

Jurisprudence constitutionnelle Autres jurisprudences

 [Décision n° 76 du 20 avril 2002](#)

 [Décision n° 75 du 19 avril 2002](#)

DECISION "IN THE NAME OF THE REPUBLIC OF ALBANIA"

The Constitutional Court of the Republic of Albania, consisting of:

Fehmi Abdiu, Chairman of the Constitutional Court

Zija Vuci, Member " "

Alfred Karamuço, Member " "

Kristofor Peçi, Member " "

Kujtim Puto, Member " "

Tefta Zaka, Member " "

Petrit Plloçi, Member " "

Sokol Sadushi, Member " "

Gjergj Sauli, Member " "

with secretary Arbenka Lalica, on April 8, 2002, took under investigation in open judicial session the case with official document nr.78, pertaining to:

A P P E L L A N T:

ARBEN RAKIPI, represented by lawyers Vangjel Kosta and Edmond Icka.

I N T E R E S T E D S U B J E C T S:

1. THE ASSEMBLY OF ALBANIA, in absentia.
2. THE PRESIDENT OF THE REPUBLIC, represented by Vjollca Uruçi.
3. THE PARLIAMENTARY GROUP OF THE SOCIALIST PARTY, represented by the chairman, Mr. Arben Malaj.
4. THE PARLIAMENTARY GROUP OF THE DEMOCRATIC PARTY, in absentia.

O B J E C T:

Repeal as unconstitutional of Decision nr. 20 dated March 19, 2002 of the Assembly of the Republic of Albania and Decree nr.3276 dated March 25, 2002 of the President of the Republic.

L E G A L B A S I S:

Articles 7, 42, 131 letter "f", 134/1 letter "g", 134/2 and 149/2 of the Constitution.

The appellant has set out in the submitted complaint that during the procedure for issuance of the decision of the Assembly of Albania and the Decree of the President of the Republic for taking the measure of discharge of the General Prosecutor from office, his constitutional and legal rights were violated by legal proceedings that denied him due process in these main respects:

- He was not informed of the nature and reason of his discharge from office;
- He was not given the necessary time to prepare his defense;
- He was not given the possibility to be heard and defended.

As an interested subject, the President of the Republic has claimed that the appellant does not have standing to submit the complaint to the Constitutional Court and that the Court does not have the competency to examine the question.

THE CONSTITUTIONAL COURT

after hearing the rapporteur of the case, Gjergj Sauli, the appellant and his representative and the representatives of the interested subjects, and after examining the case in its entirety,

FINDS

By decision nr. 20 dated March 18, 2002, the Assembly of Albania decided to propose to the President of the Republic the discharge of appellant Arben Rakipi from the office of General Prosecutor, "for acts and conduct that have seriously discredited the position of the prosecutor during the exercise of his duty." On the basis of this proposal, by Decree nr. 3276 dated March 25, 2002, based on article 149/2 of the Constitution, the President of the Republic discharged the General Prosecutor from duty with the motivation "for acts and conduct that have seriously discredited the position of the prosecutor."

Before analyzing the claims of appellant, the Constitutional Court considers it necessary to examine and take a stand on the claims made by the representative of the President of the Republic as an interested subject, in particular relating to the competency of the Constitutional Court in the examination of this question as well as the appellant's standing to put this Court into motion.

The claim of the interested subject that the Constitutional Court lacks the competency to adjudicate the constitutionality of the discharge of the General Prosecutor from office is not well grounded. It is true that, on the basis of articles 90, 115, 128 and 140 of the Constitution, the Constitutional Court has been given the competency to examine the discharge from duty of the President of the Republic, a member of the Constitutional Court, a member of the High Court and of the organs of local government, but this does not mean that this organ does not have the right to examine constitutional complaints in other cases contemplated by the Constitution.

The basic duty of the Constitutional Court, as the guarantor of respect for the Constitution, cannot be interpreted and defined as limited only in relation to the organs or functions mentioned above, but also with every individual, when the conditions of letter "f" of article 131 of the Constitution exist.

Referring to the content of articles 131 letter "f" and 134 letter "g" of the Constitution, as well as the consolidated jurisprudence of the Constitutional Court, the conclusion is reached that while for the cases of the subject asserted above, the Constitutional Court examines both the basis of the case as well as the procedure applied, in the case of the General Prosecutor, who after his discharge from duty appears as an individual, it exercises constitutional oversight only as to the application of the fundamental principle for due process.

As to the other claim of the interested subject, according to which the General Prosecutor has no standing to make a complaint to the Constitutional Court in the case of his discharge by the President of the Republic, this Court sets out a series of arguments supported in the provisions of the Constitution, in international documents and in its jurisprudence.

On the basis of articles 131 letter "f" and 134 letter "g" of the Constitution, every individual has the right to turn to the Constitutional Court when he thinks that his legal and constitutional rights have been infringed by a violation of the principle of due process and when all other legal means for the

protection of these rights have been exhausted. The right to be the General Prosecutor is not, of course, a fundamental right, but a series of constitutional and legal rights flow from this position to the individual, which article 24/1 of the Constitution attempts to protect through due process.

The interested subject also claims that the above provision protects only the rights of individuals and not of individuals who have been invested with public power, referring to a position taken by the European Court of Human Rights in the case "Pellegrin v. France."

The Constitutional Court finds it necessary to stress that the case of "Pellegrin v. France," even if referred to as a basis for issuing theoretical conclusions, attests to the contrary of what the interested subject claims. The Court of Human Rights in Strasbourg raised the problem of standing as an issue related to article 6 of the European Convention of Human Rights and with the case under adjudication, but not in relation to national law. The fact is that Pellegrin, in which the European Court of Human Rights raises the problem of standing for a public employee, had exercised the right to be tried in all the levels of the judicial system of his country.

The Constitutional Court observes that in every case the European Convention on Human Rights establishes essential standards and guarantees that every contracting state is to assure to realize due process and not the circle of persons who are to benefit from it. It considers that due process is applicable for all conflicts that are determinative of the legal position of a person, even one who is a public functionary. Thus, the Constitutional Court sees the position of a public functionary from the point of view of the guarantees assured by the Constitution, its jurisprudence to date and the spirit of the European Convention on Human Rights.

The Constitutional Court also takes account of the distinction that exists between article 6 of the European Convention on Human Rights and article 42/1 of the Constitution of the Republic of Albania. While the Convention contemplates the right of the individual to a fair criminal or civil trial, in article 42/1 of the Constitution, and in the jurisprudence of the Constitutional Court consolidated to date, the right of an individual to due process is not limited only to a judicial process, but also to that of an administrative disciplinary nature, as in the case under investigation.

Contrary to what the interested subject claims, that the appellant has not exhausted other legal means to protect his rights, the Constitutional Court concludes that the Decree of the President of the Republic to discharge the General Prosecutor from office, as an individual act of an administrative nature, cannot be treated in the same way as other administrative acts, which are examined by the courts of ordinary jurisdiction.

The special nature of this decree of the President of the Republic rests in the fact that it is indissolubly linked with parliamentary procedures, on the basis of which the proposal of the Assembly was issued, a necessary premise for the issuance the decree. From the meaning of articles 324-333 of the Code of Civil Procedure, we conclude that acts of an administrative nature of this kind, which are the result of parliamentary procedures, cannot be examined by the ordinary courts.

This being the case, the Constitutional Court considers the legal means that appellant is to use to protect his constitutional and legal rights to due process have been exhausted.

As to the claim of appellant that he was denied due process in the procedure for his discharge from office, the Constitutional Court thinks it should be stressed that every organ of public power during the exercise of its constitutional and legal function is obligated to respect generally accepted democratic standards, which have been reflected in the Constitution. In interpretative decision nr. 75, dated April 19, 2002, the Constitutional Court consolidated its position in connection with the meaning of the right to due process, reasoning that knowledge beforehand by the person against whom it is sought to take the measure of discharge of the materials that charge him with responsibility, respect of the right to be heard and to defend oneself, both in giving preliminary explanations as well as during the examination of the case, are several of the basic elements that guarantee the constitutional right of everyone to due process, as a basic right, the breach of which the jurisprudence of the Constitutional Court has identified in every case as a violation of the Constitution.

Referring to the instant case, the Constitutional Court concludes that the Assembly, during the procedure followed for the discharge of the General Prosecutor from duty, did not hold itself to the

precise respect of these standards. Thus, the Assembly considered all the accusations directed against the appellant as true, relying only on the discussions of the deputies, without giving arguments for concrete violations, without properly notifying the appellant of the content of the material charged against him, without giving him the necessary time to prepare his defense and without hearing him present his counter-arguments about these accusations.

Concretely, the session of debate about the discharge of the General Prosecutor from office was held on the afternoon of March 18, 2002 and continued without interruption until the early hours of March 19. The entire procedure was conducted about a statement that accompanied the draft decision, because only in it, and not in the motion, specific reasons were mentioned for which the discharge of the General Prosecutor from duty was sought. It is true that the appellant was notified by the Speaker of the Assembly with document nr.434/2, dated March 18, 2002 of the debate that was to be held, but the notification, which was more of an invitation to be present in the Assembly, was handed over to him along with the respective motion several hours before the debate, without being accompanied by materials about the concrete reasons charged against him for which his discharge from office was sought. Furthermore, a second document, with protocol number 683, was sent to appellant, in addition to the above notification, on the same date when the motion on the debate would be held, March 18, 2002, notifying him that at 5 PM on that date, he should present himself to the Assembly for the examination of material of the Prosecutor's Office, that is, on another question not related with the discharge motion. In this way, it was made impossible for the appellant to realize his right of defense.

Regardless of the manner of regulation in the Constitution or law of the procedures for the discharge from duty of the General Prosecutor, the Constitutional Court stresses that the Assembly was not hindered from adopting rules that it thought would be applicable for the instant case, but always respecting the constitutional principle of due process.

With these violations, even the President of the Republic concurred, approving the proposal of the Assembly for the discharge of the General Prosecutor from duty. The procedure followed by the President contains the same elements that infringed the right to due process. The appellant was called by the President before the discharge from duty was decreed, but it does not turn out that he was first made aware of the material that contained the reasons for his discharge, or that he was given the time necessary for preparation of his defense, so that the President of the Republic, in conformity with the Constitution, would be able to exercise his decision-making competency with respect to the proposal of the Assembly.

The Decree of the President and the Decision of the Assembly that are objected to in this adjudication, although pertaining to two different constitutional organs, are related to one another and represent an indivisible process. Nevertheless, not only does this connection not affect the right of the President to verify the decision of the Assembly, but it presupposes it and makes this verification essential.

This position was taken by the Constitutional Court in its interpretive decision nr. 75 dated April 19, 2002, in which it is said, concerning article 149 point 2 of the Constitution, "The Constitutional Court thinks that the President of the Republic is the competent organ charged by the Constitution to perform a verification from the constitutional viewpoint of the reasons and procedures followed by the Assembly for the discharge of the General Prosecutor. This conclusion comes from the way this constitutional article is formulated, in which the use of the expression "may be discharged," means that the decision of the Assembly for proposing the discharge of the General Prosecutor is not final, but is only the initiation of a discharge procedure, whose basis in law and in the Constitution is evaluated in this case by the President of the Republic."

Therefore, the role of the President in this case is definitive. His duty as the representative of the unity of the people is to oversee the normal functioning of the constitutional mechanisms, intervening for the elimination of deficiencies in this respect.

In conclusion, it is to be stressed that the Constitutional Court did not examine the extent to which the acts and conduct discrediting the position of the General Prosecutor are based in law and in fact,

because they have to do with the resolution of the concrete question at its fundamental level. The Court, in full exercise of its competencies, examined the constitutionality of the discharge procedures and concludes that they were contrary to the constitutional principles. It is for the Assembly of Albania to repair those violations, re-examining the case in conformity with the constitutional principles and the generally accepted international norms for due process.

FOR THESE REASONS,

The Constitutional Court of the Republic of Albania, based on article 131, letter "f," 132, and 134 of the Constitution of the Republic of Albania and on article 72 of law nr. 8577 dated February 10, 2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania, by a majority of votes

D E C I D E D

To repeal of Decision nr. 20 dated March 19, 2002 of the Assembly of Albania and of Decree nr. 3276 dated March 25, 2002 of the President of the Republic as incompatible with the Constitution of the Republic of Albania.

To send the case for re-examination to the Assembly of Albania.

This decision is final and binding and enters into force on the day of publication in the Official Journal..

Tirana, April 25, 2002

Nr.78 of the Basic Register

Decision Nr.76

Identity with the original verified

D I R E C T O R

OF THE JUDICIAL ADMINISTRATION

Drita PANDA

D E C I S I O N
"IN THE NAME OF THE REPUBLIC OF ALBANIA"

The Constitutional Court of the Republic of Albania, consisting of:

Fehmi Abdiu, Chairman of the Constitutional Court

Zija Vuci, Member " "

Gjergj Sauli, Member " "

Alfred Karamuço, Member " "

Kristofor Peçi, Member " "

Kujtim Puto, Member " "

Tefta Zaka, Member " "

Petrit Plloçi, Member

Sokol Sadushi, Member " "

with secretary Arbenka Lalica, on March 25, 2002, took under investigation in open judicial session the case with official document nr.59, pertaining to:

A P P E L L A N T:

A GROUP OF DEPUTIES OF THE ASSEMBLY OF ALBANIA, represented by Lekë Çukaj

I N T E R E S T E D S U B J E C T S:

1. THE ASSEMBLY OF ALBANIA, in absentia.
2. THE PRESIDENT OF THE REPUBLIC, in absentia.
3. THE HIGH COURT, represented by lawyer Krenar Loloçi.
4. THE GENERAL PROSECUTOR, Mr. Arben Rakipi.

O B J E C T:

A definitive interpretation of articles 128, 140, 149, point 2 of the Constitution of the Republic of Albania.

The appellant on its own initiative has limited the definitive interpretation of articles 128, 140 and 149 point 2 of the Constitution, which provide the cases for discharging a judge of the Constitutional Court, a judge of the High Court and the General Prosecutor, to an interpretation of two principal points, having to do with:

- an understanding of the reasons and motives of discharge that are connected with the constitutional terms "acts and conduct that seriously discredit the position and figure" of a judge or prosecutor, as well as "serious violations of law during the exercise of his functions" by the General Prosecutor;
- an understanding of the procedures that the Assembly should follow for verifying and determining the reasons for discharge of judges of the Constitutional Court, judges of the High Court and the General Prosecutor.

The appellant claims that the procedure that the Assembly should follow in these cases has a direct influence on guaranteeing the constitutional status of these organs and that failure to respect its rules could create dangerous precedents about respecting the Constitution.

The representative of the High Court set out his claims only for the constitutional meaning of article 140, focusing on these points:

- The Assembly's meeting of its duty to show evidence and prove whether one of the reasons contemplated in the Constitution for deciding on the discharge of a judge gives its activity several characteristics similar to judicial activity, that is, it performs a quasi-judicial activity;
- The Assembly's undertaking to examine in plenary sessions the violations committed by a judge without their having first been screened in ad hoc commissions of the Assembly might lead generally to the taking of hasty decisions that are not legally grounded;
- Regardless of whether the procedure for the discharge of a judge of the High Court is deficient it cannot be filled in with any kind of judicial decision.

The General Prosecutor summarized his opinion principally in the procedure that the Assembly had followed during the plenary session of taking the decision to propose the discharge of the General Prosecutor.

T H E C O N S T I T U T I O N A L C O U R T

after hearing the rapporteur of the case, Sokol Sadushi, the representative of the appellant and of the interested subjects, and analyzing the case in its entirety,

FINDS

The request of a group of deputies, who constitute no less than one fifth of the deputies of the Assembly of Albania, has as its object an interpretation of the constitutional articles that contemplate the cases when judges of the Constitutional Court, judges of the High Court and the General Prosecutor can be discharged.

The appellant has stated that its reason for submitting the request is that misunderstandings have been created in prior parliamentary practices, which have also brought about the failure to apply the procedures for discharge of these high functionaries in the same manner.

In its application, the appellant refers to the procedures that were followed during a motion presented about a year ago for the discharge of the General Prosecutor and a motion for the discharge of three judges of the High Court, against whom the Assembly took a concrete position. In the judicial session, the representative of appellant also referred, expressing his opposition, to the procedure that the Assembly had followed during the investigation of the motion submitted in connection with the proposal for the discharge of the General Prosecutor, during which, according to it, differing opinions were expressed in connection with the meaning of the provision, both the substantive meaning as well as the procedural one.

The positions that the Assembly has taken in all cases connected with the procedures of discharge of these high functionaries, which have received a final resolution since they have been made concrete by decisions, are considered by appellant as different manners of interpretation of articles 140 and 149 point 2 of the Constitution.

Not being clear about these constitutional articles, but also having a differing opinion about the meaning of the constitutional reasons as well as the procedure that should be followed in these cases, the group of deputies has asked the Constitutional Court to make a definitive interpretation of these provisions of the Constitution.

This being the case:

- since from prior parliamentary practices and the positions taken, it turns out that interpretation expressed through decisions of the Assembly have been made of the concrete provisions of the Constitution;
- since there is also another position on these provisions, different from the first, expressed in the complaint of a group of deputies of the Assembly, who have initiated this constitutional process, the Constitutional Court concludes that making a definitive interpretation of articles 128, 140 and 149 point 2 of the Constitution has become essential, because it creates the possibility of avoiding disagreements or unclear points that might arise from their implementation in practice.

Articles 128 and 140 of the Constitution have the same formulation, because they contain four constitutional reasons on which the Assembly should base itself for reasoning a decision to discharge judges of the Constitutional Court and the High Court, while article 149 point 2 provides the cases for discharging the General Prosecutor, of which only one is different from the first.

Of all the reasons for the discharge of these high functionaries contemplated in these constitutional articles, two of them, specifically "commission of a crime" and "mental or physical incompetency," are such that cannot be verified directly by the Assembly, because they require a preliminary determination of the competent organs.

The question becomes more difficult in the aspect of interpretation of the constitutional concepts such as acts and conduct that seriously discredit the position and figure of a judge and prosecutor as well as serious violations of law during the conduct of his functions by the General Prosecutor..

For the interpretation of these norms, the Constitutional Court does not undertake to perform the role of a positive legislator, contemplating one by one all the cases that might be included in these constitutional reasons, because such a thing would be impossible, while the Constitution, the laws or even judicial decisions cannot codify with precision the acts and conduct that seriously discredit the position and figure of a judge or prosecutor, or the cases when the law is seriously violated.

An interpretation that the Constitutional Court gives of concrete provisions or terms of the Constitution has the purpose of analytically specifying and giving the criteria, basic concepts and principles on which the competent organ should rely in order to draw a conclusion in connection with the application of the appropriate constitutional reason for the discharge of a judge of the Constitutional Court, a judge of the High Court or the General Prosecutor.

The actions or failures to act of these high functionaries of the state, which may be included in the constitutional reasons serving for their discharge, are such that can be judged case by case by the very organ that carries out this procedure of discharge. Nevertheless, in any case, they are related to incorrect and undignified conduct that these high functionaries commit not only during the exercise of duty and because of it, but also outside of duty, with abuse or violation that they cause to public trust and which are principally related to damage that they bring to society and the state. Unworthy conduct and acts committed should be so serious as to have discredited the figure and position of a judge or prosecutor and to have lowered the dignity of the organ that they represent so seriously as to compel the competent organ to take the measure of removal from duty.

Starting from the content of article 149 point 2 of the Constitution, which provides, among other reasons for the discharge of the General Prosecutor, the expression "serious violations of law during the exercise of his functions," the Constitutional Court reasons that the precise and correct meaning used in this constitutional provision, but also in others, should be analyzed and evaluated in the entirety according to several factors that have to do with the importance of the violation of law, the consequences that ensued or might ensue from this violation, the duration of these consequences and the difficulties of correcting them, as well as the subjective position that the particular person holds towards the violation committee and the resulting consequences. In addition, at the same time the characterization "serious" used both in the case of discrediting the position and figure of the judge and prosecutor as well as of a violation of law serves the competent organ that starts the discharge procedures to distinguish these actions from conduct of a lesser category that cannot be used to motivate the discharge.

The manner in which the Constitution formulates the reasons for discharge seems to leave open and debatable the making of interpretations endlessly about cases that could be classified from parliamentary practice as serious violations of law or acts and conduct that seriously discredit the position and figure of a judge or prosecutor. Nevertheless, judicial jurisprudence and in particular the examination to date or even in the future by the Constitution Court of concrete cases related to these constitutional concepts will surely give a fuller and clearer elucidation of these constitutional reasons.

In a further analysis of these constitutional concepts, the Constitutional Court considers it necessary to reason that the meaning of the constitutional terms related to the reasons for discharge should be seen as closely connected to the whole legal process that the Assembly follows in the cases when it

initiates procedures for the discharge of judges of the Constitutional Court, judges of the High Court and the General Prosecutor.

If it turns out that a judge of the Constitutional Court or the High Court, or the General Prosecutor, has violated the Constitution, has committed acts that seriously discredit his position and figure, or has seriously violated the law, the taking of the measure of discharge by the Assembly is necessarily connected with the performance of the respective procedures.

The function that the Assembly performs in this case is of a special nature.

The process accomplished by the Assembly differs from all its ordinary activity as an organ that approves laws. This legal process, which is a process of disciplinary adjudication, similar to investigative administrative procedures, has its own principles, which are related to the verification, analysis and determination of the concrete reasons that have served for the competent organ to take the measure of discharge of the judge or prosecutor from duty.

The constitutional provisions that are the object of interpretation are material and procedural, and have the purpose of specifying in an exhaustive manner the classic cases when judges or the General Prosecutor may be discharged. The existence of these constitutional reasons for discharge constitutes a guarantee especially for the functions that they perform but also for the very constitutional institutions that they represent.

These constitutional articles have left to the judgment of the Assembly both the character and importance of the violation committed as well as the determination whether the act or action is of that character that may discredit the figure of the judge or prosecutor. What the constitutional provision signifies is that the concrete case for discharge is to have happened and is to have been determined to have been such.

This is precisely the conclusion that comes from an interpretation made of the second sentence in articles 128 and 140. The Constitutional Court, examining the decision of the Assembly that has discharged a judge, determines whether the reason for the discharge exists. That is, it determines whether the Assembly has truly operated in conformity with the Constitution, with the rules and with the respective laws and whether it has respected all the procedures fully in reasoning and giving the motives and arguments for the decision of discharge.

Through this constitutional oversight performed of a decision of the Assembly, the Constitutional Court examines not only the procedure of discharge, but also the merits of the question. Thus, so that the decision of the Assembly will be as well-grounded as possible and will not be overturned as unconstitutional, it should have met all the essential elements of a correct procedure, because failure to respect the procedure and the form of issuance of an act will suffice for it to be considered invalid.

So far as concerns article 149 point 2 of the Constitution, the Constitutional Court thinks that the President of the Republic is the competent organ charged by the Constitution to perform a verification from the constitutional viewpoint of the reasons and procedures followed by the Assembly for the discharge of the General Prosecutor. This conclusion comes from the way this constitutional article is formulated, in which the use of the expression "may be discharged" means that the decision of the Assembly for proposing the discharge of the General Prosecutor is not final, but is only the initiation of a discharge procedure, whose basis in law and in the Constitution is evaluated in this case by the President of the Republic.

Taking what was set out above, the Constitutional Court sees it necessary to point out that the basic elements of a legal procedure related to the manner of initiation of the discharge procedure, the necessary quorum for making a decision, the legal reasons for discharge, as well as the organ that conclusively decides about it, are contemplated generally in the Constitution. Nevertheless, they are further regulated in the basic laws, such as in the case of the necessary quorum required to start the procedures for the discharge of judges of the Constitutional Court. So far as concerns members of the High Court, there is no legal regulation for starting the procedure to discharge them. In addition, the Law "On the organization and function of the Office of the Prosecutor in the Republic of Albania" does not provide even the basic elements of the procedures for a proposal to discharge the General Prosecutor. The only constitutional reference that might exist in this case is article 78 point 1 of the Constitution, giving the general rule (except for cases when the Constitution provides for a qualified majority) with respect to the necessary votes the Assembly should have to make a decision.

In cases when the fundamental elements of a procedure do not find detailed regulation in the Constitution or in other laws, then the Constitutional Court considers it necessary to stress that these procedural rules cannot be filled in through its interpretive decision. Interpretation, as a functional method, has its place for an existing norm when there are unclear points in its meaning but not to fill in a gap, because otherwise the Constitutional Court would be put in the mistaken position of creating a juridical norm, a function that, as is well known, belongs to the legislator.

Nonetheless, the Constitutional Court underlines that regardless of this way of regulation in the Constitution or law of procedures for discharging a judge or prosecutor, this does not prevent the Assembly from adopting special rules for each concrete case, or for all cases as a whole, but always respecting the constitutional principle, that of due process.

Generally accepted democratic standards, which have found their place in the Constitution, as well as a series of decisions of the Constitutional Court have specified and consolidated a series of elements of due process, the absence of which devalue both the procedures and the decisions taken by any organ. Argumentation of the violations that are found, respect of the principle of the separation of powers during the examination, prior knowledge by the person against whom it is sought to take the measure of discharge of the materials that charge him with responsibility, and respect for the right to be heard and defend oneself by giving preliminary explanations as well as during the examination of the case are several of the basic elements that guarantee the constitutional right of everyone to due process as a fundamental right, the infringement of which the jurisprudence of the Constitutional Court has identified in every case as a violation of the Constitution.

From all this constitutional analysis, which creates no new legal norm but which constitutes a logical and interpretative reasoning of articles 128, 140 and 149, point 2 looked at also with other provisions of the Constitution, the Constitutional Court reaches the conclusion that the complaint is correct and should be accepted.

FOR THESE REASONS,

The Constitutional Court of the Republic of Albania, based on articles 124 and 132 of the Constitution of the Republic of Albania and on articles 71, 72 and 79 of law nr. 8577 dated February 10, 2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," by a majority of votes,

DECIDED

The interpretation within the boundaries of the object of the complaint of articles 128, 140 and 149 point 2 of the Constitution in this way:

1. The expression "acts and conduct that seriously discredit the position and figure .," contemplated by articles 128, 140 and 149, point 2 of the Constitution, summarizes in itself a series of elements that can and should be identified case by case by the respective organ that makes the decision to discharge a judge of the Constitutional Court, a judge of the High Court and the General Prosecutor. They are connected with incorrect and unworthy acts and conduct that these high functionaries commit during the exercise of duty, because of it, but also outside of duty. These actions or failures to act, which are analyzed on the basis of the circumstances of their commission, the subjective moment and the damage they cause society and the state, are of such a nature as to make impossible the further performance of the constitutional functions by these subjects.
2. The expression "serious violation of law during the exercise of function" by the General Prosecutor, contemplated by article 149 point 2 of the Constitution, is related to a series of elements that have to do with those violations of legal provisions committed during the exercise of duty and because of it. These violations take on their serious nature in close connection with the importance of the law violated, the consequences that ensued or that might ensue from the violation, the frequency of the violation, the duration of the consequences and the difficulties of repairing them, as well as the subjective position that the perpetrator of the violation holds with respect to it and the resulting consequences.
3. In the determination of the procedures for discharging a judge of the Constitutional Court, a judge of the High Court and the General Prosecutor, the respective organs should respect the rules to the extent contemplated in the Constitution, in their organic laws and in other legal acts. In the undertaking of procedures for the discharge of these functionaries, respecting the constitutional right to due process contemplated in article 42/1 of the Constitution remains a fundamental condition.

This decision is definitive, final and of retroactive effect.

Tirana, April 19, 2002
Nr.59 of the Basic Register.
Decision Nr.75

Identity with the original verified
D I R E C T O R
OF THE JUDICIAL ADMINISTRATION
Drita PANDA