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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Albania** as well as précis published in the Bulletin on Constitutional Case-Law

Albania

Constitutional Court

I. Introduction

1. Date and context of creation

Albania set up a Constitutional Court for the first time in its history as a state under Constitutional Law no. 7561 of 29 April 1992 "On an addendum to Law no. 7491 of 29 April 1991 'On the main constitutional provisions'". Articles 17 to 28 of this Law institute the Constitutional Court and establish its status, powers, structure, composition, operation and jurisdiction, as well as laying down the principles it must follow when deciding constitutional issues. The Court commenced its functions on 1 June 1992, when its first members swore an oath in the presence of the President of the Republic.

II. Place of the Constitutional Court in the judicial hierarchy

1. The Constitutional Court in the new Constitution

The Constitutional Court of Albania is not part of the ordinary judicial system; it is a separate court responsible for monitoring the compatibility with the Constitution of laws and other normative instruments. When the Constitution of Albania entered into force on 28 November 1998, the Constitutional Court acquired an important institutional role. It guarantees compliance with the Constitution and decides in last instance on its interpretation (Article 124 of the Constitution). Articles 124-134 of the Constitution deal with the Constitutional Court as an independent constitutional tribunal. In its activity, the Constitutional Court is subject solely to the Constitution. These provisions deal with the composition of the Court, appointment and status of its President and judges, the type and scope of its powers for monitoring constitutionality, the persons and bodies by which cases may be referred to the Court and the binding force and application of its decisions.

2. Basic texts

- The Constitution of Albania, in force as from 28 November 1998;

- Constitutional Law no. 7561 of 29 April 1992 "On an addendum to Law no. 7491 of 29 April 1991 'On the main constitutional provisions'";

- Law no. 8373 of 15 July 1998 "On the organisation and functioning of the Constitutional Court of Albania" (repealed);

- Law no. 8577 of 10 February 2000 "On the organisation and functioning of the Constitutional Court of Albania".

III. Composition

1. The Constitutional Court is the highest authority, upholding and guaranteeing compliance with the Constitution, which it has ultimate power to interpret. It functions independently and is subject only to the Constitution (Article 124 of the Constitution).

The Constitutional Court is composed of nine members, who are appointed by the President of the Republic with the consent of the National Assembly. Judges are appointed for nine years; they may not be re-appointed. One third of the members of the Court are replaced every three years. The President of the Constitutional Court is appointed from the ranks of its members by the President of the Republic with the consent of the Assembly for a three-year term. Judges are appointed from among lawyers with a diploma in higher legal studies and at least 15 years' professional experience (Article 125 of the Constitution).

2. The office of judge is incompatible with any other public office or private occupation (Article 130 of the Constitution). Constitutional judges may not be criminally prosecuted without the prior consent of the Constitutional Court. They can be detained or arrested only if apprehended in the commission of a crime or immediately thereafter. If the Constitutional Court does not give its consent within 24 hours for the arrested judge to be prosecuted, the competent body must release him (Article 126 of the Constitution).

3. The term of office of a judge of the Constitutional Court ends when he:

a. is sentenced in a final decision for commission of a crime;

b. fails without reason to perform his duties as judge for more than six months;

c. reaches the age of 70;

d. resigns;

e. is declared incompetent to act in a final judicial decision.

4. The term of office of a judge is terminated by decision of the Constitutional Court. If the seat of a judge falls vacant, the President of the Republic, with the consent of the National Assembly, appoints a new judge, who completes the term of office of his predecessor (Article 127 of the Constitution).

IV. Referral

1. The following may refer a case to the Constitutional Court:

a. the President of the Republic;
b. the Prime Minister;
c. one fifth of the deputies of the Assembly;
d. the Chairman of the State Audit Office;
e. any court, as provided for in Article 145, paragraph 2, of the Constitution;
f. the People's Advocate;
g. local government bodies;
h. bodies representing religious communities;
i. political parties and other organisations;
j. individuals.

The bodies referred to in f, g, h, i and j may initiate an action only for issues involving their interests.

2. Each application to the Court is submitted to the President of the Court, who appoints a judge to prepare a report on the case for preliminary consideration (Article 27 of the Law on the organisation and functioning of the Constitutional Court). A chamber composed of three judges, including the rapporteur, considers the admissibility of the application. Where the decision on admissibility has not been rendered unanimously, the case is laid before the plenary court, which takes a majority decision (Article 31 of the Law). An application is declared inadmissible

when its subject-matter does not fall within the jurisdiction of the Court or when the person making the application does not have the right to do so.

3. The Court is convened by its President. It meets in plenary session and is chaired by its President. The provisions of the Constitution as well as those of Law no. 8577 of 10 February 2000 on the organisation and functioning of the Constitutional Court set out the guarantees needed to ensure the independence of the judges and the Court. The activity of the Court conforms to the basic principles of constitutional law and fair trial. Proceedings are usually conducted in public in the presence of both parties. The parties may be legally represented (Articles 20-27 of the Law on the organisation and functioning of the Court). There is no charge for the proceedings.

V. Main powers

In pursuance of Article 131 of the Constitution, the Constitutional Court decides on:

a. the compatibility of the law with the Constitution or with international agreements within the meaning of Article 122 of the Constitution;

b. the compatibility of international agreements with the Constitution prior to their ratification;

c. the compatibility of normative acts of central or local bodies with the Constitution and international agreements;

d. conflicts of jurisdiction between branches of power and between central and local government;

e. the constitutionality, pursuant to Article 9 of the Constitution, of parties and other political organisations and of their activities;

f. removal of the President of the Republic from office and verification of his incapacity to exercise his functions;

g. disputes relating to the right to stand for election and the incompatibility of the functions of the President and deputies as well as verification of the lawfulness of their election;

h. the constitutionality of a referendum and verification of its results;

i. the final adjudication of complaints by individuals alleging violation of their constitutional rights to a fair trial after all legal means for the protection of those rights have been exhausted.

VI. Nature and effects of decisions

1. The decisions of the Court are taken by a majority. Judgments must give reasons in writing and must be signed by all the Court's members who took part in the sitting. Only the Constitutional Court has the right to invalidate the acts it reviews.

2. The decisions of the Court are final; they are binding and of general application, and they usually enter into force on the day of their publication in the Official Gazette (Article 132 of the Constitution). The Court may decide that the invalidated law or act is to enter into force on another date. The decisions are usually not retroactive. However, a decision may be retroactive when it invalidates a judicial ruling on a criminal matter either in the course of enforcement or relating to the last application of the normative act invalidated by the decision of the Constitutional Court (Article 76 of the Law). When a decision invalidates a judicial ruling,

the latter loses its judicial force as from the date of its being taken, and the case is returned to the same court to be heard again (Article 77 of the Constitution). The decision of the Constitutional Court is retroactive when it interprets the Constitution (Article 79 of the Law on the organisation and functioning of the Constitutional Court).

3. The decisions of the Constitutional Court are binding and enforceable. The Council of Ministers enforces decisions through the relevant administrative bodies. The Court may appoint another body to enforce its decision and may specify the enforcement procedure. For exceptional cases, the law provides for sanctions to be imposed when a person does not execute the decision or interferes with its execution.

Albania

Identification: ALB-2000-1-003

a) Albania / **b)** Constitutional Court / **c)** / **d)** 17.04.2000 / **e)** 17 / **f)** Muçi and Others / **g)** *Fletorja Zyrtare* (Official Gazette), no. 11 / **h)**.

Keywords of the systematic thesaurus:

2.1.1.4.3 **Sources of Constitutional Law** – Categories – Written rules – International instruments – European Convention on Human Rights of 1950.
3.9 **General Principles** – Rule of law.
3.21 **General Principles** – Prohibition of arbitrariness.
5.3.13.13 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Double degree of jurisdiction.
5.3.13.17 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Rights of the defence.
5.3.13.18 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Equality of arms.

Keywords of the alphabetical index:

Trial *in absentia* / Lawyer, appointment / Lawyer, appeal procedure.

Headnotes:

The advocate of an accused tried *in absentia*, who is appointed according to the requirements of the law, enjoys all the rights of a compulsory defence, including the right to appeal against the court decision.

An appeal, which is presented by any of the advocates appointed according to the terms foreseen by the law, aims to protect the legal interests of the accused. On the contrary, denying the right to appeal infringes both the right of defence and the examination of the case by the Supreme Court.

The constitutional principle of defence during criminal proceedings is infringed if the advocate appointed by the families of the accused is not allowed to appeal against the court decision. This restricts the criminal trial to the courts of first instance, which is irregular.

The appointment of the advocates according to the ways and criteria foreseen by the law, and the recognition of their right of appeal, aim to protect the principle of a fair trial at all levels of jurisdiction, as stated in Article 1 Protocol 7 ECHR.

Summary:

The Plenary Session of the Supreme Court, by their decision no. 386 dated 29 July 1999, infringed the constitutional principles of 'defence' and 'fair trial', which are guaranteed by Articles 31.ç and 42 of the Constitution, because they wrongly interpreted the provisions of the Criminal Procedure Code providing for the rights of the advocate during a criminal case where the accused was tried *in absentia*. According to Article 410.2 of the Criminal Procedure Code, the advocate is only allowed to appeal against the decision given *in absentia* when he or she is provided with a representative act issued according to the forms foreseen by law. Article 48 of the Criminal Procedure Code provides that an advocate for detained, arrested or imprisoned persons may be appointed by a family member through a statement made to the court, or through an act handed or sent to the advocate.

The Constitutional Court considered that the representative act was compiled in conformity with the requirements of the law and was based on Articles 48 and 410.2 of the Criminal Procedure Code. The Plenary Session of the Supreme Court wrongly interpreted the law. They thus infringed one of the

fundamental rights of the citizens and at the same time carried out an unfair trial. The advocate of an accused tried *in absentia*, who is appointed according to the requirements of the law, enjoys all the rights during a compulsory defence, including the right to appeal against the court decision.

The reasoning of the Plenary Session decision stipulates that an accused tried *in absentia* does not forfeit the right of appeal, but he/she must first ask for the appeal period to be re-established. This reasoning is unfounded because it confuses the right of appeal with the right to ask for the reestablishment of the lost appeal period. Furthermore, it is contradictory and illogical, because it recognises the right of appeal, but does not settle a practical and legal way of its resolution. The accused tried *in absentia* would not able to realise both the right of appeal and the right to re-establish the appeal. This is why the law, in pursuance of the constitutional principle, places this duty on the advocate appointed in one of the ways foreseen by law. To accept the fact that the accused tried *in absentia* may realise the right of appeal through re-establishing the appeal period, when the law has guaranteed this right to the advocate appointed by his or her families, amounts to a denial of the right of appeal and restricts the trial only to the court of first instance, which makes the trial unfair.

The parties would be placed in unequal positions if the prosecutor's appeal were accepted and the accused's right of appeal denied. Such an attitude is contrary to Article 6 ECHR and the practice of the European Court of Human Rights concerning the requirements of the "equality of arms". This concept means that each of the parties must be offered the possibilities for presenting their case according to terms and conditions that do not place either in an unfavourable position as compared to the other.

According to the approach adopted by the Supreme Court, in cases where the prosecutor appeals against the decision given by the court of first instance, not allowing the advocate to appeal would only increase the inequality between the parties participating in the trial. If the reasoning introduced by the Plenary Session were accepted, the advocate appointed by the families of the accused according to the law would not be allowed either to lodge an appeal or to participate during the hearing of the case in the other instances. This means that the judgement of the case in the Appeal and Supreme Courts would be made with the participation of only one party, infringing the important adversarial principle and at the same time the principle of a fair trial.

On the other hand, the argument that the acceptance of an appeal made by the advocate denies the families of the accused the right to exercise this right by themselves or through an advocate appointed by the accused, constitutes an incorrect and illogical reasoning that infringes the right of defence during the trial. The appeal, which is presented by any of the advocates appointed according to the terms foreseen by the law, aims to protect the legal interests of the accused. On the contrary, denying the right of appeal infringes both the right of defence and the examination of the case by the Supreme Court.

The appointment of advocates according to the ways and criteria foreseen by law, including advocates specially and simultaneously appointed as in this case, and their right to appeal against court decisions, aim to ensure a fair trial at all levels of jurisdiction, as laid down in Article 1 Protocol 7 ECHR and Article 14.5 of the International Covenant for Civil and Political Rights.

The decision of the Plenary Session of the Supreme Court recognises that the advocate is not allowed to appeal against the court decision, but does not mention whether this advocate is entitled to participate during the preliminary investigations or the judgement of the case in the court of first instance. Such an attitude is contradictory because in cases where the advocate appointed by the families of the accused is not allowed to appeal, the effects would extend from the very beginning and not only for the appeal against the court decision.

Infringement of the principle of a fair trial, which is foreseen by Article 42 of the Constitution, reflects itself in another aspect of the decision of the Plenary Session of the Supreme Court. Thus, the order of the decision is contrary to Article 441 of the Criminal Procedure Code, which foresees other ways for resolving the case than the dismissal of the judgement in the Supreme Court. Additionally, the decision of the Plenary Session of the Supreme Court does not mention what is to be done with the case under examination, such as how it should be closed. These requirements are foreseen by Article 441 of the Criminal Procedure Code, on which the decision is based. Furthermore, dismissal of the case in the Supreme Court leaves the concrete case relating to the guilt or innocence of the accused unresolved.

For the above-mentioned reasons, the Constitutional Court abrogated the decision of the Plenary Session of the Supreme Court on the grounds of unconstitutionality.

A dissenting opinion was delivered, holding that the right of appeal is an exclusive right of the accused and that only he/she is entitled to exercise it. Consequently, the advocate may not enjoy this right without being authorised to do so by the accused him or herself.

Languages:

Albanian.

Identification: ALB-2000-1-002

a) Albania / **b)** Constitutional Court / **c)** / **d)** 21.03.2000 / **e)** 12 / **f)** Association “equality before law” / **g)** *Fletorja Zyrtare* (Official Gazette), no. 13 / **h)**.

Keywords of the systematic thesaurus:

1.6.6 **Constitutional Justice** – Effects – Influence on State organs.
3.16 **General Principles** – Weighing of interests.
5.2 **Fundamental Rights** – Equality.
5.3.16 **Fundamental Rights** – Civil and political rights – Right to compensation for damage caused by the State.
5.3.37.1 **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.

Keywords of the alphabetical index:

Property restitution / Compensation.

Headnotes:

A law providing the manner for the restitution of property to former owners against the payment of compensation to third parties infringes the constitutional principle of equality before law as recognised by Article 18.1 of the Constitution.

Summary:

In the framework of the political and economic changes that occurred after the 1990s, the new State took legal measures aimed at regulating the injustices suffered by some citizens during the communist regime. Law no. 7698 dated 15 April 1993 on the restitution of property to its former owners (hereinafter “the Law”) provided for the reestablishment of citizens' property rights over the properties unjustly nationalised by the communist state. The communist state took away some of these properties, more specifically dwelling houses, and sold them to other citizens. The Law provided for the restitution of this kind of property to its former owners and foresaw in Article 10 the payment of compensation to the new owners.

The first paragraph of Article 10 of the Law regulates the problem relating to houses that were transferred to third parties. The legislator decided that these houses should be restituted to the former owners and that the third parties would be paid compensation according to the sale price at the time of transfer. This compensation would be adjusted according to the level of inflation.

The approach taken by the legislator regarding the restitution of property to its former owners or their descendants should be seen in the context of the purpose of the Law, which aims to regulate the injustices suffered by those citizens who were unjustly deprived of their property from 29 November 1944 onwards through nationalisation, confiscation, expropriation or any other means.

Article 181 of the Constitution imposes certain obligations upon state bodies in order to carry out a better regulation of these issues, by respecting the interests of the individuals expropriated by the communist regime.

Acting in this way, for the purpose of reaching a balance between the interests involved and not giving rise to new injustices, the State has undertaken to compensate third parties. However, the way this is resolved by Article 10.1 is not in conformity with the Constitution. By compensating third parties according

to the sale price, adjusted in accordance with inflation, the law has not placed these two categories of individuals in an equal position. On the contrary, third parties are placed in a less favourable position as they would be unable to obtain another house. The rule relating to the amount of compensation is contrary to the principle of the equality of citizens before the law, as laid down in Article 18.1 of the Constitution. On this ground, the Constitutional Court decided to abrogate this part of Article 10 of the Law as unconstitutional.

After making this abrogation, it is the duty of the legislative bodies to make the respective amendments to the provision of Article 10.1 of the Law.

Two of the judges expressed a common dissenting opinion.

Languages:

Albanian.

Identification: ALB-2000-1-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 10.03.2000 / **e)** 11 / **f)** Treska c. the Minister of Justice / **g)** *Fletorja Zyrtare* (Official Gazette), 8 (2000), 352 / **h)**.

Keywords of the systematic thesaurus:

2.1.1.4.13 **Sources of Constitutional Law** – Categories – Written rules – International instruments – International conventions regulating diplomatic and consular relations.
2.2.1.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national and non-national sources - Treaties and legislative acts.
4.7.3 **Institutions** – Courts and tribunals – Decisions.
5.1.1.2 **Fundamental Rights** – General questions – Entitlement to rights – Foreigners.

Keywords of the alphabetic index:

Diplomat / Vienna Convention of 1961 / Jurisdiction, immunity / Court decisions, execution.

Headnotes:

According to the Vienna Convention of 18 April 1961 on diplomatic relationships, diplomatic immunity from criminal, civil and administrative jurisdiction is constitutionally legal and does not infringe the fundamental right recognised by Article 142.3 of the Constitution.

In conformity with Article 122.2 of the Constitution, an international treaty ratified by law takes precedence over domestic laws that are not in conformity with it.

All state bodies are obliged to take the necessary measures for the execution of final court decisions.

Summary:

After having won a court case obliging the Ambassador of the Italian Republic to pay rent for land on which his residence is located, the applicants requested the execution of this court decision. However, in respect of the execution of a court decision in the field of civil law involving a public, foreign person, Article 526 of the Civil Procedure Code states that an authorisation issued by the Minister of Justice should first be obtained.

The applicant failed to obtain such an authorisation and submitted an application to the Constitutional Court alleging a violation of Article 142.3 of the Constitution, which stipulates that state bodies are obliged to execute court decisions.

The Constitutional Court referred to the Vienna Convention on diplomatic relationships, which was ratified by the Albanian state. According to Article 31.1.a of the Convention, diplomats enjoy jurisdictional

immunity for actions relating to a private building (or its land) located in the territory of the receiving country, when he/she possesses it on behalf of the sending state and for the mission's purposes.

Article 122.2 of the Constitution stipulates that an international treaty takes precedence over domestic laws that are not in conformity with it. Consequently, the Constitutional Court considered that the application of Article 31.1.a of the Convention of Vienna was reasonable.

In the present case, the Constitutional Court held that the applicants' allegation, concerning the non-execution of court decisions, was contrary to Article 142.3 of the Constitution and not founded. According to this provision, no state body can dispute final court decisions. Every State body is obliged to take the necessary measures for the execution of court decisions. However, the relevant state bodies have no possibility to take these measures because they are prevented from doing so by the obligations that the Albanian State has undertaken under the Vienna Convention and in light of the Constitution.

Languages:

Albanian.

Identification: ALB-1999-3-008

a) Albania / **b)** Constitutional Court / **c)** / **d)** 10/12/1999 / **e)** 65 / **f)** On the constitutionality of the death penalty / **g)** Official Gazette, 33, 1301 / **h)** .

Keywords of the Systematic Thesaurus:

1.7.8.2 **Constitutional Justice** - Effects - Consequences for other cases - Decided cases.
2.1.1.4 **Sources of Constitutional Law** - Categories - Written rules - European Convention on Human Rights of 1950.
2.1.2 **Sources of Constitutional Law** - Categories - Unwritten rules.
2.3.5 **Sources of Constitutional Law** - Techniques of interpretation - Logical interpretation.
2.3.6 **Sources of Constitutional Law** - Techniques of interpretation - Historical interpretation.
3.9 **General Principles** - Rule of law.
3.12 **General Principles** - Legality.
3.17 **General Principles** - General interest.
5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.1.5 **Fundamental Rights** - General questions - Emergency situations.
5.2.1 **Fundamental Rights** - Civil and political rights - Right to life.

Keywords of the alphabetical index:

Death penalty, abolition / Human dignity / Human life, intrinsic value / Treaty, ratification, reference for a preliminary ruling / Death penalty, enforcement, prohibition.

Headnotes:

The existence of the death penalty in peacetime, under the Criminal Code and Military Criminal Code, is unconstitutional. The legal effects of this decision concern all death sentences pronounced by the courts and not yet enforced.

Summary:

The Criminal Chamber of the Supreme Court, hearing an appeal against a decision by lower courts to sentence a defendant to death, referred the case to the Constitutional Court for a preliminary ruling on the grounds that, under the Constitution, the right to life is a fundamental personal right, the essence of which would be violated by the application and enforcement of the death penalty.

Under Article 21 of the Constitution, "The life of a person is protected by law." This provision expresses the principle of the protection of human life, affirming it as a constitutional right. The concepts of life and human dignity are of key importance in the Constitution and form the basis for all other fundamental and

absolute rights. The inviolability of personal rights and freedoms underpins the entire section of the Constitution in which these rights and freedoms are enunciated. Article 15 of the Constitution stipulates that the fundamental human rights and freedoms are inalienable and inviolable and stand at the basis of the entire juridical order. The state therefore has a basic constitutional duty to see that they are respected and protected. The essence of these articles is concerned with ensuring respect for life and human dignity. All other rights are founded on the right to life, the denial of which implies the removal of all other human rights. Human life thus takes precedence over all the other rights protected by the Constitution.

The question raised in the application cannot be decided solely on the basis of Article 21 of the Constitution. For while stipulating that the life of every person is protected by the law, this article does not explicitly prohibit the death penalty (although that does not imply that it permits it), and it leaves scope for the counter-argument that the protection of individuals' lives is a matter for statute law rather than the Constitution. The Constitutional Court interpreted this article on the one hand in conjunction with the rest of the Constitution and its spirit generally, and on the other in relation to the way the question was addressed under Albania's former Major Constitutional Provisions. It analysed and compared the two sets of provisions, noting a significant difference between them. The new Constitution extends and reinforces the substance of the fundamental personal rights and freedoms, and thus constitutes a clear step forward.

By comparison with Article 1 of Chapter VII of the Major Constitutional Provisions, as amended by Law no. 7692 of 31 March 1993, Article 21 of the current Constitution represents a significant shift towards abolition of the death penalty, the protection of life and recognition of its inviolability, inasmuch as the death penalty is no longer mentioned even in terms of a possible exception to the general principle contained in Article 1 of Chapter VII of the Major Constitutional Provisions. As a legal affirmation of the principle of the protection of life, it does not simultaneously negate that principle, nor does it leave other alternatives open. Thus it was not the law-makers' intention to retain the death penalty, even in exceptional circumstances. Otherwise (i.e. had they been in favour of the death penalty and its application in Albania), they would have been bound to make provision to that effect, for example by including in Article 21 of the Constitution the words used in Article 1 of Chapter VII of the Major Constitutional Provisions.

The new Constitution makes provision for personal rights and freedoms. But clearly, in accordance with the guiding principles of international law, these cannot be regarded as total and absolute. The Constitution itself explicitly permits restrictions to be placed on certain rights and freedoms, as exceptions to the general principle. There is provision for such restrictions, for example, in Articles 18.3, 26, 27, 29, 34, 35, 37, 41, 43, 45 and 47.2 of the Constitution. On the other hand, certain provisions in the part of the Constitution on fundamental rights and freedoms are framed simply as general rules without any reference to exceptions. The absence of exceptions is notable in a number of Articles, among them Article 21 of the Constitution, which, because it includes no provision for the death penalty, cannot be deemed to permit violation of the right to life through the existence of such a penalty.

The entire Constitution is coloured by the fundamental principles of the protection of human life. Life is a right and a fundamental attribute, and the taking of life arbitrarily or otherwise entails the destruction of the person as an individual with rights and duties. Human life is a basic constitutionally protected value. That is not to say that the level of protection of life is identical at all times and in all circumstances, for it depends on many different factors, and it is therefore up to the law-makers to frame appropriate provisions. Only they are empowered to establish by statute the exceptional circumstances in which a person may be deprived of life in order to protect a more important right. Hence the Constitutional Court found it necessary to study Article 21 in depth in order to grasp its intent.

Article 21 can only be interpreted in the light of Article 2.2 ECHR, which permits deprivation of life. But the taking of life as envisaged by the European Convention on Human Rights, even though it may be done by the organs of the state, bears no relation to the death penalty; and because it results from exceptional circumstances it cannot be compared with the death penalty, which is a sentence imposed by a court.

The legal provisions for the protection of human life, as required by Article 21 of the Constitution, thus need interpretation. Article 21 merely refers to the law, without any mention of death in particular circumstances where - in the light of Article 2.2 ECHR - the taking of life is permissible. The legal definition of such circumstances is to be found in the general provisions of the Criminal Code, which recognises the legal concept of self-defence, and in the Use of Firearms Act, under which the armed forces are permitted to use firearms in specific situations. Furthermore, under Article 17.1 of the Constitution, it may be lawful to take life in order to protect the rights of others or to defend a vital

constitutional principle. The limitations [on the right to life] imposed under Article 17.1 of the Constitution must relate to cases where the law can permit the taking of an individual's life in order to protect the rights of others. The taking of any life in the enforcement of a court decision does not fall into this category, because the death penalty is not one of the exceptions or limitations permitted by the Constitution.

Moreover, several Articles of the Constitution, particularly in the section on fundamental rights and freedoms, refer to the European Convention on Human Rights. That is why it is important to interpret Article 21 of the Constitution in conjunction with Article 17.2, which stipulates: "These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."

Under Articles 5, 116 and 122 of the Constitution, the Republic of Albania is bound to carry out its obligations under international law by providing for the incorporation of ratified international agreements into its domestic legislation and by giving them precedence over statute law. One such international agreement is the European Convention on Human Rights, which Albania has ratified. Article 1 Protocol 6 ECHR stipulates: "The death penalty shall be abolished. No one shall be condemned to such penalty or executed." Albania has not yet ratified the protocol, but given that Article 17.2 of the Constitution prohibits any limitations of rights and freedoms exceeding those permissible under the Convention, it follows that the death penalty as provided for in the Criminal Code lies outside the intention and spirit of Constitution and of the European Convention on Human Rights itself, which does not admit this type of limitation.

Considered in the light of the Constitution and the European Convention on Human Rights, the death penalty is essentially incompatible with fundamental rights and freedoms. It negates the right to life and is a cruel and inhuman penalty even when applied by the state in the exercise of its judicial authority. Capital punishment has nothing to do with limiting the right to life, its purpose being to eliminate individuals absolutely, removing them from society. It is a means of killing people with the state in the role of executioner.

Nor can the death penalty be seen as a measure for punishing crime that serves an important function by significantly influencing the sentenced person, which would put it in the same category as general or social rehabilitation or solitary confinement, for example. The other penalties provided for in the Penal Code, such as fines, imprisonment for up to 25 years, or life imprisonment as an alternative to the death penalty, are quite adequate for the purposes of punishing offenders.

The Criminal Code's provisions concerning the death penalty are incompatible with the spirit of the Constitution and infringe the essence of the right to life and human dignity. In particular, when a death sentence is enforced as a result of human error it cannot be undone, and the individual executed becomes the innocent victim of the mistake.

It is clear, on the one hand, from an analysis of Article 17.2 of the Constitution in the light of the application before the court, that the right to life cannot be limited by a measure such as the death penalty, because this penalty constitutes not merely a limitation but the abolition of the right. And on the other hand, the limitations permissible under the European Convention on Human Rights do not extend to the death penalty as a punishment for crime.

The Constitutional Court concluded that a complete understanding of the spirit and substance of Article 21 of the Constitution could be reached under the terms of Article 17.2, which provides, as a matter of principle, for legislation to limit fundamental rights and freedoms.

It found, in particular, that Articles 3, 5, 17.2, 21, 116 and 122 of the Constitution, taken together and in conjunction with the preamble to the Constitution, not only failed to justify the death penalty, but in fact prohibited its application in Albania. It concluded that the death penalty as provided for in the Criminal Code was unconstitutional.

Since the Supreme Court's application was concerned only with the constitutionality of certain Articles of the Criminal Code, the Constitutional Court, recognising a direct link between these articles and the Military Criminal Code's provisions concerning the death penalty in peacetime, decided to review the constitutionality of the latter at the same time. Under Article 15 ECHR, the High Contracting Parties may, in time of war or other public emergency, take measures derogating from their obligations under the Convention, and Article 2 Protocol 6 ECHR stipulates that "a state may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war [...]". The European Convention on Human Rights thus permits the application of the death penalty in time of war, so the

Military Criminal Code's provisions to that effect, rather than being exceptions, are in fact compatible with the Convention. By contrast, its provisions concerning the death penalty in peacetime (referred to above) cannot be deemed compatible with the Constitution.

In conclusion, the Constitutional Court decided unanimously that the death penalty in peacetime, as provided for in the Criminal Code and Military Criminal Code, was to be abolished on the grounds that it was incompatible with the Albanian Constitution.

This decision is final and irrevocable and its legal effects concern all death sentences not yet enforced.

Languages:

Albanian, French (translation by the Court).

Identification: ALB-1999-3-007

a) Albania / **b)** Constitutional Court / **c)** / **d)** 05/11/1999 / **e)** 59 / **f)** Constitutionality of one of the paragraphs of the Law on Judicial System / **g)** Official Gazette, 32/99, 1253 / **h)** .

Keywords of the Systematic Thesaurus:

3.16 **General Principles** - Weighing of interests.
4.7 **Institutions** - Jurisdictional bodies.
4.7.4.1 **Institutions** - Jurisdictional bodies - Organisation - Members.
5.2.9.8 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Independence.

Keywords of the alphabetical index:

Judge, qualifications / Judge, dismissal / Examination, professional, compulsory.

Headnotes:

The obligation of judges with professional experience of up to 10 years to sit a professional qualification exam is based on the right of the legislator to define the professional qualifications necessary for the various levels of judges. Such an exam does not lead to differentiation between entitlements to constitutional rights, because the aim of the exam is not to threaten those rights but to ensure the appropriate levels of qualification of judges, and this is in conformity with the Constitution. The concept of professional insufficiency involves more than a mere failure to take the exam. The latter cannot be the sole means of assessing professional ability.

Summary:

Article 48.1 of Law no. 8436 dated 28 December 1998 on the Organisation of the Judiciary in the Republic of Albania ("the law") provides that judges of the first instance courts with up to ten years of professional experience are subject to a professional examination. The Constitutional Court found that the content of this provision was not unconstitutional.

The Constitution and other international acts, such as the Basic Principles on the Independence of the Judiciary, while approving the need for qualified judges, also provide for the need to dismiss them in cases of professional incapacity.

Under Article 48.1 of the law, the professional proficiency exam aims at improving professional standards, to raise the level of judges in terms of professional qualifications and ensure that they are up to date with recent developments in the law. Between 1991 and 1998 much old legislation in Albania was repealed and a new Constitution and Codes were approved instead, containing many new standards and principles. Under such circumstances, when the professional level of conducting a trial is very problematic, it is a necessity that standards of professional training of judges advance along with the legislation. There are many forms of professional qualification; organisation of the exam is one of them,

which not only stimulates judges to study, but is also a means to assess the level of knowledge of each judge in the framework of general professional assessment. Therefore, participation in the exam means fulfilling a legal obligation with which every judge should comply according to the criteria set by this law. The responsibility for non-fulfilment of this obligation is individual and assessed on a case-by-case basis depending on the reasons given in each case.

The obligation of judges with professional experience of up to 10 years to sit the exam, or in other words the setting of the time-limit in the law, has nothing to do with violation of the Constitution but is based on the right of the legislator to define the professional qualifications necessary for the various levels of judges. The exam does not lead to differentiation between entitlements to constitutional rights, because the aim of the exam is not to threaten those rights but to ensure the appropriate levels of qualification of judges, and this is in conformity with the Constitution.

Article 48.3 of the law, which states that "...judges who do not pass the exam shall be dismissed from their position by Decision of High Council of Justice...", applies only to those judges who sat for the exam but did not reach a sufficient number of points to pass the exam.

The law in question defined not only the criteria for assessing professional ability or inability, but the relevant indicators as well, such as: quality, volume of the work done, reputation, number of legal publications, or whether a judge has taken the professional exam. From its examination of this law and in particular of Article 147.6 of the Constitution, the Constitutional Court reached the conclusion that the concept of professional insufficiency involves more than a mere failure to take the exam. The latter cannot be the sole means of assessing professional ability. Article 45 of the law, which deals specifically with the assessment of professional ability, links it to some indicators. Basing such an assessment entirely on an exam result without considering a judge's professional experience, theoretical and practical contributions to the law is unconstitutional. Therefore, Article 48.3 stating that "regardless of the definition in Article 27 of this law, judges who do not pass the exam shall be dismissed by Decision of the High Council of Justice" must be abrogated.

The Constitutional Court abrogated Article 48.3 of Law no. 8436 dated 28 December 1998 on the Organisation of the Judiciary in the Republic of Albania as unconstitutional. The Court rejected the other parts of the application.

Languages:

Albanian, English (translation by the Court).

Identification: ALB-1999-3-006

a) Albania / **b)** Constitutional Court / **c)** / **d)** 04/06/1999 / **e)** 43 / **f)** Demo R. v. Joint Chamber of the Supreme Court / **g)** Official Gazette, 22, 789 / **h)** .

Keywords of the Systematic Thesaurus:

4.7.4.1.2 **Institutions** - Jurisdictional bodies - Organisation - Members - Discipline.
5.2.9.8 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Independence.
5.2.9.9 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Impartiality.
5.2.9.14 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Rights of the defence.

Keywords of the alphabetical index:

Judicial Service Commission / Judge, absence, justification / Institution, interest in dispute / Judge, disciplinary measure / Notification.

Headnotes:

Under the Judiciary (Organisation) Act, the Judicial Service Commission (JSC), sitting to decide on a disciplinary measure against a judge, is required to summons the judge concerned and hear his or her side of the case. Two judges who sat on the JSC panel that disciplined a judge subsequently also sat in the joint chamber of the Court of Cassation, which rejected the judge's appeal. The Constitutional Court found that there had been a violation of the judge's right to be heard by the JSC, and of the principle of a fair trial inasmuch as two judges who were members of the JSC panel also sat in the joint chamber of the Court of Cassation.

Summary:

The JSC, by its Decision no. 4 of 10 November 1997, dismissed R.D. from the bench. The decision was taken on the grounds that the judge had been absent for a long period without justifying his failure to perform his judicial duties. The joint chamber of the Court of Cassation, in its Decision no. 1462 of 3 November 1998, rejected the judge's appeal against dismissal. The applicant claimed in the Constitutional Court that he had not been called before the JSC and had thus been prevented from exercising his right to defend himself. The Constitutional Court found there was no evidence that the judge had been given prior notification of the grounds for his dismissal. It held that the joint chamber of the Court of Cassation had failed, in its decision, to consider properly these omissions by the JSC. The joint chamber had, admittedly, given the applicant a hearing and allowed him to be assisted by the legal representative of his choice, who was able to defend his claims and submit evidence in support of them, but this was not enough to ensure that the proceedings were fair because, having been asked to review the legal basis and merits of the JSC's decision, the joint chamber ought to have scrutinised its procedure closely and ruled on the breaches of procedure that occurred.

It is particularly important to examine breaches of procedure likely to infringe an individual's basic rights (such as the right to a fair hearing or any other constitutional right concerning the independence of the judiciary). The joint chamber should have given due consideration to the impact of such breaches on the outcome of the dispute; moreover, if it considers there is a possibility of restoring rights that have been infringed, it should make its findings known to the JSC so that similar errors can be avoided in the future. The judge's right to be heard in advance of any decision must be respected both by the court hearing the appeal and by the body legally empowered to decide on the dismissal.

The Court also found other significant flaws in the procedure followed by the joint chamber of the Court of Cassation, which seriously undermined its impartiality. Two judges who had sat on the JSC panel that imposed the disciplinary measure also sat in the joint chamber. Irrespective of how they voted in the JSC, their presence in the joint chamber seriously called into question the impartiality of the proceedings there. The Constitutional Court held that the presence of these two judges on the bench of the joint chamber and the fact that their participation was authorised constituted a flagrant breach of Section 11 of Act no. 7561 of 29 April 1992, under which a judge is required to withdraw from a case if there are lawful grounds for challenging his or her impartiality, and to avoid any behaviour detrimental to the credibility or dignity of the court. Similarly, under Article 72.5 of the Code of Civil Procedure, judges must withdraw from a case if, *inter alia*, they perform other duties on behalf of an institution with an interest in the dispute.

The fact that these constitutional and statutory requirements were not observed, either by the two members of the JSC or by the other judges sitting in the joint chamber of the Court of Cassation, who failed to challenge their presence, dictates that the joint chamber's decision must be set aside as unconstitutional because it violates the basic rights to a fair trial under the law, by an independent and impartial tribunal.

The Constitutional Court therefore set aside the decision of the joint chamber of the Court of Cassation on the grounds that it was unconstitutional, and ordered that the case be referred to the joint chamber of the Supreme Court for review.

Languages:

Albanian, French (translation by the Court).

Identification: ALB-1999-1-005

a) Albania / **b)** Constitutional Court / **c)** / **d)** 23/03/1999 / **e)** 29 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.1.4.4 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Courts.
1.2.2 **Constitutional Justice** - Types of claim - Claim by a private body or individual.
1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.
1.5.4 **Constitutional Justice** - Procedure - Exhaustion of remedies.

Keywords of the alphabetical index:

Right, protection, extraordinary means / Constitutional Court, jurisdiction.

Headnotes:

By virtue of Article 131.f of the Constitution, the Constitutional Court ultimately decides complaints by individuals for violation of their fundamental constitutional rights to due process of law, after all legal means for the protection of these rights have been exhausted. Based on this, the Constitutional Court even judges cases presented by citizens for violation of their rights when the court decision has come into force and all the legal means and to protect such rights no longer exist.

Summary:

During the time that this case was examined by the Constitutional Court, Law no. 8432 of 14 December 1998 amending the Civil Procedure Code foresaw legal ways to defend the rights of the citizens through extraordinary means. By virtue of Article 5 of this Law, the parties have the right for the reasons foreseen in points a, b, and c of Article 472 of the Civil Procedure Code to make an appeal to the Joint Benches within 3 years after the judgment comes into force, against the judgment, the decision refusing to consider the appeal and the judgments of the benches of the Supreme Court. In these circumstances, the Constitutional Court in order to safeguard its legal implementation not only should create the opportunity for citizens to have in their disposal these legal means guaranteed by the law, but at the same time cannot violate Article 13l.f of the Constitution which excludes further examination of these cases.

With the coming into force of Law no. 8432 of 14 December 1998 amending the Civil Procedure Code, the review of this case is no longer in the jurisdiction of the Constitutional Court, until an appeal to the Supreme Court as the final legal means has occurred.*Notes:*

There are a lot of similar cases filed with the Constitutional Court of the Republic of Albania.

Languages:

Albanian.

Identification: ALB-1999-1-004

a) Albania / **b)** Constitutional Court / **c)** / **d)** 19/03/1999 / **e)** 28 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

5.2.9.13 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Reasoning.
5.2.9.14 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Rights of the defence.

Keywords of the alphabetical index:

Imprisonment period, decrease / Decision, Court, reasons.

Headnotes:

Hearing only the applicant's lawyer by the penal bench does not fully comply with the constitutional right of complaint in all its complexity. The penal bench of the Court of Cassation infringed a constitutional obligation, which comes from Article 142/1 of the Constitution (which was even sanctioned in the main constitutional provisions) that court judgments must be reasoned.

Summary:

The Constitutional Court concluded that the judicial proceedings of the penal bench of the Court of Cassation regarding the applicant are irregular and as a result should be declared void on the grounds of unconstitutionality.

First of all, there is a violation of the right of appeal regarding judicial decisions, which is a constitutional right foreseen in the main constitutional provisions as well as of Article 43 of the Constitution. The Constitutional Court does not consider that hearing only the applicant's lawyer by the penal bench fully complies with the constitutional right of complaint in all its complexity. Referring to the content of the judgment and the total lack of arguments refuting the claims of the applicant, it was concluded that the hearing of the lawyer was completely formal, which breaches the defence's right. Furthermore, in the beginning of the judgment neither the reasons nor the facts were mentioned.

The decrease of the period of imprisonment, which had been decided by the two lower courts, by the penal bench does not mean that the claims or the problems raised by the applicant and his lawyer have been analysed in this judgment. On the contrary, the change of this part of the judgment was necessary in order to harmonise the period of imprisonment with the level of guilt of the applicant, which was accepted by the penal bench to have been lower than that of the two other accused persons.

Secondly, in this process the penal bench of the Court of Cassation infringed a constitutional obligation, which stems from Article 142/1 of the Constitution (which was even sanctioned in the main constitutional provisions) that court judgments must contain reasons.

The penal bench in its judgment no. 250 of 25 November 1998 not only does not mention the applicant's appeal, there is nothing clear regarding his application and what is more important it is not mentioned what the court accepted or annulled.

Furthermore, while the applicant claimed his innocence in his appeal and his lawyer's speech, in the judgment given the court discusses the lowering of the prison sentence of its own accord.

Thus, judgment no. 250 of 25 November 1998 of the penal bench of the Court of Cassation regarding the applicant should be pronounced unconstitutional and as a result of an irregular judicial process the case should be re-examined by the penal bench based on the appeal that already has been filed.

Languages:

Albanian.

Identification: ALB-1999-1-003

a) Albania / **b)** Constitutional Court / **c)** / **d)** 19/02/1999 / **e)** 7 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

3.10 **General Principles** - Certainty of the law.
4.7.3 **Institutions** - Jurisdictional bodies - Decisions.
4.7.12 **Institutions** - Jurisdictional bodies - Other courts.

5.2.9 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial.

Keywords of the alphabetical index:

Court of Cassation, functional duty / Complained judgment, legality / Cassation judgment, essential principles.

Headnotes:

An action of the civil bench of the Court of Cassation declaring void both judgments has *de facto* judged the case and overthrown the charge. Not only this has no basis in Article 189 of the Civil Procedure Code where the judgment has been based, but makes that proceeding irregular from the legal point of view because that action goes against the functional duty of the Court of Cassation.

Summary:

The Constitutional Court noted that all the issues presented in the application were important, but from a constitutional point of view the most important was the claim regarding due process of law. Taking into consideration the conclusions of the courts of First and Second Instance and the civil bench of the Court of Cassation, the Court concluded that the application should be accepted and the judgment of the civil bench of the Court of Cassation is the result of a violation of a due process of law. Thus, it should be annulled as unconstitutional on the following grounds:

By the virtue of Article 7 of Constitutional Law no. 7561of 29 April 1992 amending Law 7491 of 29 April 1991 on the Main Constitutional Provisions, as well as by virtue of Article 9 of Law 7574 of 24 June 1992 on the Organisation of Justice and Amendments to the Civil and Penal Procedure Codes, provisions which have been in force when the case was under examination, the Court of Cassation only has the obligation to examine the legal basis of the court decisions that are presented. Thus, the Court of Cassation does not examine the facts and the evidence upon which the judgments were based, but the legality upon which they have been based. This is the reason why in Article 9 of Law 7574 of 24 June 1992 the cases and the grounds for which a judgment can be appealed to the Court of Cassation are defined very precisely. The complaint in which mainly are contradicted the facts and the evidence upon which the judgment of the courts of First and Second Instance have been based, and the judgment of the civil bench of the Court of Cassation in which an analysis of evidence has taken place to prove the existence or non-existence of certain circumstances and facts, lead to the conclusion that this bench has infringed an essential principle of the Cassation judgment. Linked with what was mentioned above, the action of the civil bench of the Court of Cassation which, by declaring void both judgments complained of has *de facto* judged the case and has overthrown the charge, is not only not based on Article 189 of the Civil Procedure Code where the judgment has been based, but makes that a violation of a due process of law, because that action goes against the functional duty of the Court of Cassation.

Article 189 of the Civil Procedure Code which corresponds to Article 485 of the new Civil Procedure Code, does not give the civil bench of the Court of Cassation the right to declare void both judgments and to judge itself the case. In any case, this irregularity could not constitute a reason for an irregular proceeding from the legal point of view if the civil bench declared void both judgments and judged the case on the grounds that both judgments were the result of an incorrect implementation of the law.

By interpreting the evidence in both judgments, as well as by evaluating them in a way contrary to how they have been evaluated by the courts of First and Second Instance, the civil bench has concluded differently, sometimes by distorting the reality of the evidence. Thus, the civil bench, without any basis at all, considered the heirs not as children of the sister of the person who left the inheritance, but as children of the sister of the wife of the person who made the will, thus considering them not as first in line to the inheritance but as third in line. In addition, both courts conclude that the documents of the Registrar Office exist and that the claimed adoption has not taken place for there is no judicial decision or act in the Registrar Offices of Gjirokastra and Shkodra where the adoption could have been registered. The civil bench finds on the contrary that the documents of the Registrar Office do not exist and that this adoption has taken place on the basis of a notification act of the Tirana District Court of 1950, but even this is not confirmed by the documents of the Registrar Office.

In such circumstances, where as a result of the evaluation of evidence quite different conclusions have been reached, the civil bench of the Court of Cassation could not judge the case and overthrow the

charge, but was obliged to return the case to be tried again by the District Court or the Appeal Court. Even in this respect the civil bench of the Court of Cassation has violated a due process of law, according to Article 38 of the previous Law 7692 of 31 March 1993 on the Fundamental Human Rights and Liberties, which makes this an unconstitutional judgment.

Languages:

Albanian.

Identification: ALB-1999-1-002

a) Albania / **b)** Constitutional Court / **c)** / **d)** 25/01/1999 / **e)** 6 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

5.2.9.7 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Trial within reasonable time.
3.4 **General Principles** - Separation of powers.
3.17 **General Principles** - General interest.
4.6.8 **Institutions** - Executive bodies - Relations with the courts.
5.2.5.1.3 **Fundamental Rights** - Civil and political rights - Individual liberty - Deprivation of liberty - Detention pending trial.

Keywords of the alphabetical index:

Court of Cassation, direct appeal / Decision, administrative / Arrest without deadline.

Headnotes:

The fact that there had been no judgment from the Court of Cassation within ten days of a direct appeal does not breach individual liberties because the case was examined by the Appeal Court within 10 days.

Non-initiation of penal proceedings as long as control of the pyramid schemes continues takes away the opportunity for the prosecutor's office to execute constitutional assignments. Thus, the Court of Cassation has abided by the provisions of the disposition discussed above.

Summary:

The Constitutional Court held that the prosecutor's complaint and the applicant's appeals had been examined by the courts since both the Court of Cassation and the Appeal Court were competent for the examination of the case.

The fact that there had been no judgment on the direct appeal within 10 days by the Court of Cassation as foreseen by paragraph 5 of Article 249 of the Penal Procedure Code does not breach individual liberties as foreseen by Article 5 of the Law on Fundamental Human Rights and Liberties, because the delay is justified by the examination of this case by the Appeal Court within 10 days. The judgment of the District Court was annulled by the Appeal Court and the Court of Cassation had nothing to examine when this direct appeal was presented to it. Besides this, even when the deadline for the examination of the direct appeal by the Court of Cassation had expired, Article 249 of the Penal Procedure Code for giving liberty to the accused person could not be applied, because within 10 days the Appeal Court which was competent to examine the case had decided that the applicant should be taken into custody.

The Constitutional Court took into account the applicant's claim that the prosecutor's office had no legal right to initiate penal proceeding against him, as this was forbidden by Article 3, second paragraph of Law 8227 of 30 July 1997 amending Law 8215 of 9 May 1997 on Financial Control of Legal Entities (excluding banks) which have borrowed Money from the State. The Constitutional Court considered that Article 3, second paragraph of this law had more the character of an administrative order than of a penal procedural provision. Being of this nature, it was contrary to the constitutional provisions since it was an interference of the legislative into the judiciary, breaching the independence of the latter.

Non-initiation of penal proceedings, as long as the control of the pyramid schemes continued, took away from the prosecutor's office the opportunity to execute the constitutional duty to safeguard the general interests of the society, the legal order and the citizen's rights and in certain cases put the judiciary under the executive power. Before such a provision, the prosecutor's office accepted to respect the constitutional obligations, by not considering the provisions of the law.

Languages:

Albanian.

Identification: ALB-1999-1-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 25/01/1999 / **e)** 2 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

3.4 **General Principles** - Separation of powers.
4.6.9.1.1 **Institutions** - Executive bodies - Territorial administrative decentralisation - Principles - Local self-government.
4.6.9.2.2 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Municipalities.
4.8.4 **Institutions** - Federalism and regionalism - Distribution of powers.

Keywords of the alphabetical index:

Director of Urbanism Department, appointment / Decentralisation of powers, principle.

Headnotes:

The approval of the establishment and functioning of the Council of Territory Regulation (CTR) by the minister who covers the activity in this field is a violation of the constitutional principle of decentralisation of powers.

The bodies of local government by virtue of the law appoint and discharge the staff of these local councils, and therefore they should determine the way of appointing or discharging the Head of the Urbanism Department within their territory.

Summary:

The applicants' claims of unconstitutionality of the contested legal provisions in the Law on Urbanism Office are partially true but the law does not breach the main constitutional principles that deal with decentralisation, and local autonomy and the right of private property in its entirety. In the Court's opinion it is only the last paragraph of Article 14, and the first and third paragraphs of Article 23 of the Law on Urbanism Office which violate these principles.

Article 14, last paragraph reads: "...the establishment and functioning of the CTR is made on the proposal of the District Council, Tirana Municipal Council or other cities belonging to the first category and is approved by the Ministry that covers the activity in that field..."

The approval of the establishment and functioning of the CTR by the minister who covers the activity in this field is a violation of the constitutional principle of decentralisation of powers. The CTR is an administrative body that is established and functions near to local government in order to regulate activity in the field of urbanism. This notion is stated in the very first paragraph of Article 14. Thus, the establishment and functioning of the CTR can not be attributed to the minister who is a representative of the central government. The bodies of the local government, based on the principle of local autonomy, should themselves approve the establishment and functioning of the CTR, because respect for public assignment, an important aspect of which is activity in the building field, belongs in the first place to

bodies which are closest to the citizens. Thus, the bodies of local government should not just make proposals for this specialised office, but should decide on the appointment of these officials.

The Court should judge the unconstitutionality of the first and third paragraphs of Article 23 of the Law on Urbanism Office from this point of view. By virtue of this legal provision, the appointment and discharge of the Head of the Urbanism Office in the District Council and Municipalities of cities belonging to the first category are a competence of the Minister who covers the activity in that field on the proposal of the District Council or Municipal Council, while the Director of the Urbanism Department of Tirana is appointed and discharged directly by the minister. The Head of the Urbanism Office in the Districts or cities belonging to the first category as well as the Director of the Urbanism Department of Tirana, who are under the administrative structure of the District Councils or the Municipalities, do not differ at all from the heads of the other departments or offices near the organs of local government, who are appointed or discharged by local government. Their activity is connected with local government and in this aspect the formulation of the first and third paragraphs of Article 23 of the Law on Urbanism Office cannot be accepted as it is. Bodies of local government by virtue of Law no. 7572 of 10 June 1992 on the Organisation and Functioning of Local Government appoint and discharge the staff of the administration of these bodies and as such, the way of appointing or discharging the head of the Urbanism Office or the Director of the Urbanism Department of Tirana depends on them.

Languages:

Albanian.

Identification: ALB-1998-3-006

a) Albania / **b)** Constitutional Court / **c)** / **d)** 02/12/1998 / **e)** 71 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
5.2.4 **Fundamental Rights** - Civil and political rights - Equality.

Keywords of the alphabetical index:

Flooding, compensation for damage / Allegedly identical proceedings / Identical proceedings, impossibility / Similar proceedings, equal treatment.

Headnotes:

The concept of equality under and before the law does not mean that courts will deliver identical decisions in allegedly identical cases. The manner in which a case is decided is the exclusive responsibility of the courts, and because the elements of every case - the evidence and circumstances - are different, it is impossible for proceedings to be absolutely identical.

The concept of equality under and before the law applies not to the way in which the merits of a case are examined, but to the legal safeguards afforded by the state to enable citizens to resolve their disputes.

Summary:

The Court of Appeal dismissed an appeal by the applicants (residents of the village of Balldré in the Lezha district). They were seeking compensation for flood damage to their land. The Civil Chamber of the Court of Cassation had already ruled in the case.

In the Constitutional Court, the applicants claimed that the principle of equal treatment before the law had been breached because, in similar cases, 65 people from the same village had been awarded compensation by the courts.

The Constitutional Court ruled that their claim was not founded. Under Article 25 of the Constitutional Law "on fundamental human rights and freedoms", all citizens are equal in the eyes of the law, and

discrimination on grounds of sex, race, ethnic origin, language and political beliefs is prohibited. However, the concept of equality under and before the law does not mean that courts will deliver identical decisions in allegedly identical cases.

The standardisation of court practice does not follow from the principle of equality under and before the law; it is simply useful for the ordinary courts in the interests of maintaining a uniform or consistent approach, always bearing in mind the evidence and circumstances of each particular case.

For these and other reasons, the Court of Appeal had dismissed the application.

Languages:

Albanian.

Identification: ALB-1998-3-005

a) Albania / **b)** Constitutional Court / **c)** / **d)** 04/11/1998 / **e)** 58 / **f)** / **g)** Official Gazette, no. 27 / **h)** .

Keywords of the Systematic Thesaurus:

1.1.4.4 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Courts.
1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.
1.7.3 **Constitutional Justice** - Effects - Effect *erga omnes*.
1.7.6 **Constitutional Justice** - Effects - Influence on State organs.
4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.

Keywords of the alphabetical index:

Constitutional Court, decision, application / Constitutional provision, interpretation / Constitutional Court, jurisdiction / Court of Cassation, non-enforcement of decisions of the Constitutional Court.

Headnotes:

The Constitutional Court has jurisdiction to assess the constitutionality of decisions that violate citizens' fundamental rights; indeed this is the most important aspect of constitutional review. It does not interfere with the right of lower courts to decide specific cases on the merits.

Summary:

The applicants submitted that the joint Chambers of the Court of Cassation had acted unconstitutionally in deciding not to give effect to Decision no. 7 of the Constitutional Court of 10 April 1998, which, under the Law "on major constitutional provisions", is a final decision.

On 4 June 1998, the joint Chambers of the Court of Cassation decided to dismiss the case, which had been referred to it by the Constitutional Court, on the grounds that decisions of the Court of Cassation could not be set aside by other bodies.

In its decision, the Constitutional Court therefore points out that the ruling by the joint Chambers of the Court of Cassation fails to distinguish between the Court of Cassation's role of review and the process of constitutional review. Article 6.1 of the Law "on major constitutional provisions" asserts the independence of the judiciary and this provision must be seen not in isolation but in its full context, taking account of the Constitutional Court's jurisdiction - as the supreme organ for upholding the Constitution and ensuring compliance with it - to review the constitutionality of any decision that violates fundamental rights: not only decisions of the legislature, but also those of the executive and judiciary. Decisions of the Court of Cassation fall into the last-mentioned category.

The joint Chambers of the Court of Cassation exceeded their powers in taking it upon themselves to interpret provisions of the Constitution. In their interpretation of Article 24.9 of the Constitutional Law

(which is moreover a misinterpretation) they encroached upon the jurisdiction of the Constitutional Court - the only court empowered to interpret the Constitution and constitutional laws. The above-mentioned provision, under which the Constitutional Court is empowered to make final rulings on applicants' claims in respect of violations of their fundamental rights by unlawful decisions, does not have the meaning imputed to it in the joint Chambers' decision.

Under Article 26.2 of Law no. 7651 of 29 April 1992 "on certain changes and amendments to Law no. 7491 of 29 April 1991 on major constitutional provisions", decisions of the Constitutional Court are final.

The application of those decisions is a constitutional obligation and no body has the right to call into question the validity of Constitutional Court decisions.

The decision by the joint Chambers of the Court of Cassation not to hear the case - despite the obligation to apply the Constitutional Court's decision under the Law "on major constitutional provisions" - constitutes a dangerous and unconstitutional precedent. Application of a decision by the Constitutional Court is an obligation under the Constitution, and no body has the right to question the validity of such a decision.

Languages:

Albanian.

Identification: ALB-1998-3-004

a) Albania / **b)** Constitutional Court / **c)** / **d)** 04/11/1998 / **e)** 57 / **f)** / **g)** Official Gazette, no. 27 / **h)** .

Keywords of the Systematic Thesaurus:

1.1.4.4 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Courts.
1.2.4.3 **Constitutional Justice** - Types of claim - Type of review - Abstract review.
1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.
1.3.8 **Constitutional Justice** - Types of litigation - Litigation in respect of jurisdictional conflict.
4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
5.2.9 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial.
5.2.9.7 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Trial within reasonable time.
5.2.9.10 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Double degree of jurisdiction.
5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Court of Cassation, interpretation of the Constitution / Constitutional Court, jurisdiction / Court decisions, review by the Constitutional Court.

Headnotes:

The Court of Cassation is empowered to examine the legal basis of contested court decisions but it cannot interpret the Constitution. Under Article 24.1 of the Constitutional Law, it is the prerogative of the Constitutional Court to interpret the Constitution and constitutional laws.

The Constitutional Court has jurisdiction to examine complaints lodged by natural persons or legal entities alleging violations of their fundamental rights by unlawful decisions. The term "decision" as used in the basic law covers not only decisions by other organs of the state but also court decisions.

Summary:

By Decision no. 928 of 30 June 1998, the Civil Chamber of the Court of Cassation set aside Decision no. 29 of 24 March 1998 of the Tirana Court of Appeal, and also ordered that proceedings before the Court of Appeal be suspended, on the grounds that Constitutional Court Decision no. 45 of 27 August 1997 - on which the contested ruling was based - was unconstitutional.

The Civil Chamber of the Court of Cassation held that the Constitutional Court was not entitled to review court decisions because there was no legislation providing for it to examine court proceedings. According to the Civil Chamber, it was not entitled to pass judgment on whether the rules governing lower courts were well founded. Likewise, if the Constitutional Court decided to review a court decision it could only set aside or cancel that decision, but could not refer the case to a lower court.

The Court of Cassation has jurisdiction to examine the legal basis of contested decisions but may not interpret the Constitution. Under Article 24.1 of Law no. 7561 of 29 April 1992 "on certain changes and amendments to Law no. 7491 of 29 April 1991 on the main provisions of the Constitution", it is the prerogative of the Constitutional Court to interpret the Constitution and constitutional laws. In ruling that "the decision of the Constitutional Court is unconstitutional because it assumes powers beyond those provided for in the Constitutional Law", the Civil Chamber is interpreting constitutional law in relation to the extent of another body's powers. This in itself constitutes a serious violation of the Constitution.

The Constitutional Court has jurisdiction to examine complaints lodged by natural persons or legal entities alleging violations of their fundamental rights. The term "decision" as used in the law covers not only decisions by other organs of the state but also court decisions. Were this not the case, the law would make an explicit exception. The fact that there is no reference to any such an exception is sufficient to indicate that court decisions, like the decisions of other bodies, are subject to constitutional review. The Constitutional Court upholds the Constitution; it does not interfere in the areas of responsibility of the judiciary even when, on the basis of an application, it examines a violation of fundamental rights, i.e. considers whether or not a court decision is in conformity with a basic law. In this case, the Constitutional Court had a duty to examine the application lodged by the Confederation of Albanian Trade Unions and its claims in respect of the violation of its right to property, which is a fundamental right.

Under Article 24.9 of Law no. 7561 of 29 April 1992, the Constitutional Court rules on complaints concerning violations of fundamental personal rights. It gives a final ruling having regard to the fundamental right at issue, the question of whether or not it has been violated and the fundamental nature of the right, which by no means implies that it is the role of the Constitutional Court to decide specific disputes between persons, arising from the violation of their fundamental rights.

It is the prerogative of the ordinary courts to decide specific cases, on the basis of procedural rules and the relevant legislation.

It was for these reasons that the case was referred to the Court of Appeal. However, the ruling that the decision of the Civil Chamber of the Court of Cassation was unconstitutional left unresolved the proceedings initiated by the Confederation of Albanian Trade Unions. Failure by the Constitutional Court to refer the case to the Court of Cassation would entail a serious violation of various fundamental rights, such as the right of appeal (under Article 13 of chapter V of the Constitution) and the right to a fair hearing (Article 38 of chapter V of the Constitution) within a reasonable time (Article 40 of chapter V of the Constitution).

Decision no. 928, of 30 June 1998, of the Civil Chamber of the Court of Cassation is therefore unconstitutional and, in accordance with Article 45 of Law no. 8373 of 15 July 1998 "on the organisation and functioning of the Constitutional Court of the Republic of Albania", has no legal effect.

Languages:

Albanian.

Identification: ALB-1998-3-003

a) Albania / **b)** Constitutional Court / **c)** / **d)** 27/10/1998 / **e)** 55 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.5.4 **Constitutional Justice** - Procedure - Exhaustion of remedies.

Keywords of the alphabetical index:

Decision, judicial, non-execution / Immunity, diplomatic / Civil obligation, voluntary performance.

Headnotes:

The Constitutional Court may hear a claim by a person whose fundamental rights have been violated only after all the ordinary remedies have been exhausted.

Summary:

The Constitutional Court refused to hear an application by two individuals concerning the non-enforcement of a court decision, because the applicants had not exhausted all the ordinary remedies in their dispute with the Ministry of Justice.

The absence of a response from the Ministry of Justice about why authorisation had not been given to require the Italian Ambassador in Albania to pay ground rent in respect of his residence is not sufficient grounds for submitting the case to a review of constitutionality.

There are other possibilities, which have not been exhausted, for resolving the dispute by administrative means.

The Albanian Government must therefore intervene to facilitate the voluntary performance of what is a civil obligation.

Under Article 35 of Law no. 8373 of 15 July 1998 "on the organisation and functioning of the Constitutional Court of the Republic of Albania", the court may only hear a claim after all the ordinary remedies have been exhausted.

Languages:

Albanian.

Identification: ALB-1998-3-002

a) Albania / **b)** Constitutional Court / **c)** / **d)** 14/10/1998 / **e)** 48 / **f)** / **g)** Official Gazette, no. 26 / **h)** .

Keywords of the Systematic Thesaurus:

4.6.2 **Institutions** - Executive bodies - Powers.
4.6.8 **Institutions** - Executive bodies - Relations with the courts.

Keywords of the alphabetical index:

Contract of sale / Right to initiate proceedings / State Monitoring Service / Privatisation, monitoring powers.

Headnotes:

The acceptance of an application lodged by a party not entitled to initiate legal proceedings, and in particular the fact that this application was the basis on which the case was heard in three courts, renders the proceedings in question unlawful and the respective decisions of the courts unconstitutional.

Summary:

The circumstances of the applicant's claim that Decision no. 248 of the Council of Ministers, of 27 May 1993, was unlawful and clearly unconstitutional under Article 8 of the Constitutional Law required the suspension of the proceedings and the referral of the case to the Constitutional Court.

The basis of the proceedings to have a contract of sale declared unconstitutional was Petition no. 35, of 23 March 1994, lodged by the State Monitoring Service, a body that does not have the authority to initiate proceedings in relation to privatisation problems. Under Law no. 7597 of 31 August 1992 concerning the State Monitoring Service, which is referred to in the complaint, the Service is authorised simply to monitor the privatisation of state property, not to initiate proceedings in relation to any problems involved. That being so, the acceptance of an application lodged by a party not entitled to initiate proceedings, and in particular the fact that this application was the basis on which the case was heard in three courts, renders the proceedings in question unlawful and the respective decisions of the courts unconstitutional.

Moreover, in the court of first instance, counsel for one of the parties asserted that Decision no. 248 of the Council of Ministers, of 27 May 1993, "on measures to accelerate the privatisation of small and medium-sized businesses" - which was the basis of the complaint - was in breach of Law no. 7512 of 10 August 1991 "on the sanctioning and protection of private property, freedom of initiative, independent private activities and privatisation". The court did not consider this claim and thus it was not referred to in the decision.

The Constitutional Court therefore decided to examine the case. It ruled that the contested decision was clearly unconstitutional, and took issue particularly with points 2 and 22. It found that, in these circumstances, the ordinary court had a duty to suspend the proceedings and refer the case to the Constitutional Court.

The failure to take account of constitutional provisions, the applicant's lack of standing and the fact that absolute priority had been given to a subordinate legislative provision (the decision of the Council of Ministers) without reference to the terms of the law, rendered the proceedings in question unlawful and the respective decisions unconstitutional and therefore void.

Languages:

Albanian.

Identification: ALB-1998-1-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 03/06/1998 / **e)** 16 / **f)** / **g)** *Official Gazette*, no. 15, June 1998 / **h)** .

Keywords of the Systematic Thesaurus:

1.2.4.1 **Constitutional Justice** - Types of claim - Type of review - Preliminary review.
1.4.1 **Constitutional Justice** - The subject of review - International treaties.
3.4 **General Principles** - Separation of powers.
4.5.6 **Institutions** - Legislative bodies - Law-making procedure.

Keywords of the alphabetical index:

Constitutional Court, jurisdiction / Treaties, scrutiny by Constitutional Court.

Headnotes:

The Constitutional Court is competent to review the compatibility with the Constitution of all Treaties signed in the name of the Republic of Albania prior to their ratification.

Summary:

Article 24.4 of the Constitutional Law no. 7561 of 29 April 1992 reads: "The Constitutional Court has the following powers: ..... to decide on the compatibility with the Constitution of international agreements

concluded in the name of the Republic of Albania, and those prior to their ratification, and also on the compliance of laws with generally accepted norms of international law and with agreements to which Albania is a party".

The Parliamentary Group of the Social Democratic Party asked the Constitutional Court to undertake a partial interpretation of Article 24.4 by stating "whether this provision should be applied in every case and for each international agreement, especially before they have been ratified by the competent institutions, or only in cases where it is not clear whether there is an incompatibility of interests between them and the Constitution or the Interim Constitutional Laws".

The Constitutional Court of the Republic of Albania, on the basis of Article 24.1 of Law no. 7561 of 29 April 1992, held that the Constitutional Court is competent to review the compatibility with Constitution only of international agreements which have been signed in the name of the Republic of Albania and always before their ratification.

Languages:

Albanian.

Identification: ALB-1997-3-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 13/11/1997 / **e)** 53 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.4.5 **Constitutional Justice** - The subject of review - Laws and other rules having the force of law.
3.4 **General Principles** - Separation of powers.
4.6.2 **Institutions** - Executive bodies - Powers.
5.2.32.3 **Fundamental Rights** - Civil and political rights - Right to property - Other limitations.

Keywords of the alphabetical index:

Property, administration / Pyramid schemes / Financial control.

Headnotes:

Forced administration of property by the executive power has to respect the constitutional limits of the right to property and the principle of separation of powers.

The Constitutional Court has the right to examine the constitutionality of the laws approved by the Parliament *(Kuvendi Popullor)*.

Summary:

In this case, the Constitutional Court discussed and decided upon the unconstitutionality of Article 7 of Law no. 8227 dated 30 July 1997 "on certain amendments of Law no. 8215 of 9 May 1997 on the financial control of the juridical persons which have borrowed money from the public".

In Article 7 of Law no. 8227, dated 30 July 1997 "on certain amendments and additions to Law no. 8215, dated 9 May 1997 on the financial control of the juridical persons which have borrowed money from the public", the Parliament of the Republic of Albania gives the administrator of the control bodies very extensive powers. With these powers he can act like the owner of a property which effectively does not belong to him and is able to act on behalf of the real owner of this property.

According to that Article, the rights of the administrator are the following: the suspension of the contractual obligations, the management of the activity and the property of the subject in the way the administrator considers necessary as well as the execution of the rights of the shareholders, partners and

the administrative staff. The administrator has the right to sell and to possess the property or activity when he considers it reasonable.

The Constitutional Court observes that giving these administrative powers can lead to divesting the owner not only of the right of administration, but also of all other property rights.

The Court considers that the regulating role of the State in the economic development of the country, sanctioned by Article 10 of the law "On the Major Constitutional Provisions", does not give the State the right to divest the owner completely of his property.

The Court also observes that Article 7 gives the administrator, as a representative of the executive power, rights which belong only to the judiciary, for example the suspension of payment of obligations, the non-application of the conditions foreseen in the contract or agreements of the subject of control. In this way, the constitutional principle of the separation of powers which is sanctioned in Article 3 of the law "On the Major Constitutional Provisions" is not respected.

In these conditions, the Court concluded that Article 7 of Law no. 8227 of 30 July 1997"On Certain Amendments and Additions to Law no. 8215 of 9 May 1997" on the financial control of the juridical persons which have borrowed money from the public, is contrary to Articles 3.10 and 11 of the law "on the major constitutional provisions" and for this reason it must be abrogated.

Languages:

Albanian.

Identification: ALB-1996-3-006

a) Albania / **b)** Constitutional Court / **c)** / **d)** 14/10/1996 / **e)** 36 / **f)** / **g)** to be published in the Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

4.6.9.2.1 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Provinces.
5.2.34.2 **Fundamental Rights** - Civil and political rights - Electoral rights - Right to be elected.

Keywords of the alphabetical index:

Regional Council, head / Assembly, people's candidacy.

Headnotes:

The Constitutional Court is competent to examine petitions by Heads of District Councils, in the capacity of local government bodies, requesting that Council of Ministers orders to replace Heads of District Councils temporarily by other persons be ruled unlawful and unconstitutional.

Summary:

The Council of Ministers, by Order no. 525 of 12 August 1996, paragraph 2, appointed Mr Fiquiri Gjeta as its delegate holding the position of Head of Kukës District Council on the ground that "the Head of Kukës District Council, Mr Ukë Todaj, was relieved of that office as from 1 May 1996 upon presenting himself as candidate for the office of Member of the People's Assembly of the Republic of Albania". The Head of Kukës District Council petitioned the Constitutional Court against this order appointing another person to fill his position.

The Council of Ministers issued the order on the basis and within the forms of Amendment Act no. 8158 of 31 July 1996 relating to Act no. 8068 of 15 February 1996 amending certain provisions of Act no. 7572 of 10 June 1992 on the organisation and functioning of local authorities, which expressly stipulates that

"where the District Council does not succeed in electing its own Head within the specified time, an official shall be appointed by the Council of Ministers to act as Head of the District Council".

During the proceedings in the case, it emerged that Mr Ukë Todaj had indeed been relieved of office as Head of Kukës District Council on 1 May 1996 upon his presentation as candidate for the office of Member of the People's Assembly of the Republic of Albania in the election held on 26 May 1996, in which he was unsuccessful.

However, by Kukës District Council Order no. 12 of 7 June 1996, Mr Ukë Todaj was re-elected as Head of the Council without the Prefect objecting as provided by Section 6 of Act no. 7608 of 22 September 1992 concerning Prefectures.

The foregoing is based on Kukës District Council Order no. 12 of 7 June 1996 and recorded in the minutes of the meeting.

The authority of the Council of Ministers to appoint one of the district councillors as Head of the District Council stems from Section 45, paragraph 1 of Act no. 7572 of 10 June 1992 on the organisation and functioning of local authorities.

In the circumstances of the case, the Court held that the Council of Ministers, in appointing a delegate on 12 August 1996 to act as Head of Kukës District Council when the District Council had already elected its own Head with effect from 7 June 1996, infringed Section 45, paragraph 1 of Act no. 7572 of 10 June 1992 on the organisation and functioning of local authorities, and also offended against the principle of local government bodies' independence enshrined in Section 3 of Constitutional Act no. 7570 of 3 June 1992 amending Main Constitutional Provisions Act no. 7491 of 29 April 1991. The court found that paragraph 2 of the aforementioned Order appointing a delegate of the Council of Ministers to act as Head of Kukës District Council was unlawful and unconstitutional.

Languages:

Albanian.

Identification: ALB-1996-3-005

a) Albania / **b)** Constitutional Court / **c)** / **d)** 24/09/1996 / **e)** 34 / **f)** / **g)** to be published in the Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

1.1 **Constitutional Justice** - Constitutional jurisdiction.
2.2.2.1 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources - Hierarchy emerging from the Constitution.
4.6.9.2.2 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Municipalities.
5.2.34 **Fundamental Rights** - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Constitutional Court, jurisdiction / Unconstitutional Act.

Headnotes:

The functions of the Constitutional Court may be modified, limited or extended only as provided by constitutional law.

Summary:

The proceedings, instituted by the Constitutional Court of its own motion, relate to the constitutionality of statutory provisions enacted by the People's Assembly of the Republic of Albania. Specifically, the

Constitutional Court established the unconstitutionality of Section 16 of Act no. 8151 of 12 September 1996. According to its terms the Constitutional Court, rather than the Court of Cassation, is the authority competent to receive petitions contesting decisions of the Central Committee for Local Government Elections.

The People's Assembly of the Republic of Albania, under Section 16 of Act no. 8151 of 12 September 1996 amending Act no. 7573 of 16 June 1992 on the election of local government bodies, modified the first and second paragraphs in Section 40 of the aforementioned Act by replacing the words "Court of Cassation" with "Constitutional Court" as the authority competent to examine complaints against decisions of the Central Committee for Local Government Elections.

The Constitutional Court found that the provision in Section 16 of the aforementioned Act, which is moreover an ordinary statute, conflicted with Article 24.7 of Constitutional Act no. 7561 of 20 April 1992 modifying and amending Main Constitutional Provisions Act no. 7491 of 29 April 1991, which provides in definitive terms that the Constitutional Court "resolves questions concerning the lawfulness of the election of the President of the Republic and of the Members of Parliament, and questions concerning the people's referenda, proclaiming the final results".

Consequently, the Court found that Section 16 of Act no. 8151 of 12 September 1996 amending Act no. 7573 of 16 June 1992 on the election of local government bodies must be declared void on the ground of unconstitutionality.

Languages:

Albanian.

Identification: ALB-1996-2-004

a) Albania / **b)** Constitutional Court / **c)** / **d)** 15/06/1996 / **e)** 24 / **f)** / **g)** to be published in the Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

1.2.2.4 **Constitutional Justice** - Types of claim - Claim by a private body or individual - Political parties.
1.3.5.2 **Constitutional Justice** - Types of litigation - Electoral disputes - Parliamentary elections.
1.4.6 **Constitutional Justice** - The subject of review - Presidential decrees.
1.4.13 **Constitutional Justice** - The subject of review - Administrative acts.
1.5.9.1 **Constitutional Justice** - Procedure - Parties - *Locus standi*.

Keywords of the alphabetical index:

Election, Central Committee, decision, setting aside.

Headnotes:

The Constitutional Court is responsible for examining complaints by "electoral entities" against decisions of the Central Committee on Parliamentary Elections to the National Assembly of the Republic of Albania. In the case in question, the Constitutional Court heard an application from two electoral entities, namely the Democratic Alliance Party and the Social Democratic Party of Albania, against the decision of the Central Committee on Elections and a Decree of the President of the Republic regarding the re-staging of the parliamentary elections to the National Assembly in 17 constituencies.

Summary:

As electoral entities, the Democratic Alliance Party and the Social Democratic Party of Albania appealed to the Constitutional Court requesting it to set aside the decision of 26 May 1996 of the Central Committee on Parliamentary Elections to the National Assembly, regarding the re-staging of elections in 17 constituencies, and, by extension, the annulment of the Decree of the President of the Republic setting

17 June 1996 as the day on which these elections would be held. The applicant argued that the Central Committee on Elections had already expressed its views and recognised the results of elections in all the constituencies of the Republic and that it was not entitled to go back on a previous decision. The Constitutional Court considered that the press release issued by the Central Committee on Elections on 29 May 1996 did not constitute a specific decision on its part. In response to the complaints lodged by various electoral entities and on the basis of the investigation it had conducted, the Central Committee on Elections had taken the appropriate decisions with regard to the annulment of the elections in the 17 constituencies. Therefore, this did not amount to going back on a previous decision of the Central Committee on Elections. Since the decision of the Central Committee on Elections on the annulment of the results of the elections in the 17 constituencies was lawful, the Decree of the President of the Republic on the re-staging of the elections was also legitimate. Ultimately, the Constitutional Court rejected the applications of the two aforementioned parties.

Languages:

Albanian.

Identification: ALB-1996-2-003

a) Albania / **b)** Constitutional Court / **c)** / **d)** 10/05/1996 / **e)** 11 / **f)** / **g)** to be published in the Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

1.2.2.4 **Constitutional Justice** - Types of claim - Claim by a private body or individual - Political parties.
1.3.5.2 **Constitutional Justice** - Types of litigation - Electoral disputes - Parliamentary elections.
1.4.13 **Constitutional Justice** - The subject of review - Administrative acts.

Keywords of the alphabetical index:

Election, parliamentary, Central Committee, decisions / Electoral entity.

Headnotes:

The Constitutional Court is responsible for examining complaints by "electoral entities" against decisions of the Central Committee on Parliamentary Elections to the National Assembly. In this particular case, the Constitutional Court examined an application by an electoral entity, namely the Christian Democrat Party of Albania, regarding the setting aside of two decisions taken by the Central Committee on Elections refusing to register the party's candidates in two constituencies.

Summary:

As an electoral entity, the Christian Democrat Party of Albania appealed to the Constitutional Court to set aside two decisions of the Central Committee on Parliamentary Elections refusing to register its candidates in two constituencies. In both cases the Central Committee on Elections found that the applications for the registration of the candidates had been submitted after the deadline prescribed by law. The Constitutional Court, having examined the matter, found that, in the first case, the necessary papers for registration of the candidate as specified in the Law on Election to the National Assembly had been delivered to the Electoral Commission of the constituency on 27 April 1996, ie. before the statutory deadline. As regards the second case, the reason for the delay was a lack of organisation on the part of the constituency commission. In conclusion, the Court decided to set aside the decisions of the Central Committee on Elections and ordered that the candidates for the delegation of the Christian Democrat Party of Albania be registered in the aforementioned constituencies.

Languages:

Albanian.

Identification: ALB-1996-2-002

a) Albania / **b)** Constitutional Court / **c)** / **d)** 09/05/1996 / **e)** 10 / **f)** / **g)** to be published in the Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

1.2.1 **Constitutional Justice** - Types of claim - Claim by a public body.
1.3.5.2 **Constitutional Justice** - Types of litigation - Electoral disputes - Parliamentary elections.
1.5.9.1 **Constitutional Justice** - Procedure - Parties - *Locus standi*.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.

Keywords of the alphabetical index:

Candidate / Electoral Commission / Electoral entity.

Headnotes:

The electoral commission of a constituency is not entitled to appeal to the Constitutional Court to set aside a decision of the Central Committee on Parliamentary Elections to the National Assembly.

Summary:

On 29 April 1996, the electoral commission of constituency no. 26 refused to register a candidate for the National Assembly proposed by the Socialist Party in its capacity as an "electoral entity" in these elections. On 4 May 1996, the Central Committee on Elections examined the complaint of the proposed candidate, decided to set aside the decision of the electoral commission of constituency no. 26, and ordered that the candidate be registered immediately. The commission of constituency no. 26, represented by its chair, brought proceedings in the Constitutional Court against the aforementioned decision of the Central Committee on Elections. The Court found that under Sections 36, 38 and 50 of Law 7556 of 4 February 1992 "On elections to the National Assembly", the institution of proceedings is a remedy which may only be used by electoral entities and candidates proposed by electoral entities, in order to ensure that the rights derived from constitutional and electoral law are respected. Accordingly it is the exclusive right of these electoral entities to bring their case before the Constituency Commission, the Central Committee on Elections or the Constitutional Court. Ultimately, the Court decided to reject the application from the Electoral Commission of constituency no. 26.

Languages:

Albanian.

Identification: ALB-1996-2-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 31/01/1996 / **e)** 1 / **f)** / **g)** Official Gazette, 1/1996, 20-27 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.7 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Civil and Political Rights of 1966.
3.3 **General Principles** - Democracy.
4.5.12 **Institutions** - Legislative bodies - Political parties.
5.2.34.2 **Fundamental Rights** - Civil and political rights - Electoral rights - Right to be elected.

Keywords of the alphabetical index:

Crime against humanity / Lustration.

Headnotes:

The temporary exclusion of the perpetrators, conceptualisers and implementers of that fierce, inhuman dictatorship which the constitutional law denounces in its preamble from the right to be elected is constitutional.

The Constitutional Court is entitled to review requests, by Parliamentary Groups to have declared unconstitutional laws that conflict with the main Constitutional Provisions concerning the right to vote as well as additional fundamental rights.

Summary:

In the present case, the Constitutional Court reviewed requests made by the Albanian Socialist Party's Parliamentary Group and the Albanian Social Democratic Party's Parliamentary Group to have annulled certain legal provisions concerning limitations on the right to be elected of a certain category of persons that worked in certain positions during the period of the communist regime.

The Parliamentary Group of the Social Democratic Party of Albania and the Parliamentary Group of the Socialist Party of Albania argued that the restriction set out in Article 3 of Law no. 8001 dated 22 September 1995 "On genocide and crimes against humanity committed in Albania during the Communist regime for political, ideological and religious reasons", was unconstitutional. This restriction concerned the right to be elected to the central and local organs of power and to be nominated to the high State administration, the judicial system and the mass media until 31 December 2001, for persons who before 31 March 1991 were members of the Political Bureau and the Central Committee of the Party of Labour of Albania (and the Communist Party), Ministers, Deputies of the People's Assembly, members of the Presidential Council, Chairmen of the Supreme Court, General Prosecutors, First Secretaries of the Districts, employees of State security and collaborators with State Security and witnesses who denounced defendants in political trials.

In support of the complaint, they cited Articles 2, 4 and 8 of Law no. 7491 dated 29 April 1991 "On the major Constitutional provisions" and Articles 19, 25 and 41 of Law no. 7692 dated 31 March 1993 "On fundamental human rights and freedoms". These provisions provide for equality before the law, the guarantee of fundamental human rights and freedoms generally recognised in international documents, and the respect by the legislation of the Republic of Albania of the principles and norms generally accepted in international law, as well as for the right of election and the temporary limitation of particular rights.

Having regard to the above constitutional norms in the general context of Albanian constitutional legislation generally accepted international acts and norms, the unparalleled violation and denial of fundamental human rights and freedoms during the Communist regime as well as to the conditions of the transition, the Court considered the complaint of the parliamentary groups to be groundless, with respect to the limitation for a set time period of the right to be elected as well as of the exercise of several employment functions for the category of persons in question.

In its preamble, the Constitutional Law "On fundamental human rights and freedoms", in stating its purpose, stresses "... during the fierce and extremely inhuman 46 year dictatorship of the party state in Albania, civil and political, economic, social and cultural rights, as well as basic human freedoms, were violated and denied through state terror", and that "...the general respect for, the enjoyment of, these rights and freedoms constitutes one of the highest aspirations of the Albanian people and one of the necessary preconditions for guaranteeing the freedom of our society and social justice and democratic progress in it".

It is precisely the subjects specified in Article 3 of Law no. 8001 dated 22 September 1995 and Article 2 of Law no. 8043 dated 30 November 1995 who were the perpetrators, conceptualisers and implementers of that fierce, inhuman dictatorship which the constitutional law denounces in its preamble. Consequently, the temporary limitation of the rights of these subjects to be elected and nominated to specified State duties constitutes a guarantee for the implementation of all the constitutional provisions and international acts that have to do with fundamental human rights and freedoms.

It is true, as the Parliamentary Group of the Socialist Party propounds, that in Article 25 of the International Covenant on Civil and Political Rights it is contemplated that every citizen has the right to

vote and be elected and also to take part in the management of public affairs. But, as is specified in the first paragraph of the same Article, only "unreasonable limitations" may not be made to these rights.

In addition to the above, the Court notes that the second paragraph of Article 29 of the Universal Declaration of Human Rights provides that : "in the exercise of his rights, every person is subject only to the limitations set by law and only with the purpose ... of responding to the demands of morality and general well-being in a democratic society".

Basing itself also on these provisions, the Court reaches the conclusions that the laws that are the object of investigation set out reasonable limitations that respond to the demands of the moral law of the democratic society of Albania.

The Court finds well-grounded the complaint of the Albanian Socialist Party's Parliamentary Group to repeal the point "j" of article 1 (this article provides for restrictions on the profession of mass-media employees) of Law no. 8043 "On the verification of the moral character of officials and other persons connected with the defense of the democratic State". Article 1 of this law provides for the positions where the subjects defined by Article 3 of Law no. 8001 "On genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious reasons" cannot be placed.

By Article 2 of the Law "On fundamental human rights and freedoms" and Article 1 of Law no. 7755 "On the press", the right of the press is guaranteed. The profession of journalist is a free profession, based on initiative and personal activity, and has no connection to State duties.

The Court finds well-founded the complaint of the Albanian Socialist Party's Parliamentary Group to repeal Article 12 of Law no. 8043, dated 30 November 1995, which provides for the right of the Minister of Justice to make a request for the verification of the leadership of political parties and associations. Giving this right to the Minister of Justice is in conflict with the second paragraph of Article 6 of the Law "On the major constitutional provisions". According to this provision, political parties and other organisations are completely separate from the State. For this reason, the words "by the Minister of Justice or" shall be struck from Article 12.

Languages:

Albanian.

Identification: ALB-1995-3-003

a) Albania / **b)** Constitutional Court / **c)** / **d)** 21/09/1995 / **e)** 12 / **f)** / **g)** Official Gazette 21, 1995 / **h)** .

Keywords of the Systematic Thesaurus:

1.2.1.2 **Constitutional Justice** - Types of claim - Claim by a public body - Executive bodies.
1.3.8 **Constitutional Justice** - Types of litigation - Litigation in respect of jurisdictional conflict.
1.5.9 **Constitutional Justice** - Procedure - Parties.
4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
5.2.9.7 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Trial within reasonable time.

Keywords of the alphabetical index:

Execution, stay, unconstitutionality.

Headnotes:

The Constitutional Court has power to rule on the conformity with the Constitution of orders staying execution and may be asked by the Council of Ministers to examine the cases concerned.

Repeated orders by the President of the Court of Cassation for a stay of execution of a single decision in civil proceedings which have become final, and the stay of execution of, or objection to, decisions of the *plenum* of the Court of Cassation are unlawful and unconstitutional acts.

Summary:

The Council of Ministers had asked the Constitutional Court to declare unlawful and unconstitutional the orders of the President of the Court of Cassation during the execution phase of civil decisions of the courts which, in the Council's view, were markedly detrimental to citizens' rights and interests. The acts concerned were:

- orders addressed to the courts and the administrative authorities responsible for the execution of civil decisions for a stay of execution of decisions delivered by such courts which had become final; and

- orders addressed to the same courts for non-execution of decisions of the Court of Appeal against which an appeal had been lodged with the Court of Cassation.

On the other hand, the President of the Court of Cassation had asked the Constitutional Court to rule on the impossibility under the law of the Council of Ministers referring to the said Court orders and acts of the President of the Court of Cassation, and to rule that petitions of the Council of Ministers were not within the jurisdiction of the Constitutional Court.

In addition, the President of the Court of Cassation had asked the Constitutional Court to rule that petitions of the Council were inadmissible, since they were contrary to the Constitution, violated international principles and did not reflect reality.

The Constitutional Court first considered whether the Council of Ministers had the power to refer the petition concerned to the Court. Section 25 of Act no. 7561 of 29.4.92 on alterations and amendments to the Main Constitutional Provisions Act defines the organs of the State which may refer matters to the Constitutional Court. One of these organs is the Council of Ministers.

The Court concluded that the Council of Ministers had the power to ask the Constitutional Court to examine "petitions on behalf of citizens" in pursuance of Section 24 of the same Act, in so far as there was no limitation or prohibition with regard to the Council of Ministers as a petitioner.

The power of the Council of Ministers to refer matters to the Constitutional Court was based upon Section 36 of the Main Constitutional Provisions Act, which lays down that one of its prime tasks is to safeguard the legal system and to protect citizens' interests.

On the subject of the jurisdiction of the Constitutional Court, the Court dismissed the argument put by the President of the Court of Cassation as without foundation. Under the Constitutional Court Act, and in the light of that Court's practice, the case could be considered directly, without first being considered by other courts, whether ordinary or administrative.

As there was no other remedy against an order staying the execution of a decision which had become final, issued by the President of the Court of Cassation or by the Attorney-General, the Constitutional Court had sole power to rule whether such an order was in conformity with the Constitution, and the Council of Ministers had the power to refer the case concerned to it.

On the issue of repeated orders staying execution of court decisions, the President of the Court of Cassation emphasised that Section 185 of the Code of Criminal Procedure did not specify how many times a stay of execution of a court decision could be ordered, so there was no legislation preventing more than one stay of execution of a court decision.

The Court dismissed this argument, stating that Section 185 of the Code of Criminal Procedure was clear, in that a stay of execution of a court decision was possible only for a two-month period and could not be ordered more than once in respect of a single case. Section 185 was intended to forestall the potential detrimental effects of execution of a decision which has become final, the lawfulness of which might be subject to a serious challenge. A stay of execution of such a decision for a two-month period offered an opportunity to remedy the situation. This was fully in line with Sections 38 and 40 of the Human Rights and Fundamental Freedoms Act, which guarantee a fair trial and a decision within a reasonable time.

The Constitutional Court therefore concluded that the President of the Court of Cassation had exceeded his powers under the legislation on the execution of court decisions and had thus violated citizens' fundamental rights, as guaranteed by Sections 38 and 40 of the Human Rights and Fundamental Freedoms Act.

Finally, in respect of the second part of the petition of the Council of Ministers concerning non-execution of decisions of the Court of Appeal against which appeals had been lodged with the Court of Cassation, the Constitutional Court concluded that the act concerned emanated directly from the Court of Cassation, which was not a party to the case, and not from its President. It was consequently impossible for the Court to consider the merits of the act concerned.

Languages:

Albanian, French (translation by the Court).

Identification: ALB-1995-3-002

a) Albania / **b)** Constitutional Court / **c)** / **d)** 19/09/1995 / **e)** 11 / **f)** / **g)** Official Gazette 21, 1995 / **h)** .

Keywords of the Systematic Thesaurus:

1.1.1.1.4 **Constitutional Justice** - Constitutional jurisdiction - Statute and organisation - Sources - Rules of procedure.
1.6.4.6 **Constitutional Justice** - Decisions - Types - Finding of constitutionality or unconstitutionality.
4.7.7.2 **Institutions** - Jurisdictional bodies - Ordinary courts - Criminal courts.
5.2.31.1 **Fundamental Rights** - Civil and political rights - Non-retrospective effect of law - Criminal law.

Keywords of the alphabetical index:

Reasons, faulty or insufficient, petition.

Headnotes:

Sittings of the *plenum* of the Court of Cassation in criminal proceedings became unlawful following the amendment of certain legislation.

The constitutional right to challenge the lawfulness of a court decision, guaranteed by Section 13 of the Human Rights and Fundamental Freedoms Act, was preserved, in spite of the withdrawal of the possibility of a petition in respect of faulty or insufficient reasons in criminal proceedings, since the new Code of Criminal Procedure recognises a remedy against decisions which have become final through the introduction of the review procedure.

The Council of Ministers has power to bring before the Constitutional Court petitions in respect of faulty or insufficient reasons.

Summary:

On 26 July 1995, in pursuance of the Code of Criminal Procedure adopted under Act no. 6069 of 25 December 1979 (which was in force until 31 July 1995), the *plenum* of the Court of Cassation sat to examine three petitions in respect of faulty or insufficient reasons in criminal proceedings. While one of the petitions was examined and found to be admissible, the other two, including the criminal case concerning the petitioner, were not examined for different reasons, and the decisions were deferred to September 1995.

In the meantime, the new Code of Criminal Procedure came into force, on 1 August 1995. It made provision neither for petitions in respect of faulty or insufficient reasons, as an exceptional procedure, to the President of the Court of Cassation, nor for the existence of a *plenum* of the Court of Cassation as the

supreme criminal court. The new Code further stipulated that, in respect of any case before a court of first instance or appeal, the provisions of the former Code of Criminal Procedure would be applied until 15 November 1995 (Section 525 of the new Code of Criminal Procedure).

During the hearing, counsel for the petitioner claimed that recognition of the principle of retroactivity of the new Code of Criminal Procedure infringed the constitutional rights provided for in Section 6 of Act No 7692 of 31.3.93 amending Act no. 7491 of 29.4.91, the Main Constitutional Provisions Act, and that, even if the amendment concerned was not unconstitutional, it nevertheless infringed the rights of his client.

The Court took the view that these arguments were without foundation, in that the promulgation of the Act was unconnected with the existence of the *plenum* of the Court of Cassation or with petitions in respect of faulty or insufficient reasons. The adoption of the amendment concerned had not worsened the petitioner's position by withdrawing the *plenum* of the Court of Cassation and the possibility of petitions in respect of faulty or insufficient reasons.

The Court further took the view that, in withdrawing the right to petition in respect of faulty or insufficient reasons, the legislature had not denied the constitutional right to challenge the lawfulness of a court decision guaranteed by Section 13 of the Human Rights and Fundamental Freedoms Act, in that the new Code of Criminal Procedure recognised a remedy against decisions which had become final through the introduction of the review procedure.

The Constitutional Court concluded that sittings in *plenum* of the Court of Cassation in respect of criminal proceedings were to be considered contrary to the Constitution with effect from 1 August 1995, and it set aside as unconstitutional the judgment of 26 July 1995 of the *plenum* of the said court on the examination after 31 July 1995 of the petition in respect of faulty or insufficient reasons in criminal proceedings.

Languages:

Albanian, French (translation by the Court).

Identification: ALB-1995-2-001

a) Albania / **b)** Constitutional Court / **c)** / **d)** 23/02/1995 / **e)** 3 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.3.5.6 **Constitutional Justice** - Types of litigation - Electoral disputes - Referendums and other consultations.
3.1 **General Principles** - Sovereignty.
4.5.2 **Institutions** - Legislative bodies - Powers.

Keywords of the alphabetical index:

Legislature / Law, normative / Popular approval.

Headnotes:

The approval of the Constitution by referendum without prior parliamentary approval is lawful.

Summary:

The parliamentary groups of the Social Democratic Party and the Socialist Party brought an action before the Constitutional Court arguing that Article 2 of the "Law on Referendums" (no. 7866), which permits the approval of the Constitution by referendum before parliamentary approval, was unconstitutional in the light of the provisions contained in Article 3.2 and Article 16.2 of the "Law on Major Constitutional Provisions" (no. 7491).

This claim was rejected by the Constitutional Court which said that Article 3.2 reflects the sovereign power of the people in that they exercise power through their representative organs and through

referendums. While Article 16.2 provides that the Parliament has the power to adopt and amend the Constitution, the Court said that it was subject to the right of the people to approve the Constitution. As a result, the application to strike out Article 2 of Law no. 7866 as unconstitutional was rejected.

A strong dissenting judgment was delivered by two members of the Constitutional Court who argued that there was no constitutional basis for the majority's view.

Languages:

Albanian.