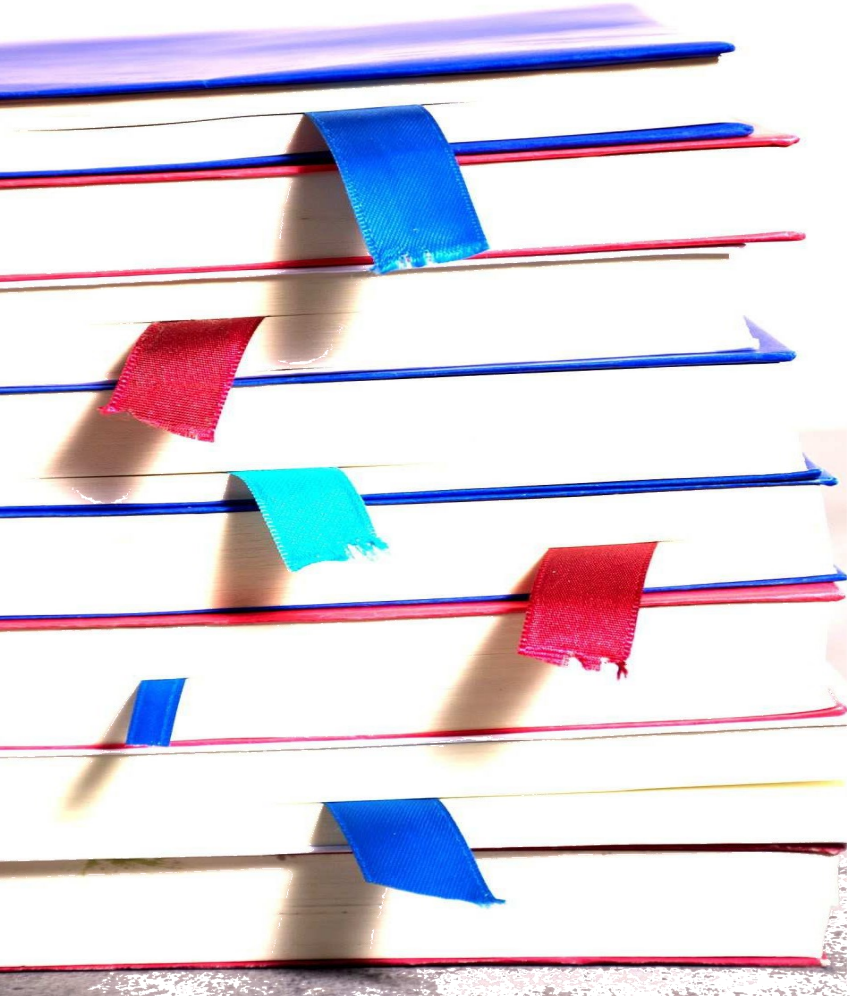
REPUBLIC OF ALBANIA

CONSTITUTIONAL COURT

PERIODICAL NEWSLETTER of the Constitutional Court

Decisions May-June 2024



Periodical Newsletter of Decisions
No 3, May-June 2024

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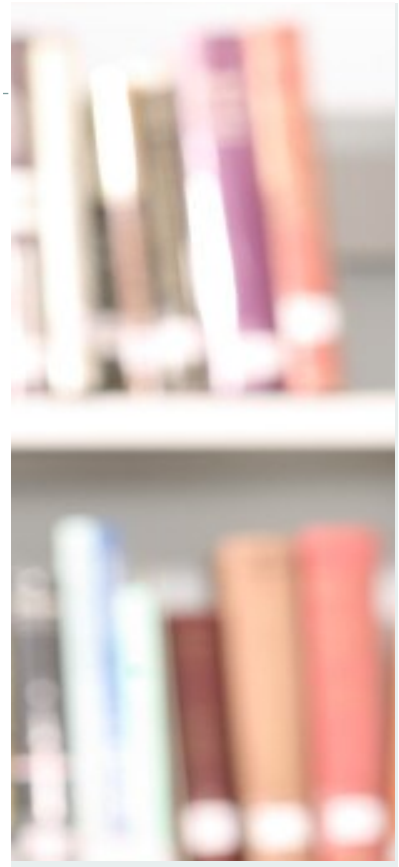

INTRODUCTION

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. 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. The decisions 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 period May-June 2024

CONTENT

Principle of representative democracy – Principle of parliamentary autonomy

KEY WORDS

Representative democracy – autonomy of the Assembly / disciplinary violation/ disciplinary measure/ exclusion from participation in commissions and plenary sessions/ mandate of the deputy/ activity as a member of the Assembly/ Regulation

In the aspect of its jurisdiction, the Court judged that although the Regulation is by its nature a *sui generis* act with an atypical nature, taking into account that the claims relate to constitutional norms, consequently creating a dispute of a constitutional nature, and also since that act is not expressly subject to the control of any other judicial jurisdiction, but neither is there any express prohibition against exercising constitutional control, the examination of the provisions of the Regulation falls within the constitutional jurisdiction.

The principle of parliamentary autonomy is not predominant and should be exercised in harmony with the concepts of effective democracy and the rule of law. Although the Assembly in principle has the constitutional mandate to intervene also for the regulation of those matters that have to do with the definition of actions/ behaviours that constitute disciplinary violations, it should respect the principle of proportionality.

No fewer than one fifth of the deputies of the Assembly of the Republic of Albania (*The Regulation of the Assembly)* – judgment no. 48, of 19.06.2024

Facts

By decision 126/2023, the Assembly approved amendments to its Regulation in the aspect of disciplinary measures, specifically, extending up to 30 or 60 days the disciplinary measure of exclusion from the commissions and/or the plenary sessions, as well as providing the violations for which those measures are given.

The applicant turned to the Constitutional Court (the Court) for the repeal of those amendments, claiming that they violated article 83, point 2 of the Constitution in connection with the application of the accelerated procedure for their approval, as well as the rights of the deputies that derive from their constitutional status, leading to impeding the effective exercise of the constitutional mandate, and consequently also of the Assembly itself.

Even though the applicant raised his claims with regard to the violation of the principle of proportionality of the intervention in restriction of the rights of the deputy, contrary to article 17 of the Constitution, the Court held, based on the principle *iura novit curia*, that in essence they do not deal with the rights of the deputy as an individual, but with the principle of the representative democracy in the meaning of article 2 of the Constitution.

Court`s assessment

The principle of representative democracy – In the instant case, the determination of the boundaries between two distinct principles which enjoy the same constitutional protection is put into discussion: on the one hand, that of self-regulating parliamentary autonomy, and on the other hand, that of representative democracy. Even though within its self-regulating autonomy the Assembly has the right and freedom to choose the means that it considers necessary and effective for meeting the purposes of internal good functioning, it also has the obligation to respect the principle of proportionality, which does not permit the exercise of power in an unlimited manner.

On the other hand, the Court emphasizes that the principle of representative democracy guarantees to every deputy to exercise during the parliamentary activity, the rights provided in article 70 of the Constitution as well as law no. 8550/1999. This right is not guaranteed without any limitation but can be limited because of the principles and other values of a constitutional level, such as that of the good functioning of the Assembly.

The Court finds that the Assembly approved some amendments and additions to the provisions of the Regulation, by means of which the imposition is provided of disciplinary measures with a length of 10, 30 or 60 days for violations that might be committed by the members of the parliament.

Considering the amendments to the Regulation, the Court holds that two provisions (letter “a” of point 6 of article 65/1 and letter “a” of point 1 of article 65/1) provide disciplinary measures with different lengths for the same violation. In this connection, the lack of clarity in the content of those two provisions, which provide different measures, is such as to lead to arbitrariness in its application. The same applies to the content of letter “b” of point 7 of article 65/1 of the Regulation, which provides for the giving of the disciplinary measure of exclusion from the commissions and/or the plenary session up to 60 days “when the member of the parliament commits actions/behaviours that are suspected of containing elements of a criminal offence provided in the Criminal Code”.

(continues on page 5)

In this case, the Court's assessment is not a classical control such as that in the sense of article 17 of the Constitution, since the interest and need of intervention are presumed aspects, since the Assembly acts based on the principle of parliamentary autonomy. It deals only with verifying the severity of the measures, that is, whether they may bring a violation or limitation in the exercise of the representative mandate of the deputy, not only because of content but also during the application, in implementation of the principle of representative democracy.

The Court emphasizes that the definition of behaviours and actions of a member of the parliament that constitute disciplinary violations should be done in a clear and concrete manner, whereas referring in a general manner to undefined actions or behaviour creates the possibility for arbitrariness during their implementation.

Concerning the content of letter "c" of point 7 of article 65/1 of the Regulation as well, the Court finds that the provision of the actions and behaviours that entail its application should be defined or definable in a clear and precise manner, not leaving space for its interpretation or application in a discretionary manner, such as might violate disproportionately the exercise of the representative mandate.

The Court also finds that point 9 of article 65/1 of the Regulation, according to which the member of parliament, during the period of application of the disciplinary measure, is also prohibited from carrying out "any other activity as a member of the Assembly" even beyond his participation in the plenary session and in the commissions constitutes a new disciplinary measure. The disciplinary measure of exclusion up to 30 or 60 days is the most severe measure that can be given to a member of parliament, and consequently, any other accompanying restriction constitutes a disproportional restriction on the exercise of the representative mandate, because it is considered to be more severe in the aspect of its consequences than is necessary for reaching the purpose.

Decision-making

The Court decided by majority vote to accept the application in part (eight judges had a partial dissenting opinion).

Freedom of economic activity – Principle of legal certainty

KEY WORDS

Income tax/ Self-employed individual/ commercial individual/ entities/ tax norm/ annual tax basis/gross income/ analytic list/effects of the law

The text of article 69, point 1, letter "dh", second and third sentence of the Law on Taxation , which defines a different calendar for the entry into force of the tax obligation for self-employed persons who provide professional services compared to self-employed persons who perform genuine commercial activity (reserving for the latter a soft solution, with the entry into force of the new tax norm in fiscal year 2030), interwoven with the amount of the new tax norm of 15%, the absence of an appropriate notice period for the subjects whom the new tax norm burdens, without any kind of escalation and without giving an appropriate opportunity to subjects to adjust to the new amount of the tax norm, violates the principle of proportionality in the aspect of the necessity/severity of the means selected by the legislator.

No fewer than one fifth of the members of the Assembly of the Albania, the Association "Institute of Authorised Accounting Experts", the Association "Institute of Approved Accounting Experts", the Chamber of Advocacy of Albania (*provisions of the Law on Taxation for the entry into force of the tax obligation for self-employed persons who provide professional services*) – judgment no. 52, of 27.06.2024

Facts

The Assembly approved law no. 29/2023 "On income tax "(Law on Taxation), which provides in its article 24, point 2 that net taxable business income for commercial and self-employed individuals is taxed with progressive norms as follows: for the annual tax basis 0 – 14 million ALL, the tax norm is 15%, and on an annual tax basis over 14 million ALL, the tax norm is 23%.

Pursuant to article 69, point 1, letter "dh" of the Law on Taxation, the tax exemptions and facilities provided in law no. 8438/1998 continue to be applicable. In addition, for commercial individuals, self-employed individuals and entities with gross income up to 14 million ALL per year, the tax norm of 0% will be applied until 31 December 2029; the tax norm of 0% is not applied to taxpayers who provide professional services; the analytic list of professional services is determined by decision of the Council of Ministers in compliance with the regulatory legislation in force related to those professional services.

The Law on Taxation entered into force on 18.5.2023, that is, 15 days after publication in the Official Journal, while its effects begin from 1 January 2024. Exceptions are the provisions of articles 22, 23 and 24, point 1, which begin effects from 1 January 2025, letter "ç" of point 1 of article 69, which begins effects with the entry into force of the Law on Taxation and point 2 of article 69, which begins effects from 1 June 2023.

Consequently, the Council of Ministers approved decision no. 753/2023 (10 days before the implementation of the effects of the Law on Taxation began), which in article 4 defined the list of services with the object of taxation from 1 January 2024, including the economic activities of taxpayers who are self-employed natural persons and entities that provide professional services with annual income up to 14 million ALL, who will pay tax on personal income from the business or tax on income of the corporation starting from fiscal year 2024.

Court`s assessment

Freedom of economic activity related to the principle of legal certainty – The Court found that the change and implementation of a new tax scheme for income generated from the exercise of activity up to 14 million ALL a year constitutes a legal obligation with a financial nature and, as such, they interfere in the constitutional rights and freedoms of taxpayers. In this sense, the Court examined whether the intervention was done by law, whether a public interest exists and whether the proportionality between intervention and the situation that has dictated it is fair, that is, necessary, essential and appropriate, within the constitutional standards.

From an analysis of the data submitted by the parties in the process, the Court found that the legislator applied the tax norm of 15% on net taxable income from 0 to 14 million ALL per year for the category of business for commercial individuals and those who are self-employed, On the other hand, it chose the implementation of that norm on gross income for three categories, which are commercial individuals, self-employed persons and entities, graduating it in two different periods. Concretely, that norm is applied to commercial individuals after 31 December 2029, because until that date, the norm of income taxation will be 0%, while for self-employed persons and entities, that norm of taxation will be applied from 1 January 2024

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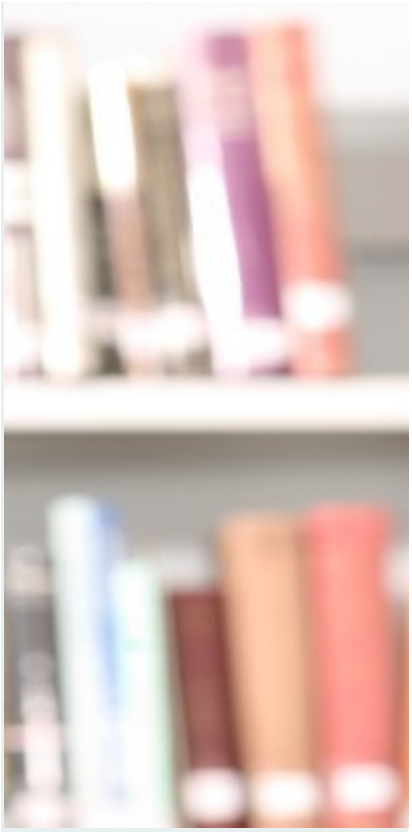

The Court considered that the text of article 69, point 1, letter "dh", second and third sentence, of the Law on Taxation, which defines a different calendar for the entry into force of the new tax obligation for self-employed persons who provide professional services compared to those self-employed persons who carry out genuine commercial activities (as to whom the Lax on Taxation provides entry into force of the new norm in fiscal year 2030), interwoven with the amount of the new tax norm of 15%, the absence of an appropriate notice period for the subjects whom the new tax norm burdens (it enters into force about seven months from the approval of the law, while the determination of the concrete kind of activities that will be subject to the new tax norm starting from fiscal year 2024 was approved by decision of the Council of Ministers only 10 days before the implementation of the effects of the law began), without any form of grading exercise and without giving an appropriate opportunity to subjects to adjust to the new amount of the tax norm, violates the principle of proportionality in the aspect of the necessity/severity of the means selected by the legislator.

The implementation of tax laws should be accompanied by appropriate transitional measures, because giving time to taxpayers gives them the opportunity not only to become familiar with the forms for calculating the implementation of the tax against them but also to take measures that the taxpaying subjects themselves assess as necessary to meet the consequences of the applicable scheme.

Not questioning the broad margin of appreciation of the legislator to determine the amount of the tax norms per se (in the concrete case, the figure of 15%), nor the fact that exemption from tax obligations does not constitute a right of the taxpaying entity, the Court holds that from an interwoven analysis of the circumstances in which the new tax norm was approved and implemented, the tax is not proportional in the aspect of necessity, therefore the claim of the applicants is grounded. Under such conditions, the Court deems not to analyse further the sub-criterion of appropriateness.

Decision-making

The Court decided by majority vote to accept the application in part (two judges had a concurring opinion as well as a partial dissenting opinion and two other judges had dissenting opinions).

The right to a fair trial within a reasonable time

KEY WORDS

Minor/ disability payment with a guardian/MCDAW/ interest of a minor to enjoy a quality, healthy life/ importance of what is at stake for the applicant

Bardhoke Bicaku *(unreasonable length of time of a court proceeding in the administrative court of appeal)* – judgment no. 37, of 07.05.2024

Facts

The applicant is the mother of a three-year old daughter who has been diagnosed as "paraplegic", and on such grounds the Medical Commission for Determining Ability to Work (MCDAW [Alb. acronym KMCAP]) treated her with the status of paraplegic. Even when re-commissioned by the MCDAW, First Level, the girl was given the same status. The decision of the latter was later changed by the Superior MCDAW, which decided not to recognise the status of paraplegic for the daughter, but only the right to earn a disability payment. The applicant did not agree with such change, because it worsened the situation of her minor daughter, so she turned to court. The Administrative Court of First Instance rejected the lawsuit. The applicant appealed such decision and the case was registered in the Administrative Court of Appeal on 19.01.2022, where the case has not been examined yet. In order to accelerate the trial, the applicant filed a request to the Administrative Court of Appeal, which rejected the request. The High Court rejected the recourse as well.

The applicant lodged an individual application with the Constitutional Court (the Court) for the repeal of such decision for a violation of a reasonable time principle in the trial of the case in the Administrative Court of Appeal.

The applicant's case is related to "personal and vital" interests, including the interests of her minor child, who has different abilities, and requires the courts to examine the case with priority, especially when the object of the disagreement concerns financial claims. The interest of a minor child to enjoy a quality, healthy life is a primary priority of every institution, especially the decision-making authorities with direct influence on their care and well-being.

The Court's Assessment

The examination of the case within a reasonable time– With regard to the *applicant's behaviour,* she did not become a reason for the excessive length of the trial of her case, while so far as concerns *the complexity of the case,* it does not appear complex, because it has to do with property and moral indemnification as well as expenses necessitated by negligent medical treatment.

So far as concerns the *behaviour of the authorities,* the delay in the trial of the case is a consequence of the high caseload in that court and of the *rapporteur* judge, caused by the implementation of the reform in justice.

With regard to *the importance of what is at stake for the applicant,* after the visit and the evaluation of the medical documentation, as well as the respective examinations, the Superior MCDAW decided that the applicant's daughter is not entitled to the status of paraplegic, but becomes the beneficiary of a disability payment, first group, with a guardian. The Court holds that the applicant's case, due to its nature, which is linked to "personal and vital" interests, where included the interests of her minor child, requires that the courts examine the case with priority. The High Court analysed the case only in the aspect of its complexity and not the importance of what is at stake for the applicant. The High Court should have taken into consideration the fact that the applicant's claims -of a financial nature- aim at covering the expensive of the illness and the medical treatment of her minor daughter.

Decision-making

The Court decided unanimously to accept the application, finding a violation of a reasonable time principle and the obligation of the Administrative Court of Appeal to adjudicate the case within a six-month period.

The right of access – The standard of reasoning of the judicial decision – The right to be rehabilitated and/or indemnified

KEY WORDS

Indefinite term labour relationship/ status of the civil servant/ Labour Code/ compensation of damage/ change on initiative of the object and legal claims of the lawsuit

The constitutional claim has to do with the manner in which the High Court interpreted the legal procedure concepts of the object and legal reason of the lawsuit. Consequently, it acted within its constitutional function for interpretation of the law, giving a reasoned answer to the claims of the recourse.

Adem Rrenga *(interpretation of the legal procedure concepts of the object and legal claims of the lawsuit)* – judgment no. 38, of 14.05.2024

Facts

The applicant, who held the position of director of the Agency of Administration of Seized and Confiscated Properties, was released from duty in an immediate manner by order of the Minister of Finance. After the administrative appeal, the applicant brought a lawsuit with the object of repeal of the order releasing him from duty, return to work and compensation for the time he was unemployed, according to law no. 152/2013 "On the status of the civil servant".

The Tirana Administrative Court of First Instance rejected the lawsuit, with the reasoning that the Labour Code is applicable to the resolution of the dispute and not law no. 152/2013, because the applicant did not have the status of civil servant. On the applicant's appeal, the Administrative Court of Appeal changed the decision, accepting the lawsuit in part and obliging the defendant to pay the applicant one month's pay as indemnification for not respecting the notice period and two months' pay for the termination of the labour contract in an immediate and unjustified manner. Both parties exercised a recourse against such decision. The High Court reversed the decision of the court of appeal and left the decision of the court of first instance in force, with the reasoning that the court of appeal had exceeded the boundaries of the lawsuit, expressing itself beyond the claims raised by applicant.

The Court `s assessment

The right of access related to the standard of reasoning of the judicial decision – According to the High Court, the court of appeal could not on its own initiative change the object and reason of the lawsuit, which is an exclusive right of the applicant, who asked for the resolution of the consequences in pursuance of law no. 152/2013 and not the Labour Code. According to the High Court, although the preparation, trial and resolution of the case cannot be based solely on what is written in the introductory part of the lawsuit entitled "object of the lawsuit" and its "legal basis", the court still has the obligation to express itself only as to that which is sought by the applicant.

Since the main point of the applicant's constitutional claim has to do with the manner in which the High Court has interpreted the legal procedure concepts of the object and legal reason of the lawsuit, the legal basis of the lawsuit and the right of the ordinary court on its own initiative to make the legal qualification of the dispute that is submitted for examination, regulated by articles 5, 31, 154 and 185 of the Code of Civil Procedure and unifying decision no. 3/2012, it acted within its constitutional function for the interpretation of the law, thus providing the applicant with a reasoned answer to his claims set out in the recourse, respecting the right of access to court. The reasoning of the decision does not turn out to be insufficient, because it does not contain ambivalence, open or hidden contradictions or such serious defects as to violate the constitutional standard of a reasoned judicial decision.

Decision-making

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

Execution of a final decision within a reasonable time – The right to property – The standard of reasoning of the decision – The right to be informed

KEY WORDS

Registration of the act of obtaining ownership/ final judicial decision/ private judicial bailiff service/ excessive length of procedure of executing a court`s decision

The failure by the state organ to respect a judicial decision addressed to it, constitutes a violation of the very core of a fair trial and the principle of the rule of law. A state organ cannot refuse to execute a final judicial decision with the claim that the decision is debatable from the viewpoint of the law.

Laert Kola (*failure to execute a final judicial decision within a reasonable time*) – judgment no. 39, of 14.05.2024

Facts

The Commission for Restitution and Compensation of Property recognised ownership over a site to J. K., as well as physically compensating his legal heirs. The decision was registered in the former mortgage office. The applicant, one of the heirs, asked to re-register the property in the registers of immovable properties, a request that was refused with the reasoning that the property was previously registered in the name of the Commune Centre, Fier.

The applicant turned to court. The Vlora Administrative Court of First Instance rejected the lawsuit, a decision against which the applicant appealed. Since the Administrative Court of Appeal did not examine the case for more than four years, the applicant addressed the High Court for a violation of a reasonable time period, a request that was refused.

On the basis of applicant's request, to the Constitutional Court ordered the court of appeal to adjudicate the applicant's case within six months. After the trial of the case on the merits, the court of appeal changed the decision of the district court and accepted the lawsuit, ordering the interested subjects to register the property. The decision was not executed, not even with the intervention of a private bailiff.

Under such conditions, the applicant addressed the Vlora Court for a violation of a reasonable time, a request that was rejected with the reasoning that the one-year period for execution of a final decision according to article 399/1 of the Civil Procedure Code (CCivPr) had not yet been fulfilled. The applicant turned again to the Constitutional Court for the violation of the right to execution of the court`s final decision.

Court`s assessment

The criterion of exhaustion of effective legal remedies – Even though the applicant had addressed the competent court before the completion of the general one-year period defined by article 399/2, point 1, letter "c" of the CCivPr, that application followed a judicial process as to which a violation of a reasonable time had already been found by the Constitutional Court, which had ordered the acceleration of the procedure of the trial on the merits of the case. Through the legal remedies for protection that the CCivPr provided, the applicant had sought to be protected also in the procedure of execution of the final decision rendered in that judicial process.

The right for execution of a judicial decision within a reasonable time – In connection with the *behaviour of the applicant,* he, as creditor, had acted in conformity with his rights and had met every procedural obligation on time, the private judicial bailiff, as a procedural subject in the phase of mandatory execution of executive titles, had also, despite the failure to undertake coercive warned actions, realised the necessary procedural steps for timely execution of the final judicial decision.

So far as concerns *the behaviour of the authorities,* the failure to execute the judicial decision in this case does not turn out to result from any lack of clarity of the decision that would make it objectively impossible to register the property according to its order. The behaviour of the state authorities was not at the appropriate level of efficacy, leading to unjustifiable delay in the execution of the judicial decision.

In connection with *importance of what applicant risks,* the case does not have to do with any closely personal right; it is related to the right of property, guaranteed by article 41 of the Constitution. Considering the actions and failures to act of the state organs in failing to implement a judicial decision, but also the fact that a violation of the reasonable time period was also found before during the process in the ordinary courts, the case is of such a nature that applicant's interest is endangered to a considerable degree by the excessive length of time of the procedure of execution of the judicial decision.

Decision-making

The Court decided unanimously to accept the application, found a violation of a right and ordered the debtor to conclude the execution of the final judicial decision.

Personal liberty – Standard of reasoning of the decision

KEY WORDS

Detention on remand/serious health condition / medical expertise/ Special Institution of Health Care for Prisoners / Institution of the Execution of Criminal Decisions (Alb. acronym IEVP)

If a less severe security measure is to be implemented, it is necessary to analyse three criteria defined by the European Court of Human Rights: (i) the medical conditions of the prisoner; (ii) the appropriateness of medical care and assistance, under the prison hospital conditions; (iii) the appropriateness of the security measure in conformity with the prisoner's health condition. The Criminal College of the High Court reasoned the continuation of the security measure of detention on remand, thus analysing those criteria and answering the applicant's fundamental claims.

Lefter Koka *(replacement of a personal security measure due to a health condition)* – judgment no. 40, of 14.05.2024

Facts

Two criminal proceedings were initiated against the applicant, as to which the security measure of "Detention on remand" was taken. The applicant addressed the Special Court for Corruption and Organised Crime [Albanian acronym GJKKO] of the first instance with two special requests seeking to replace the security measures with a less severe measure due to an aggravated health condition. His requests were not accepted, hence the applicant appealed to the GJKKO court of appeal, which did not accept the appeals. The High Court declined to accept the requests in both cases, decisions that the applicant contested, claiming degrading treatment, a violation of personal liberty in connection with the standard of reasoning of the decision, the right of access in connection with the right to an effective defence and the right to be tried by a court established by law.

Court`s assessment

Personal liberty related to the standard of reasoning of the decision – The Court judges that in order to determine whether a less severe security measure will be applied, the three criteria defined by the European Court of Human Rights should be analysed: (i) the medical conditions of the prisoner; (ii) the appropriateness of medical care and assistance, under the prison hospital conditions; (iii) the appropriateness of the security measure in conformity with the applicant's health condition.

With those criteria in mind, the Criminal College of the High Court reasoned the continuation of the security measure of detention on remand, considering the applicant's health conditions (the first criterion), as to which it concluded that notwithstanding the assessment of the doctors, he could be cured in the pretrial detention premises, that is, the impossibility was not proven of medical treatment and curative therapies both in the medical institution where remand prisoners are treated as well as in a specialised medical institution, with medical care and assistance being adjusted for him (the second criterion) and that the verification of the continuation of the security measure of prison arrest is in conformity with his health condition (the third criterion). It performed the analysis through a systematic interpretation, based on the criteria provided in law no. 81/2020 and the provisions of the Criminal Procedure Code, through which it has answered the applicant's fundamental claims of a violation of personal freedom and the failure to meet the criteria for replacing the security measure of detention on remand with a less severe measure.

Decision-making

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

The right of substantive access – Standard of reasoning of the judicial decision

KEY WORDS

right of pre-purchase/ site in use of a privatised public object/ non-notification of recourse/ notification by posting/ memo to the High Court

The applicant was not notified of the recourses submitted by defendants, making it objectively impossible for it not only to know about the process in the High Court, but also to exercise the right to submit a counter-recourse or make submissions and claims in defence of its legal and constitutional interests. The absence of notification of the recourse was not repaired by the High Court, which did not take into consideration and did not examine the submissions and arguments brought by the applicant through a memo, which was the only remaining procedural means that could be used by it.

The courts of fact reached contrary conclusions as to whether or not applicant had the right to privatise the site in conflict. Finding itself before two diametrically opposed solutions, the High Court did not indicate clearly why it chose to confirm the position of the court of first instance compared to that of the court of appeal, although it did not bring to light any legal mistake by the latter in the evaluation of the evidence.

"Ferlut" shareholder company *(absence of notice of the recourse of the other party in the trial)* – judgment no. 41, of 29.05.2024

Facts

Through the privatisation of shares, the applicant became the owner of the object, the former School of Social Nourishment in Lapraka (the "object"), with a site area of 3176 m² (the "site"), the applicant was in conflict with the company AL.P.IN, in whose ownership that asset was registered. AL.P.IN had become the sole partner of the TTC ltd.company., after buying the shares of the Italian company "GGIF Investment" s.r.l. in TTC, which was a founding partner of TTC together with the Albanian state, which possessed 45% of the shares. The state's shares were privatised by GGIF Investment s.r.l.

The applicant requested the National Privatisation Agency to sell it the site in use of the object, but was notified that the sale procedure could not continue. AL.P.IN brought suit against the applicant with the object of freeing up and handing over the site, a lawsuit from which it later withdrew. The court decided to dismiss the case as to this part, while it continued to examine the applicant's countersuit, considering it a lawsuit. The applicant claimed that the site had never been part of the capital of TTC and that the contracts entered into in connection with the site are absolutely invalid.

The Tirana District Court rejected the lawsuit. According to it, the applicant lacked legitimacy to ask for the privatisation of the site, and it also held that such case did not deal with a contract for sale of the site, but a contract for the sale of shares.

The court of appeal changed the decision of the court of first instance, accepting the lawsuit in part, while the High Court reversed the decision of the court of appeal and left the decision of the court of first instance in force. The applicant turned to the Constitutional Court (the Court).

Court`s assessment

The right of substantive access – The applicant was not notified of the recourse of the defendant parties, thus making it objectively impossible for the applicant not only to be informed about the High Court being put into motion, but also to exercise its rights guaranteed by article 42 of the Constitution. Even though the High Court has the obligation to verify whether the judicial administration has taken the measures to give notice of the recourse to the parties at trial, it did not make such verification. The High Court did not bring out in the decision the claims submitted in the applicant's memos nor did it examine them, failing to give them a final and reasoned answer. Those deficiencies in the notification of the recourse constitute, in the Court's judgment, a fundamental fair trial violation, because they affect the applicant's right of access to go to the High Court and to receive a final answer in connection with its claims, and consequently also the right to be heard in that court in respect of the principle of the equality of arms.

Standard of reasoning of the decision – The courts of fact reached contrary conclusions in connection with whether or not the applicant had the right to privatise the site. Finding itself before two diametrically opposed solutions, did not indicate clearly why it chose to confirm the position of the court of first instance compared to that of the court of appeal, although it did not bring to light any legal mistake by the latter in the evaluation of the evidence.

The decision of the High Court also contains obvious inaccuracies in its reasoning. Even though it turns out clearly that the applicant had sought judicially the right to privatise the site, the High Court expressly denies this in its reasoning. Even if such a circumstance were to be true, this cannot lead to the rejection of the lawsuit, but, referring to the High Court's unifying practice, to the dismissal of the trial. Therefore, the decision of the High Court in this connection is contradictory, and its reasoning is not coherent with the dispositive part of this decision in which it decides to reject the lawsuit, thus infringing the unity of the parts of the decision.

Decision-making

The Court decided unanimously to accept the application.

The right to life

KEY WORDS

Family member of the victim of a criminal offence/ suspension of investigations/ prescription of criminal prosecution/ incomplete investigative actions

The right to life, in the procedural aspect, requires that effective investigations shall be carried out by the organ of criminal prosecution to uncover the circumstances of the event and its perpetrator, which should among other things be complete, impartial and careful. The prosecution did not take care to carry out a rapid, full and comprehensive investigation that would ensure the effective implementation of the law in order to secure the protection of the constitutional right to life.

Lumturi Varfi (*violation of the right to life due to the failure to perform full and effective investigations)* – judgment no. 42, of 29.05.2024

Facts

The applicant is the sister of citizen A. V. (the victim) as to whom the Vlora Prosecutor's Office registered a criminal proceeding for the offence of "Kidnapping a person or holding him hostage". After the victim was found dead, that criminal offence was joined with that of "Murder" and the case was passed to the Fier Prosecutor's Office.

After several investigative acts were performed, they were interrupted. On the appeal of the victim's father, the deputy general prosecutor ordered the Fier Prosecutor's Office to perform a series of other investigative actions. Following the performance of some additional investigative actions until the suspected perpetrator turned out to be dead in 1997, the Fier Prosecutor's Office dismissed the criminal proceeding against the suspect, while it suspended the investigation for uncovering other unidentified persons. The investigations remained in that situation until September 2017, when they were started again by the Fier Prosecutor's Office based on articles 329/a and 328/a(1)(d) of the Code of Criminal Procedure, which asked the court to dismiss the case, because more than 20 years had elapsed from the moment of commission of the criminal offence, and consequently, the prosecution was prescribed.

The Fier District Court rejected the request and ordered the return of the acts and the continuation of the investigation. This decision was changed by the court of appeal, which accepted the prosecutor's request and ordered the dismissal of the case, because the maximum 20-year term of prescription of criminal prosecution was completed before the amendments made by law 36/2017. On the applicant's recourse, the High Court left the decision of the court of appeal in force. The applicant turned to the Constitutional Court (the Court).

Court`s assessment

The right to life – Due to deficiencies of the investigative actions in the sense of speed, appropriateness and necessary care, the perpetrators of the criminal offence were able to avoid justice. The failure to identify and take all the necessary evidence in time to make the event clear led to the later restriction of the possibilities for fully uncovering the circumstances of the event and its perpetrators. Even though the prosecution office had data about persons who might possibly be involved in the crime and about their motives, it did not turn out to have followed a clear line of investigation. If the investigative actions had been quick, complete and oriented correctly, the result of the investigation, starting from that possibility, would have been different, in this way avoiding the situation where the perpetrators of those criminal events were not able to be punished.

The prosecution office did not take care to carry out a rapid, full and comprehensive investigation that would ensure the effective implementation of the law in order to secure the protection of the constitutional right to life. The suspension of investigation to uncover the perpetrators for a long time period (20 years) did not provide any effective answer in this aspect.

The courts of ordinary jurisdiction did not give an answer to the claims related to the effectiveness of the investigations in this criminal process, but satisfied themselves with finding the fact of prescription. Acting in this way, they did not respect the principle of subsidiarity, that is, they did not fulfil the constitutional function to guarantee and protect the constitutional right to life.

Decision-making

The Court decided unanimously to accept the application in part, finding a violation of the constitutional right to life because of failing to fulfil the constitutional and legal obligations to perform complete and effective investigations.

The right to a fair trial within a reasonable time

KEY WORDS:

Appeal against decision not to begin a criminal proceeding/ request for indemnification/ workload of the judicial system/ reform in justice

The court of appeal was objectively unable to try the applicant's case within a reasonable time. In connection with the importance of what the applicant risks, he did not argue and prove the danger to his interests, the nature and importance of which justify treating his case with priority and particular speed.

Bardhyl Ibra *(unreasonable length of time of a court proceeding in the court of appeal)* – judgment no. 43, of 04.06.2024

Facts

The applicant made a criminal denunciation against the employees of the Durrës Local Office of the Registration of Immovable Properties, as to which the prosecutor declined to start a criminal proceeding. On the basis of the applicant's appeal, the Durrës District Court decided to accept the request and ordered the prosecutor's office to give full reasoning of the decision not to start a proceeding. The applicant sued the Ministry of Justice and the Ministry of Finance and the Economy, seeking their obligation to indemnify him in the amount of 100,000 ALL because of the irregular actions of the prosecutor's office in connection with their failure to reason the decision not to start a proceeding.

The Durrës District Court accepted the lawsuit and on the appeal of defendants, the case was registered in the Durrës Court of Appeal. Because it still has not been examined, the applicant turned to the High Court with a request for finding of a fair trial violation as a result of the court of appeal's failure to adjudicate such appeal within a reasonable time, which the High Court decided to reject.

Court `s assessment

Examination of the case within a reasonable time– In connection with the *behaviour of the applicant,* it did not result that he was a cause for the length of time of the process. So far as concerns *the complexity of the case,* it does not appear complex.

In connection with the *behaviour of the authorities*, considering the current situation of the caseload of the judicial system due to the reform in justice, the court of appeal was objectively unable to adjudicate the applicant's case within a reasonable time due to the high volume and order of other older cases waiting to be adjudicated, with the same or a higher level of priority.

The Court holds that due to its nature, the applicant's case is not connected to "personal and vital" interests, since the claims have to do with irregular actions of the Durrës Prosecutor's Office, which were found correct by final decision of the Durrës District Court, which ordered the Durrës Prosecution Office to provide a full reasoning of the decision not to start a criminal proceeding, thus correcting the material mistakes of such decision.

Decision-making

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

The right of substantive access – The standard of reasoning of the decision

Eleonora Poga, Gjergji Shalësi, Petrika Shalësi, Sofiana Shakaj, Rozi Beqiri, Zaira Poga *(evaluation of the actions of the Local Office of Registration of Immovable Properties for the deregistration of an ownership title on the basis of a CMD)* – judgment no. 44, of 04.06.2024

KEY WORDS

Restitution of property/ registration of decision of the Commission for Restitution and Compensation of Property (CRCP) or Council of Ministers Decision (CMD)/ deregistration of ownership title/ exhaustion of effective legal remedies/ reasonable time

The ordinary courts analysed and evaluated the claims of the applicants and gave a reasoned answer to them, guaranteeing the right of substantive access.

Facts

The CRCP of Tirana restituted a site area in Tirana to the applicants, part of which was located within the annex to "Selman Stërmasi" Stadium, Tirana. The decision was registered in the mortgages of the time. By CMD (*Council of Ministers Decision)* no. 342/2005, an inventory list of the properties of the Stadium was approved, also including this site area, and on the basis of a request of the Municipality of Tirana, the Local Office of Registration of Immovable Properties (LORIP) of Tirana registered the site in its ownership. To the applicants' request for the registration of the site after the decision of the CRCP, the LORIP answered that it was registered in the ownership of the Municipality.

The applicants addressed the LORIP to remove the registration, a request that was rejected with the reasoning that expunging the registration was outside the jurisdiction of the LORIP. The applicants brought a lawsuit, which was refused by the Tirana District Court, with the reasoning among other things that before asking for the registration to be expunged, the applicants should have contested the administrative act in court. The Administrative Court of Appeal left the decision of the court of first instance in force, while the High Court declined to accept the recourse.

Court`s assessment

The criterion of exhaustion of legal remedies – CMD no. 342/2005, contested in the object of the request, does not turn out to have been the object of contested trials, but was objected to for the first time in the individual constitutional complaint.

The right of substantive access in connection with the standard of reasoning of the decision – The applicants have asked for the resolution of a dispute of an administrative nature, at the basis of which is the legality of the actions of the LORIP as to which the courts of fact have held that they were done in conformity with the law and the site was registered in the ownership of the Municipality on the basis of CMD no. 342/2005, an administrative act that the applicants did not contest in court, which makes it impossible to examine the validity of such act according to the object of the dispute. The Court finds that the courts have analysed and assessed the claims raised by the applicants, providing a reasoned answer to them and guaranteeing in this way the right of substantive access provided by article 42 of the Constitution.

Decision-making

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

The right to a fair trial – The effectiveness of a compensating remedy

KEY WORDS

Acceleration of trial/ compensation/compensation of damage/ reasonable time period

When the Court examines claims about the excessive length of a reparative/ corrective legal remedy, the individual cannot be required also during this process to use or exhaust the legal means provided by articles 399/1 et seq. of the Civil Procedure Code. A different position would cause those remedies to lose their purpose and would impose an excessive burden on the individual, because they would force him to put judicial processes into motion to secure speed and effectiveness of a remedy that itself has the purpose of speeding up the judicial process and preventing a violation of the unreasonable length of the judicial process.

A lawsuit for compensation for the damage caused by the excessive length of a trial should be examined within a reasonable time, and those procedures should be done in an immediate manner, so that the solution will be effective.

Laert Kola *(absence of effectiveness of the compensating remedy)*- judgment no. 45, of 11.06.2024

Facts

The applicant put a judicial process into motion for the invalidity of the administrative act by which the Office of Registration of Immovable Properties had registered a site area in the name of the Commune Centre of Fier and for the registration of the decision of the Commission for the Restitution and Compensation of Property that recognised the site to applicant's testator. The Vlora court of first instance rejected the lawsuit, and on the appeal of the applicant, the case was registered in the Administrative Court of Appeal. Since it had not been examined yet, the applicant addressed the High Court for speeding up the procedure and compensating the damage caused by the delay, which was rejected. The Constitutional Court, put into motion by the applicant, accepted his application and found a violation of his right due to the failure to adjudicate the case within a reasonable time.

Consequently, the applicant turned to the Tirana District Court with a lawsuit for compensation because of the finding of a violation of the right to a fair trial within a reasonable time in the Court of Appeal, a lawsuit that was accepted in part by it. Such decision was appealed by both parties and the case was registered in the court of appeal. The applicant submitted a request for speeding up the trial of the case and then a request for a finding of a violation of a reasonable time of examining the appeal, which was rejected by the High Court with the reasoning that according to article 399/2 of the Code of Civil Procedure (CCivPr), the ordinary time of a trial at appeal is two years and the special nature of the case was not reflected by the legislator in providing special legal time periods for a trial on appeal.

Court`s assessment

On the criterion of ratione personae – Even though there is a decision of the court of first instance that has recognised to him the right to compensation due to the unreasonable length of time of the court`s proceeding examining the lawsuit on the merits, which constitutes a favourable measure to him, not only has the applicant not been able to execute the decision, but he is still awaiting the examination of the case by the court of appeal, put into motion on the basis of his appeal. Under such conditions, the applicant has not lost the status of victim, in the aspect of the appropriateness and effectiveness of the compensating remedy.

The criterion of the exhaustion of effective of legal remedies – Even though, the applicant has formally submitted to the ordinary courts for a finding of delay in the examination of his civil case, such a circumstance is not important in the aspect of his constitutional standing, since this kind of trial does not require the exhaustion of legal remedies.

The finding of a violation of the right to a fair trial because of the absence of effectiveness of the compensating remedy - Article 399/7 of the CCivPr has specified a three-month term for the trial of a lawsuit for the compensation of damage from the time of the lawsuit submission. Even though such provision speaks about the examination of the lawsuit and does not refer to the examination of the appeal, the approach of the High Court and the Court of Appeal in the interpretation of this provision is not in conformity with the content and purpose of the provisions that regulate the corrective/ compensatory protective remedies that aim not only at repairing a violation of the right to a trial within a reasonable time, but also in assuring a trial as quickly as possible.

The Court re-emphasizes that the trial of these kinds of cases, including in the court of appeal, should be fast and cannot be subject to the general trial time. This was also the intent of the legislator in articles 399/1 et seq. of the CCivPr providing special short time periods for examining the means protecting the right to a trial within a reasonable time. In particular, article 399/7, point 1 of the CCivPr has provided a special three-month period for the adjudication of the compensating means at the first instance level, a time period that deserves to be kept mind also for the trial at the appeals level.

Decision

The Court decided unanimously to accept the application.

Principle of not worsening the defendant's position (*reformatio in peius*) – Right to appeal

KEY WORDS

Production of military arms/ unlicensed arms possession/ hostage taking/ kidnapping / abbreviated trial/ legal qualification of the facts

The legal qualification of a criminal offence is part of the constitutional concept of criminal punishment, because it directly affects the individualization of the criminal offence as well as determining the type and boundaries of the sentence. When the court of appeal is put in motion only on the individual's appeal, it cannot exercise discretion to change the legal qualification of the offence, worsening the individual's position. The application of article 425, point 3 of the Criminal Procedure Code is not related only to the amount of the sentence rendered by the court, but also to the legal qualification of the offence.

Françesk Vala *(change of the legal qualification of the criminal fact when the court is put into motion on the basis of the defendant's appeal (article 425 of the Criminal Procedure Code)* – judgment no. 46, of 11.06.2024

Facts

The applicant was proceeded against criminally for committing the criminal offences of "Kidnapping or hostage taking of a person" and "Production and unlicensed possession of military arms and ammunition". The Court of First Instance for Serious Crimes, which had adjudicated the case according to the procedure of an abbreviated trial, declared the applicant guilty of committing the criminal offence provided in articles 109, first paragraph and article 25 of the Criminal Code and sentenced him to 11 years' imprisonment, as well as finding him guilty of committing the criminal offence of "Production and unlicensed possession of military arms and ammunition" and sentenced him to three years' imprisonment. Joining the sentences, the applicant was sentenced to 12 years' imprisonment, and pursuant to article 406 of the Criminal Procedure Code (CCrP), he was finally sentenced to eight years' imprisonment.

The decision was appealed by the applicant, and the Court of Appeal for Serious Crimes decided to change the decision of the first instance, finding the applicant guilty of committing the criminal offence of "Kidnapping or hostage taking of a person", committed in collaboration, provided by articles 109, third paragraph and 25 of the Criminal Code and sentenced him to 11 years' imprisonment, while it left in force the appealed decision for the criminal offence provided by article 278, first paragraph of the Criminal Coe. Based on article 55 of the Criminal Code and article 406 of the CCrP, the applicant was finally sentenced to eight years' imprisonment.

The High Court, after it examined the applicant's recourse, decided to leave the decision of the court of appeal in force.

Court`s assessment

Principle of not worsening thedefendant's position (reformatio in peius) in connection with the right to appeal – The criminal offence of which the applicant was accused and adjudicated was provided in the first paragraph of article 109 of the Criminal Code, which contains a sentence of imprisonment of from 10 to 20 years, while the third paragraph of that provision contains a sentence of imprisonment no less than 20 years. Consequently, the legal qualification of the criminal offence according to the third paragraph of article 109 of the Criminal Code is more serious than that according to the first paragraph.

At the time of the rendering of the decision of appeal, article 425 of the CCrP had not been amended, and the court of appeal interpreted it literally the applicant's case, without analysing the spirit of the principle of not worsening the position of the defendant in a criminal proceeding. This decision was rendered by the court of appeal on 21.07.2017, at the moment when the legal amendments (including article 425) were approved on 30.3.2017, were published in the Official Journal dated 5.5.2017 and entered into force after some days.

According to the Court, the High Court's interpretation that the change of the legal qualification did not change the amount of the sentence rendered to the applicant is a narrow interpretation made of the text of article 425, point 3 of the CCrP, infringing not only the core of the principle *reformation in peius,* but also the core of the defendant's right to appeal to a higher court. Even though the court of appeal did not change the amount of the applicant's sentence, this is irrelevant to the instant case, since the application of article 425, point 3 of the CCrP is not related only to the amount of the sentence rendered by the court, but also to the legal qualification of the offence according to the provisions of article 109 of the CCrP.

Decision-making

The Court accepted the application by majority vote.

The principle of legal certainty – The principle of equality before the law

KEY WORDS

Termination of a labour contract/ notice period/ the right to return to work/ unifying decision/ lawful expectations

When there is a unifying decision of the High Court in the aspect of the application of the substantive or procedural law for a particular issue, this fact brings expectations for the individual that the law will be applied and interpreted in a uniform manner, as it was unified by the unifying decision of the High Court for the same legal issues.

Arlinda Mulgeci *(interpretation of law by the High Court in the point of view of a unifying decision)* – judgment no. 47, of 11.06.2024

Facts

The general director of the General Directorate of Customs (GDC) decided to terminate a labour relationship between the applicant and the GDC. The applicant brought a lawsuit to annul the decision terminating the labour contract, indemnification for the immediate and unjustified termination of the labour contract, as well as to be returned to the former workplace. The Administrative Court of First Instance, rejected the lawsuit, also referring to unifying decisions no. 7/2011 and no. 8/2007 of the High Court. That decision was changed by the Administrative Court of Appeal, which decided to accept the lawsuit in part, obliging the GDC to pay the applicant 12 months' salary. On the recourse of the GDC, the High Court reversed the decision of appeal and left the decision of the court of first instance in force, reasoning that the GDC had respected the requirements of articles 143, 144 and 145 of the Labour Code so the contract is considered terminated normally.

Court`s assessment

Principle of legal certainty in connection with the principle of equality before the law – Considering the fact deviations from judicial practices or unifying decisions can lead to a violation of legal certainty as well as putting the equal treatment of individuals in doubt, the Court analyses the content of unifying decision no. 19/2007 in the aspect of the applicant's expectations for the resolution of her case in conformity with it.

The Court observed that the interpretation of the law by the High Court that the GDC respected its obligation to notify the plaintiff with the payment of three months' salary, and the labour contract is considered terminated normally, it is not in the same line with the position of unifying decision no. 19/2007. The High Court examined this case and rendered a decision on it, although the legal issue that was also connected to this case had been set out for unification a little while before the decision was contested in the High Court. By not analysing the case in conformity with the unifying decision, the High Court infringed the lawful expectations of the applicant for the execution of the law in harmony with the judicial practice of that court.

Decision-making

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

The right to life

KEY WORDS

Suicide/ taking of measures by airport security employees/ actions or failures to act in violation of duty/ effective investigations/ dismissal of the criminal proceeding

Giving the management of public services by concession to third parties does not avoid the positive obligations of the state in the framework of article 21 of the Constitution and article 2 of the European Convention on Human Rights (ECHR). The airport constitutes a zone where the law enforcement organs exercise special supervision in the aspect of keeping order and security.

In the instant case it is not shown that the airport security employees could have foreseen the victim's purposes or consequently determined the real and immediate danger that might be caused to the life of the victim. As soon as this danger became evident, they took measures to prevent consequences from ensuing, as well as to send the victim to the hospital on an emergency basis.

Shaban Kapllanaj *(the right to life in the substantive and procedural aspect)* – judgment no. 49, of 20.06.2024

Facts

A person about 25 years old climbed up to the offices at Rinas Airport and then jumped from the height. Notwithstanding medical assistance, he passed away. On the basis of materials referred by the airport security employees, the Tirana District Prosecutor's Office (the Prosecution Office) registered a criminal proceeding for the offence of "Causing a suicide", and after investigations, dismissed it, because of the failure to complete the elements of the figure of the criminal offence.

The victim's father (the applicant) objected to the decision in the Tirana District Court, which rejected the complaint. After examining the applicant's appeal, the Tirana Court of Appeal left the district court's decision in force.

The applicant turned to the Constitutional Court (the Court), setting out that there were violations of (i) the right to life guaranteed by article 21 of the Constitution, because the airport security employees did not undertake any action to prevent the event, while the prosecutor's office did not carry out effective investigations to reveal its circumstances and it investigated for the offence of "Causing a suicide" and not that of "Abuse of office": (ii) the right to a fair trial, guaranteed by article 42 of the Constitution, in the aspect of the right of access, because he was not notified of the date of examination of the case in the court of appeal, and the standard of reasoning, since the courts did not give an answer to his claims.

Court`s assessment

The right to life in the substantive aspect – The Court finds that the airport "Mother Teresa" constitutes an area where the law enforcement organs (employees of the airport's private security, according to a concession agreement) exercise special supervision in the aspect of keeping order and security, which requires the state to fulfil its positive obligations in the framework of article 21 of the Constitution and article 2 of the ECHR.

Analyzing the court decisions, the Court holds that the law enforcement authorities took measures to guarantee the substantive aspect of the right to life of the applicant's son. In the instant case, it is not shown that the airport security employees could have foreseen the purposes of the victim or consequently determined the real and immediate danger that might be caused to the life of the victim. In the very moment that danger became evident, the airport security employees took measures to prevent consequences from ensuing, as well as to send the victim to the hospital on an emergency basis. From this point of view, those employees do not turn out to have acted or failed to act in violation of the obligations that article 21 of the Constitution and article 2 of the ECHR impose in connection with situations when an individual threatens to commit suicide in their presence or before their eyes, and it does not result that they showed negligence in the aspect of guaranteeing the victim's right to life. The Court also considers that the ordinary courts sufficiently argued the positions taken in their decisions in the framework of the substantive aspect of the right to life.

The right to life in the procedural aspect – The prosecution office decided the dismissal of the proceedings because it did not turn out that specific persons, by their actions or inactions, with indirect will or by negligence, caused or permitted the consequence to ensue, in violation of duty. The Court finds that the applicant's claims in this respect were examined by the ordinary courts, which analyzed them against the actions undertaken by the prosecutor's office, giving a reasoned answer to the positions taken by them.

In connection with the claims about notification, under the conditions when the appeal of the district court's decision was exercised by the applicant, in which he set out his claims, and it also does not turn out that the prosecution office submitted objections, the Court considers that the failure to give notice by posting the date of the trial in the court of appeal did not make it objectively impossible for the applicant to exercise his rights or put him in unequal conditions as against the prosecution office.

Decision-making

The Court rejected the application by majority vote (three judges had a dissenting opinion and one judge had a concurring opinion).

Standard of reasoning of the judicial decision

KEY WORDS

Entrepreneurship agreement / obligations that derive from contracts/ legalisation of an illegal building/ the right of property/ failure to give notice of the recourse and the date of the court hearing

It is the duty of the courts of ordinary jurisdiction to assess the facts and evidence administered, as well as to interpret the law for the purpose of the judicial process, while its (the Court's) duty is to assess whether there were violations of constitutional rights during the judicial process, in particular, the reasoning of the decision. The Court intervenes where the legal or factual mistake by the courts of ordinary jurisdiction is so obvious that a reasonable court could never have done it or it is such as to make the trial unfair.

Anastas Risto *(interpretation of provisions of the Civil Code and the law applicable to the resolution of a civil dispute)* – judgment no. 50, of 20.06.2024

Facts

The applicant and the interested subject (entrepreneur) entered into an entrepreneurship contract in 1999 for an apartment with an area of 134 m², part of an eight-story building whose construction would begin in September 1999 and would be finished in April 2001. The contract payment would be separated into four instalments. The entrepreneur constructed the building without obtaining a permit from the competent authorities, and the construction finished in 2004, when the applicant began to use it.

The applicant did not pay the last instalment, and he also occupied an area of 42 m² (a parking spot) outside of the contractual conditions, which he rented to a third party.

The entrepreneur brought a lawsuit with the object of satisfying the contractual obligations and freeing up an area of 20 m² occupied outside of the contract conditions, as well as the obligation to return the the unjustly obtained amount of money and freeing up the garage premises of 42 m². The Tirana District Court accepted the lawsuit in part, obliging the applicant to free up the area of 42 m² and also to return the amount of 1,200,000 ALL unjustly obtained from renting out the parking spot. The Court of Appeal left the decision in force for the part refusing the lawsuit and changed the decision for the other part, rejecting the lawsuit asking for the freeing up of the garage area of 42 m², as well as the payment of the civil fruits from the use of the item. On plaintiff's recourse, the High Court reversed the decision of the Court of Appeal and left the decision of the district court in force.

Court`s assessment

Violation of the principle of legal certainty in connection with the principle of equality before the law-The Court holds that, in essence, the applicant's claim has to do with an interpretation of the provisions of the Civil Code as well as law no. 9482/2006 "On the legalisation, Urban Planning and Integration of Unauthorized Building". In this manner, the High Court, within its constitutional competences as a court of law, interpreted the law, and the concrete interpretation does not turn out to be obviously unreasonable or in conflict with the concept of a fair trial. Concretely, the High Court reasoned that plaintiff was the builder of the entire building in which the applicant also lives and has the legal obligation also to prepare the legal documentation also for such ancillary space of the building.

The construction was unlicensed and was done by plaintiff with his investment and on the basis of article 32/a of the Civil Code he has a lawful interest, because as the investor, he went to ALUIZNI [Albanian acronym for the government organ that deals with legalisation] in order to have the construction of the building legalised. The High Court set out that the applicant entered into an entrepreneurship agreement with the plaintiff, recognising him as the constructor of the building, and the fact that the building was illegal could not make it legitimate for the applicant to exploit and take income from an area of a building that does not belong to him.

The Court found that the High Court had reasoned that since the building was in the process of legalisation and there are lawful expectations that it will be made legitimate as a building, and consequently, the plaintiff, as the investor of the illegal building, will have legitimacy to take delivery of the asset in accordance with law no. 9482/2006 and the applicant was a possessor in bad faith.

Decision-making

The Court rejected the application by majority vote (one judge had dissenting opinion).

The right of access – Standard of reasoning of a court`s decision

KEY WORDS

Recognition as owner/ property gained by inheritance/ lawsuit to recover property/ unlawful possessor/ diametrically opposite decisions/ unifying decision/ the right to property

While the court of first instance examined and resolved the conflict as a dispute of a civil nature, the court of appeal examined the dispute, in essence, as one of an administrative nature. The High Court found itself before two decisions of the lower courts that took different positions in the manner in which they defined the dispute between the parties, which imposed on it the obligation to exercise its role as a court of law, verifying the manner of implementation of the law and its unifying decisions

Lulzim Jajaga *(diametrically opposite court`s decisions in the aspect of defining the dispute)* – judgment no. 51, of 20.06.2024

Facts

The applicant is one of the heirs of a former owner to whom the CRCP [Commission for Restitution and Compensation of Properties] of the Municipality of Tirana returned a site of 11,181 m², part of which was registered in the ownership of the applicant. The applicant brought a lawsuit to recover property against the interested subjects, claiming that they are unlawfully in possession, and he asked for the site to be freed up and delivered.

The Tirana District Court accepted the lawsuit, while the Tirana Court of Appeal changed the decision and rejected the lawsuit, with the reasoning that the applicant should not have brought a lawsuit for return of possession, but a lawsuit contesting the decisions of the CRCP of the Tirana District Council, on the basis of which the interested subjects possessed the property lawfully. The Civil College of the High Court declined to accept the applicant's recourse.

Court`s assessment

The right of substantive access related to the standard of reasoning of the decision – The court`s proceeding was put into motion by the applicant through a lawsuit to recover property, pursuant to article 296 of the Civil Code, as the principal lawsuit for the protection of ownership, by means of which the owner seeks the return of his possession from a person who holds it without a legal reason. The court of first instance examined and resolved the conflict as a dispute of a civil nature, while the court of appeal reasoned that the applicant should not have brought a lawsuit seeking the return of the object but should have contested the decisions of the CRCP of the Council.

The High Court found itself before two decisions of the lower courts that took different positions in the aspect in which they defined the dispute between the parties, which imposed on it the obligation to exercise its role as a court of law.

Although claims were raised in the recourse about irregularities in the court`s proceedings, such as that of the right to private property, the High Court did not give an answer to those claims of a constitutional nature, failing to exercise its constitutional role. The failure of the High Court to accept the applicant's recourse, sufficing itself only with setting out in its decision the reasons of the recourse and with the reasoning *de plano* that those reasons were not among those provided by law, without giving a reasoned answer to the claims of a constitutional nature, leads to the conclusion that the application of the procedural law by it is obviously unreasonable.

Decision-making

The Court decided unanimously to accept the application in part.