standing were not open to question. The applicant has not even appealed this decision in the court of appeal. The applicant chose to submit a recourse and then an individual constitutional complaint against the decision of the court of appeal, in relation to the part that ordered to leave part of the object in the use of third parties. In connection with this ruling, the applicant did not argue how this transfer of the right of use of part of the sequestered object (that is, in the administration of State organs) to third parties- brings direct and real consequences to the right of property. The latter was restricted as to applicant by the decision imposing the sequestration, against which the applicant does not have an objection.

Decision-making

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