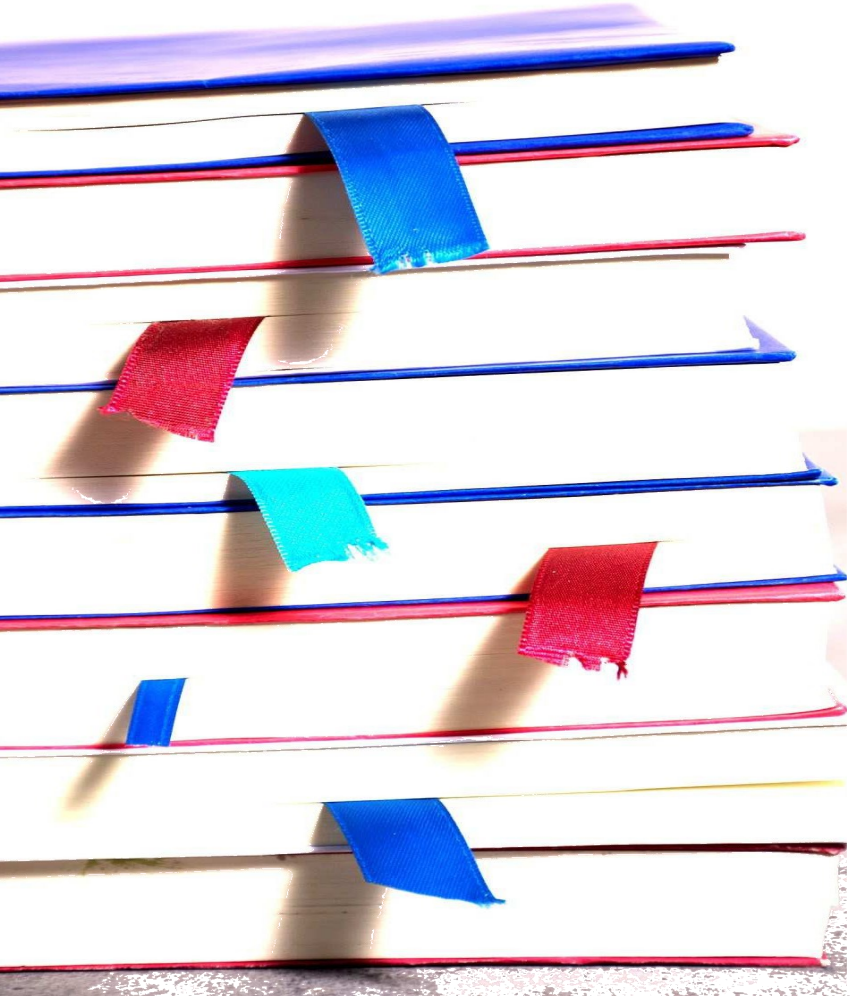
REPUBLIC OF ALBANIA

Constitutional Court

Periodical Newsletter

of the Constitutional Court

Decisions July 2024



Periodical Bulletin of Decisions
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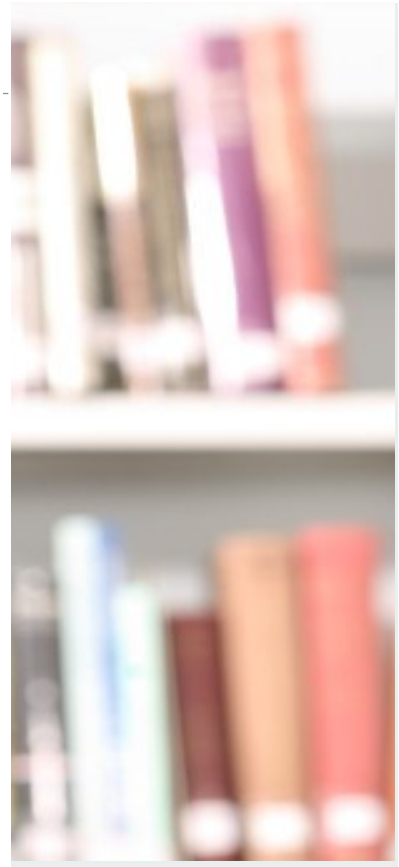

INTRODUCTION

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 July 2024.

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

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

CONTENT

Principle of parliamentary autonomy – Right of the parliamentary minority to ask for an investigative commission – Standard of mandatory implementation of decisions of the Constitutional Court – Right of the parliamentary minority to an effective investigation – Right to transparency and accountability – Principle of legal certainty

KEY WORDS

Parliamentary autonomy/ legislative initiative/ effective parliamentary control/ effective parliamentary investigation/ concrete issue/ alternative formulation/ legal vacuum/ admission of evidence/ intermediate decision/ permission from the prosecutor's office to call witnesses/ interpretation in conformity with the Constitution

The absence of a provision for an "alternative formulation" of the object of investigation creations a legal vacuum that violates the constitutional right of the minority and also entails an infringement of the function of the Assembly for a parliamentary investigation.

No fewer than one fifth of the deputies of the Assembly (*law amending the law on investigative commissions*) – judgment no. 54 dated 09.07.2024

Facts

Several deputies of the Assembly deposited various legal initiatives for additions and amendments to law no. 8891 dated 02.05.2002 "On the organisation and functioning of investigative commissions of the Assembly", of which only one initiative was approved by law no. 106/2023 in a plenary session of the Assembly (the amending law). The applicant turned to the Constitutional Court seeking the repeal of the amending law as incompatible with the Constitution, claiming in essence that the law violates the right of the minority's control according to article 77 of the Constitution.

Assessment of the Court

In the assessment of the Court, although the repeal of the amending law in the entirety was sought, applicant's claims are mainly related to articles 4, 6, 7 and 9 of that law.

Article 4 – The constitutional jurisprudence emphasises that the right to conduct a parliamentary investigation is not unlimited and that this limitation is related to the obligation that the object of the investigation shall respect these constitutional standards and principles: (i) the issue should have to do with the legislative function and other functions as to which it has been authorised to take legal measures; (ii) the object of investigation should be focussed on concrete subjects or issues; (iii) sufficient data or indicia should exist testifying to the existence of an issue as to which investigation is necessary, and (iv) when the majority claims that the constitutional principles and standards are infringed in the object of investigation, it is obligated to propose alternative formulations, giving the minority the opportunity to reformulate its request.

The Court observed that article 4 has reflected only part of the constitutional standards, while the obligation of the parliamentary majority to propose alternative formulations when it finds that the object of the investigation endangers the constitutional principles and standards is absent. The absence of the provision for an "alternative formulation" creates a legal vacuum that violates the constitutional right of the minority and also entails an infringement of the functioning of the Assembly for a parliamentary investigation.

Article 7 (points 4 and 5) – The Court judged that if the law does not guarantee the right to obtain evidence in the procedural aspect, it will not be able to guarantee the right of the minority to conduct an effective parliamentary control. In order to guarantee such a control, the intermediate decision about refusing evidence should be an exceptional case from the general rule, and in any case, it should be reasoned in the aspect of giving reasons for the refusal. The manner in which the legislator has acted has created a legal vacuum, because he has not guaranteed full procedural guarantees in article 7 of the amending law so that to guarantee the right of the minority to an effective parliamentary control.

Article 9 (points 1/2 and 2/4) – The Court judges that the content of these provisions does not respect the principle of the separation and balancing among the powers and that of legal certainty.

In connection with point 1/2, the provision -that obliges the Assembly to ask for permission from the prosecutor's office/court to call witnesses -restricts the parliamentary investigation, since it leaves to the assessment of the prosecutor's office/ court the importance and the admission of that piece of evidence, something that violates the effectiveness of the parliamentary investigation at the core. This obligation constitutes interference in the activity of the Assembly.

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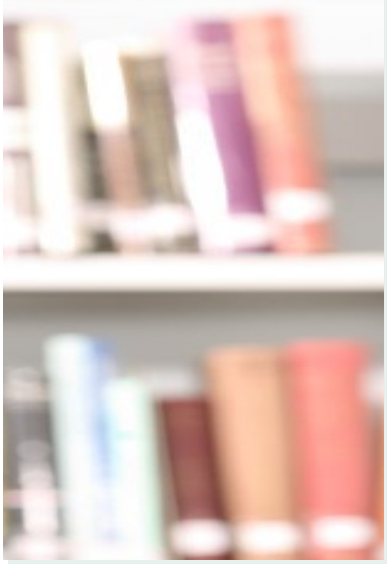
For the purpose of guaranteeing effective parliamentary control, an intermediate decision of an investigative commission refusing evidence should be an exception from the general rule and in every instance should be reasoned.

The provision that obliges the Assembly to ask for permission from the prosecutor's office/court to call witnesses violates the effectiveness of parliamentary investigation at the core.

Article 9 of the amending law guarantees the right not to testify against oneself also for cases when it is a matter of "persons to related to him" , without defining this concept and without determining the category of persons included in it. The concept related person" goes beyond the concept of "family" that article 32 of the Constitution protects, making the concept "related person" unclear.



This provision also has problems in the aspect of its clarity, in connection with the principle of legal certainty, because not only does it not define the boundaries up to which the right of the prosecutor/court extends for permitting the calling of witnesses, but also, in the aspect of the circle of witnesses, it extends its implementation also to cases as to which an investigation has not yet started or as to which the circle of witnesses who will be called has not been determined, permitting abuse with the circle of witnesses to whom this provision is applied.

So far as concerns the content of point 2/4, examining its content in the aspect of compatibility with the fundamental human rights, the Court judges that unlike article 32 of the Constitution, which guarantees the right not to testify against oneself or one's family, point 2/4 links the right of the witness to refuse to testify also to cases when it is a question of "persons related to him" without defining this concept and without determining the category of persons included in it. The concept "related person" goes beyond the concept of "family" that the constitutional norm aims at protecting, making this provision unclear.

Article 6 – The Court judged that this provision violates the right to transparency and accountability, because the holding of closed-door meetings is done with only the votes of the majority. The Court finds that unlike the prior article that has been amended, article 6 has provided in an exhaustive manner the instances or situations for holding meetings without the participation of the public, defining them through a numbered list. Although the Court finds the last two reasons on the list ("c" and "d") incomplete and unclear, because they leave space as to the manner of their interpretation during implementation by the investigative commission case by case, this is nevertheless not sufficient to make that article unconstitutional, since they permit several ways of interpretation, making it possible for the Court to verify, through a conciliating interpretation, whether there is an interpretation that is in harmony with the Constitution.

In this aspect, the Court gives the orientation that the definition of "commercial secret" should be interpreted according to the legislation in force, and also that the provision "secret in the interest of the state" should be applied and interpreted by the investigative commission only as every piece of data provided as classified information on the basis of the law, also including an "investigative secret". The Court judges that with this conciliating interpretation, the content of article 6 does not violate the principle of transparency and accountability.

Decision

The Court decided by a majority of votes to accept the application in part, finding articles 4 and 7 of law no. 106/2023 incompatible with the Constitution, repealing article 9, points 1 and 2 of law no. 106/2023, and also obliging the Assembly to fill in the legal vacuum within six months from the entry into force of this decision (one judge dissented in part).

Standard of mandatory implementation of decisions of the Constitutional Court – Principle of the free (non-binding) mandate of the deputy.

KEY WORDS

Profit-making activity that stems from the assets of the state/ motion for incompatibility of the mandate of the deputy/ dispute of competences between 1/10 of the deputies and the Assembly/ first interpreter of a constitutional norm/ new constitutional case

The Court emphasises that a new constitutional dispute can arise from the failure to implement a decision of the Constitutional Court, depending on the circumstances of the case, which should contain new elements that were not first subject to the assessment of the Court.

In decision no. 1/2023, when treating the dispute of competence between 1/10 of the deputies and the Assembly, the Court emphasises that the verification and evaluation of the legal-formal criteria of requests of this nature is an issue that pertains to the Assembly, while the assessment of the merits of the case pertains exclusively to the Court.

No fewer than one tenth of the deputies of the Assembly and no fewer than one fifth of the deputies of the Assembly (*failure by the Assembly to implement a decision of the Constitutional Court*) – judgment no. 55 dated 10.07.2024

Facts

Two groups of 14 and 15 deputies of the parliamentary minority (no fewer than one tenth) addressed two motions to the Assembly in June and July 2022 for a finding of the invalidity and end of the mandate of deputy Olta Xhaçka, because a commercial company owned by her husband, consequently also of the deputy in question, has obtained property rights from the assets of the state. By decisions no. 85 and 84 of the year 2022, the Assembly decided not to approve the report of the minority, but to approve the report of the parliamentary majority, according to which the constitutional criteria for putting the Court into motion (article 70, points 3 and 4 of the Constitution) are not met. As a consequence, the Assembly did not send the case to the Court.

The group of 1/10 of the deputies turned to the Court to resolve the dispute of competence created between it and the Assembly, as a consequence of decisions 83 and 84, as well as a declaration of their incompatibility with the Constitution (the first case). At the same time, another group of 28 deputies of the Assembly (1/5) addressed the Court seeking the repeal of those Assembly decisions based on the same complaints (second case).

As to the first case, by its decision no. 1/2023, the Court decided to accept the application, resolving the dispute of competence between 1/10 of the deputies and the Assembly and repealing mentioned decisions 83 and 84. As to the second case, the Court dismissed the trial with decision no. 2/2023, judging, in essence, that what it sought was repealed with decision 1/2023, and also that the Court did not have jurisdiction to find incompatibility of the mandate of a deputy according to point 2 of article 70 of the Constitution.

Through the Council on Legislation and the Council on Mandate, the Assembly again examined decisions 1/2023 and 2/2023. The majority and the minority presented their reports in the Council on Mandates in connection with the motion and the implementation of decision 1/2023 of the Court, and it was also sought for the matter to pass to the plenary session for examination. The Assembly decided not to implement decision no. 1/2023 of the Court. The applicants (1/10 and 1/5 of the deputies) turned again to the Court. The 1/10 applicant sought the declaration of Assembly decision no. 41/2024 as incompatible with the Constitution and the resolution of the disputes of competences created by this decision between it and the Assembly, while the 1/5 applicant asked for a final interpretation of articles 70, points 1 and 4, 73, point 1 and 132, point 1 of the Constitution.

Assessment of the Court

The Court finds that at the core of the applications of 1/10 and 1/5 of the deputies is the mandatory force of decision 1/2023 of the Court which determined the obligation of the Assembly to initiate a constitutional process of control of the incompatibility with the Constitution of the mandate of deputy Olta Xhaçka. The Court dealt initially with handling the application of the 1/10 applicant.

On the jurisdiction of the Court – The failure to implement a decision of the Court can give rise to a new constitutional dispute, but the definition of a "new issue/dispute" depends on the circumstances of the case, in the sense that the case should contain new elements that were not previously subjected to the Court's assessment. By decision no. 1/2023, the Court decided the resolution of the dispute of competence created between 1/10 of the deputies and the Assembly, which, in violation of decision 1/2023, again decided, by decision 41/2024, not to send the motion of 1/10 of the deputies to the Court. As a consequence, because of decision 41/2024, a new conflict of competence was created between the 1/10 and the Assembly. This conflict is concrete, has a constitutional nature and has created a new constitutional issue, which is included in constitutional jurisdiction.

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The failure to implement decisions of the Court violates the entire structure of rights and obligations and constitutes a dangerous precedent.

The principle of the free mandate of the deputy is not an absolute freedom of the deputy, unrestricted by the Constitution and the laws, an element of which is also the binding nature of the implementation of decisions of the Court.

Although the Assembly is the first interpreter of the constitutional provisions, it cannot interfere on those matters where the Court, which makes the final interpretation of the Constitution according to its article 132, has expressed itself.

On the merits of the application - Putting a constitutional trial into motion only for the case of verifying incompatibility according to point 3 of article 70 of the Constitution is considered an instrument of control of the legislative power which requires a trial, something that is outside the entitlements and possibilities of the Assembly. In cases when it is put into motion according to article 70, point 4 of the Constitution, the Assembly cannot put up for discussion the motion submitted and cannot subject it to parliamentary debate, but its decision-making is in the service of the legitimacy of this organ as one of the subjects that can put constitutional jurisdiction into motion. The Court re-emphasised that the verification and evaluation of the legal-formal criteria of requests of this nature is a matter that pertains to the Assembly, while the evaluation of the merits of the case pertains exclusively to this Court.

As to the implementation of its decisions, the Court has stressed that the mandatory nature of the implementation of its decisions is guaranteed by the Constitution (article 132). They have binding force and are conclusive and as such they constitute constitutional jurisprudence and consequently have the effects of the force of law. The failure to implement decisions of the Court violates the entire structure of rights and obligations provided in the Constitution, which constitutes a dangerous precedent.

In connection with the principle of the free mandate of the deputy (article 70, point 1 of the Constitution), it has been emphasised in the constitutional jurisprudence that the mandate of a deputy is not revoked by the voters or the political party, he is not bound by the orders of the electorate and he is not obliged to be or to remain part of particular parliamentary group. However, this principle cannot be understood as an absolute freedom of the deputy which is not limited by the Constitution and the laws, to act in such a manner that the Assembly will not be in a condition to implement the requirements that come from the Constitution and to approve decisions in harmony with it. When the deputies are called to voting, the principle of the free mandate cannot be understood as his absolute freedom which is not limited by the Constitution and the laws, an element of which also the binding nature of the implementation of decisions of the Court. In this sense, the principle of the deputy's free mandate cannot be extended to matters that have to do with the implementation of decisions of the Court.

So far as concerns the role of the Assembly as the first interpreter of a constitutional norm, that organ may intervene up to that point and only on those issues where the Court has not expressed itself, as the organ that makes a final interpretation of the Constitution. If this has happened, the Assembly may no longer exercise the role of first interpreter of the constitutional norm.

The Court judges that the Assembly's decision not to implement decision 1/2023 cannot be justified with the principle of the non-binding mandate of the deputy, because the implementation of a decision of the Court is not a political matter, a case where the Assembly has a margin of appreciation and the deputy enjoys the freedom to choose his position through voting according to the free mandate.

As to the application of 1/5 of the deputies, the Court judged that since the interpretation of the constitutional provisions has received an answer in its reasoning, it will not go on to examine that application.

Decision

The Court decided by a majority of votes to accept the application in part, resolving the conflict/dispute of competence between the Assembly and the constitutional subject in conflict, no fewer than 1/10 of the deputies, repealing decision no. 41/2024 of the Assembly of Albania, and obliging the Assembly to send the motion on the incompatibility of the mandate of deputy Olta Xhaçka to the Constitutional Court (one judge dissented).

Freedom of economic activity – Principle of proportionality of an intervention

KEY WORDS

Excises/ tax obligations/ differentiated excises/ excise unification/ economic policy/ tax system/ preferential treatment

Repealed legal norms may be subjected to constitutional control only when they are to be applied to the regulation of legal consequences that extend over time and are related to the execution of civil legal obligations that result from legal relationships created in the time of the repealed law.

Concerning the criteria that a legal provision that limits the freedom of economic activity should respect, the principle of proportionality of the intervention is analysed according to its three sub-criteria, need, essentialness and appropriateness.

Concerning the essentialness of the intervention, the imposition of a restriction of preferential treatment, through unification, does not violate the core of the freedom of economic activity of the companies that are members of applicant. The means used was essential to achieve the purpose (equality in the fiscal burden). Lifting the preferential treatment of the producers of beer brings the appropriate effect and accomplishes the intent for which it was chosen.

Association of Producers and Traders in Domestic Alcoholic Beverages *(amendments to the law on excises)* – judgment no. 56 dated 16.05.2024

Facts

The law on excises and its amendments up to the year 2021 had established a differentiation of the excise for products of beer, depending on the quantity produced. By later legal amendments (laws no. 81/2022 and no. 94/2023), the Assembly repealed that differentiation, unifying the excise, which brought an increase to the members of the association for the product of beer. Applicant lodged a constitutional appeal at various times in the Court for the repeal of those amending laws which, according to applicant, violated the freedom of economic activity in the aspect of the proportionality of the intervention, the right of property, the principle of legal certainty and article 70 of the Stabilisation/ Association Agreement with the EU.

Assessment of the Court

Jurisdiction of the Court – Although law no. 81/2022 was repealed by law no. 94/2023, it brought direct consequences to the members of the applicant association in the aspect of raising the excise level. The repealed legal norms can be subjected to constitutional control only when they, as a part of positive law, are to be applicable for the adjustment of the legal consequences which extend in time and are related to the periodic or the fixed-deadline execution of civil legal obligations that derive from legal relations created in the time of the repealed law. In this sense, the Court considered that it has jurisdiction to examine the compatibility of law no. 81/2022 with the Constitution.

Freedom of economic activity – The amending laws repealed the excise differentiation, unifying it, which means an additional obligation would be applied against the members of the applicant association for the excise on beer, putting a restriction on the freedom of economic activity. In order to evaluate this restriction, the court analysed whether the legal intervention met the constitutional criteria according to articles 11 and 17 of the Constitution: (i) the restriction shall be made by law; (ii) for important public reasons/ interests; (iii) to have respected the principle of proportionality.

The Court found that the first criterion was met, because the restriction was made by law. Also, the legal amendments serve a public interest, which is made concrete in the increase of income to the state budget and its use for improving the needs of society, as well as the avoidance of fiscal evasion.

For the evaluation of the proportionality of the intervention, the Court sees the criterion of proportionality according to its three sub-criteria, need, essentialness and appropriateness.

Thus, the Court considered that a need existed for legal interventions, related to increasing income to the state budget, as well as unification of the excise in order to avoid discrimination between producers of beer.

Concerning the necessity of the intervention, the Court underlined the fact that the producers and traders of beer had had preferential treatment for a 15-year period, with the purpose of giving them an appropriate opportunity and to consolidate their activity, and putting a restriction on that preferential treatment through unification would not violate the core of the freedom of economic activity of applicant's members.

The Court found that the means used was essential to reach the purpose (equality in the fiscal burden). Finally, in the assessment of the Court, lifting the preferential treatment of the producers of beer would also meet the appropriateness of the intervention, because it would bring an increase in the state budget and a reduction of spaces for avoiding its payment. In this aspect, that measure brings an appropriate effect and accomplishes the intent for which it was chosen.

Decision

The Court rejected the application by a majority of votes (two judges concurred and two judges dissented).

Principle of availability in a constitutional trial

KEY WORDS

Withdrawal from a constitutional appeal/ exemption from the principle of availability/ public interest/ notarial declaration

Although the legal representatives selected with a special power of attorney did not have knowledge of it nor did they revoke the entitlements of representation, a notarial declaration presented by the administrators of applicants constitutes an act of withdrawal from the constitutional complaint and entails the dismissal of the trial if the Court does not judge that there is a public interest in examining the case that permits the continuation of the trial on an exceptional basis.

The company "Meteo" sh.p.k., the company "NG Structures" sh.p.k. *(withdrawal from an individual constitutional complaint)* – judgment no. 53 dated 08.07.2024

Facts

The applicants, companies with activity in the field of construction, lodged an individual constitutional complaint with the Court with the object of repealing article 19 of law no. 22/2018 on social housing, according to which 3% of the building area passes to the municipality for the public fund of social residences, without compensation. After the case passed to the plenary session, the administrators of the two applicant companies submitted a joint notarial declaration to the Court withdrawing from the examination of the application, a reason for which the Court set an examination of the issue with priority.

The legal representative of the applicants for the constitutional trial, who was selected with a special power of attorney, stated that the declaration does not constitute a request to the Court and that he has no knowledge about it or about the revocation of the rights of representation of applicants by him in the constitutional trial. Meanwhile, the Constructions' Association of Albania, on its own initiative, submitted a written opinion in Court emphasising that the declaration does not constitute a request to the Court for withdrawal, so the constitutional trial should continue, because the matter has a public interest for them and for the society as a whole in the aspect of the economic development of the country.

Assessment of the Court

The Court observed that, based on the content of articles 31/b and 43/b, point 2 of law no. 8577/2000, the principle of availability operates for putting a constitutional trial into motion, according to which an applicant has the right to interrupt a proceeding started by him through an act of withdrawal. This act, as a rule, entails the dismissal of examination of the case, except when its examination has a public interest. Consequently, the Court analyses whether (i) a notarial declaration constitutes a request for withdrawal from the individual constitutional complaint; (ii) the examination of the case has a public interest, in the meaning that the exception to the rule of the principle of availability is applicable.

Specifically, the Court found that through the notarial declaration, the administrators of the applicants expressed themselves about withdrawal from the individual constitutional complaint. Taking into consideration that the administrator of a company, by law, has the right and is obliged to represent the company and that the will for withdrawal has been declared before a public notary, it results that they have acted within their legal rights and there is no room to doubt the will clearly expressed by them. The fact that the legal representative of the applicant companies did not have knowledge about the act of withdrawal or the non-revocation of the act of representation does not affect the validity of the act of withdrawal, since it is a matter of a right that based on the principle of availability is recognised personally to applicants.

So far as the public interest is concerned, the Court assessed that although the case is related to the right of property and the economic freedom of a category of individuals, the mere fact that the case is related to the fundamental rights of applicants is not sufficient. Consequently, since there is no convincing reason that the continuation of the trial presents a public interest, there is no place for applying the exception from the principle of availability.

Decision

The Court decided by a majority of votes to dismiss the trial of the case (two judges dissented).

Criterion of standing *ratione temporis* to address the Court

KEY WORDS

Time period for a constitutional appeal/ receipt of effective knowledge/ European Court of Human Rights (ECtHR)/ non-acceptance of a recourse/ not passing a case to a plenary session

As a rule, the date of notice is the date of announcement of the reasoned judicial decision in the presence of the party, while when the judicial decision is not announced with reasoning or when the party is not present, the date of receipt of knowledge is considered that of its written or electronic notice. When the appeal has to do with a decision of the High Court, the date of receipt of knowledge is considered the date when the reasoned decision becomes available to the parties by being deposited in the judicial secretariat and its publication on the official web page or electronic notice of it, when the parties have left electronic contact data.

Company "2001" sh.p.k. *(submission outside the time period for a constitutional complaint)* – judgment no. 161 dated 15.07.2024

Facts

The applicant submitted a lawsuit to the Tirana District Court, which returned the lawsuit and the acts without action because the applicant had not corrected the defects of the lawsuit. Applicant made a special appeal to the Tirana Court of Appeal, which left the Tirana district court's decision in force. The applicant submitted a recourse. After a period of several years while the case was waiting to be examined in the High Court, the applicant turned to the ECtHR, which rejected the application as inadmissible because of the failure to exhaust the remedy of a constitutional appeal. While the application was being examined in the ECtHR, the High Court decided not to accept the recourse, with the reasoning that it did not contain reasons from among those provided in the law. On 29.04.2024, the applicant lodged an individual constitutional complaint, as to which the College of the Constitutional Court decided to pass the case to the Meeting of the Judges for preliminary examination.

Assessment of the Meeting of the Judges

In connection with standing *ratione temporis,* the Meeting of the Judges found that the date of receiving knowledge effectively of the judicial decision taken in the exercise of the final means of appeal is the date of the beginning of the legal four-month term for lodging the individual constitutional complaints. In the instant case, it was found that the decision of the High Court bears the date of 14.07.2021, while the application was lodged in the Court on 29.04.2024, almost three years later, outside of the four-month term. The applicant claimed that it had been notified of the decision of the High Court that had decided not to accept the recourse through the decision of the ECtHR.

According to applicant, it had gone to the High Court three times in the year 2023 to obtain its reasoned decision, and on 04.01.2024, that Court finally sent it the reasoned decision. Based on those facts, the applicant claimed that it had obtained effective knowledge of the contested decision on 04.01.2024 (that decision having been published on the High Court's official web page on 29.5.2024).

The Meeting of the Judges finds that the judgment of the ECtHR was taken on 30.05.2023, where contained the circumstance that -the High Court had decided on 14.07.2021 not to accept the recourse-, and also that the ECtHR had asked the applicant to exhaust the remedy of a constitutional complaint.

Although the High Court had not published the reasoned decision on its official web page at an appropriate time, the Meeting of the Judges finds that applicant had received effective knowledge of the High Court's decision during the process before the ECtHR, as well as with publication of the latter's decision in the Official Journal on 27.07.2023. In this situation, it is considered that the applicant lodged the constitutional complaint beyond the legal four-month term, and consequently it does not have standing *ratione temporis* to turn to the Court.

Decision

The Meeting of the Judges decided by majority vote not to pass the case to a plenary session for examination.

Criterion of exhaustion of effective legal remedies

KEY WORDS

Waiting list/ civil servant/ entry into force/ retroactive force/ final decisions

High Court`s decisions that reverse decisions of the lower courts and return the case for retrial cannot be considered as final decisions for purposes of a constitutional trial, because they do not decide on the merits of the case in a final manner.

When the process on the merits is continuing to be tried in the ordinary courts, an applicant has all the necessary legal means for the protection of his interests during the retrial of the case.

Gëzim Kodra *(failure to exhaust legal remedies)* – judgment no. 165 dated 17.07.2024

Facts

The applicant was the head of sector in the Finance Directorate in the Ministry of Defense. By decision of the Secretary General of that Ministry, the applicant was put on the waiting list due to the restructuring of the institution. The applicant turned to the court. The Administrative Court of First Instance accepted the lawsuit in part. According to the court, the lawsuit was filed in court on 20.03.2014 and the applicant was notified of his transfer to the waiting list on 19.02.2014. By its judgment no. 5 of 05.02.2014, the Constitutional Court repealed of the Council of Ministers` normative act no. 5 of 30.09.2013, which had determined the beginning of the effects of the law on the civil servant.

On the complaint of the Ministry of Defense and the Department of Public Administration, the Administrative Court of Appeal left the decision of the court of first instance regarding the applicant in force. A recourse was brought against such decision. The High Court reversed the decision and sent the case for re-examination to the court of appeal, with the reasoning that the lawsuit was submitted for trial after the entry into force of the Court`s decision that repealed the normative act, not having as a consequence retroactive force in the meaning of article 76 of the organic law of the Court.

The High Court gave the court of appeal, in the retrial, instructions of analyzing the claims set out by the parties in conformity with the provisions of the law on the civil servant. Applicant turned to the Court with an individual constitutional complaint.

Assessment of the Meeting of the Judges

The standing of applicant – The applicant asks the Court for the repeal of the High Court`s decision that reversed the court of appeal`s decision and returned the case for re-examination to the same court. The applicant claimed that he has *exhausted the effective legal remedies,* because although the High Court decision returned the case to the court of appeal for re-examination, it is binding so far as it concerns the instructions assigned to that court.

According to the constitutional jurisprudence, such decisions cannot be considered final decisions, for purposes of a constitutional trial, because they do not decide in a final manner about the merits of the case. In such instances, when the process on the merits continues to be on retrial, the applicant has all the necessary legal means necessary for the protection of his interests during the retrial of the case, also including constitutional protection in this Court. The Meeting of the Judges finds that although the High Court seems to have instructed the court of appeal what the applicable law is for the resolution of the concrete dispute, the applicant's case has not finished being examined yet in the courts of ordinary jurisdiction. For this reason, the Constitutional Court, which makes a final judgment of the appeals of individuals, cannot be invested in this phase.

Decision

The Meeting of the Judges decided not to pass the case to a plenary session for examination.

The right to be informed and assisted by an interpreter in a language that one understands – Effects and appropriateness of a security measure for purposes of extradition

KEY WORDS

Being wanted internationally/ extradition/ temporary arrest/ interpreter/ language that one understands/ length of time of reasoning a decision/ failure to notify the reasoning of a decision

Article 28, point 1 of the Constitution speaks about notice to a person whose liberty is taken away "in a language that he understands", that is, not necessarily in the language of the country whose citizenship that person has, since its purpose is to assure notice to the detained or arrested person so an extent that is sufficient to permit him to understand the reasons for taking away liberty. The criminal procedure law specifies the interpreter as one of the participants in the criminal proceeding, for the purpose that through communication with the defendant (or an equivalent person in a criminal process) in his mother tongue or one that he understands, if he does not speak and does not understand the Albanian language of the process, the latter will realise his rights in the criminal process, among them and as the case may be, also that to know the reasons of being arrested and the accusation made against him.

Stephan Morgenstern *(temporary arrest measure for purposes of extradition)* – judgment no. 175 dated 25.07.2024

Facts

The applicant, a German citizen, was declared internationally wanted on the basis of an international arrest warrant issued by a court in South Korea, which set the measure of "prison arrest" against him as suspected of committing several criminal offences. The judicial police carried out a temporary arrest of the applicant. The prosecution office asked the court to set the security measure of "prison arrest" for purposes of extradition. The court of first instance accepted the prosecutor's request. The Court of Appeal left the decision in force. The applicant brought a recourse, and the High Court decided not to accept it. The applicant turned to the Constitutional Court (the Court).

Assessment of the Meeting of the Judges

Standing *ratione materiae* – The Meeting of the Judges finds that applicant's claims are related to the extradition request, thus, the merits of the case, while the object of the judicial proceeding is related to the temporary implementation of coercive measures before the request for extradition arrives. For these reasons, the Meeting of the Judges assesses that those claims cannot be examined at this moment, since the applicant still has effective legal remedies available to him.

So far as concerns the applicant's claim that his right to be informed and assisted by an interpreter in a language that he understands, the Meeting of the Judges finds that according to the minutes for the temporary arrest, the applicant was arrested in the presence of an Albanian citizen, declared as a trusted person of applicant, who affirmed that he possessed very good knowledge of Albanian and English, languages which the applicant also possessed very well. It is also shown in the minutes that the applicant's arrest was done because he was wanted internationally by Interpol South Korea, while the court of that country had set the security measure of "prison arrest" against him.

Also, according to the minutes, after being made aware of his rights, the applicant chose a defence attorney, who was immediately notified and was present in the subsequent legal actions. The minutes of the temporary arrest were signed regularly and without comments by the applicant and his trusted person. The Meeting of the Judges also finds that an official English language interpreter was also present in the next judicial session, who also assisted him during the judicial process. In this sense, the mere fact that the notification of the reasons of arrest and of the accusation made was not done with the assistance of an official interpreter cannot lead to a denial of the fact that he received such a notification, all the more when the accuracy of the notification made in this aspect is not contested, according to the minutes of arrest.

So far as concerns the claim that the security measure has lost its effects because of the failure to reason the decision by the court of first instance within 48 hours, the Meeting of the Judges finds that, according to the acts in the judicial file, it results that the court decision was given within the time period of 48 hours. In the assessment of the Meeting of the Judges, the applicant did not succeed in proving consequences that were incurred for this reason, since he was not impeded in his constitutional right to submit an appeal to a higher court. Furthermore, the legislator has linked the consequence of the loss of force only with the case when the time period of examining the case was not respected, and not when the time period for reasoning the decision has not been respected.

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The security measure does not lose its effects because the court of first instance does not reason the decision within 48 hours. What is important is that the decision of the court shall have been rendered within the time period of 48 hours. Furthermore, the legislator has linked the consequence of the measure's loss of force only with the case when the time period for examining the case has not been respected and not when the time period for reasoning the decision has not been respected.

The applicant has claimed that a more serious measure was given to him than that requested in the Interpol notice, according to which the arrest was sought but not necessarily prison arrest, and also that the appropriateness of other alternative measures was not considered, such as the security measure of a property guarantee or house arrest. The Meeting of the Judges finds that the security measure of "prison arrest" was set against him by the Korean authorities as suspected of committing several criminal offences. Going on, the applicant's temporary arrest by the Albanian authorities and the setting of the security measure of prison arrest was done for purposes of his extradition. Consequently, this claim of applicant is openly ungrounded.

Decision

The Meeting of the Judges decided by a majority of votes not to pass the case to a plenary session for examination.