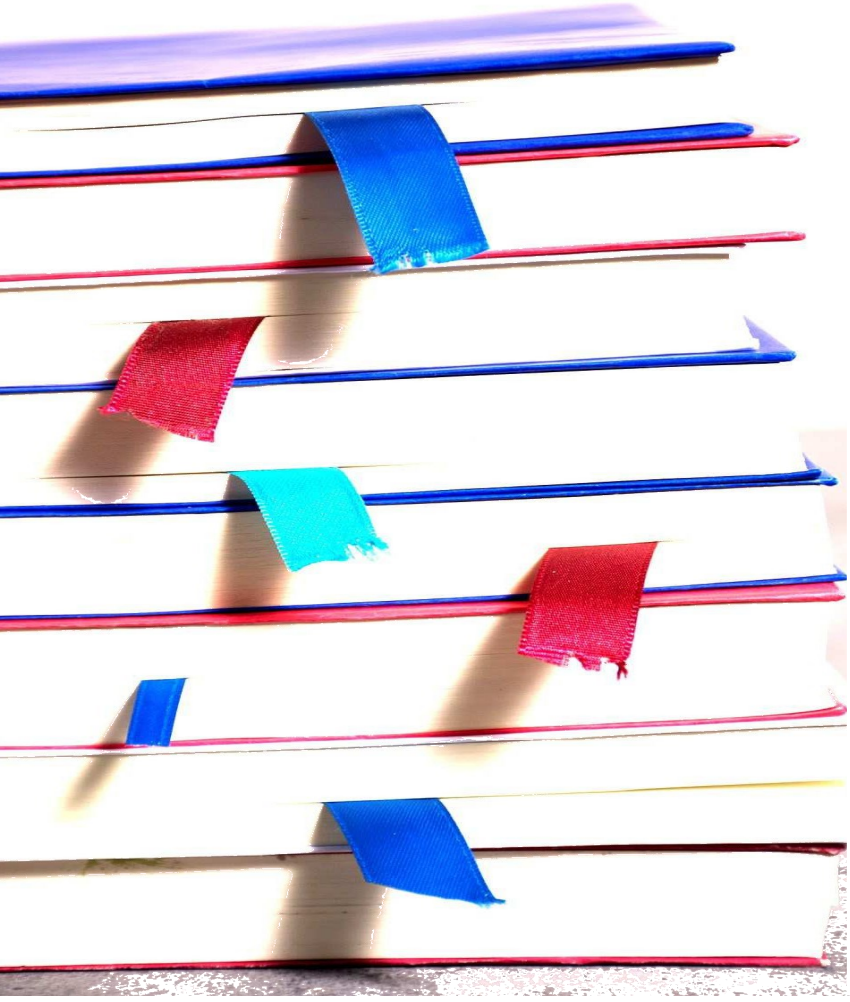
REPUBLIC OF ALBANIA

Constitutional Court

Periodical Newsletter

of the Constitutional Court

Decisions September-October 2024



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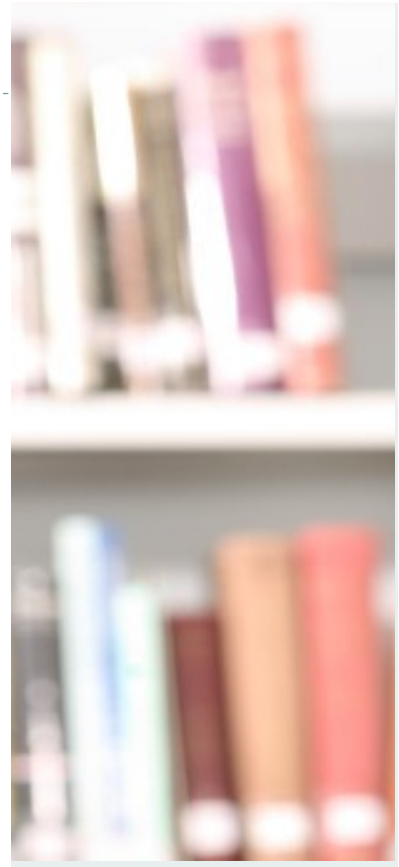

INTRODUCTION

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

CONTENT

Right to a fair trial- right to be tried within a reasonable time period

Alida Gazidedja (*violation of the right to a trial within a reasonable time because of the excessive length of the trial in the court of appeal and the High Court*) – Judgment no. 58 dated 17.09.2024

KEY WORDS

Reasonable time period/ violation of a reasonable time period/ unreasonable excessive length of time period/ case with rights of a child as the object or with an effect on a juvenile

Facts

Applicant and citizen Leonard Toçi were married in 2000, and five years later, a child was born, Brooklyn Toçi. In 2010 Leonard Toçi sought a divorce, and its consequences, in the Court of the Tirana Judicial District. The Tirana court accepted the lawsuit, granted the divorce and resolved the consequences in connection with the child. Applicant brought an appeal, claiming among other things that the marriage had been dissolved by a decision of the court of Bolzano, Italy, but the consequences had been resolved differently, a decision that had become final before the Tirana court made its decision.

The Tirana Court of Appeal left the decision of the Tirana court in force concerning dissolution of the marriage, reversing it and sending the case for re-trial so far as it concerned the regulation of the consequences for the child. On applicant's recourse, the High Court reversed the decision of the court of appeal and sent the case for retrial to that court, reasoning among other things that the court of appeal did not take the existence of the decision of the Italian court into consideration. On the retrial, the court of appeal left the decision of the Tirana court in force.

Applicant brought a recourse on 16.11.2016. Since the recourse was not being addressed, applicant twice addressed the High Court, on 02.09.2020 and 18.09.2020, with a request to find a violation of a reasonable time period and the acceleration of the trial procedure. By decision no. 9/5 dated 26.07.2023, the High Court dismissed the trial of the case related to a violation of the time period, because another of its colleges, which had the case under examination on the merits, had set the date of 20.09.2023 for the case to be examined, a college that reversed the court of appeal and ordered the case sent for re-examination to the same court. Applicant addressed the Constitutional Court *(the Court)*.

Assessment of the Court

On a trial of the case within a reasonable time period – Applicant claimed that her recourse had been examined by the High Court after about six years and eight months, while the request for a finding of a violation of a reasonable time period and acceleration of the trial procedure, after about two years and 10 months.

The Court considers that applicant's case, as one dealing with the rights of a child or which affected a child, had priority for examination in connection with the interest of applicant that was infringed as a consequence of the excessive length of the trial in the High Court.

In order to evaluate whether there was an unreasonable, excessive length of the time period in the case under examination, the Court analyses the particular circumstances of the concrete case in connection with the criteria established by the constitutional jurisprudence related to (i) applicant's behaviour; (ii) the complexity of the case; (iii) the behaviour of the authorities; (iv) the importance of what the applicant is risking. In connection with the behaviour of applicant, the Court judges that applicant has acted in accordance with her procedural rights and does not turn out to have been the cause of nor has she caused delays in the trial of the case. Concerning the case's complexity, only applicant and her former husband were parties in the case and it does not turn out to have been complex or to have had a large number of probative documents that might have had an effect on what was a reasonable length of time for the trial.

Concerning the behaviour of the authorities, the Court judges that it was not up to the appropriate level of trial efficiency. Finally, in connection with the importance of what applicant is risking, the Court considers that, in the point of view of what the High Judicial Council determined by decision no. 78 of 30.05.2019, that cases with the rights of a child as an object or which had an effect on a juvenile had trial priority, the Court considers that applicant's case had priority for examination in the aspect of the interest of applicant that is infringed as a consequence of the excessive length of the trial. The court considers that in the circumstances of the instant case, the judgment made by the High Court is not in compliance with the Constitution, because the examination of the case by it has exceeded a reasonable time boundary in the constitutional aspect.

Since the decision of the High Court should be repealed for the above reasons, the Court judges not to analyse applicant's other claims.

Decision

The Constitutional Court unanimously accepted the application.

Right to a fair trial - right to be tried within a reasonable time period

Arben Malaj *(violation of the right to a trial within a reasonable time because of the excessive length of the trial in the court of appeal)* – Judgment no. 59 dated 17.09.2024

KEY WORDS

Member of the Supervisory Council of the Bank of Albania/ reasonable time period/ criteria of constitutional jurisprudence/ unjustified length of time of a judicial examination/ objective impossibility/ high workload in the court of appeal/ reform in justice

Facts

Applicant performed the duty of member of the Supervisory Council of the Bank of Albania from December 2018 until December 2019. Applicant was discharged from that duty by decision of the Assembly. Applicant submitted a lawsuit to the Administrative Court of First Instance, Tirana, for the repeal of the Assembly's decision. The Tirana court rejected it as unsupported in law. Applicant appealed, and the case was registered in the Administrative Court of Appeal on 18.11.2020. Since the case was not tried, on 31.08.2023 applicant submitted a request to the court of appeal for a finding of a violation of the reasonable time period of the trial and the acceleration of the judicial procedures.

This request was transmitted to the High Court and registered there on 10.10.2023. The High Court asked for an opinion from the court of appeal about the delay, which court sent information from the reporting judge about the case. According to the reporting judge, his caseload at that moment was 2,754 cases and the request about a violation of a reasonable time period was submitted by applicant without the 30-day time period of a trial in the court of appeal being met (from the moment when the case was given by lot to that judge). The High Court then decided not to accept applicant's request, because the violation of a reasonable time period in the court of appeal was a consequence of the great volume of cases remaining to be tried, something that constituted objective impossibility for the proceeding. On 22.02.2024, applicant turned to the Court.

Assessment of the Court

On a violation of the right to a trial within a reasonable time period – With regard to this, the Court analyses the special circumstances of the concrete case in connection with the criteria established by the constitutional jurisprudence in relation to: (i) applicant's behaviour; (ii) the complexity of the case; (iii) the behaviour of the authorities; (iv) the importance of what applicant risks.

Applicant did not succeed in setting out sufficient reasons to prove that his case was of such a nature as to endanger his interest to a considerable degree from the length of time of the judicial procedures.

So far as concerns the behaviour of applicant, the Court judges that it does not turn out that the applicant or the parties in the process to have been a cause of or to have caused delays in the trial of the case. Also, so far as the complexity of the case is concerned, the Court finds that the dispute that is the object of the trial is of an administrative nature and that, as the High Court itself has considered, the case does not appear complex in order to justify the length of time of its examination.

So far as concerns the behaviour of the authorities, the Court finds that applicant's case has been waiting to be examined in the court of appeal for almost four years, while cases registered in the year 2017 are currently in line for trial in this court, as well as cases with an acceleration of examination at the request of the parties according to decision 78/2019 of the High Judicial Council.

Based on the above indicators, the Court judges that the time length of the trial of applicant's case is related to the high caseload in the court of appeal caused by implementation of the reform in justice. Finally, in connection with the importance of what applicant is risking, the Court finds that duty as a member of the Supervisory Council does not hinder that member from also performing other duties at the same time. This means that activity as a member of the Supervisory Council cannot be the only function that he can exercise, and consequently, the compensation from that duty also is not the only source of living for him. In addition, the Court judges that applicant has not succeeded in setting out sufficient reasons to prove that his case is of such a nature that his interest is endangered to a considerable level from the length of time of the judicial procedures.

Decision

The Constitutional Court rejected the application by majority of votes (one judge dissented)

The right to a trial within a reasonable time period

KEY WORDS

Miner/ early pension / pensioner/ reasonable time period/ essential means of living/ reform in justice/ caseload of the judicial system

Several categories of cases require special acceleration because of their nature. Among them are disputes in connection with the right to a pension, which should be examined quickly in order to avoid serious consequences to the parties in the process.

Haki Kosta *(violation of a fair trial in connection with a trial within a reasonable time period in the court of appeal)* – judgment no. 60 dated 19.9.2024

Facts

Applicant was a miner in several mines. Since he was such, the Regional Directorate of Social Insurance of Tirana (RDSI) declared the applicant a beneficiary of an early pension "special treatment of a miner" based on law no. 8685/2000. After law no. 150/2014 "On pensions of employees who have worked underground in mines" was approved, the applicant made a request to the RDSI to obtain an old age pension. The RDSI judged that the applicant did not meet the conditions provided in law 8685/2000 and ordered termination of the pension that has been allocated according to law no. 150/2014, as well as announcing that applicant was a debtor for a sum of money.

Applicant turned to the Administrative Court of First Instance, which accepted the lawsuit and annulled the administrative acts of the RDSI, which appealed the decision to the Administrative Court of Appeal, and the case was registered in this court on 4.6.2018. Under the conditions that the court of appeal did not undertake any action until 2.12.2022, applicant addressed the reporting judge to ask for the acceleration of the trial. In the absence of a response, on 16.2.2023, appellant turned to the High Court for a finding of a violation of a reasonable time period and the acceleration of the trial of the case. The High Court rejected the request, with the reasoning that the failure of the court of appeal to act did not happen for subjective reasons and that there was no deliberate procrastination by the reporting judge. Applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

Violation of the right to a trial within a reasonable time period – The Court found that the dispute was related to an essential means of living, such as the right to a pension. Although more than five years have passed, there is still no decision in connection with its merits, which means that the trial of the case in the court of appeal was overly long. In this context, the Court analysed the particular circumstances of the case in the framework of the criteria established by the constitutional jurisprudence, which are related to: (i) applicant's behaviour; (ii) the complexity of the case; (iii) the behaviour of the authorities; (iv) the importance of what applicant is risking.

First, the Court found that applicant had performed all the actions, which showed that the delay did not come from his conduct. Secondly, the Court judged that applicant's case did not appear complex to such an extent as to justify a length of time of over five years for examination. In connection with the behaviour of the authorities, the Court found, while taking into account the current situation of a high caseload in the judicial system, that so far as concerns the importance of what applicant is risking, applicant's circumstances are special (subsurface miner, currently 67 years of age). His case is related to an essential means of living, the pension right of a former subsurface miner. According to the High Judicial Council, cases of earning a pension are of a specific nature and should be examined quickly in order to avoid serious consequences for the parties in the process.

Decision

The Court accepted the application unanimously (two judges dissented in part).

Fair trial – Standard of reasoning of a judicial decision – Principle of the presumption of innocence

KEY WORDS

Social insurance/ Duplication/ Insurance fraud/ Falsification/ Redefinition of facts/ Beyond a reasonable doubt/ Standard of reasoning

The presumption of innocence means that the ordinary courts should not begin a process with the belief that the defendant has committed the crime of which he is accused, that the burden of proof belongs to the accusing party, that every doubt should go in favour of the defendant and that the court should support its decision on direct and indirect evidence that has to be proven by the accusing party.

Prend Suta *(violation of the standard of reasoning of a decision because the criminal offence was not proven beyond a reasonable doubt)* – judgment no. 61 dated 19.9.2024

Facts

The Regional Directorate of Social Insurance of Shkodër ("RDSI") made a criminal denunciation against the applicant for the criminal offence of "insurance fraud", because a duplication of applicant's employment periods in two different enterprises was shown in the basic register of employees. Considering the criminal offence proven, the prosecution office sent the file to the Puka District Court, which found applicant guilty and sentenced him.

On applicant's appeal, the Shkodër Court of Appeal reversed the decision of the court of first instance and dismissed the case, because the accusing organ did not prove beyond a reasonable doubt that applicant had committed the criminal offence. The prosecutor's office brought a recourse, and the High Court reversed the decision of the court of appeal and left the decision of the Puka district court in force.

Applicant turns to the Constitutional Court (*the Cour*t), claiming among other things an absence of reasoning in connection with his guilt beyond a reasonable doubt, in the viewpoint of the standard of reasoning of the decision.

Assessment of the Court

Standard of reasoning of a judicial decision. In the assessment of the Court, under the conditions that the official acts produced different data about the same fact, the High Court did not evaluate the legal responsibility of applicant through reasoning of the actual circumstances that are important for the case. Concretely, the Court analysed the reasoning of the High Court in connection with applicant's legal responsibility, based on an analysis of the conclusions of two acts of expertise.

According to the High Court, there are corrections in the register of one of the enterprises of the beginning of labour relations and no one else had an interest in reflecting this period of work in the register [*except applicant*!], and therefore he turns out to have submitted false circumstances to the social insurance bodies, for the purpose of unfairly obtaining a pension. The Court finds that the High Court left the decision of the Puka court in force notwithstanding that it did not reason in its decision in connection with the elements of the criminal offence, it did not argue by whom the employment page of the register was falsified or how it reached that conclusion in connection with a document that was administered by the RDSI itself.

The High Court analysed once again the evidence received for examination by the courts of fact, filling it in, consequently re-defining the facts of the case, making a further evaluation of the evidence than that of the courts of fact. The Court judged that the manner in which the High Court acted in relation to the consequences that ensued for applicant (his guilty finding), concretely, not reasoning why the circumstances and evidence in favour of defendant should not be taken into consideration or why doubts about the accusation were not deemed to be in his favour and redetermining the facts of the case to the boundaries of guesses, cast doubt on the respecting of the right to a fair trial provided in article 42 of the Constitution, in the aspect of guaranteeing the presumption of innocence and the principle of a court established by law.

Decision

The Court unanimously accepted the application.

Right to a fair trial- right of access to court

Ardian Narkaj (*violation of the right to a fair trial because of not guaranteeing the right of access to court*) – judgment no. 63 dated 24.09.2024

KEY WORDS

Recourse/ Defender without standing/ Notice returned with the note "left"/ completion of formal defects/ confirmation of will/ standing of defender/ formalistic position/ a fair trial is also a function of the ordinary courts/

Facts

In the village of Bratosh in Malësia e Madhe, two citizens were killed with firearms, while applicant was injured. The following day, applicant was detained as a suspect in the commission of the criminal offences, and later the security measure of "prison arrest" was validated against him by the Shkodër District Court.

At the end of the investigations, the prosecutor sent the case to trial, accusing applicant of the criminal offences of homicide in other qualifying circumstances and unlicensed keeping of military arms. The court of Shkodër found applicant guilty of both accusations. On applicant's appeal, the Shkodër Court of Appeal reversed the decision and returned the case for retrial. The case was then retried several times in the court of first instance, the court of appeal and the High Court.

While the case was waiting to be examined for the last rime in the High Court, applicant was arrested in execution of the criminal decision against him and was sent to prison (institutions of execution of criminal decisions). The High Court did not accept the last recourse, with the reasoning that applicant's recourse had been signed and deposited by a defence attorney who was not legitimate. Applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the right of access to court. The Court finds that applicant's case had been examined in a judicial proceeding that lasted about 15 years. During this process, applicant was represented by six different defenders. The last recourse in the High Court was compiled in applicant's name, while it was signed on every page by the first defender, where a handwritten note of applicant is also found.

The High Court took a formalistic position, because the actions performed by it did not serve in making the defects of the recourse precise.

The Court finds that the High Court in addition to examining applicant's recourse had begun the procedure of completing its formal defects, performing specific actions to confirm the will of applicant in the aspect of submitting the recourse and the choice of the first defender who had signed the recourse. However, during the trial of the case in the High Court, applicant had been in isolation, serving the criminal sentence against him, so the act of notification sent to his residence, which was returned with the note "left", clearly did not serve the purpose that the High Court had to guarantee the will of application in connection with the submission of the recourse and the standing of his first defender.

The High Court has all the space, in conformity with its interpretive function, to interpret the legal requirements about the formal elements that a recourse should meet and the completion of its defects in order to guarantee the fundamental rights, also including the right of access to court.

In the assessment of the Court, in the case under examination, the High Court took a formalistic position, because the actions taken by it did not serve to correct the defects of the recourse in the aspect of verifying applicant's will. The High Court has all the space, in conformity with its interpretive function of a norm, to interpret the legal requirements about the formal elements that a recourse should meet for the purpose of guaranteeing the fundamental rights of the individual, concretely the access to court. As a consequence, the Court judges that applicant's right of access to court has been violated.

Concerning applicant's other claims, which have to do with a violation of the principle of the equality of arms and legal certainty related to the standard of reasoning of the judicial decision, the Court emphasises again that controlling respect of the constitutional standards for a fair trial is also a function of the ordinary courts, all the more, of the High Court. Since applicant's case will be taken under examination again by the High Court, the latter should give a reasoned answer to the claims of a constitutional nature raised by applicant in the recourse and itself to respect those standard of a fair trial, so the Court does not consider it necessary to give an expression about them.

Decision

The Court decided unanimously to accept the application in part.

Right to a fair trial-Right to be tried by an impartial court-Standard of reasoning of a judicial decision-Right of access to a judicial decision

KEY WORDS

Prosecutor/ promotion/ special recourse/ recourse submitted outside the legal term/ exclusion of a judge/ objective test and subjective test/ different legal cases/ limitation of the right of access

Whether the principle was respected for being tried by an impartial court (a judge of the high Court took part in two cases with the same parties) should be verified by applying two tests, the subjective test and the objective test. In the instant case, applicant's claim is related to the objective test of the principle of impartiality of the court. Although formally the High Court was examining the same judicial process with the same trial parties under examination, at the core it was examining different legal cases.

The right of access may be restricted when it is a question of the admissibility of an appeal, such as the time periods defined in the Constitution and the laws, which are in the service of the principle of legal certainty.

Although the access of applicant was restricted by the decision not to accept the recourse, the restriction was in compliance with the Constitution since the recourse was submitted by her during the legal time period.

Sonila Muhametaj (*violation of the right to be tried by an impartial court because of the participation of a judge in two cases claimed to be connected; violation of the right of access because the recourse was considered untimely*) - Judgment no. 64 dated 01.10.2024

Facts

The High Prosecutorial Council (HPC) began procedures for the promotion from the ranks of prosecutors for two vacancies in the Special Prosecutor's Office against Corruption and Organized Crime. Three prosecutors, including applicant, ran for those places. In connection with this, the HPC issued five decisions, according to which applicant was ranked third and the two candidates who took the first places were appointed to the Special Prosecutor's Office.

Applicant appealed to the Administrative Court of Appeal, which decided to accept applicant's lawsuit in part, finding the absolute invalidity of all the decisions of the HOC. The State Advocate's Office submitted a special recourse, which was accepted by the court of appeal. Applicant submitted a counter-recourse. The High Court examined the case in chambers and reversed the decision of the court of appeal, sending the case for retrial to that court. Without the trial in the court of appeal being held, applicant turned to the Constitutional Court (*the Court*), the college of which declined to pass the case to the plenary session, with the reasoning that applicant had not exhausted the effective legal remedies.

In the retrial, the court of appeal rejected applicant's lawsuit. Applicant brought a recourse, which the court of appeal rejected because it was submitted outside of the 30-day time period. Applicant then submitted a second special recourse, which the court of appeal sent to the Hugh Court. When she became aware of the judicial panel, applicant requested the exclusion of the reporting judge, with the argument that he had been part of the judicial panel in the rendering of the High Court's prior decision. This request was not accepted. The High Court also rejected applicant's recourse, and she then turned to the Constitutional Court (*the Court*).

Assessment of the Court

On the aspect of standing ratione materiae. Applicant claimed among other things a violation of the right to be heard, because the High Court examined the case in chambers, although the case was complex. The Court considers that applicant did not succeed in arguing how the trial of the case in chambers affected this constitutional right. The mere argument that the case should have been examined in a public session because of complexity is not sufficient to cast doubt on respect for the right to a fair trial.

On a violation of the right to be tried by an impartial court. Applicant claimed in this connection that the High Court had, by deciding against accepting of the recourse, violated her right to be tried by an impartial course because one of the judges had been part of the judicial panel of the High Court that had previously decided to reverse the decision of the court of appeal in favour of applicant. The Court said that respect for this principle should be verified by applying two tests, the subjective test and the objective test. In the concrete case, the Court finds that applicant's claim is related to the objective test of the principle of the impartiality of the court. Contrary to what applicant claims, although formally the High Court was examining the same judicial process with the same trial parties under examination, at the core it was examining different legal cases in this way, applicant's claim that the judge of the High Court who rendered two decisions in her case had prejudgments incompatible with the principle of impartiality, does not hold up. The Court considers that the High Court has provided sufficient guarantees to exclude any reasonable doubt in the aspect of the objective test.

On a violation of the right of access in relation to the standard of reasoning of the judicial decision. Applicant has claimed that the judgment of the courts that her recourse was submitted outside the 30-day time period is a consequence of a wrong interpretation of the law, which violated her constitutional rights. The Court has emphasised that the rule of law cannot be conceived of without recognising individuals right to access the courts. However, the right of access can be restricted when it is a question of conditions of admissibility of an appeal, such as the time periods defined in the Constitution and the laws.

Thus, although the access of applicant was restricted by the decision not to accept the recourse, the restriction is in compliance with the Constitution, since the recourse was submitted by her outside the legal time period. The Court also considers that the decision of the High Court, contrary to what applicant claims, appears regular in form and content, and in the reasoning part, it gives an answer to her claims set out in the special recourse. Under the conditions when it turned out from the constitutional trial of the case that the judicial process for not accepting applicant's recourse was in compliance with the Constitution, then she has lost the opportunity to raise claims in the individual constitutional appeal, since the legal remedies that applicant had available were not exhausted.

Decision

The Court rejected the application unanimously.

Fair trial-Right to be tried within a reasonable time period

Agred Tafaj *(violation of the right to a trial within a reasonable time period because of the excessive length of time awaiting trial in the court of appeal)* – decision no. 65 dated 2.10.2024

KEY WORDS

Student/ Elections of the Academic Senate/ reasonable time period/ criteria of constitutional jurisprudence/ excessive trial length/ objective impossibility/ reform in justice/ high caseload in the court of appeal

Facts

Applicant was registered as a candidate from the ranks of students for the elections to the Academic Senate of the University of Tirana. At the end of the elections, the Electoral Institutional Commission (EIC) took the respective decision, where applicant was not a winner. The EIC decision was left in force by the Appeal Commission (AC). Applicant brought a lawsuit in the Administrative Court of First Instance, Tirana, in which he asked for a declaration of the decisions of the EIC and the AC as invalid, which the court accepted it in part. The opposing parties appealed to the Administrative Court of Appeal, an appeal that was registered on 28.4.2021.

Applicant submitted a request for acceleration of the trial on 3.2.2022, but the court of appeal did not respond. On 18.9.2023 applicant addressed a request to the High Court for a finding of a violation of the reasonable time period and for the acceleration of the trial procedures. The High Court rejected the request. According to it, the failure of the court of appeal to act did not happen for subjective reasons related to abusive positions and evaluations of the reporting judge. Also, the High Court judged that the court of appeal is in the conditions of a heavy workload. On 13.3.2024 applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

Fair trial violation related to a trial within a reasonable time period. – The Court analysed the particular circumstances of the specific case in relation to the criteria established by the constitutional jurisprudence: (i) the behaviour of applicant; (ii) the complexity of the case; (iii) the behaviour of the authorities; (iv) the important of what applicant is risking.

In connection with the behaviour of applicant, the Court found that applicant had addressed both the court of appeal as well as the High Court with a request for a violation of the reasonable time period. Consequently, the Court judged that applicant does not turn out to have been a reason for the excessive length of the trial of his case in the court of appeal. In connection with the complexity of the case, the Court finds that the case is of an administrative nature and has the object of a declaration as partially invalid of administrative acts to the evaluation and ordering of two of the candidates for the Academic Senate. Consequently, the Court judged that the concrete case did not appear complex. In connection with the behaviour of the authorities, the Court observed that the case was still waiting to be examined in the court of appeal after three and a half years, and the total time of the procedures is about four years.

The right that is sought to be protected is a right that according to law can be realised only within a set time period. Since the realisation of the right is linked to a particular time period, this term also determines the very core of the right, the failure to realise which during this time period makes the right itself illusory.

It also found that currently, cases registered in the year 2018 and those with an accelerated trial on the request of the parties are still awaiting trial. Consequently, the excessive length of the trial of the case is related to the court of appeal's high caseload. So far as concerns what applicant is risking, the Court found that it was claimed in the appeal that membership in the Academic Senate has a four-year term, and more than two years have passed from the rendering of the decision of the Tirana court for applicant's registration as a member of the Senate.

Under those conditions, the delay in examining the case makes it impossible to exercise that mandate, making the final decision ineffective. The right that is sought to be protected is a right provided by law and which can be realised only within a particular time period (a four-year mandate). That is, since the realisation of the right is linked to a particular time period, that time period is determinative of that very right. The Court brought out that the time of the trial of applicant's case was fundamental in the aspect of the recognition and eventually the exercise of the right. The excessive trial length made the claimed right to remain useless, even if it is recognised judicially.

Decision

The Court decided unanimously to accept the application in part.

Right to a fair trial- Standard of reasoning of a judicial decision

Ndrec Lasku, Marte Lasku, Adelina Lasku, Gentjana Lasku, Mirela Ndoci *(violation of the standard of reasoning of a judicial decision because of the incorrect identification of the person against whom the lawsuit for indemnification should have been submitted)* – judgment no. 66 dated 3.10.2024

KEY WORDS

Traffic accident/ insurance company/ damage insurance/ indemnification/ two- and three-year prescription period/ prescription of a lawsuit and final criminal decision/ prescription of time period and identification of the guilty person /

The interpretation of a law not linked to concrete facts is not in harmony with the specific trial, because, in essence, it does not serve the resolution of the dispute in question. Consequently, this makes the reasoning part of the High Court's decision formalistic and not consistent in relation to the facts and circumstances of the case, removing the purpose of the process from the very essence of the individual's constitutional right.

Facts

Applicants are the legal heirs of the late Violeta Lasku, who lost her life in a traffic accident on 29.5.2006. The prosecutor's office of Tirana dismissed the criminal proceeding twice. On applicants' appeal, the Tirana District Court ordered the further continuation of investigations. The prosecutor appealed to the Tirana Court of Appeal, which decided to leave the decision of the Tirana court in force.

The prosecutor's office then took the driver of the automobile as a defendant, accusing him of a violation of the road circulation rules, and at the end of the investigations it sent the case to the Tirana court, which found him the driver of the automobile guilty and sentenced him. The decision was left in force by the Court of Appeal. After the conclusion of the criminal process, applicants turned to the insurance company with a request for indemnification. In the absence of a response, on 26.12.2013 they brought a lawsuit in court against the insurance company for indemnification. The Tirana court rejected the lawsuit with the reasoning that the lawsuit was prescribed, because it had been submitted outside of the legal two- and three-year time periods. On the appeal of applicants, the Tirana Court of Appeal reversed the decision of the Tirana district court with the reasoning that the lawsuit was not prescribed because it had been submitted within the legal time periods, since the time periods began to run after the perpetrator of the incident was found guilty and sentenced by a formal decision.

The High Court decided in chambers to reverse the decision of the court of appeal and leave the decision of the Tirana district court in force, with the reasoning that the lawsuit had been prescribed. Applicants turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the standard of reasoning of a judicial decision – The Court found that, although there still was no final decision on the merits, the High Court decided to resolve it itself, considering that the case is related to an interpretation of the law about the time periods for prescription of the lawsuit. It analysed the provisions of the Civil Code that regulate the prescription of a lawsuit, according to which lawsuits for indemnification under an insurance contract are prescribed within two years and for non-contractual indemnification, within three years. According to the High Court, the lawsuit was submitted about seven years after the accident had happened, that is, beyond the legal time period.

The Court found whereas the High Court had dealt with the institute of prescription of a lawsuit, it had not analysed and had not expressed itself about the fact that a criminal proceeding, extended in time and dynamic in procedural actions, had been conducted from the date when the accident occurred (29.5.2006) until the date when applicants brought the lawsuit (26.12.2013). The Court deemed that the High Court had not interpreted the applicable law in coherence with the factual circumstances, because although it had set out the prosecutor's office had dismissed the case twice because it was not proven that the driver of the automobile had violated the traffic rules, it had reached the conclusion that the time period for prescription of a civil suit for indemnification began from the date of the accident. Consequently, it did not argue against whom the lawsuit for indemnification could have been submitted in the period during which the prosecutor's office and the court had not yet identified the responsible person – the one who caused the damage.

Decision

The Court decided unanimously to accept the application in part.

Right to a fair trial- Right to be tried by an impartial court- Standard of reasoning of the decision- Principle of the equality of arms and the adversary principle

KEY WORDS

Process of privatisation/ Denunciation (for new work)/ failure to form a quorum/ reopening of the judicial process/ exclusion of a judge/ reasoning of a decision de plano/ summoning a third person and an expert/

Applicant had accepted that it had not made a request to exclude judges, it even turned out in the minutes of the respective session that the parties, including applicant, had expressed themselves in agreement with the judicial panel. Consequently, applicant has not exhausted the legal remedies.

Although the High Court reasoned in a limited manner *de plano*, it indicated in an implied manner that applicant did not raise any of the questions of law provided in the legal provisions. Also, even when the High Court refuses to accept a case because the legal reasons are not supported, the limited reasons can meet the legal criteria and those of article 6 of the European Convention on Human Rights.

Company "Prodhim Veshje nr. 2" sh.a. *(violation of the right to be tried by an impartial court and of the standard of reasoning of the judicial decision, because of the absence of impartiality of the judges in the court of appeal and the absence of reason of the decision of the High Court)* – judgment no. 67 dated 3.10.2024

Facts

Applicant owns buildings and a site that are part of the former Enterprise of the Production of Clothing (former EPC), privatised at different times. During the privatisation process, one of the buildings was not included in the capital of the former EPC. This non-included building was sold to a third party who, in 1997, gave it to one of the interested subjects, who also started the construction of a building on it.

Applicant brought a lawsuit with the object of denouncing the new work, claiming that the site on which the construction was being done had not been sold to the interested subject. Applicant also submitted a request for the measure of securing the lawsuit to be taken, which was accepted by the three courts.

As to the trial on the merits of the lawsuit, the Tirana District Court decided in 2008 to reject the lawsuit and the measure of securing the lawsuit, a decision that was left in force both by the Court of Appeal and also by the High Court. Applicant turned to the Constitutional Court (the Court). By judgment no.44/2013 the Court refused the application, because it did not reach the quorum for taking a decision according to the constitutional and legal provisions.

Applicant then turned to the European Court for Human Rights (ECtHR) with a claim of a violation of the right of access (because of the absence of a quorum), the absence of impartiality of the judges in the court of appeal and the absence of reasoning of the decision of the High Court. The ECtHR found a violation of the right of access to court, while it did not accept the claims of applicant about the right to be tried by an impartial court and a violation of the standard of reasoning. Based on the decision of the ECtHR, applicant addressed the Court with an application to reopen the final process with the Court's judgment no. 44/2013, claiming a violation of the right to be tried by an impartial court, a violation of the standard of reason of the decision and the equality of arms.

Assessment of the Court

Violation of the right to be tried by an impartial court – Applicant had claimed that the judicial panel of the Court of Appeal that disposed of the case on the merits was the same as that which previously decided on the request for annulment of the bailiff's actions. The Court brought out that applicant had accepted that it had not make a request to exclude the judges, but had asked the judicial panel to withdraw from the examination of the case. It did not turn out that there was such a request in the judicial file, and also, from the minutes of the session of 5.2.2010, it resulted that the parties agree with the court and that they did not have preliminary requests. The Court found that applicant did not exhaust all the effective legal remedies available to it, because it had not submitted a request for the withdrawal of the members of the judicial panel according to the provisions of the Code of Civil Procedure.

Violation of the standard of reasoning of the decision– According to applicant, the decision of the High Court contains reasoning *de plano*, mentioning only the legal provision. The Court finds that the decision-making of the lower courts was reflected in the decision of the High Court, the reasons raised in the recourse and also the applicable law, while in the reasoning part, the High Court decided not to accept the recourse, after finding that it did not contain reasons from among those required by law. In its entirety, the decision appears to be regular in form and clear in content. The Court considers that the limited reasoning of the High Court's decision is in conformity with the standards of the Court for these kinds of decisions, meeting the criteria in the aspect of the standard of reasoning of the judicial decision.

Violation of equality of arms and the adversary principle – The Court finds that applicant claimed before the Tirana court for third persons and an expert to be summoned, requests that were not accepted by the courts, considering this as a violation of the principle of the equality of arms. In this aspect, the Court finds that the preliminary requests of applicant for calling third parties or the expert to the trial were examined by the courts, giving an argued answer. Analysing the decisions of the courts of fact, it turns out that applicant was given the opportunity to present arguments and evidence in support of its claims, as well as to object to the counterarguments of the other party (the interested subject). In addition, the courts analysed the facts and evidence submitted at trial against those submitted by the interested subject. In this sense, applicant does not turn out to have been put in unequal conditions with the other parties in the proceeding.

Decision

The Court unanimously rejected the application.

Right to a fair trial- Standard of reasoning of the decision- Right of access for a judicial decision

KEY WORDS

Reimbursement of customs overpayments/ failure to appear at trial/ dismissal of the trial/ a new procedural law also has effect on cases that are being tried/ interest of plaintiff/ absence of interest

The Court emphasises first, that a procedural law is applied immediately in compliance with the principle *tempus regit processum*, and in the procedural law, unlike the substantive law, a new procedural law also has an effect on cases that are at trial, with except when it says otherwise itself.

The content of article 179 of the Code of Civil Procedure (CCivP) (dismissal of a trial for failure to appear at trial) is related, at the core, to the absence of interest of the plaintiff in the conduct of the trial.

Although the reasoning of the court of fact, from the formal point of view, seems to be regular, this reasoning has not analysed at the core the facts found in the constitutional trial for the purpose of reaching a conclusion about the absence of interest of applicant in the continuation of the trial.

Company "A&A International" sh.p.k. (*violation of the right of access as a consequence of the dismissal of the trial because of not appearing at trial*) - Judgment no. 68 dated 08.10.2024

Facts

Applicant is a legal person that exercises activity in the field of transport and shipping. Through customs declarations, it carried out customs procedures at the Kapshtica Customs Branch, passing goods through that point. Claiming that the amount paid was higher than its obligation, applicant addressed the Kapshtica Customs Branch for a review of the customs declarations and reimbursement of the overpaid amount, a request that was rejected.

Applicant went to the Korça district court for reimbursement of the overpaid amount. During the trial, the Korça court decided to call, as a third person, the company "Huawei Technologies Albania" sh.p.k., considering that it had an interest in the trial, because the goods released form customs belonged to that company, while plaintiff (the applicant) was acting as customs agent.

In the judicial session of 20.05.2013, the court found that none of the representatives of plaintiff (applicant) did appear at the trial although they had knowledge regularly and no lawful reason was presented for their failure to appear. Based on article 179, first paragraph 1 of the CCivP, the Korça court decided to dismiss the trial, a decision that was left in force by the Administrative Court of Appeal.

Applicant submitted a recourse against this decision, and the High Court declined to accept it. Applicant then turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the right of access related to the standard of reasoning of the decision – According to applicant, the courts did not take into consideration the manner of application of the procedural law, the conduct of the parties and the very jurisprudence of the High Court, which has made a distinction between the application of the substantive legislation and the procedural legislation, which is that of the moment at which the dispute is resolved and is implemented immediately, except when the law itself provides otherwise.

The Court stresses first that the procedural law is applied immediately in compliance with the principle *tempus regit processum,* and in the procedural law, unlike the substantive law, a new law also has effect for cases that are on trial, with the exception of the case when it says otherwise. The Court finds that the lawsuit was registered in the court of first instance on 16.02.2012 and the decision of that court was rendered on 20.05.2013, and consequently, the trial was held on the basis of the procedural provisions in force at the time of examination of the case.

The Court observes that according to the first paragraph of article 179 of the CCivP, the failure of a plaintiff to appear without reasonable causes constituted a reason to dismiss the trial. However, the content of those provisions is related, at the core, to the interest of the plaintiff for the conduct of the trial, as well as with the right of access to a trial, as a right that makes it possible for a party to protect its lawful rights and interests before the court, and also to exercise at trial the other rights guaranteed in the framework of a fair trial.

The Court finds that while applicant (plaintiff) and defendant in the trial had been part of the judicial examination of their claims, being heard by the court in connection with the claims and counterarguments about them, the purpose of postponing the judicial sessions was so that the Korça court could hear the third person, because it had judged that it had an interest in the case. In this phase of the trial, that court should have formally postponed the trial, since not only does applicant not turn out to have been the cause for the postponement of the last judicial sessions, not only was the third person who had been called not present, so it could not have presented its position and opinion for the continuation of the trial, but even the defendant had submitted a request to postpone the judicial session.

Under the conditions when in particular the decision of dismissing the trial brings consequences in the aspect of the individual's access to the trial, not only in the aspect of receiving a final answer on the claims raised in the lawsuit, but also because it affects the provision about bringing the lawsuit again. Consequently, although the reasoning of the Korça court seems regular from the formal point of view, in its essence this reasoning has not analysed the above facts found in the constitutional trial for the purpose of reaching a conclusion about the absence of an interest of the plaintiff (applicant) for the continuation of the trial, consequently bringing a violation of its right of access in the aspect of having a final answer to the claims raised in the lawsuit.

Decision

The Constitutional Court decided unanimously to accept the application and send the case back to the Administrative Court of First Instance, Tirana, for examination.

Right of property

KEY WORDS

Contract of purchase and sale/ payment of the amount of compensation/ status of homeless citizen/ decision 12/2000 of the Court does not deny the right of compensation/ formalistic reasoning/ quasi-judicial organ/ final decision of the Commissioner of Return and Compensation of Property (CRCP)/

Based on decision no. 12/2000 of the Court, which repealed the first paragraph of article 10 of law no. 7698/1993, the courts did not take account of the reasoning of that decision, which in no case denies the right of compensation to third persons, on the contrary, it considers as a constitutional right the assurance from the state of a fair and full compensation to third persons, taking the market price as a basis.

The public organs and ordinary courts did not implement the obligation specified in the decision of the CRCP, which was not appealed and, as such, was not open for debate (as a decision of a quasi-judicial organ). Therefore, under the conditions when, at the end of the judicial process, applicants did not realise their right recognised by a final decision of the CRCP. The Court considers that their right of property has been violated.

Tomor Bylykbashi, Satliko Bylykbashi (*violation of the right of property as a consequence of the denial of the right of third persons to compensation*) – judgment no. 69 dated 08.10.2024

Facts

Applicants are the legal heirs of H. B., who in 1958 bought a residential house in Korça. By decision 604/1994, the Commission of the Return and Compensation of Property (CRCP) recognised and returned this house to the heirs of the former owner H. B. Also, according to that decision, the state was obliged to pay the heirs of former owner H. B. an amount of compensation, according to the selling price at the time of alienation of the house, converted with the index of price increases, based on article 10 of law 7698/1993.

By decision 12/2000, the Constitutional Court (the Court) repealed article 10, first paragraph, of law 7698/1993 in part, reasoning among other things that the rule about the amount of compensation for building of former private owners who were alienated by third persons, not taking the market price as the basis, that is, the real value of the construction at the moment of delivery to the former owner, is contrary to the principle of equality before the law.

Through a judicial process, the heirs of former owner B.V. obliged applicants to free up and hand over the house. Later, applicants turned to the court of Korça for the obligation of the interested subjects to pay the full and real amount of the residence according to CRCP decision 604/1994. The case was tried by the Administrative Court of First Instance of Korça which accepted the lawsuit in part and obliged the Korça Treasury Branch to pay the respective amount to the heirs of H. B. The Administrative Court of Appeal reversed the decision of the Korça administrative court and rejected the lawsuit, reasoning that their seeking to obtain full and real compensation for the residence that they had possessed and which had been returned to the lawful owner was baseless in the law and the evidence, because they were not expropriated by the defendant, but the property had been returned to its owner. According to that court, applicants should be treated as homeless citizens on the basis of normative act 3/2012 "On the freeing up of residences to the former owners" and law 82/2012 "On the freeing up of residences to the lawful owners by homeless citizens, resident in the residences that were formerly the property of expropriated subjects".

On the recourse of applicants, the High Court left the decision of the court of appeal in force. Applicants turned to the Court, claiming, above all, a violation of the principle of legality certainty in connection with the right of private property.

Assessment of the Court

On a violation of the right of private property – The Court finds that the courts of ordinary jurisdiction did not make any attempt to interpret the legal norms in that aspect that they would give a result in harmony with the Constitution and would guarantee the constitutional rights of applicants. Concretely, basing itself on Court decision no. 12/2000, which repealed the first paragraph of article 10 of law 7698/1993, the courts did not take the reasoning of that decision into account, which in no case denies the right of compensation to third parties, on the contrary, it considers securing fair and full compensation from the state as a constitutional right of the third persons, taking the market price as the basis, that is, the real value that the building has at the moment it is handed over to the former owner.

Also, notwithstanding that the fact was not contested during the process that the house that is the object of the trial was bought by applicants' testator by a sale contract, by the same formal reasoning and without taking the CRCP into consideration, the court of appeal and the High Court considered them as subjects of normative act no. 3/2012 and law no. 82/2012, which means as persons with the status of a homeless citizen, resident in the houses that were the former property of expropriated subjects. In this sense, the High Court, as a court of law, based itself on a formalistic reasoning and a narrow interpretation of the right of property, which is not in compliance with the purpose of article 41 of the Constitution, making the manner of resolving the dispute obviously unreasonable.

The Court judges that the public organs and the court of ordinary jurisdiction did not implement the obligation determined in the CRCP decision, which was not appealed and, as such, could not be disputed (as the decision of a quasi-judicial organ). Therefore, under the conditions when, at the end of the judicial process, applicants have not realised their right recognised by a final decision of the CRCP, the Court considers their right of property to have been infringed.

The High Court, as a court of law, is in an appropriate position to examine the claims of applicants and give an answer to them respecting the constitutional standards, as well as filling in the deficiencies and repairing the violations of the court of appeal.

Decision

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

Right to a fair trial – Principle of the presumption of innocence – Standard of reasoning of a judicial decision

KEY WORDS

Abuse of office/ building permit/ signature on a transcription of a building permit/ responsible person of the planning section/ secretary of the Council of Regulation of the Territory (CRT)/ being in office at the time when the criminal fact occurred/ guilt should be proven beyond any reasonable doubt

The Court finds that applicant's claim has to do in essence with the fact that the ordinary courts found him guilty for the criminal offence of "abuse of office", defining the facts of the case accurately. The courts did not determine the time when applicant exercised the duty of responsible person of the planning section, not evaluating for this respective act of appointment administered as evidence in the trial, just as they have not answered either his claim he was not in this office at the time when the criminal fact attributed to him occurred.

From the reasoning of the judicial decisions, it does not seem that the courts sufficiently fulfilled the obligation to support them with direct or indirect evidence proven by the accusation or that the guilt of applicant was proven beyond any reasonable doubt.

Dritan Nuzi (*violation of the standard of reasoning of a judicial decision because of failure to meet and respect the principle of the presumption of innocence*) – Judgment no. 70 dated 15.10.2024

Facts

The prosecutor's office of Dibër registered a criminal proceeding for the criminal offence of "unlawful construction" and further registered the names of applicant and citizen I. K. as suspected of committing the criminal offence "abuse of office" committed in collaboration. The criminal fact was related to the administrative procedure of granting the site permit and the building permit for a side addition to an existing building in Peshkopi, in favour of citizens Sh. K. and D. M., permits approved on 29.09.2006 by the Council of Regulation of the Territory of the Municipality of Peshkopi (CRT).

Applicant and I. K. were later accused of this criminal offence and tried. The Dibër district court found applicant guilty of the criminal offence at issue, sentencing him to imprisonment and the removal of the right to exercise public functions. So far as concerns co-defendant I. K., the court found him not guilty. The court of appeal left the decision of the Dibër court in force concerning applicant, substituting a sentence of imprisonment with that of work in the public interest. As to the prosecutor's appeal, the court of appeal did not accept it. The High Court also decided against accepting applicant's recourse, and applicant turned to the Constitutional Court (*the Court*), claiming a violation of the principle of the presumption of innocence, because the only evidence for his conviction was his signature on the transcription of the building permit on 24.03.2010, as secretary of the CRT, while the building permit was approved on 29.09.2006, a time when applicant was a student.

He also claimed a violation of the principle of equality before the law, because the courts in the same process declared co-defendant I. K. not guilty, although he, the same as applicant, had signed the transcription of the same building permit, as chairman of the CRT.

Assessment of the Court

On the violation of the principle of the presumption of innocence in connection with the standard of reasoning of a judicial decision – Under the light of the facts, the Court finds that the criminal fact notified to applicant in the accusation against him is related to the procedures followed for the examination of requests and further with the approval by the CRT on 29.09.2006 of a site permit and building permit in favour of citizens Sh. K. and D. M., as well as with the exercise by him during this procedure of the duty of responsible person of the planning section of the Municipality.

However, in their reasoning the ordinary courts do not indicate any concrete evidence evaluated by them in connection with the accepted fact that that the administrative examination of the requests of citizens Sh. K. and D. M. for the site permit and the building permit approved on 29.09.2006 by the CRT was done by applicant, as the responsible person of the section of planning, nor of the fact that the construction of the side addition to the building was done by those citizens during the time when applicant exercised the duty in question. In particular, the courts did not reason in connection with the time when applicant exercised the duty of responsible person of the planning section, nor did them reason about the evidence requested by him, decision no. 40, dated 18.03.2009, of the mayor of the Municipality, which appointed applicant to the duty in question.

In the meaning of the principle of the presumption of innocence, it does not seem from the reasoning of the contested judicial decisions that the courts sufficiently fulfilled the obligation to support them with direct or indirect evidence proven by the accusation or that the guilt of applicant was proven beyond any reasonable doubt. The reasoning of the courts is considered as obviously unreasonable in the constitutional point of view. The Court judges that the specifics of the instant case and the nature of applicant's claim of a violation of the principle of the presumption of innocence require an assessment by the courts in the aspect of the determination of the facts in relation to the criminal responsibility of the applicant.

Decision

The Constitutional Court unanimously accepted the application in part, repealing the decisions of the court of appeal and the High Court and sending the case to the court of appeal for re-examination.

Fair trial-Standard of reasoning of a judicial decision

KEY WORDS

Mining employee/ special pension/ decision based on claims and data of another person/ defect of a decision/

The reasons set out by the High Court in its decision obviously have to do with another case, different from that of applicant. Consequently, the Court finds that this is a defect in the decision of the high Court that puts the reasoning of that decision into question.

This defect found in the High Court's decision is such as to violate in the entirety the standard of reasoning of the decision in connection with the right of appeal, since it does not permit the Court to reach a correct conclusion as to whether the High Court has examined the reasons set out in the recourse by applicant.

Prend Suta (*violation of the standard of reasoning of a judicial decision because of the lack of a basis of the decision in the facts of the case*) Judgment no. 71 dated 15.10.2024

Facts

Applicant addressed the Regional Directorate of Social Insurance (RDSI), Shkodër, with a request to enter into a special pension as a subsurface employee, based on the provisions of law no. 8685 dated 09.11.2000 "On a special treatment of employees who worked in mines underground" (*law no. 8685/2000*). Based on this law, the RDSI gave special treatment to applicant as a subsurface employee. After law no. 150/2014 dated 06.11.2014 "On pensions of employees who have worked in mines underground" (*law no. 150/2014*) entered into force, applicant submitted a request for an old age pension of the first category according to the provisions of that law. The RDSI refused the request, as well as deciding to end the special treatment that applicant enjoyed under law no. 8685/2000, and it also charged him with a financial obligation.

Applicant appealed to the Regional Appeal Commission, Shkodër, which said that it did not have the competence to examine the request. The Central Appeal Commission at the Institute of Social Insurance took the same position. Applicant went to court for a finding of the absolute invalidity of the decisions of the RDSI and the Commissions. The Administrative Court of First Instance rejected tee lawsuit, a decision that was left in force by the Administrative Court of Appeal. The High Court declined to accept applicant's recourse. Applicant turned to the Constitutional Court.

Assessment of the Court

On a violation of the standard of reasoning of the judicial decision – Applicant claimed that the High Court had based its decision on the claims and data of another person, and consequently, it had not examined the claims raised by applicant in the recourse and did not answer them, not reasoning its decision.

Referring to the content of the recourse submitted by applicant attached to the application, but also the very content of the High Court's decision, the Court found that the reasons presented in the decision of that court clearly are not related to applicant's case or with the facts that turned out during the judicial process in the courts of fact or which applicant claims were proven during that process.

The reasons that were set out by the High Court in its decision obviously have to do with another case, different from that of applicant. Consequently, in the presence of this fact, the Court finds that this is a defect in the decision of the High Court that puts the standard of the reasoning of that decision into question, since in its limited reasoning, in the introductory part of the decision, the reasons of the applicant's recourse are not listed, which casts doubt on judgment of that court during the preliminary examination of it and the conclusions reached by it in connection with the reasons for not accepting the recourse, and consequently, also the effective exercise of the right of applicant to appeal to a higher court. This defect found in the decision of the High Court is such as to violate in the entirety the standard of reasoning of the decision in connection with the right of the appeal, since it does not permit the Court to reach a correct conclusion as to whether the High Court, in compliance with its function and in implementation of the principle of subsidiarity, has examined the reasons set out by applicant in the recourse and whether the claim about the (lack of) basis for them is the result of an analysis of those reasons.

So far as concerns the other claims raised by applicant, the Court judges that, based on the principle of subsidiarity, it is the duty of the High Court to evaluate them and give an answer in conformity with its function as a court of law.

Decision

The Constitutional Court decided unanimously to accept the application in part, repealing the decision of the High Court as well as sending the case back for reexamination in that same court.

Right to a fair trial – Standard of reasoning of the judicial decision

KEY WORDS

Recourse/ State Advocate's Office/ lack of grounds of a recourse/ abusing with a recourse

The imposition of a fine for abusing with a recourse is a procedural measure that aims at assuring the proper administration of justice. It has the purpose of the avoidance of abuses with rights in the judicial process. On the other hand, the ordinary courts have an additional obligation to show clearly in the reasoning of their decision, in addition to the manner of resolution of the case, not only the applicable law but also the concrete fact in the meaning of why particular conduct constitutes abusing with the law.

Dashamir Alsula *(punishment of a state advocate for submission of an abusive recourse)* – judgment no. 72 dated 17.10.2024

Facts

Applicant exercises the duty of state advocate, appointed in the Interior Ministry, in implementation of the law on the State Advocate's Office. In one of the legal cases where the defendant was the General Directorate of the State Police, Applicant signed a recourse by means of which the decision rendered against the defendant was contested. The General State Advocate's Office sent the recourse to the Administrative Court of Appeal, a recourse that was transmitted to the High Court. The latter decided against accepting the recourse because it did not contain any reason provided in article 58 of the Law on the Administrative Courts and fined applicant in the amount of 50,000 lek, on the basis of article 34, point 1 of the Code of Civil Procedure.

Applicant submitted an appeal to the High Court, which declined to accept it. Applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

Standard of reasoning of the judicial decision – According to applicant, the High Court did not reason where the lack of a basis and abusiveness of the recourse was found, under the conditions when the recourse was regular in form and content and in the manner of argumentation. The Court brought out that with the imposition of such fines, the ordinary courts have the additional obligation, in addition to the resolution of the case, to show clearly not only the applicable law on setting the fine but also the concrete fact, in the meaning of why a particular behaviour constitutes abusing with the law.

In the concrete case, the Court stressed that such an obligation take on decisive importance for the High Court when it decides not to accept a recourse on the basis of Article 34, point 1 of the Code of Civil Procedure. In those cases, the High Court judges with discretion, in reliance on the acts in the judicial file and the interpretation of the law, so the further assessment that the submission of the recourse was an abuse with the law because of the lack of a basis of the reasons cannot be reasoned in a standard, abstract and limited manner, for otherwise the reasoning infringes the constitutional balance that should exist between the right to submit a recourse and the need to preserve the judicial process from abusive recourses.

The Court found that the position of the High Court is unreasoned, because it sufficed itself only with the interpretation of when article 34, point 1 of the Code of Civil Procedure is applied, without linking its application to the circumstances of the case, but only with the fact that it does not contain reasons from among those provided in article 58 of the Law on the Administrative Courts. Concretely, the reasoning about when article 34, point 1 of the Code of Civil Procedure is applicable finds reflection in eight paragraphs, which contain a detailed explanation of the applicable law and the procedure of appealing against the fine, but lacking in them are reasons about why the concrete recourse constituted abusing with the law. Going on, the Court brought out also that the above constitutional defects were not corrected by the High Court in rendering the decision that rejected the appeal to revoke the sentence of a fine.

Decision

The Court decided unanimously to accept the application.

Right to be tried by a court established by law-Right of access to court-Standard of the judicial decision

KEY WORDS

Concessionary contract/ resolution of a dispute by arbitration/ exclusion of judicial jurisdiction/ special recourse or appeal/ composition of the judicial panel/ will of the parties expressed in the contract

By the amendments made to law no. 49/2012, the Administrative College of the High Court tries all cases with three judges, except for (i) recourses submitted against decisions of the Administrative Court of Appeal that examined a lawsuit against a subordinate normative act, as well as (ii) trials in a judicial session for the unification or development of the judicial practice, which are tried by five judges". Since the High Court was not found before either of those instances, the examination of the case by a judicial panel of three members does not conflict with the legal provisions.

The fact that applicants had more than eight months available to exercise the right to appeal of defence in the Tirana court, or the fact that applicants by exercising a special appeal against the court decision had the opportunity and set out their claims in the High Court on the issue of jurisdiction defeats their claim of the absence of access to be heard and to defend themselves.

Jurisdiction related to the resolution of disputes between the parties by arbitration or judicially depends and is determined by and with the will of the parties themselves, made material in the concessionary contract.

Company "ANK" sh.p.k., company "Bardh Konstruksion" sh.p.k. (*violation of the right to be tried by a court established by law because the composition of the judicial panel was not formed according to law; violation of the right of access to court because the courts have not examined the claims on the merits*) – Judgment no. 73 dated 17.10.2024

Facts

Applicants and the Ministry of Infrastructure and Energy (the contracting authority) signed a concessionary contract. Among other things, point 3 of article 54 of the contract specified the resolution of disputes between the parties by international arbitration. According to the contract, applicants paid a premium for insuring the contract with an insurance company. At one moment, the authority asked the insurance company to transfer the amount of insurance of the contract from the insurance company to the authority for the account of applicants, something that the insurance company did not do.

As a consequence, the authority sued the insurance company in the Administrative Court of First Instance, Tirana.

After became aware of this, applicants brought suit to the same court against the authority with the object of obliging the latter to continue the procedures of the concession contract. The Tirana court removed the case from judicial jurisdiction, because referring to the contract, the parties had agreed for disputes to be resolved by arbitration, excluding judicial jurisdiction. By a special appeal, applicants turned to the High Court, which left the decision in force. Applicants turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the right to be tried by a court established by law. The Court finds that applicants claim, first, that the Tirana court should have tried the case with a judicial panel consisting of three judges and the High Court should have tried it with five judges. In this respect, the Court finds that the claim related to the composition of the judicial panel in the Tirana court was not raised by applicants in the special recourse submitted to the High Court, but it was articulated for the first time in the constitutional appeal. Under those circumstances, the Court judges the applicants have not exhausted the effective legal remedies that they had available for this claim. In addition, the Court judges that the examination of the case by a judicial panel of three members does not conflict with the legal provisions. Under those conditions, the claim of applicants of a violation of the principle of a court established by law is obviously baseless.

In connection with a violation of the right of access in connection with the right to be heard and to be defended – Applicants claimed a violation of the right of access in connection with the right to be heard and to defend oneself, because the courts did not examine the merits of the claims. The concessionary contract has defined the possibility of resolving disputes by arbitration as an alternative to a judicial resolution by using the word "may", but in no case does it exclude the latter. At the same time, in their lawsuit applicants have asked for the continuation of the procedures of implementation of the concessionary contract. In addition, the Tirana court did not give them the opportunity to be heard and to defend themselves in connection with the authority's request to remove the case from judicial jurisdiction.

The Court finds that it does not turn out from the content of the minutes of judicial session in the Tirana court that applicants gave their counterarguments orally or in writing in the session or asked for the court to administer their claims in writing. The Court also finds that from the date when the contracting authority submitted the request to remove the case from judicial jurisdiction until the moment when it was taken under examination, applicants had more than eight months available to exercise the right of defence. In addition, the Court finds that by exercising a special appeal, applicants had the opportunity to and did set out their claims in the High Court on the issue of jurisdiction. On its part, the High Court analysed applicants' claims.

According to the High Court, in the concrete case the jurisdiction related to the resolution of disputes between the parties belongs to arbitrary in Paris, according to the will of the parties themselves, set out materially in the concessionary contract. It reasoned that notwithstanding the use of the work "may" in particle 54, point 3 of the contract, in the entirety, the graduation of the mechanisms for resolution (negotiations and technical expertise), their chronological listing and the semantics of provisions in points 2 and 3 of article 54 of the contract reflect the will of the parties for disputes to be subjected exclusively to international arbitration, implicitly excluding Albanian judicial jurisdiction.

Decision

The Constitutional Court rejected the application by majority of votes (two judges dissented).

Fair trial - Principle of legal certainty- Right to be tried by a court established by law- standard of reasoning of the judicial decision

KEY WORDS

Electronic sales tax invoice/ execution order – executive title/ measure of suspension of an executive title/ measure of securing a lawsuit/

The civil procedure law distinguishes between the temporary measures for securing a lawsuit that may be imposed in an ordinary trial and those that may be imposed in a trial related to the execution of executive titles.

In the instant case, the court of appeal considered the debtor's request as a request for securing the lawsuit, but in the end, it did not decide on the taking of any measure of securing the lawsuit, but on the suspension of execution of the executive title.

Company "Tirana Auto" sh.p.k. (*violation of the principle of a fair trial in connection with the reasoning of the decision because the courts did not take account of the conditions of the law*) - Judgment no. 74 dated 22.10.2024

Facts

Applicant and the interested subject, the General Directorate of the State Police (GDSP), entered into a contract for the leasing of vehicles. After the conclusion of the contract, applicant issued two electronic sales tax invoices, which were not satisfied by the GDSP.

Applicant went to the Administrative Court of First Instance, Tirana, which ordered the issuance of an execution order for executive titles, for the tax invoices. The bailiffs who were retained notified the debtor, the GDSP, to execute the obligation voluntarily.

The GDSP contested this through three judicial processes. In the first process, the GDSP opposed the enforcement action with a lawsuit, also asking for the taking of the measure of suspension of execution, a measure that the Tirana court refused. After, that court also refused the lawsuit, with the reasoning that the GDSP did not have standing. The Administrative Court of Appeal reversed the decision of the Tirana court and returned the case to that court.

In the second process, the GDSP contested the bailiff's action because of the calculation of penalty interest by the bailiff, also asking again for suspension of execution, a suspension that was again refused by the Tirana court.

In the third judicial process, the GDSP went to the court of appeal with a request to suspend execution of the bailiff's actions, which was accepted by that court. Applicant's recourse was not accepted by the High Court. Applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

Violation of the principle of legal certainty. The Court emphasises that in the case of final judicial decisions, legal certainty is related to the fact that when the court has decided finally on an issue, its decision should not be put into doubt. That is, when the decision has become final, it is also binding on all the courts and other institutions.

On a violation of the reasoning of the decision – Applicant has claimed in essence that the courts did not make precise whether the case has to do with securing the lawsuit in the administrative trial, based on articles 28 and 29 of law 49/2012, in connection with articles 202 et seq. of the Code of Civil Procedure or with the invalidity of the executive title and an objection to the bailiff's actions, which are regulated by articles 609 and 610 of the Code of Civil Procedure.

The Court finds that the civil procedure law distinguishes between the temporary measures for securing a lawsuit that may be imposed in an ordinary trial and those that may be imposed in a trial related to the execution of executive titles. The Court finds that in the instant case, the court of appeal considered the request of the GDSP as a request to secure the lawsuit, but in the end, it did not decide on the taking of any measure of securing the lawsuit, but on the suspension of execution of the executive title. The Court also finds that the High Court supported this reasoning as well.

In the instant case, the Court finds that the court of appeal was referring to the conditions for securing the lawsuit, so far as concerns the reasons for imposing the measure of suspension of execution. In this way, it is obvious that the court, notwithstanding the means that put it into motion, was not referring to the conditions provided by law for that remedy, but another remedy, remedies that in fact represent two different institutes of the civil procedure law, which regardless of their similarities as measures of a temporary nature are distinct in their content and legal nature.

In this sense, since the claims of applicant set out in the recourse submitted to the High Court were of both a legal nature as well as a constitutional one, by deciding not to accept the recourse and not giving a final answer to those claims, the High Court did not fulfil its obligation as a court of law.

Applicant also asked for the repeal of the decision of the court of appeal, but this request was rejected because the Court did not reach the required number of votes for taking a decision.

Decision

The Constitutional Court decided, by a majority of votes, to accept the application in part; to repeal the decision of the High Court; also, to send the case for examination to the High Court; to reject the application as to the second request in connection with the repeal of the decision of the Administrative Court of Appeal (four judges dissented as to the second request)

Right of access to a trial -Standard of the judicial decision

Avenir Ballvora (*violation of the right of judicial access in connection with the standard of the decision because of an incorrect interpretation of the principle of res judicata*) – Judgment no. 75 dated 28.10.2024

KEY WORDS

Disposition by will/ invalidity of a will /legal reserve – for inability to work/ invalidity of a will – for disposition outside out the circle of legal heirs/ res judicata

Facts

The heirs Haxhire Ballvora, Sulltane Merja (Ballvora), Fatmira Ballvora and their brother (applicant's father) obtained a house by legal inheritance from their father. The sisters and the brother transferred their parts to Haxhire Ballvora by regular contracts in 1987. In 1992, Haxhire Ballvora donated the house to citizen Hajdar Qufaj, who in 1996 donated it to Vasil Nishku. The latter donated the house to applicant in 1998.

The right to ownership of this house has become a trial object in five judicial processes. At the conclusion of the first three processes, the contracts of donation were declared invalid and the house was returned to Haxhire Ballvora, who passed it to Shaqir Shtishi by will in 2000.

The fourth judicial process (2005) was related to the lawsuit of Sulltane Merja (Ballvora), with the object of contesting the will of Haxhire Ballvora. She claimed that her legal reserve had been violated, because she was unable to work. The Tirana court rejected the lawsuit with the reasoning that the legal reserve had not been violated because plaintiff had not lived with the testator at least one year before her death, a decision that remained in force at the end of the trial in all three levels.

The fifth judicial process (2013) was related to the lawsuit of applicant for a finding of the invalidity of the will of Haxhire Ballvora, claiming, in essence, that the interested subject was not included in the circle of heirs and could not benefit from the will.

The Tirana court rejected the lawsuit, but the court of appeal reversed the decision, finding the will of Haxhire Ballvora invalid, and it also dismissed the trial, with the reasoning that the interested subject was outside the ranks of legal heirs of Haxhire Ballvorës and consequently could not inherit that. In addition, her sister Fatmira Ballvora was alive at the time the will was drawn up, a fact that prohibited Haxhire from making dispositions outside the ranks of the legal heirs.

It has been affirmed in the constitutional jurisprudence that the Court does not act as a court of the fourth level, except for cases when the findings of the courts of ordinary jurisdiction can be considered arbitrary or obviously unreasonable. The Court acts in a case when a legal or factual mistake by the ordinary courts is so obvious that a reasonable court could not ever have made it or is such that it makes the trial unfair.

At the end, the High Court reversed the decisions of both court of fact and dismissed the trial, with the reasoning that the courts of fact had not interpreted the principle of res judicata correctly. Applicant turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the right of access to court in connection with the standard of reasoning of a judicial decision – Addressing the data of the last two judicial processes, which were judged by the High Court as *res judicata*, the Court points out that the judicial process previously concluded by the ordinary courts was put into motion by Sulltane Merja (Ballvora), with the object "invalidity of the will of testator Haxhire Ballvora", based on articles 360 et seq. of the Civil Code, with the legal cause, an alleged violation of the legal reserve of Sulltane Merja (Ballvora), as unable to work and in the testator's charge. This judicial process concluded (at all levels) with the refusal of the lawsuit on the reasoning that the legal reserve does not turn out to have been infringed.

Meanwhile, the other judicial process, the object of the constitutional appeal, was put into motion by applicant against the interested subject, with the object of "invalidity of the will of testator Haxhire Ballvora", based on articles 374, 377 and 379 of the Civil Code and alleging among other things that the interested subject is not included in the circle of heirs of testator Haxhire Ballvora.

Under those circumstances, the Court finds that it is a matter of two judicial processes which although they have the same object and legal basis, the invalidity of the will, differ in connection with the legal reasons of the lawsuits that have been brought.

The analysis of the High Court for those circumstances contains an obvious factual mistake in the determination that both judicial processes had the same legal reasons, which also brought as a result a legal mistake in the interpretation of *res judicata*. This means that the analysis of the High Court contains factual errors that were not objectively justifiable and reasonable, which also led to an incorrect interpretation of the law in the aspect of (not) resolving the dispute.

Decision

The Court unanimously accepted the application in part.

Right to a fair trial - Right to be tried by a court established by law -Standard of reasoning of a judicial decision - Right of property

KEY WORDS

Recognition of ownership/ previously recognised and restituted property / timely objection/ following the administrative route/ failure to apply the 30-day time period of the administrative appeal

According to Law no. 9235/2004, expropriated subjects do not have the obligation to turn to the administrative route if for the same property the former CRCP [Commission for the Restitution and Compensation of Property] or the ARCP [Agency for the Restitution and Compensation of Property] have previously decided on its recognition and restitution to another expropriated subject, cases in which the matter is in judicial jurisdiction.

So far as concerns the right to appeal in court against decisions of the ARCP, while law no. 9235/2004 has provided such a right for expropriated subjects, no time periods have been defined for its exercise. The time period of 30 days was provided later, with the amendments made to law no. 9235/2004 by law no 10207/2009. Not having a retroactive nature, those amendments cannot be applied to the instant case, which occurred previously.

Fatma Hoxha, Arlind Hoxha, Endri Hoxha (*violation of the right of access in connection with the standard of reasoning of a judicial decision because applicants did not have standing to bring a lawsuit*) – Judgment no. 76 dated 29.10.2024

Facts

In 1955, the People's Court of the Durrës District verified the legal fact of ownership in favour of citizen A. H. (applicants' testator) for a site with an area of 1310 m² and two buildings erected on it. This act was registered, and the heirs of A. H. divided that property into parts voluntarily among them. In 2006, the heirs of A. H. turned to the Regional Office of the Restitution and Compensation of Property, Durrës (ROCCP), for recognition of ownership of the site according to law no. 9235/2004 "On the restitution and compensation of property", amended.

The ROCCP decided not to examine the request because the property had been recognised and restituted previously to the Moslem Community by decision no. 205/1 of the CRCP dated 06.06.1997. On the appeal of applicants, by decision no. 240/2007 the ARCP decided not to recognise the right of ownership of the site to the heirs of A. H. In 2012, applicants went to court, seeking the annulment of the CRCP decision in favour of the Moslem Community as well as the registration of the site in their name.

The Durrës court rejected the lawsuit, reasoning that plaintiff did not have standing to contest a decision of the Durrës CRCP, because he had not objected to ARCP decision no. 240/2007 within the legal time period. The court of appeal left the decision of the Durrës court in force. The High Court declined to accept the recourse. Applicants turned to the Constitutional Court (*the Court*).

Assessment of the Court

On a violation of the right of access in connection with the standard of reasoning of the judicial decision – Regardless of the nature and type of applicants' lawsuit, the Durrës court had rejected it with arguments both of a procedural nature and of a substantive nature. On the other hand, the court of appeal left the decision of the Durrës court in force considering only the arguments of a procedural nature, which were supported as lawful by the High Court.

The Court finds that so far as concerns law no. 9235/2004, the High Court made a unifying interpretation of it, reaching the conclusion that in implementation of that law, expropriated subjects do not have the obligation to use the administrative route if for the same property the former CRCP or the ARCP have given a decision previously for its recognition and restitution to another expropriated subject, cases in which the matter is in judicial jurisdiction.

Concerning the right to appeal decisions of the ARCP in court, the Court finds that at the moment when the ARCP rendered decision no. 240/2007 not to recognise the right of ownership to applicants' testator, although law no. 9235/2002 provided the right of appeal for expropriated subjects, it did not specify the time periods for its exercise. The 30-day term was provided later, in its article 18, only after the amendments made to it by law no. 10207/2009; this provision seems to have been applied in the instance case by the ordinary courts.

The Court finds that the dispute set out before the courts is related to the right of ownership, while the lawsuit of applicants for the recognition of that right was rejected by the court of appeal and the High Court with arguments of a procedural nature, without examining it on the merits. In the concrete situation, neither did applicants have the obligation to follow the administrative route for the recognition and restitution of the property nor could the ARCP decision have led to the loss of their right of ownership or conditioned the exercise by them of the right to bring a lawsuit seeking the property.

The Court judges that the findings of the court of appeal and the High Court did not meet the function of a correct decision from the viewpoint of reasoning. In addition, by not examining the lawsuit of applicants on the merits, the courts violated applicants' right of access to court.

Decision

The Constitutional Court unanimously accepted the application in part.