

**Decision no. 62 dated  
20.11.2023 (V-62/23)**

The Constitutional Court of the Republic of Albania, composed of: Holta Zaçaj, Chairperson, Marsida Xhaferllari, Fiona Papajorgji, Elsa Toska, Sonila Bejtja, Sandër Beci, Marjana Semini, Ilir Toska, members, with secretary Blerina Basha, on the dates 10.10.2023 and 06.11.2023 reviewed in a public plenary session case no. 3 (K) 2023 of the Principal Register, pertaining to:

**APPLICANT:**           **ALBANIAN HELSINKI COMMITTEE**, represented by Erida Skëndaj, with authorization.

**CIVIL RIGHTS DEFENDER, BRANCH  
TIRANA, i**

represented by Erida Skëndaj, with statement in session.

**ALBANIAN MEDIA COUNCIL**, represented by Erida Skëndaj, with statement in session.

**ALLIANCE AGAINST DISCRIMINATION LGBT, to**

represented by Erida Skëndaj, with special power of attorney.

**NETWORK BALKAN FOR  
INVESTIGATIVE JOURNALISM,  
ALBANIA – BALKANS**, represented by Erida Skëndaj, with special power of attorney.

**INTERESTED PARTIES:**

**PARLIAMENT OF THE REPUBLIC OF ALBANIA**, represented by Mimoza Arbi, with authorization.

**COUNCIL OF MINISTERS**, represented by State Advocate Irma Qosja, with authorization.

**SUBJECT MATTER:**       **The abrogation of point 2 of Article 5, insofar as it concerns the delegation granted to the Council of Ministers; Article 8; the words “or with names that are contrary to order or the mandatory provisions of the law” in point 1 of Article 9; letter “a” of point 3 of Article 17; letter “c” of point 2 of Article 20;**

**Articles 26, 28, point 6 and 32 related to the position of the chancellor; the words “chancellor/or chancellor” in the articles**

relevant, where are determined; point 1 of Article 29; points 1 and 2 of Article 36; points 2-6 of Article 49; point 5 of Article 50 of Law No. 80/2021, dated 24.05.2021 “Për regjistrimin e organizatave jofitimprurëse”, as incompatible with the Constitution of the Republic of Albania.

**LEGAL BASIS:** Articles 17, 18, 46, 131, point 1, letter “a” and 134, points 1, letter “h” and 2, of the Constitution of the Republic of Albania (*Kushtetuta*); Article 11 of the European Convention on Human Rights (*KEDNJ*); Articles 27, 28, 29, 30, 47, 49, 50 and 51 of Law No. 8577, dated 10.02.2000 “Për organizimin dhe funksionimin e Gjykatës Kushtetuese të Republikës së Shqipërisë”, as amended (*law no. 8577/2000*).

### **CONSTITUTIONAL COURT,**

after hearing the rapporteur of the case Ilir Toska, examined the claims of the applicants, who have requested the acceptance of the request, the counterarguments of the interested parties, the Parliament of the Republic of Albania (*Parliament*) and the Council of Ministers, who have requested the rejection of the application, noted the absence of the opinion *amicus curiae* of the People’s Advocate, as well as discussed the case in its entirety,

### **NOTES:**

#### **I**

#### **Circumstances of the case**

1. The Parliament of the Republic of Albania (*Parliament*), with law no. 8788, dated 07.05.2001 “Për organizatat jofitimprurëse”, as amended (*law no. 8788/2001*), has determined the rules for the establishment, registration, operation, organization, and activity of nonprofit organizations, whereas with law no. 8789, dated 07.05.2001 “Për regjistrimin e organizatave jofitimprurëse”, as amended (*law no. 8789/2001*) has determined the procedures for the registration of nonprofit organizations, as well as the rules for maintaining their register (article 1). According to this law, the rules regarding the form of organization, establishment, activity, and operation of

The nonprofit organizations are determined by law (article 2). Article 3 of this law provides that associations, foundations, and other forms of nonprofit organizations, which may conduct their activity and acquire legal person status only after registration in court, are explicitly specified by law, whereas according to article 4, the register of nonprofit organizations is maintained by the Tirana Judicial District Court.

2. In 2021, the parliament, pursuant to articles 78, 81 point 1, and 83 of the Constitution, upon the proposal of the Council of Ministers, approved law no. 80/2021, dated 24.06.2021 “Për regjistrimin e organizatave jofitimprurëse” (*law no. 80/2021*). The purpose of this law is to define the registration procedures and the rules for maintaining the register for nonprofit organizations, which are required to register according to the applicable legislation that sets out the rules for their establishment, registration, functioning, organization, and activity (article 1). The aim of the law is to facilitate the registration procedures of nonprofit organizations by creating a transparent and enabling environment for the development of their activity (article 2). Law no. 80/2021 was published in the Official Gazette no. 121, dated 02.08.2021 and entered into force on 17.08.2021.

3. Referring to the final provisions of this law, included in Chapter VII, it has amended point 1 of article 22 of law no. 8789/2001 and has added, after article 39 of that law, Chapter VII/1 “Administrative offences” (article 51). Likewise, article 50, point 1, has provided for the transitional regime, according to which, until the commencement of the operation of the electronic register, the registration procedures for nonprofit organizations shall be conducted according to the provisions of law no. 8789/2001. Article 53 of law no. 80/2021 provides that: “*On the date of commencement of operation of the electronic register, law no. 8789, dated 07.05.2001 “Për regjistrimin e organizatave jofitimprurëse” and legal and bylaw acts that are in conflict with this law are repealed.*”, whereas according to article 52, point 3, the date of commencement of operation of the electronic register is determined by decision of the High Judicial Council (*HJC*), no later than 30.08.2021.

4. In implementation of the above provision, by decision no. 35, dated 26.01.2022 (*decision no. 35/2022*) The HJC has decided: “*1. The Electronic Register of Non-Profit Organizations is established at the Tirana Judicial District Court. 2. The operation of the electronic register commences on December 30, 2023.*”.

5. Pursuant to point 2 of article 5 of law no. 80/2021 and article 4 of law no. 10325, dated 23.09.2010 “Për bazat e të dhënave shtetërore” (*law no. 10325/2010*), the Council of Ministers has approved decision no. 94, dated 09.02.2022 “Për miratimin e rregullave të

detajuara për të dhënat parësore dhe dytësore, që regjistrohen në regjistrin elektronik të

of non-profit organizations, regarding the providers of information, interaction with other databases, as well as the level of access for interested parties” (*DCM no. 94/2022*), which has as its subject the determination of detailed rules for the primary and secondary data recorded in the electronic register of non-profit organizations, regarding the providers of information, interaction with other databases, as well as the level of access for interested parties in the electronic register of non-profit organizations. According to point 3, the electronic register of non-profit organizations is created by the KLGJ and administered and maintained by the Tirana Judicial District Court, in accordance with the principles, criteria, and technical-organizational measures applicable for guaranteeing and managing security in the processing of personal data, according to the provisions of the legislation in force for the protection of personal data. According to point 5, the electronic register contains data related to the establishment, field of activity, and deregistration of non-profit organizations, any change in their status and form of organization, data pertaining to their representation, as well as other data provided by law, specifying them as follows. Likewise, *DCM no. 94/2022* has determined other databases with which this register interacts (point 10); who are the providers of information and interested parties (points 11 and 12); the level of access to the system and the database of the electronic register (point 13).

6. On 17.01.2023, the Albanian Helsinki Committee (*KSHH*), Civil Rights Defender, Tirana branch (*CRD*), Albanian Media Council (*KSHM*), Alliance against LGBT Discrimination (*Alliance LGBT*), Balkan Investigative Journalism Network Albania – Balkans, (*BIRN Albania*) (*the applicants*), have addressed the Constitutional Court (*The Court*) upon request according to its subject matter, which, after being completed in accordance with the provisions of Law No. 8577/2000, was registered on 10.02.2023.

7. The College of the Court, at the meeting dated 13.03.2023, based on Article 31, point 3, of Law No. 8577/2000, decided to refer the request for preliminary review to the Meeting of Judges, and the latter, by decision dated 06.04.2023, decided to refer the case for review in a public plenary session, determining the interested parties to be summoned to the trial, as well as to request a written opinion from the Ombudsman. The latter, even though duly notified by the Court, did not submit an opinion. *amicus curiae* in relation to this matter.

## II

### The claims of the applicants

8. *The applicants*, in summary, have stated that the contested legal provisions infringe upon the following rights and constitutional principles:

- 8.1. *The constitutional right to organise, as provided in Article 46 of the Constitution and Article 11 of the ECHR*, in contradiction with the intervention criteria provided in Article 17 of the Constitution, as the limitation by law is not respected in the substantive aspect. Organisations play a key role in achieving objectives in the public interest and are important actors for the promotion, support, and protection of human rights and the implementation of commitments deriving from international documents. The Joint Guidelines of the Venice Commission and OSCE/ODIHR “On the Freedom of Association” have identified 11 principles for guaranteeing and promoting this right. According to it, a presumption in favour of the formation of the organisation and the legality of its foundation, statute, aims, objectives, and activity must be recognised, and any restriction of the right to organise, including sanctions, must be in accordance with international standards, be provided for by law, and pursue a legitimate aim. The law must be precise, secure, and foreseeable, particularly regarding provisions granting discretion to state authorities, and the limitations, including sanctions, must be proportionate to the aim sought to be achieved.
- 8.2. The delegation made by Article 5, point 2, of the law on the Council of Ministers creates ambiguity and uncertainty regarding the data held about the organisation and access to this data by third parties, whereas these rules should have been exhaustively provided by the law itself. The delegation does not fulfil the requirement that legislation on the registration, holding of data for non-profit organisations (*NGO*) and access to this data should be clear and should not create room for inappropriate interference.
- 8.3. Likewise, the wording of Article 8 makes registration mandatory, implying that if the non-profit organisation is not registered within 30 days from its establishment, it will be considered illegal and may be subject to legal sanctions according to Article 49 of this law. According to international standards, legislation should recognise both formal and informal organisations, or at least allow them to operate without considering them illegal. It should not oblige them to acquire legal personality, but should create the possibility to do so.

- 8.4. The words “in contradiction with order” in point 1 of Article 9 of the law do not have a clear and defined meaning, leaving room and discretion for the authorities, who may misuse it to unjustly refuse the registration of an organisation, whereas the prohibitive provision should be clear and exhaustive.
- 8.5. The requirements set out in Article 17, point 3, letter “a”, of the law, in particular the one regarding annual financial statements, create a burden for the NGO and may create an obstacle to facilitating and promoting the right to organise. According to international standards, resources lawfully obtained by the organisation may be subject to reporting and transparency requirements; however, these should not impose an excessive and unnecessary burden and should be proportionate to the size of the organisation and the scope of its activities, taking into account value, assets, and income.
- 8.6. Article 20, point 2, letter “c”, of the law refers to other laws in an undefined and unclear manner, which creates legal uncertainty and may provide room for inappropriate interference with the freedom of organisation.
- 8.7. The provisions of Articles 26, 28, point 6, and 32, of the law, which specify the competence of the chancellor, do not meet international guarantees and standards, since the chancellor is not an independent, impartial decision-making authority.
- 8.8. The content of Article 29, point 1, of the law, is of a strictly formal nature and may result in obstacles to the freedom of organisation. The law does not distinguish between essential requirements for registration, of a serious nature, and other requirements of a formal and non-essential nature. Furthermore, the discretion to suspend cannot be attributed to the chancellor as a judicial officer, who is not an independent and impartial decision-making authority, but must be the exclusive attribute of the court.
- 8.9. Simultaneous registration, as provided in Article 36, points 1 and 2, of the law, being a mandatory registration, may constitute a premature burden for the organisation, taking into account the mandatory data to be declared according to tax, social and health insurance, and statistical legislation. This rule, instead of being facilitating, may become an obstacle to the registration and free exercise of the organisation's activities.

8.10. The provision in Article 49 of the law that the amount of the fine cannot be less than

30,000 ALL does not limit its maximum ceiling, linking it to 1% of the annual income of the organisation. This wording does not fulfill the requirements of clarity and legal certainty in the drafting and determination of legal sanctions, and the provision in these articles of the chancellor as the authority for imposing the fine does not meet the requirements for independence and impartiality of the decision-making body.

8.11. The provision of Article 50, point 5, of the law, further reinforces the arguments against its Article 8, regarding the obligation to register. In addition to the prescribed sanctions, it also provides for an extreme measure, the deregistration of the non-profit organisation.

8.12. *The principle of equality before the law, as provided in Article 18 of the Constitution*, since Article 49, points 2 to 6, of the law, by linking the amount of the fine to the annual income declared by the organisation, for the same violation provide for different fines, depending on the annual income.

9. *The interested party, the Parliament of Albania*, in its objections, it has submitted, in summary, as follows:

*A) On the legitimisation of the applicants*

9.1. On the legitimisation *ratione materiae* the applicants have not argued a concrete and real damage suffered from the contested provisions in the constitutional right to organise related to legal certainty, private life, and equality. Their claims are not concrete but are based on theoretical reasons, as evidenced by the use of the word “may” in the application, whereas the possibility or not of consequences occurring does not constitute grounds for proving legitimisation in terms of interest. Even regarding claims about the infringement of informal groups, a direct and personal interest has not been proven, given that the applicants are organisations registered in court.

*B) On the merits of the claims*

9.2. *Regarding the infringement of mandatory international law*, the acts of the Council of Europe and OSCE/ODIHR are not mandatory for implementation and they cannot be used as grounds for the abrogation of a law.

9.3. *Claims regarding the infringement of the right to organise*, in contradiction with

the intervention criteria under Article 17 of the Constitution, are unfounded. The provision of Article 5, point 2, of Law No. 80/2021 is related to the role held by the Council of

Ministers under Law No. 10325/2010, since the electronic register of a non-profit organisation is a state database that is created by Law No. 80/2021. Furthermore, Law No. 10325/2010 sets out the administration of the state database (Article 5), the primary and secondary data (Article 7), and the basic rules of coordination (Article 8). Meanwhile, Article 10 provides that the detailed procedures and rules relating to state data are approved by the Council of Ministers.

- 9.4. Referring to Article 8 of Law No. 80/2021, the registration obligation applies only to those organisations expressly provided for by law and not to all types of organisations. Furthermore, the law has allowed a suitable 30-day deadline for the preparation of the necessary documents for registration, thereby also accepting the suggestions of interest groups during its drafting. Consequently, the obligation within a set period respects the principle of legal certainty.
- 9.5. The term “order” in Article 9 of the law is defined in the Albanian and in the legal language, and this regulation aims to prevent the use of names that undermine the activity of a company, social and civic order, and the entirety of rules for maintaining and protecting peace, order, and morality in social and civic relations, a provision that is also found in other laws. The assessment of whether the name of the organisation is contrary to order is made by the judge, ensuring maximum guarantees.
- 9.6. Whereas in relation to Article 17, point 3, letter “a” of Law No. 80/2021, the applicants have not managed to prove the real, direct, and verifiable consequences arising from this legal provision. Furthermore, the obligation of NGOs to prepare and maintain financial statements arises from Law No. 25/2018, dated 10.05.2018 “Për kontabilitetin dhe pasqyrat financiare” (*law no. 25/2018*), therefore their publication does not constitute a heavy and insurmountable burden.
- 9.7. The reference in Article 20, point 2, letter “g” of the law is of a general nature and relates to the discretion of the legislator to provide by special law the cases when an NGO may be deregistered. Such a definition is also found in Law No. 9754, dated 14.06.2007 “Për përgjegjësinë penale të personave juridikë” and Law No. 110/2016 “Për falimentimin”, which applies to any legal person, including NGOs, insofar as this type of organisation is not also provided as an exceptional case.

- 9.8. Regarding the claims concerning Articles 26, 28, point 6, and 32 of the law, which relate to the powers of the chancellor, the applicants have failed to analyze the legal norms regarding the appointment and dismissal of the chancellor, even though Law no. 98/2016, dated 06.10.2016 “Për organizimin e pushtetit gjyqësor në Republikën e Shqipërisë” (*ligji nr. 98/2016*) has guaranteed his independence and impartiality. The legislator's aim in this specific case has been the effectiveness of the process, reduction of the burden of judicial procedures, facilitation of actions, etc.
- 9.9. The claim regarding Article 29 of the law is also unfounded, as these cases have been specifically determined and concern the absence of elements of the formal aspect of the request, a provision that is also found in other laws.
- 9.10. The regulation of Article 36, points 1 and 2, of the law aims to facilitate the activity of organizations by enabling the development of two registration procedures at the same time. Referring to the provisions of ligji nr. 9920, datë 19.05.2008 “Për procedurat tatimore” (*ligji nr. 9920/2008*), NGOs have had the obligation that immediately after registration in court to register with the tax authorities. Meanwhile, the claim of the applicants that this registration may lead to tax evasion has no legal basis.
- 9.11. Also regarding Article 50, point 5, of the law, the claim of the applicants is unexamined and is contrary to their legal obligation to carry out this registration.
- 9.12. *The claim regarding the violation of the principle of equality before the law*, from the content of Article 49, points 2-6, of the law, is unfounded, since the provisions of this article respect the principle of proportionality and are in accordance with Article 10, points 1 and 2, of ligji nr. 10279, datë 20.05.2010 “Për kundërvajtjet administrative” (*ligji nr. 10279/2010*), which stipulates that the penalty may be fixed or determined by minimum and maximum limits. In any case, it is up to the court to apply point 2 of that article. On the other hand, the penalty amount from 0.1% to 1% is proportional and cannot be considered excessive. It guarantees the principle of equality, as it carries the same weight for all subjects and the penalty is not measured by the quantitative value, but by the actual percentage it represents in each organization.
10. ***The interested party, the Council of Ministers***, has objected as follows:

A) *On the legitimisation of the applicants*

10.1. The applicants have not proven the connection and direct interest between the mission for which they were established or the activity they carry out and the negative consequences arising or expected to arise from the contested provisions. Their claims have not been raised at the constitutional level, failing to argue how these provisions infringe the freedom of association.

*B) On the merits of the claims*

10.2. *The claims of infringement of the freedom of association are unfounded* Regarding Article 5, paragraph 2, of Law No. 80/2021, the applicants have not argued how the delegation to the Council of Ministers affects their interests or infringes this freedom. Based on the legal authorization, Decision of the Council of Ministers No. 94/2022 has been adopted, which details the elements that the electronic register must contain. The applicants have not argued how this delegation creates ambiguity and insecurity regarding the data maintained about the organization and the access to this data by third parties, or how this delegation creates room for improper intervention. Given that the electronic register is created as a state database, the latter are governed by Law No. 10325/2010, which has left it to the discretion of the legislator to decide whether this database will be created by law or by Decision of the Council of Ministers.

10.3. As regards Article 8 of the law, it leaves no room for interpretation regarding the scope of application, referring only to organizations that, under Law No. 8788/2001, have the obligation to register. Even according to OSCE/ODIHR standards for acquiring legal personality, an association may inform the authorities of its formation and undergo a formal process that includes registration. Since the Constitution provides for the registration of non-profit organizations and Law No. 8788/2001 determines which organizations have this obligation, Law No. 80/2021 regulates registration and provides the corresponding sanctions for violations of the obligations arising from the law on NGOs.

10.4. Regarding the concept of public order in Article 9 of the law, it is not exhaustive and is interpreted on a case-by-case basis, being a term also found in other laws. The applicants have not provided any example of how this phrase can be interpreted differently from those foreseen by the Constitution itself and the

legislation in force, and this claim is resolved through harmonious interpretation.

- 10.5. Regarding Article 17, point 3, letter “a”, of the law, non-profit organizations have the right to carry out economic activities for the purpose of generating income, provided that this is not their primary purpose. These organizations are subject to Law No. 25/2018 and have the obligation to prepare and maintain financial statements, so this obligation does not arise from Law No. 80/2021. The legislation has envisaged facilitations so that the registration of financial statements does not constitute an excessive burden. They are part of the financial and accounting documents and serve as a basis for the calculation of tax obligations. Registration increases the standard of conducting the activities of these organizations, making them more transparent and preventing corruption.
- 10.6. In Article 20, point 2, letter “g”, of the law, the use of references in other laws enables the legislator to ensure coherence between legislative and bylaw acts and does not create legal uncertainty, but guarantees the regulation of the matter in accordance with all legislation. In this specific case, the reference is made to legislative acts and is not left to the discretion of the competent public authorities.
- 10.7. Meanwhile, regarding the claims concerning Articles 26, 28, point 6, and 32, of the law, the powers of the court registrar are provided by Law No. 98/2016, and considering the fact that they relate to simplified procedures for the filing of acts, their purpose is to avoid overburdening the court with matters that do not require an in-depth review. On the other hand, registration by the registrar brings benefits, as the process is completed in a shorter period of time. As for the impartiality and independence of the registrar, the applicable legal provisions provide guarantees for their recusal or exclusion from the review of the request. Therefore, the applicants’ arguments have not been raised to a constitutional level, as they have not argued how the freedom of organisation is affected.
- 10.8. The claim regarding Article 29 of the law is subjective and undeveloped, as even the applicants themselves are not clear about the meaning and distinction between serious and formal requests. Within the meaning of Law No. 80/2021, all registration requests have the same importance and aim to accurately reflect data in the electronic register of organisations. Suspension of the request allows the applicant entity to complete the request with the necessary elements

according to the law. As for the registrar's discretion, the law has provided for a position equal to that of the judge in terms of responsibility, impartiality, and independence. The conditions

The conditions provided for by the law relate to the registration of organisations and not to their organisation, therefore they do not infringe upon this freedom.

- 10.9. The claim regarding Article 36, paragraphs 1 and 2, of the law is unfounded, as the obligation to register with the tax administration arises from Law No. 9920/2008. Furthermore, Law No. 8788/2001 has provided for the obligation of non-profit organisations to keep tax records in accordance with tax legislation and to be subject to inspection by tax authorities. Law No. 80/2021 has aimed to facilitate the registration procedure, reduce costs, and eliminate bureaucracy, by providing for simultaneous registration with the central and local tax administration, in the social and health insurance scheme, and with the labour inspectorate. The legislator has provided for non-compliance with the registration obligation to be an administrative violation, whereas non-payment of fees and taxes is considered a criminal offence.
- 10.10. Regarding Article 50, paragraph 5, the claimants have not presented any arguments, thus failing to elevate their claim to a constitutional level. The obligation to register with the tax organisation is a legal obligation and, furthermore, we are dealing with a transitional provision that has already fulfilled its effects.
- 10.11. *Regarding the claim of violation of the principle of equality before the law* from the content of Article 49, paragraphs 2-6, the arguments have not been raised to a constitutional level, as the infractions and administrative sanctions are determined in accordance with Law No. 10279/2010, while the manner of their enforcement does not constitute constitutional jurisdiction. Through this provision, it is ensured that the same violation receives the appropriate administrative sanction, without linking it to a fixed amount. This is because a fixed fine for an organization with large financial resources does not have the same effect as for another with fewer resources, and for the latter, it may even constitute an obstacle to the exercise of its activity.

### III

#### Assessment of the Constitutional Court

##### A. *On the legitimisation of the claimants*

11. The issue of legitimisation (*locus standi*) The Court has assessed it as one of the

main aspects related to the initiation of a constitutional process. In cases of constitutional review of a norm, the conditioned subjects, which are provided for in Article 134, paragraph 2,

of the Constitution, are obliged to prove the necessary connection that must exist between the activity they carry out and the constitutional issue raised.

12. The Court notes that in Article 131 of the Constitution, its competences are provided for, among which is also that of controlling the compliance of the law with the Constitution (*point 1, letter "a"*), whereas Article 134 provides for the subjects that may initiate it, which also include organisations (*point 1, letter "h"*). These latter, according to Article 134, paragraph 2, of the Constitution, may file a request only if they prove an interest in relation to the constitutional issue raised. The content of this constitutional provision is elaborated in Article 49 of Law No. 8577/2000, which in points 3, letter "d" and 4 provides that organisations are obliged to prove in each case that the issue is directly related to the rights and freedoms provided by the Constitution or to the objectives of their activity.

13. The assessment of whether an organisation has sufficient interest or not is done on a case-by-case basis, depending on the circumstances of each particular issue. The organisation that initiates proceedings before the Court must prove the direct and individualised connection that exists between its activity and the norm it challenges. Constitutional jurisprudence has stated that the interest to act of the conditioned subjects must be certain, direct, and personal. This interest consists in the violated right, in real or potential damage, and not in theoretical premises about the unconstitutionality of the norm that has affected the interest. The mere fact that the challenged provisions may have or have had any kind of effect on the applicant is not sufficient to determine whether it is legitimised to submit the application, but it is necessary to prove that they regulate relationships included in the objectives of its activity, according to the definitions made in the Constitution, in laws, or, in the case of private law subjects, in the statute (*see decisions no. 39, dated 15.12.2022; no. 30, dated 05.07.2021; no. 20, dated 20.04.2021 of the Constitutional Court*).

14. The applicants have submitted that they are entitled to address the Court, based on Article 134, paragraph 1, letter "h", of the Constitution, as they possess legal personality and are subject to Law no. 80/2021, the contested provisions of which create room for inappropriate interference by state authorities in the independent exercise of the activities of these organizations and hinder them in fulfilling their mission and in promoting and protecting human rights.

15. Regarding the applicant KSHH, it was registered as a legal person by decision no. 17/1, dated 12.01.1991, of the Minister of Justice and subsequently by decision no. 2/1, dated 19.07.2002, of the Tirana Judicial District Court. According to these decisions and the content

of

According to Article 2 of the statute, KSHH is a non-profit organization whose purpose and object of activity, among other things, includes monitoring the situation of human rights and fundamental freedoms, the rights of minorities and other communities, as well as the implementation of the principles of the rule of law, the denunciation of any violation that contradicts Albanian legislation and the generally recognized norms of international law, etc.

16. By decision no. 3595, dated 30.05.2013 of the Tirana Judicial District Court, the Albanian branch of CRD was registered as a legal person. According to Article 1 of the statute, its purpose is to protect the civil and political rights of individuals, in accordance with the 1975 Helsinki Final Act and other international human rights instruments, as well as to empower local and regional human rights defenders. Whereas regarding the other applicant, KSHM, the Court notes that it was registered as a legal person by decision no. 5206, dated 11.11.2015, of the Tirana Judicial District Court, and referring to this decision, as well as Article 6 of the statute, the purpose of the association's activity includes, among other things, the preservation and improvement of freedom of expression and information, freedom and pluralism of the media, the free movement of information and ideas, and the free formation of opinions, etc.

17. The applicant Aleanca LGBT is registered as a legal person by decision no. 567, dated 10.11.2009 of the Tirana District Court and, according to Article 3 of its statute, in order to support its vision for a free, open, and equal society, the association seeks to support, empower, and increase the visibility of the communities of homosexuals, bisexuals, and transgender people, increasing awareness and the public level of information on issues of sexual orientation and gender identity. The other applicant, BIRN Albania, is a non-profit organization, registered as a legal person by decision no. 554, dated 07.10.2009 of the Tirana District Court, which, according to Articles 5 and 6 of its statute, aims to assist the development of investigative journalism in Albania, as well as to promote and support freedom of media, expression, and information, etc.

18. Law no. 80/2021 provides for the procedures of registration and those for maintaining the register for non-profit organizations that are obliged to register according to the applicable legislation, which sets the rules for their establishment, registration, functioning, organization, and activity, with the aim of facilitating the registration procedures and creating a transparent and enabling environment for the development of this activity. The court notes that the applicants are subjects of law no. 80/2021, as long as the electronic register, as a database, also includes all the data relating to organizations already registered under the applicable legislation; consequently, the applicants are subject to the initial registration (in

in the sense of Article 50 of the law) and subsequently to other registrations, according to its requirements, compulsory facts, acts, and information. In this way, the applicant associations must fulfill the new legal requirements in order to continue their activity. Furthermore, the applicants have the obligation to organize and operate according to the applicable legislation, including the rules of the contested law. Based on these considerations, the Court assesses that the applicants justify a direct and personal interest in the case presented, in the sense of Article 134, paragraph 1, letter “h” and paragraph 2, of the Constitution, and Article 49, paragraph 3, letter “d”, of law no. 8577/2000, and therefore are legitimized *ratione personae*.

19. Subsequently, the Court, based on Article 50, paragraph 1, of law no. 8577/2000, finds that the applicants are legitimized *ratione temporis*, since the request was submitted within two years from the entry into force of the challenged law no. 80/2021. Specifically, this law was published in the Official Gazette no. 121, dated 02.08.2021 and entered into force 15 days after publication, whereas the request for the constitutional review of its provisions was submitted on 17.01.2023, therefore within the legal deadline.

20. Regarding legitimization *ratione materiae*, the applicants have claimed that the challenged provisions infringe the constitutional right to organize, provided for in Article 46 of the Constitution and Article 11 of the ECHR, in contravention of the intervention criteria set out in Article 17 of the Constitution, as well as the principle of equality before the law, provided for in Article 18 of the Constitution. The Court, considering that these claims of the applicants fall within constitutional jurisdiction, will subsequently examine their merits in substance. Likewise, based on the nature and essence of these claims, they will subsequently be analyzed from the perspective of the freedom of organization, as provided for by Article 46 of the Constitution.

#### *B. Regarding the merits of the claims*

21. The applicants have claimed that a presumption should be recognized in favor of the formation of the organization and the lawfulness of its establishment, statutes, purposes, objectives, and activities, and any restriction of the right to organize, including sanctions, must be in accordance with international standards, provided by law, and must have a legitimate aim. The law should be precise, certain, and foreseeable, especially for provisions that recognize discretion to state authorities, and the restrictions, including sanctions, should be proportional to the aim sought to be achieved. According to the applicants, the provisions of the challenged dispositions do not meet these requirements, as they create ambiguity and uncertainty and some

of them do not have a clear and defined meaning, leaving room and discretion for

authorities. They create a burden for the non-profit organization and may create an obstacle to the facilitation and promotion of the right to organize. Likewise, they have also claimed that the provisions granting certain competences to the chancellor do not meet international guarantees and standards, as he is not a decision-making, independent, and impartial authority.

22. According to the interested parties, the Parliament and the Council of Ministers, the allegations of violation of the right to organize in contradiction with the intervention criteria under Article 17 of the Constitution are unfounded. The contested provisions respect the principle of legal certainty and do not impose a heavy and insurmountable burden on organizations. The law does not create ambiguity or uncertainty regarding the data held about the organization and third-party access to this data, nor does it create room for inappropriate intervention. The contested provisions do not leave room for interpretation, and the use of references to other laws allows the legislator to ensure coherence between laws and bylaws and does not create legal uncertainty, but guarantees the regulation of issues in accordance with all legislation.

23. The Constitution in Article 46 provides: “*1. Everyone has the right to organize collectively for any lawful purpose. 2. Registration in court of organizations or associations shall be carried out according to the procedure provided by law. 3. Organizations or associations pursuing unconstitutional purposes are prohibited by law.*”. This constitutional provision concerns the freedom of collective organisation, which represents one of the most important freedoms in a democratic society. The freedom of organisation, as a negative freedom guaranteed by the Constitution, aims to give citizens the possibility to assemble and organise freely and according to their preference for common purposes and objectives (*see decisions no. 38, dated 09.12.2022; no. 3, dated 05.02.2010 of the Constitutional Court*).

24. According to the European Court of Human Rights (*ECHR*), referring to Article 11 of the *ECHR*, the freedom of association is a fundamental right in a democratic society and, like freedom of expression, is one of the foundations of such a society. The ability to form a legal person in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which it would be deprived of any meaning. The manner in which national legislation provides for this freedom and its practical application by the authorities indicates the state of democracy in that country. Of course, states have the right to satisfy themselves that the aims and activities of an association are in accordance with the rules set out in the legislation, but they must do so in a manner consistent with their obligations under

the Convention and which are subject to review by the institutions of the Convention (*see Koretsky and Others v. Ukraine, no. 40269/02, dated 03.04.2008, § 32*).

25. The harmonious interaction of individuals and groups with different identities is essential for achieving social cohesion. It is natural that when a civil society functions in a healthy manner, citizen participation in the democratic process is largely achieved through membership in associations, in which they can integrate with one another and collectively pursue common objectives (*see Ecodefence and Others v. Russia, dated 14.06.2022, § 123; Gorzelik and Others v. Poland [GC], no. 44158/98, dated 17.02.2004, §§ 91, 92*).

26. However, this right is not absolute and may be subject to restrictions. In constitutional jurisprudence, the criteria set out in Article 17 of the Constitution for the restriction of the rights and freedoms provided for in the Constitution have been analysed. The criterion of restriction by law does not require only that the contested measure be provided by law, but also refers to the quality of the law in question. The purpose of this criterion is to provide the fullest possible guarantees in cases of restrictions and, for this reason, only the highest legislative body should be competent (*see decisions no. 30, dated 05.07.2021; no. 20, dated 04.04.2014; no. 20, dated 11.07.2006 of the Constitutional Court*).

27. The Court has emphasized that when the constitutionality of interventions in human rights is being reviewed, the assessment of the criterion “*restriction only by law*” is analysed both in the formal aspect, i.e., whether the intervention is provided for by law adopted by the parliament, and in the substantive aspect, i.e., whether the law provides sufficient guarantees for the intervention (*see decision no. 30, dated 05.07.2021 of the Constitutional Court*). Regarding the substantive aspect, the Court has stated that the law which restricts constitutional rights must fulfill the requirements of quality: it must be accessible to the interested party (in the sense of being informed) and foreseeable with respect to its effects. Likewise, the law must be sufficiently clear, in order to give citizens an appropriate indication of the circumstances and conditions under which public authorities are authorized to intervene in their constitutional rights (*see decisions no. 30, dated 02.11.2022; no. 30, dated 05.07.2021 of the Constitutional Court*). This is also linked to the principle of legal certainty, which has as its indispensable requirement that the law in its entirety or its specific provisions in their content must be clear, defined, and understandable (*see decisions no. 24, dated 04.05.2021; no. 9, dated 26.02.2007 of the Constitutional Court*). An incorrect regulation of the legal norm, which leaves room for the implementer to give it different interpretations and which brings consequences, does not comply with the purpose, stability, reliability, and effectiveness that it itself aims for

norm (*see decisions no. 10, dated 26.02.2015; no. 36, dated 15.10.2007 of the Constitutional Court*). Consequently, during the review of acts of public authority, whenever a constitutional right or fundamental freedom is called into question, it is important to verify the principles related to the quality of law, foreseeability, legal certainty, and equality before the law, as it is precisely these that protect the individual from arbitrariness, especially in the relationships between him and the state (*see decision no. 30, dated 02.11.2022 of the Constitutional Court*).

28. Regarding the criteria that allow for the restriction of the freedom of association, the ECtHR has emphasized that in matters affecting fundamental rights, it would be contrary to the principle of the rule of law, one of the basic principles of a democratic society, for legal discretion granted to the executive to be expressed in terms of unlimited power. Consequently, the law must clarify with sufficient precision the purpose of such discretion and the manner in which it is exercised. The level of precision required from the domestic legislation depends to a significant extent on the content of the instrument in question, the field it aims to cover, and the number and status of the subjects to whom it is addressed (*see Jafarov and Others v. Azerbaijan, dated 25.07.2019, § 63*).

29. Law no. 8788/2001 has established the rules for the founding, registration, functioning, organization, and activity of non-profit organizations that pursue charitable purposes and are in the public interest, whereas law no. 8789/2001 has set out the procedures for the registration of non-profit organizations, as well as the rules for maintaining their register. On 24.06.2021, the legislator adopted law no. 80/2021, which sets out the procedures for registration and for maintaining the register of non-profit organizations that are obliged to register according to the applicable legislation, as well as the rules for the founding, registration, functioning, organization, and activity of such organizations, with the aim of facilitating registration procedures and creating a transparent and enabling environment for the development of this activity. The disputed provisions of law no. 80/2021 concern the determination of the data to be registered (article 5, point 2), the registration obligation (article 8), the naming rules (article 9, point 1), other mandatory registrations (article 17, point 3, letter “a”), deregistration of the entity (article 20, point 2, letter “c”), the powers of the chancellor (article 26, article 28, point 6 and article 29, point 1), simultaneous registration (article 36, points 1 and 2); administrative offenses administrative (Article 49, points 2 to 6); the transitional regime (Article 50, point 5). Likewise, the applicants have also requested the abrogation of the words “kancelari/ose kancelari” in addition to the aforementioned, also in Articles 29, point 1, 30, 33, points 2 and 6, 34, 35, point

1, 41, 44, point 3 and 46, point 1, of Law No. 80/2021.

30. The Court notes that interventions in the freedom of association include a variety of measures, which may manifest in the form of registration formalities, legal requirements, restrictions, or even punitive measures. Consequently, the Court will proceed to assess whether the disputed provisions constitute a restriction on the freedom of association and whether this restriction fulfills the criteria of Article 17 of the Constitution, which is also the test to be applied for any intervention in the fundamental rights and freedoms of the individual that may be restricted. In analyzing these criteria, the Court considers it appropriate to also refer to the principle of legal certainty, which, among other things, has as an essential requirement that the law or its specific provisions in their content be clear, precise, and understandable.

*B.1. On the infringement of the freedom of association related to the principle of legal certainty*

*B.1.1. On the content of Article 8 of Law no. 80/2021*

31. According to the applicants, the formulation of Article 8 of the law makes registration mandatory, implying that if the non-profit organization is not registered within 30 days from its establishment, it will be considered unlawful and may be subject to legal sanctions pursuant to Article 49 of this same law. According to international standards, legislation should recognize both formal and informal organizations/associations or at least allow them to operate without being considered unlawful. The law should not oblige them to acquire legal personality, but should create the possibility to do so. In the specific case, no distinction is made between the concept of NGOs and informal groups, which may choose to organize and operate in one of the forms of non-profit organizations, but the difference is that they cannot enjoy legal personality if they are not registered with the court. Those that choose to acquire legal personality are obliged to meet all the criteria and legal requirements for their establishment and registration.

32. The interested party, the parliament, has argued that the registration requirement in Article 8 of the law applies only to those organizations expressly provided for by law and not to all types thereof. Furthermore, the law has allowed a suitable 30-day period for preparing the necessary documents for registration, thereby also accepting the suggestions of interest groups during the drafting of the law, and thus it respects the principle of legal certainty. According to the interested party, the Council of Ministers, this provision does not leave room for interpretation regarding its scope of application, referring only to organizations that

according to Law No. 8788/2001 have the obligation for registration. Also referred the standards OSCE/ODIHR for profit e

of legal personality, the association may notify the authorities of its formation and undergo a formal process that includes registration. Since the Constitution provides for the registration of non-profit organizations and Law No. 8788/2001 defines which organizations have this obligation, Law No. 80/2021 regulates registration and provides for appropriate sanctions for violations of the obligations arising from the law on NGOs.

33. The court notes that according to Article 8 of Law No. 80/2021: "*Non-profit organizations which are obliged to register according to the applicable legislation, which sets out the rules for the establishment, registration, functioning, organization, and activity of non-profit organizations, are required to submit to the Tirana Judicial District Court the application for initial registration or for other mandatory registrations within 30 (thirty) calendar days from the date of establishment or from the date of occurrence of the factual circumstance and/or drafting of the act required to be registered.*".

34. According to the ECtHR, states may establish in their legislation rules and requirements for legal persons and governing bodies, as well as ensure compliance with them. In fact, the domestic laws of many member states of the Council of Europe provide for such rules and requirements, with varying degrees of regulation (*see Ecodefence and Others v. Russia, dated 14.06.2022, § 152*). While states have the right to require organizations seeking official registration to fulfill reasonable legal formalities, such a requirement is always subject to the criterion of proportionality (*see United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 2), dated 18.10.2011, § 40*). The measure in question must respond to a "pressing social need" and be proportionate to the "legitimate aim," and the reasons presented by the national authorities to justify it must be "relevant and sufficient." While states may have legitimate reasons to monitor financial operations in accordance with international law, with the purpose of preventing money laundering and the financing of terrorism and extremism, the ability of an association to seek, receive, and use funds so that it is able to promote and protect its causes constitutes an integral part of freedom of association (*see Aliyev v. Azerbaijan, No. 68762/14 and 71200/14, dated 20.09.2018, § 212*).

35. The objective to increase the transparency of association financing, although legitimate, cannot justify legislation that is based on presumptions, made in principle and applied indiscriminately, that any financial support from a non-national entity and any civil society organization that receives such financial support is inherently responsible for risking the political and economic interests of the state and the ability of its institutions to

to operate freely from interference. A regulatory framework must correspond to the scenario of a sufficiently serious threat to a fundamental interest of society, which these obligations are supposed to prevent (*see Ecodefence and others v. Russia, dated 14.06.2022, § 166*).

36. According to Article 46 of the Constitution, the procedure for registering organizations or associations is carried out according to the law, but the constitutional norm does not foresee any obligation except for the competent authority for registration. Meanwhile, according to Article 26 of the Civil Code (KC), private legal persons are companies, associations, foundations, and other entities of a private nature, which acquire legal personality in the manner specified by law, while Article 29 of the Civil Code defines as the moment of acquiring the legal capacity of the legal person the moment of its creation, and when the law provides as an obligation, the registration thereof. According to Article 3, point 5, of Law no. 80/2021, “non-profit organization” has the same meaning as in the law which sets the rules for the establishment, registration, functioning, organization, and activity of non-profit organizations. Referring to Article 2, points 3 and 4, of Law no. 8788/2001, “non-profit organization” means associations, foundations, and centers, the activity of which is carried out independently and without being influenced by the state, and “non-profit activity” means any economic or non-economic activity, provided that the income or property of non-profit organizations, where such exist, are used only for fulfilling the goals set out in the organization's statute. Article 13 of Law no. 8788/2001 provides that NGOs acquire legal personality after being established and registered in court, in accordance with the conditions and procedures provided by law. The founders of a non-profit organization gather and approve the act of establishment and its statute, and may also authorize one or more persons to carry out the registration actions. Whereas according to Article 3 of Law no. 8789/2001, associations, foundations, and other forms of NGOs, which may exercise their activity and acquire the status of legal person only after registration in court, are explicitly defined by law.

37. In the Court's assessment, the obligation of non-profit organizations to undergo initial registration—an obligation which, if not fulfilled, is considered an administrative offence within the meaning of Article 49 of Law No. 80/2021 and is punishable by a fine—constitutes a form of intervention in the freedom of association. The legislation in force, while specifying the forms of organization, has linked formal registration in court only to the acquisition of legal personality, as this is the moment from which obligations for the private legal person arise. The Court notes that freedom of association, under Article 46 of the Constitution, also implies the right of citizens to decide on the degree of exercise of this

freedom, which means that these voluntary organizations can be formal or informal. Meanwhile, Article 8 of the law regulates initial registration, stating that

organizations that have the obligation to register according to the legislation in force are required to register. This formulation of the norm not only obliges citizens to register in court regardless of their will, but essentially constitutes a new obligation, created precisely by Law No. 80/2021, since it is not provided as such by the legislation in force, specifically Laws No. 8788/2001 and No. 8789/2001. In cases where unformalized organizations, for various reasons, consider or are not in conditions to seek registration according to the law, they have the right to organize only in the form of an informal group, without possessing, for the purposes of the law, the legal personality of formal organizations. The ability to form a legal person, with the aim of acting collectively in a field of common interest, as one of the important aspects of freedom of association, is directly related to the creation of those conditions that not only facilitate registration and the exercise of activity, but also allow a particular organization to take the necessary time to assess and prepare the necessary legal documentation in this regard.

38. The provision of Article 8 of Law no. 80/2021, which, by the way it is formulated, links the obligation for initial registration to the approval of the act of establishment, compels informal groupings to change their behavior and approach in order to avoid the risk of facing legal sanctions, which, for this reason, may also constitute an excessive financial burden. The Court has emphasized that an inaccurate regulation of the legal norm, which leaves room for the enforcer to give it different interpretations and which brings consequences, does not comply with the purpose, stability, reliability, and effectiveness intended by the norm itself (*see decisions no. 10, dated 26.02.2015; no. 36, dated 15.10.2007 of the Constitutional Court*). Due to the scope regulated by Law no. 80/2021 and especially the challenged provision, a reasonable degree of precision is necessary, whereas, in terms of content, this provision is not such as to prevent its arbitrary application or interpretation. Bearing in mind not only the absence of a legal obligation for registration, but, on the other hand, also the procedures that must be followed up to the submission of a request to the court for initial registration, as well as the necessity for preparing and completing the required documentation, the effect of this obligation is considered to bring a significant “chilling effect” on the choice of groupings to formalize and register according to the law. This may result *de facto* in the impossibility of these groupings acquiring legal personality, consequently preventing them from carrying out the activities for which they were established.

39. As long as, as emphasized above, the Constitution and the applicable legislation do not foresee and do not establish obligations regarding the form of organization, formal or informal, up until the decision for registration is made, the law cannot establish any obligation

to initiate legal procedures and to confer upon these organizations a specific legal status. For the above reasons, the obligation for initial registration, by linking this to NGOs which according to the law have an obligation to register, does not meet the criterion of “quality of law” required by Article 17 of the Constitution and the principle of legal certainty.

40. Even though, in the Court’s assessment, the failure to meet one of the limitation criteria within the meaning of Article 17 of the Constitution is sufficient at the constitutional level to consider the legal norm unconstitutional, it considers it necessary to emphasize that the interested parties did not manage to argue that the obligation imposed on newly established organizations to submit a request for initial registration within a 30-day period is a measure that responds to an urgent need and is proportionate to the objective sought to be achieved. This obligation, as emphasized above, not only does not derive as such from the applicable legislation, but, on the one hand, creates additional obligations for these entities, and, on the other hand, its non-compliance entails legal consequences, as long as it is considered an administrative violation and is accompanied by a fine. This provision, insofar as it may produce the opposite effect from that intended to be achieved, making initial registration of NGOs difficult or impossible, is deemed to constitute an impediment to freedom of association. The Court did not find important and sufficient reasons for imposing such a requirement, which restricts freedom of association in an unforeseeable and disproportionate manner.

41. Consequently, the Court assesses that the provisions of Article 8 of the law regarding the obligation for initial registration, as long as they are not clear and foreseeable, do not meet the criteria of Article 17 of the Constitution for restriction by law, nor the requirements of the principle of legal certainty.

*B.1.2. Regarding the competencies of the chancellor according to the disputed provisions of Law No. 80/2021*

42. Also, from the perspective of freedom of organization, the applicants have requested the abrogation of the words “chancellor/or chancellor” in the respective articles where they appear, specifically Articles 26, 28, point 6, 29, point 1, 30, 32, 33, points 2 and 6, 34, 35, point 1, 41, 44, point 3 and 46, point 1, of Law No. 80/2021. According to them, these provisions do not fulfill international guarantees and standards, as he is not a decision-making, independent and impartial authority. The law does not distinguish between essential, substantive requests for registration and other requests of a formal and non-essential nature. Furthermore, the discretion of

The suspension cannot be attributed to the chancellor as a judicial officer, who is not an independent and impartial decision-making authority, but must be the exclusive attribute of the court.

43. In relation to these claims, the interested party, the Parliament, has argued that Law No. 98/2016 has guaranteed the independence and impartiality of this official. The legislator's aim in this specific case has been the effectiveness of the process, reduction of the burden of judicial procedure, facilitation of actions, etc. Whereas according to the interested party, the Council of Ministers, the competencies of the chancellor are provided for by Law No. 98/2016, and given that they are related to simplified procedures for the filing of acts, their purpose is to avoid overburdening the court with matters that do not require in-depth review. On the other hand, registration by the chancellor brings benefits, as the process is carried out in a shorter period of time. With regard to the impartiality and independence of the chancellor, the legal provisions in force provide guarantees for his recusal or exclusion from the review of the application.

44. The Court notes that Article 4, as well as the preamble of the Constitution, declares the principle of the rule of law, which is one of the most fundamental and important principles in a democratic state and society. As such, it is an independent constitutional norm; thus, its violation in itself constitutes a sufficient basis for declaring a law as unconstitutional. This principle implies the reign of law and the avoidance of arbitrariness, with the aim of achieving respect and guarantee of human dignity, justice, and legal certainty. The principle of the rule of law implies the action of all state institutions according to the law in force, as well as the supremacy of the Constitution over other normative acts (*see decisions no. 55, dated 27.07.2016; no. 16, dated 10.04.2015 of the Constitutional Court*). In the context of this principle, the content of the constitutional provision cannot be avoided or exceeded by giving priority to legal acts issued on the basis of and for the implementation of the Constitution, an obligation arising from the content of Article 4, paragraph 3, of the Constitution. In every case where the constitutional regulation is expressly provided by it, it must be applied directly. For the constitutional functions of the bodies, what the Constitution has not intended to do cannot be done by law (*see decisions no. 55, dated 27.07.2016; no. 22, dated 24.04.2015 of the Constitutional Court*).

45. The Court has emphasized that it is within the margin of appreciation of the legislature to determine the manner of regulating a particular issue, while its own duty is to verify whether such regulation is made in accordance with the Constitution and its fundamental

principles (*see decision no. 55, dated 27.07.2016 of the Constitutional Court*). In this sense, the Court assesses that Article 46 of the Constitution has clearly stipulated that the registration of organizations or associations is conducted in court, thereby determining the competent authority that decides on the registration, according to a

procedure which is approved by law. Under these circumstances, in order to reach a fair conclusion regarding the contested legal provisions that stipulate specific competences for the chancellor, the determination of the concept of “registration” according to the constitutional norm becomes important.

46. Referring to Article 1 of Law No. 8788/2001, it sets out the rules for the establishment, registration, functioning, organization, and activities of non-profit organizations, whereas according to Article 13, the registration of NPOs grants them legal personality. On the other hand, according to Articles 1 and 2 of Law No. 80/2021, it specifies the procedures for the registration of NPOs and the maintenance of their register, as well as the facilitation of registration procedures. According to Article 25 of the law, the decision on the initial registration of NPOs, as well as the decision on their deregistration, is taken by a judge of the commercial section of the Tirana Judicial District Court in accordance with the rules provided in this law, while according to Article 26, the decision on other registrations, as defined in Section IV of Chapter II of this law, is made by the chancellor of that court in accordance with the rules stipulated in this law. The Court notes that the law, depending on the type of registration, has also determined the competent authority, assigning to the judge only the competence for the initial registration, which according to Article 3, point 9, of the law is the first-time registration in the register, whereas the chancellor is competent to decide on any other registration, which according to point 10 of the same article is any change, addition, or deletion of data in the register.

47. Referring to Section IV of Chapter II of Law No. 80/2021, it concerns other mandatory registrations and more specifically those provided in Article 17, which include the obligation to register any change in the notified data and in the accompanying documents deposited in the electronic registry, as well as: a) the annual financial statements maintained according to legal requirements, in cases where holding such documents is mandatory; b) the appointment of the liquidator, as well as his identification data; c) acts of dissolution, closure or distribution, acts of transformation, merger, division, initiation of administration, liquidation or reorganization procedures, as well as other intermediate acts provided for by the applicable legislation. For branches of foreign non-profit organisations, acts of transformation, merger, division, initiation and closure of liquidation or bankruptcy procedures of the foreign non-profit organisation are also registered; ç) other places of activity, different from the registered office; d) representation powers of the governing bodies or liquidators; dh) first name, last name, date of birth and the value of property contributions to the founding fund (if any); e) any other

mandatory registration according to provisions of the applicable legislation. Voluntary registrations of any other data, other than those specified in Article 17 of this law, which are related to

the activity of NGOs, which includes, but is not limited to: a) the designation or other distinctive signs of the activity (if it/they are different from the registered name of the non-profit organisation); b) the website, e-mail address, telephone and fax number; c) decisions of the governing bodies of the non-profit organisation, such as suspension decisions of the activity or other decisions different from decisions mandatory for registration; ç) other data related to the activity of the non-profit organisation (Article 18). Likewise, registrations of court decisions regarding the registered data or activity of the non-profit organisation are also included, in which case the relevant decision is attached to the registration request (Article 19).

48. The Court notes that even according to point 11 of Article 3 of Law no. 80/2021, “registration” is the initial registration and any other registration, including transformation, merger, or deregistration of the entity from the register. Under these circumstances, regarding the constitutional concept of “registration,” the Court assesses that it is the act/result at the end of the procedure provided by law, by which the non-profit organisation acquires legal personality, being capable of assuming rights and obligations arising from non-profit activity for lawful purposes.

49. Even though the law has distinguished between the initial registration, through which the organisation obtains legal personality according to the law, and other registrations, which are carried out during its activity, fundamentally all these actions fall within the constitutional concept of registration. Other registrations according to the law, by their nature, as long as they involve changes, additions, or even deletions of data presented in the initial registration, bring about the same consequences relating to the legal status of non-profit organisations. Consequently, these actions, regardless of whether they are carried out anew or during the duration of the legal person, are directly connected with the acquisition or termination of legal personality, as well as with the manner of exercising this non-profit activity, and the rights and obligations arising from it. They also include actions requiring legal assessment and may result in changes to those aspects of the initial registration that have already been evaluated by the judge at the time of the organisation’s registration in court. In this sense, any action performed in the electronic register for registration, regardless of when it is carried out, before or after obtaining legal personality, falls under the exclusive competence of the judicial body, as defined by the constitutional norm.

50. Also in the spirit of the constitutional provisions regarding the separation and balancing of powers, the court chancellor, although performing duties at the court, is not included in the constitutional concept of “court”, with respect to matters relating to the

registration of organisations.

non-profit. Within the meaning of Article 37 of Law no. 98/2018, the court's speaker is responsible for the organization and functioning of judicial administration at the court in relation to non-judicial activities through the chancellor, except where otherwise provided in this law, while according to Article 39, the chancellor is responsible for the management of judicial administration, also determining the powers exercised in this regard. Matters relating to the registration of NGOs, due to their nature and consequences, are not included in the concept of non-judicial or administrative matters, that is, they are not such as to be included within the scope of judicial administration and management powers under the law.

51. For the above reasons, the Court, taking into consideration the procedure contained in the law for the registration of non-profit organizations, determines that the competencies given to the chancellor exceed the competencies of judicial administration and management, inherently possessing a judicial nature and, for this reason, must be exercised by the judge/court. The legislator, in contravention of the rule of law principle, has exceeded the constitutional provision, which explicitly stipulates that the registration of organizations or associations is conducted in court, which is the only competent body in relation to any action performed by the organization or association, both regarding the acquisition or termination of legal personality and with actions related to the exercise of such activity, up to the imposition of suspension or fines, according to the law. Under these circumstances, the Court finds that the provisions of Articles 26, 28, paragraph 6, 29, paragraph 1, 30, paragraphs 1, 2, and 3, 32, 33, paragraphs 2 and 6, 34, 35, paragraph 1, and 46, paragraph 1, as far as they provide for the chancellor's competence to exercise powers which according to Article 46 of the Constitution belong exclusively to the judicial body, are incompatible with the Constitution. In view of the above, the provision regarding the chancellor's competence under Article 49, paragraph 6, of Law no. 80/2021 for the imposition of fines in case of an administrative offence is also incompatible with the nature of this function, therefore, this provision too is incompatible with the Constitution.

52. The Court also notes that, although the applicants did not expressly object to them in the subject matter of the request, they have also sought verification of the compatibility with the Constitution of Articles 41 and 44, paragraph 3, of Law No. 80/2021, which provide that the KLGJ, at the proposal of the chancellor, approves the format and content of the certificates of verification and of the Official Registration Bulletin of Announcements, as well as of extracts from the electronic register and the request for their issuance. Regarding these provisions, the Court assesses that these aspects are not related to the constitutional concept of

registration, but concern issues of judicial management and administration within the meaning of Article 39 of Law No. 98/2016, specifically

with the maintenance and management of the electronic register, which, as acts of an administrative nature, fall within the scope of the chancellor's competences. Consequently, the provisions of Articles 41 and 44, paragraph 3, of Law No. 80/2021 are not incompatible with Article 46 of the Constitution.

53. For the above reasons, the Court finds that this claim of the applicants is partially well-founded.

*B.2. For the violation of freedom of association related to the principle of proportionality of intervention*

54. According to the applicants, the provisions of Article 49 of Law No. 80/2021, which establish the amount of the fine for administrative offences, do not meet the requirements of clarity and legal certainty in the formulation and determination of legal sanctions, whereas any restriction on the right to associate, including sanctions, must be proportional to the objectives it seeks to achieve. By tying the amount of the fine to the annual income declared by the organisation, these provisions, for the same violation, foresee different fines depending on annual income.

55. In relation to these claims, the interested party, the Parliament, has argued that the provisions of Article 49 respect the principle of proportionality and are in accordance with Article 10, points 1 and 2 of Law No. 10279/2010. The penalty amount from 0.1% to 1% is proportional and it cannot be considered excessive, but ensures the principle of equality, as it carries the same weight for all entities and the penalty is not measured by the quantitative value, but by the real percentage it represents for each organisation. Whereas, according to the interested party, the Council of Ministers, administrative offences and sanctions are determined in accordance with Law No. 10279/2010, while the manner of their implementation does not constitute constitutional jurisdiction. Through this provision, it is guaranteed that the same violation receives the appropriate administrative sanction, without linking it to a fixed amount. A fine with a fixed amount for an organisation that has large financial resources does not have the same effect on another with fewer resources, and for the latter it may even constitute an obstacle to the exercise of its activity.

56. The court notes that the contested provisions of Article 49 of Law No. 80/2021 stipulate that the declaration in the electronic register of false data, when it does not constitute a criminal offence, and failure to fulfil the obligation for initial registration and other mandatory registrations within the time limits provided by this law, constitute administrative

contraventions and are punishable by a fine ranging from 0.1% to 1% of the annual income declared by the organisation

non-profit (*points 2 and 3*), the amount of which, in any case, may not be less than 30,000 ALL (*point 4*). According to point 5 of this article, if the chancellor, ex officio, finds that the non-profit organisation has declared false data or has not fulfilled the obligations for initial registration or other mandatory registrations, according to points 2 and 3 of this article, before making a decision, notifies the parties to submit the application for registration or correction of data.

57. Referring to the legislation in force on administrative offences, Law No. 10279/2010 sets out the rules for their identification and review, the procedures and deadlines for appeals against acts of public administration bodies imposing administrative penalties, as well as the procedures for the enforcement of administrative sanctions. According to Article 10, the amount of the penalty by fine is determined by the law that has provided for the administrative offence and may be fixed or determined with minimum and maximum limits. Under point 2 of this article, in cases where the specific law sets minimum and maximum limits for the amount of the penalty by fine, then, for the purpose of making the decision on the administrative offence, the competent administrative body for reviewing the offence, in addition to the principles provided in Article 18 of this law, also adopts a methodology or other additional principles, on which it relies for determining the value of the fine, for cases of offences for which the same penalty is provided. Whereas under Article 18 of the same law, in the selection of the type of penalty and in determining its amount, in cases where the law has provided minimum and maximum limits for the value of the fine, the body reviewing the administrative offence must take into account: a) the circumstances of the commission of the offence; b) whether the offender has previously been administratively sanctioned; c) the gravity of the offence; ç) the consequences resulting from the action or omission.

58. The Court notes that the contested provisions of Law No. 80/2021 have envisaged two concepts regarding the amount of the fine, leaving it within minimum and maximum limits related to the undeclared annual income, and subsequently also setting it within fixed limits. Consequently, the Court will assess whether the amount of these penalties is proportional to the purpose they aim to achieve.

59. In constitutional jurisprudence, it has been emphasized that the principle of proportionality implies that the legislator's intervention to restrict a specific right or freedom must be carried out with suitable means that appropriately correspond to the intended purpose to be achieved. Moreover, the use of these means must be necessary, which means that the objective cannot be achieved by other means. The requirement that the restriction be

proportionate to the situation that dictated it is concretized in the requirement of necessity, usefulness, and proportionality. In

the essence of this principle lies in the fair balancing of interests, their objective assessment, as well as the avoidance of conflict through the selection of appropriate means to achieve them (*see decisions no. 30, dated 05.07.2021; no. 20, dated 20.04.2021; no. 16, dated 01.03.2017 of the Constitutional Court*).

60. The Court has noted that the assessment of proportionality requires consideration of several criteria: (i) whether the objective of the legislator is sufficiently important to justify the restriction of the right; (ii) whether the measures taken are reasonably related to the objective, they must not be arbitrary, unfair or based on illogical reasoning; (iii) whether the means used are not stricter than necessary to achieve the required objective—the greater the detrimental effects of the selected measure, the more important the objective must be in order for the measure to be justified as necessary. The proportionality of a restriction is assessed on a case-by-case basis, bearing in mind that the above criteria should not be analyzed separately, but intertwined with each other (*see decisions no. 20, dated 20.04.2021; no. 11, dated 09.03.2021; no. 33, dated 08.06.2016 of the Constitutional Court*).

61. According to the ECtHR, when it examines whether restrictions of the rights or freedoms guaranteed by the Convention are “necessary in a democratic society”, Member States enjoy a certain, but not unlimited, margin of appreciation. Acting within this margin, national authorities must apply standards that are in conformity with the principles embodied in Article 11 of the Convention and base their decisions on an acceptable assessment of the facts, a failure of which may be considered a violation of this article (*see Körtvélyessy v. Hungary, dated 05.04.2016, §§ 26-29*). As regards the sanctions imposed by national authorities, Member States do not enjoy unlimited freedom to take any measure they deem appropriate, and it is for the Court to assess the nature and severity of the penalties imposed for conduct involving a certain degree of disturbance of public order, with a view to examining the proportionality of an interference in relation to the aim pursued (*see Ekrem Can and Others v. Turkey, dated 08.03.2022, § 91*).

62. The ECtHR has emphasised that it must be satisfied that the penalty does not constitute a form of censorship and likewise the penalty must not be such as to interfere with NGOs in carrying out their task as independent observers and “public watchdogs” (*see Társaság a Szabadságjogokért v. Hungary, no. 37374/05, dated 14.04.2009, § 27; Magyar Helsinki Bizottság v. Hungary [GC], dated 08.11.2016, § 159*). In order to put the financial impact of the penalties into perspective, the ECtHR has considered it appropriate to use as

appropriate comparative tool the minimum monthly wage, which is set and reviewed (*see Tolmachev v. Russia, no. 42182/11, dated 02.06.2020, § 54*), in order to reach the conclusion as to whether the minimum value of the fine was at a level that exceeded the minimum monthly wage or was roughly equal to the subsistence income. Likewise, it assesses, as another appropriate comparative tool, the penalties for other types of administrative offences. In order to be proportionate, the intervention must correspond to the severity of the violation and the penalty to the gravity of the violation it aims to punish (*see Independent News and Media and Independent Newspapers Ireland Limited v. Ireland, no. 55120/00, dated 16.06.2005, §§ 110-13; Gyrllyan v. Russia, no. 35943/15, dated 09.10.2018, § 28*).

63. The Court notes that by their nature NGOs are entities whose activities are carried out independently and without state influence, and these include any economic or non-economic activity provided that the income or property, if any, is used solely for the achievement of the legitimate objectives set out in the organisation's statute. By reference to the purpose and subject matter of such activities, the legal provisions that establish obligations for these entities, especially when it comes to measures accompanied by financial consequences, must be such as not to create an excessive burden on them.

64. The purpose of the legislator in adopting Law No. 80/2021 was to improve the legal framework and provide for a transparent procedure for the registration and operation of NGOs, modernisation of services and the data database, also to enable a system for information exchange. This initiative was undertaken in implementation of MONEYVAL's recommendations, which assessed that Albania does not have a clear policy to promote accountability, integrity and public trust in the administration and management of NGOs, having a limited approach toward this sector and the donor community regarding issues of terrorist financing. Likewise, the initiative was proposed also within the framework of the Albanian government's obligations to fulfil the objective of the civil society roadmap, adopted by Decision of the Council of Ministers No. 539, dated 25.07.2019. In these circumstances, the Court assesses that the intervention of the legislator corresponds to a public interest, related to the improvement of procedures in terms of the exercise of activity by NGOs and transparency in managing the registered data. Consequently, the Court does not dispute the objective that the legislator aimed to achieve in this case, but it intends to assess whether the means used by the legislator, in this case the measure of administrative penalties in relation to the violations attributed, are severe and whether they are reasonably linked to this objective.

65. The court notes that according to points 2 and 3 of Article 49 of Law no. 80/2021, the declaration of false data in the electronic register is considered an administrative violation, when it does not constitute a criminal offence, as well as failure to fulfill the obligation for initial registration and other mandatory registrations within the deadlines stipulated by this law. Regarding the initial registration, as long as the court assessed that this law cannot determine such an obligation, the forecast of a violation for non-compliance with it is likewise considered unconstitutional. With respect to other administrative violations, taking into account the nature of these violations, which relate only to the declaration of data in the electronic register and the consequences they may bring, the court considers that these measures are harsher than necessary to achieve the intended objective.

66. Regarding the margin set from 0.1% to 1%, it does not meet the standards related to the clarity of the legal norm with respect to the meaning and calculation of fines on the annual declared income of non-profit organizations, making these penalties, by their nature, arbitrary. In terms of the wording of the violation, these provisions are also unpredictable, as long as it is not clear how they will be applied in determining the lesser or greater violation, in the absence of other factors or criteria that could lead to any change in the amount of the fine. On the other hand, even the determination of the fine at the minimum amount of 30,000 ALL is considered, for the same reasons, as a disproportionate measure in relation to the intended objective to be achieved.

67. According to the report of the Committee on Legal Affairs, regarding the amount of the fine in cases of administrative violations, experts from MONEYVAL and the FATF have noted that the sanction must be sufficiently deterrent and punitive, in order to prevent the commission of violations. According to this report, the fine measures, which have been reviewed following concerns expressed by NGOs, respect the principle of proportionality, meaning that the amount of the fine is set in accordance with the annual declared income of the organization, ensuring a proper balance between the amount of the fine as an obligation arising from international commitments and the interest of NGOs not to be fined immediately, but only if they have failed to fulfill the obligation notified by the court or the registry.

68. In the Court's assessment, the provision of these fines is not deemed appropriate to the nature of the administrative violation for which they are envisaged, nor are they considered necessary and essential to justify achieving the purpose and objective for which they are envisaged, thus rendering the restriction of constitutional freedom arbitrary. to organization. In manner that to be proportionate, intervention must to

correspond to the gravity of the violation and the penalty to the seriousness of the administrative offence it seeks to punish. The interested entities have not presented reasons and arguments to justify the imposition of such measures for violations of this type and nature, nor have they addressed the impact and effects of these measures on the ability of NGOs to carry out their activities for lawful purposes. Likewise, they have not submitted arguments regarding the assessment parameters or evaluation criteria upon which they have based the measures for these fines, including both the minimum level of the sanction and the margins set on declared annual income. Considering the declaration of false data and the registration of other data beyond the legal deadline as administrative violations, the level of fines for these cases does not appear to correspond to the gravity of the violation, thus risking turning into a form of censorship and an obstacle to the exercise of activity.

69. Consequently, the provisions of points 2 through 5 of Article 49 of Law No. 80/2021 do not meet the required standards for proportionality of the restriction, thereby failing to respect the constitutional criteria for restricting freedom of association, and must therefore be repealed.

### *B.3. For the other claims*

70. With regard to the applicant's claims concerning the content of Article 5, point 2, Article 9, point 1, the phrase “*or with names that are contrary to public order or to mandatory provisions of the law*”, Article 17, point 3, letter “a”, Article 20, point 2, letter “c”, Article 36, points 1 and 2, and Article 50, point 5, of Law No. 80/2021, the Court will assess below whether these provisions impose a restriction or interfere with the constitutional freedom of association.

71. The Court notes that, according to point 1 of Article 5 of Law No. 80/2021, the register contains primary and secondary data pertaining to the establishment, activity, and deregistration of non-profit organizations, any amendments to the statute and organization of the entity, data relating to representation, as well as other data provided by law. Whereas point 2 provides that the Council of Ministers shall approve detailed rules for the primary and secondary data recorded in the electronic register for information providers, interaction with other databases, as well as the level of access for interested subjects. In accordance with the provisions of point 2 of Article 5 of Law No. 80/2021 and Article 4 of Law No. 10325/2010, Decision of the Council of Ministers No. 94/2022 has been adopted, which establishes detailed rules for the primary and secondary data recorded in the electronic register of non-profit organizations, for information providers, interaction with other

other data, as well as for the level of access for interested parties in the electronic register of non-profit organizations.

72. The Court notes that the applicants' claim regarding the content of Article 5, paragraph 2, is essentially connected to the delegation made by the contested provision for the regulation, by bylaw, of primary and secondary data; however, this claim has not succeeded in linking such delegations to a violation of the freedom of association. In constitutional jurisprudence, it has been argued that the subjects envisaged in Article 134, paragraph 2, of the Constitution are not legitimised to request the unconstitutionality of a legal provision by presenting, as argument, the existence of formal defects, if the provision itself has not violated any constitutional right or freedom that the subject is legitimised to defend before the Court (*see decision no. 25, dated 29.07.2008 of the Constitutional Court*). The applicants have not only failed to argue from a constitutional perspective the violation caused by the contested provision, especially when the regulation by bylaw has been made in conformity with other legislative forecasts, but they have not even challenged the provisions of DCM no. 94/2022 regarding the regulations brought by this act with respect to the database and the access and interaction with it. Consequently, the applicants' claim in this regard is unfounded.

73. Regarding the claim for the expression "*or with names that are contrary to order or to mandatory provisions of the law*", in point 1 of article 9 of Law no. 80/2021, the Court assesses that the applicants have not succeeded in arguing that the way the contested provision is formulated, it could be subject to different interpretations. They have not argued that it presents such ambiguities as would bring the need for a consistent and foreseeable interpretation, or that it could lead to a broad and unforeseeable interpretation by state authorities during its application. This provision cannot be considered as granting discretion to the authorities (the court) to act in an unlimited manner, nor can it be concluded that it makes it impossible for organizations wishing to register to foresee which are those names (not activities in the sense of article 46, point 3, of the Constitution) that are not permitted by law. The word "order" used in this provision, in the assessment of the Court, does not appear to have intended to bring a meaning or concept different from that to which the legislation as a whole refers.

74. Regarding the content of Article 20, point 2, letter "c", of Law No. 80/2021, the Court observes that it provides for the deregistration of NGOs also pursuant to the provisions of special laws. Examining the content of Article 20 in its entirety, it results that according to point 1 of this provision, organizations are deregistered from the electronic register in the cases

provided by the law that

sets the rules for their establishment, registration, functioning, and activity, in cases where the law provides for the dissolution and invalidity of legal persons and in any other case provided by the legislation. In the Court's assessment, mere reference to the legislation in force is not sufficient from a constitutional standpoint to substantiate this claim. The applicants have not submitted constitutional arguments in this regard, failing to explain how this provision produces effects, i.e., interferes with the freedom of organization. On the contrary, contrary to what the applicants claim, reference to other legal acts in force does not allow the application of this provision in a discretionary manner by the implementing body, since deregistration is conducted only in those exhaustive cases clearly provided by legal norms. Consequently, this claim of the applicants is unfounded.

75. Also regarding the provisions of Article 17, point 3, letter “a” and Article 36, points 1 and 2, of Law No. 80/2021, the Court notes that, in themselves, they do not establish new obligations for NGOs, but refer to those obligations arising from the legislation in force, which relate to the payment of tax liabilities or social and health insurance contributions.

76. The Court notes that Article 17 of Law No. 80/2021 provides that any non-profit organization which carries out initial registration also bears the obligation to register any change in the notified data and in the accompanying documents that are filed in the electronic register, according to Section III of Chapter II of this law (point 1). Whereas according to point 3 of this Article, in addition to what is provided in point 1, NGOs must also register and file the acts specified in this provision. According to Article 36 of the law, registration in the electronic register also constitutes simultaneous registration with the central and local tax administration in the social and health insurance scheme and with the Labour Inspectorate, and NGOs, for the purposes of registration and obtaining the initial registration certificate, also declare the mandatory data according to tax legislation, social and health insurance and statistical legislation according to the respective forms (points 1 and 2).

77. Article 17, paragraph 3, letter “a” of Law No. 80/2021 has not added data and information that NGOs must submit or make public, nor has it increased the manner, form, or number of reports throughout the year, meaning it has not established additional requirements or obligations. This provision applies to those entities that bear the obligation under the current legislation and is therefore not a new criterion. It has not increased legal obligations for entities, nor has it introduced a new financial burden, whether for preparing statements or for their maintenance and registration for applicants or for any other organization that, according to the legislation, is not subject to such an obligation. Consequently, it does not place NGOs in a

situation of legal uncertainty and does not impose restrictions or denial of the free exercise of their activity, nor does it result in preventing them to such an extent that it makes the exercise of this activity impossible.

in a situation of legal uncertainty and does not impose restrictions or denial of the free exercise of their activity, nor does it result in preventing them to such an extent that it makes the exercise of this activity impossible.

78. On the other hand, the obligation for registration with the tax administration derives from Law No. 9920/2008, which in Article 40 also covers NGOs, including foundations, associations, centers, as well as branches of foreign NGOs registered in the register of non-profit organizations, whereas according to Article 42 thereof, non-profit organizations are registered with the tax administration after having previously completed registration, in accordance with the relevant legislation, and the tax administration maintains a special electronic register for these organizations. The applicants have not argued in which aspect this simultaneity of registration creates for them a premature burden, whereas the obligations for registration derive from special legislation and not from the contested law. Article 36 of the law, as also argued by the interested parties, has aimed to facilitate the registration procedures for these entities, but without adding obligations for them or for the manner of implementation of the special laws in the field of taxation and social security.

79. Whereas regarding the content of point 5 of Article 50 of Law no. 80/2021, the Court assesses that this provision not only has ceased to have effect, but it has not been proven to have brought any direct and real consequence in the exercise of the constitutional freedom of association.

80. For the above reasons, the Court assesses that the claimants' allegations regarding the content of Article 5, point 2, Article 9, point 1, the phrase "*or with names that are contrary to public order or to the mandatory provisions of the law*", Article 17, point 3, letter "a", Article 20, point 2, letter "c", Article 36, points 1 and 2, and Article 50, point 5, of Law no. 80/2021 are unfounded.

81. In conclusion, the Court assesses that the claimants' allegations regarding the content of Article 8 of Law no. 80/2021, which provides for initial registration within a 30-day period, as well as Articles 26; 28, point 6; 29, point 1; 30, points 1, 2 and 3; 32; 33, points 2 and 6; 34; 35, point 1; 46, point 1, and 49, point 6, which concern the powers of the chancellor, as well as points 2-5 of Article 49, which relate to the amount of fine for administrative offences, of Law no. 80/2021, are founded according to the reasoning above in this decision, and therefore the request is partially accepted.

## FOR THESE REASONS,

The Constitutional Court, pursuant to Articles 131, point 1, letter “a” and 134, point 1, letter “h” of the Constitution, as well as Articles 72 and following of Law no. 8577, dated 10.02.2000 “Për organizimin dhe funksionimin e Gjykatës Kushtetuese të Republikës së Shqipërisë”, as amended, by majority vote,

### DECIDED:

1. Partial acceptance of the request.

2. Revocation of the expression “ *for initial registration*” in Article 8; the expression “ *the chancellor of*” in Article 26; the expression “ *or by the chancellor*” in point 6 of Article 28; the expression “ *or the chancellor*” in point 1 of Article 29 and in point 1 of Article 30; the expression “ *or of the chancellor*” in point 2 of Article 30; point 3 of Article 30; Article 32; the expression “ *of the chancellor*” in point 2 of Article 33; point 6 of Article 33; the expression “ *or of the chancellor*” in Article 34; the expression “ *of the chancellor*” in point 1 of Article 35; the expression “ *including the appeal procedure against the decision of the chancellor, according to Article 33 of this law*” in point 1 of Article 46; points 2 to 6 of Article 49 of Law No. 80/2021, dated 24.06.2021 “Për regjistrimin e organizatave jofitimprurëse”, as incompatible with the Constitution of the Republic of Albania.

3. Dismissal of the request for the remaining part.

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

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### Partial dissenting opinion

1. For the reason that we do not share the same position as the majority regarding the conclusion reached in this matter concerning the abrogation of the expression “ *chancellor*” in Article 26; the expression “ *or by the chancellor*” in point 6 of Article 28; the expression “ *or the chancellor*” in point 1 of Article 29 and point 1 of Article 30; the expression “ *or of the chancellor*” in point 2 of Article 30; point 3 of Article 30; Article 32; the expression “ *of the*

*chancellor*” in point 2 of Article 33; point 6 of Article 33; the expression “ *or the chancellor*” in Article 34; the expression “ *the chancellor*” in point 1 of Article 35; the expression “ *including the procedure for appealing against the decision of the chancellor, pursuant to Article 33 of this law*” in point 1

of Article 46 of the law subject to challenge and the arguments on which this position is based, we consider it important to express a minority opinion.

2. In summary, we assess that:

(i) The provisions are presumed to be constitutional until proven otherwise by the claimants. This means that the competencies of the chancellor are presumed to be in accordance with Article 46, paragraph 2, of the Constitution, as long as the claimants' arguments were not raised to a constitutional level sufficient to overturn this constitutional presumption.

(ii) Based on the original, linguistic, systematic and teleological interpretation of the chapter on human rights and specifically Article 46, paragraph 2, of the Constitution, the constitutional notion "in court" should be understood as an institution and not *strictu sensu* as "judge/judicial body".

(iii) The chancellor performs administrative functions within the court, moreover, some of his competencies are related to judicial administration, and in this context, his decision-making according to the law subject to challenge does not infringe upon the requirements of independence and impartiality within the constitutional notion "in court".

(iv) The legislator has not violated the standard for respecting the proportionality of constitutional values, aiming for efficiency and effectiveness of the judicial system through reducing the burden of judicial procedure, without infringing upon the freedom of organization of organizations or associations, as the chancellor's decisions regarding other registrations can be appealed, and thus the system recognizes and guarantees the correction of the chancellor's unlawful actions by the judge/judicial body.

3. For the above-mentioned, the detailed arguments will be presented below:

4. In accordance with the principle of the rule of law, as provided in Article 4, paragraph 1, of the Constitution, which states that: "Law constitutes the basis and the limits of state activity", where even the Court itself is not excluded from respecting the separation of jurisdictions and the principle of separation of powers. In this respect as well, maintaining the balance between judicial creativity and the purpose of constitutional provisions is an obligation of the Court, which it has also expressed through *the principle of self-restraint (vetëpërmbajtja gjyqësore)*.

5. The Constitution in Article 131, point 1, grants jurisdiction to the Court to decide, among other matters, on: "a) the compatibility of the law with the Constitution [...]. To avoid any possibility of interference in the competencies of the legislative power, the Court does not

assume the role of legislator, but aims to give life to constitutional norms through the proper understanding of their content and purpose (*see decisions no. 7, dated 24.02.2016; no. 29, dated 30.06.2011 of the Court Constitutional*). For more too, The Court has emphasized that in assessment e

the constitutionality of the restriction of individual rights and freedoms, it starts from the presumption of the constitutionality of the law with the Constitution. This means that the Court does not have the authority to check the intentions and the fairness of the solutions applied by the legislator. The duty of the Court is to assess whether the legal solutions applied do not violate constitutional norms and values (*see decision no.16, dated 25.07.2008 of the Constitutional Court*).

6. Regarding the role of the judicial administration, the Court has previously stated that: “[...] taking into account the spirit and content of Articles 7, 42, 144, and 145 of the Constitution, the role and functioning of the judicial administration cannot be separated from the function of delivering justice and constitutes an important element of the organizational independence of the judiciary (*see decision no.19, dated 03.05.2007 of the Constitutional Court*).

7. On the other hand, the Court has stated that the High Council of Justice (*KLD*) has the duty to realize the “self-governance” of the judiciary and, according to Article 147 of the Constitution, is the constitutional body positioned at the top of the organizational pyramid of the judiciary. To realize the self-governance of the judiciary, the High Council of Justice is composed mainly of judges, who, by exercising their functions as such, establish the connection with the judicial corps. The spirit of self-governance in the High Council of Justice has been included by the constitution-maker with the purpose of making the Court independent from the interference of any other power (*see decisions no.20, dated 09.07.2009; no.11, dated 02.04.2008; no.14, dated 22.05.2006 of the Constitutional Court*).

8. In view of the above-mentioned standards, the majority would have to analyze the role and competencies of the chancellor within the court in terms of his independence and impartiality, especially after the new role given to this position by the 2016 justice reform with Law no. 98/2016, which provides: (i) The chancellor of the court is a member of the Steering Council (*see Article 27, paragraph 2, letter “c” of Law 98/2016*); (ii) the competencies of the chancellor (*see Article 39 of Law no. 98/2016*); the manner of election and dismissal from office by the KLGJ (*see Article 59 and Article 69/2 of Law no. 98/2016*), an analysis that is missing from the decision, in order to reach the conclusion that granting this body the competence to carry out other registrations infringes on the freedom of organization of organizations or associations, to such an extent that it extinguishes the essence of the right to registration.

9. Returning to the matter under review, the applicants’ arguments are that the provisions

of Articles 26, 28, paragraph 6 and 32, which set out the competencies of the chancellor, do not meet international guarantees and standards, since he is not a decision-making authority, independent and impartial (*see paragraph 8.7 of the decision*). The objections of the interested party, the Parliament, are that regarding the claims concerning Articles 26, 28, paragraph 6 and 32, which relate

regarding the competencies of the chancellor, the applicants have failed to analyze the legal norms relating to his appointment and dismissal, even though Law no. 98/2016 has guaranteed his independence and impartiality. In the present case, the intention of the legislator has been the effectiveness of the process, the reduction of the burden of judicial procedures, the facilitation of actions, etc (*see paragraph 9.8 of the decision*).

10. Meanwhile, according to the majority: “[...] Even in the spirit of the constitutional provisions for the separation and balancing of powers, the court chancellor, although performing his duties at the court, is not included within the constitutional concept of “court,” with regard to matters related to the registration of non-profit organisations. According to Article 37 of Law No. 98/2018, the president of the court is responsible for the organisation and functioning of judicial administration in the court concerning non-judicial activities through the chancellor, except in cases otherwise provided by this law, whereas according to Article 39, the chancellor is responsible for managing judicial administration, also specifying the competencies he exercises in this respect. Matters concerning the registration of NGOs, due to their nature and consequences, are not included within the concept of non-judicial or administrative matters, i.e., they are not such as to fall within the scope of management and judicial administration competencies, according to the law. (...) For the foregoing, the Court, taking into account also the procedure contained in the law for the registration of non-profit organisations, assesses that the competencies assigned to the chancellor go beyond the competencies of management and judicial administration, having in themselves a judicial nature and, for this reason, should be exercised by the judge/court. The legislator, in contradiction with the rule of law principle, has exceeded the constitutional provision, which clearly stipulates that the registration of organisations or associations takes place in the court, which is the only competent authority in relation to any action performed by the organisation or association, both concerning the acquisition or termination of legal personality, as well as actions related to the exercise of this activity, up to the imposition of suspension or fines, according to law. In these circumstances, the Court assesses that the provisions of Articles 26, 28, paragraph 6, 29, paragraph 1, 30, paragraphs 1, 2 and 3, 32, 33, paragraphs 2 and 6, 34, 35, paragraph 1, and 46, paragraph 1, insofar as they stipulate the chancellor’s competence for exercising the powers which, pursuant to Article 46 of the Constitution, belong exclusively to the judicial authority, are incompatible with the Constitution. (*see paragraphs 51 and 52 of the decision*).

11. From a linguistic and teleological perspective, referring to the chapter on fundamental

human rights and freedoms, it should be noted that when the constitution-maker has intended, he has used the term “*judicial decision*” or “*judge*”. Thus, in Article 26, the term “*judicial decision*”, in Article 27, the term has been used “*lawful orders of the court*”, in Article 28/2 has used

term “before the judge”, in Article 28/3 has used the term “the judge”, in Article 43 “the decision in a higher court”, whereas in Article 46 the term “in court”.

12. According to our assessment, the compared articles differ depending on the constitutional language used and the constitutional guarantees that the constitution-maker intended to provide according to the type of right and the nature of judicial protection. Referring to the Constitutional Debate, during the discussions on drafting the constitutional norm related to the registration of organizations, it was noted that: [...] registration in court is foreseen as a very important element, which opposes any previous practice where registration was done at a ministry or other branch of the executive...”. (*see Constitutional Debate, Discussions on the drafting of the Draft Constitution, volume I, page 103*). In the present case, the constitutional term “in court” was not intended to unify with the judicial body or the judge, or registration before the judge by judicial decision, but to avoid the legal definition of registration competence by any executive authority, as also results from the original interpretation of the norm, therefore the position of the majority, which recognizes the registration competence for any information of organizations exclusively to the judge, has exceeded the content of the constitutional norm and its purpose.

13. Moreover, Article 46, point 2, of the Constitution itself refers to registration according to the procedure provided by law, which means that through the legal reservation, the constitution-maker has left it to the legislator to determine the modalities of registration (what will be considered registration, types of registrations, procedure, deadlines, competent bodies, etc.). The majority reasons that: “[...] according to point 11 of Article 3 of Law No. 80/2021 “registration” is the initial registration and any other registration, including transformation, merger, deregistration of the entity from the register. In these conditions, regarding the constitutional concept of “registration”, the Court assesses that it is the act/result at the end of the procedure provided by law, by which the non-profit organization acquires legal personality, being able to undertake rights and obligations from non-profit activities for lawful purposes.” (*see paragraph 49 of the decision*). This reasoning, used to explain the constitutional concept “registration”, refers to the law subject to challenge, in our assessment it does not correspond to the purpose of the constitutional norm. Referring again to the Constitutional Debate, it is emphasized that: “[...] the court must register an organization for any lawful purpose, but which does not conflict with the Constitution. If it finds an unconstitutional purpose, the court does not register it” (*see the Constitutional Debate, Discussions on the drafting of the Draft Constitution, volume I, pages 101-102*). In the systematic interpretation of Article 46 of the Constitution, the

court verifies the right to organize according to a lawful purpose and likewise may prohibit organizations or associations that pursue unconstitutional purposes.

unconstitutional. In the purposive view of the provision, this constitutional norm affirms the following:

(i) Everyone has the right to organize collectively for any lawful purpose; (ii) the registration in court of organizations or associations is carried out according to the procedure provided by law; (iii) organizations or associations that pursue unconstitutional purposes are prohibited by law.

14. For all the above, the majority has narrowed the constitutional notions in such a way that, in our assessment, based on the methods of interpretation in the chapter on fundamental human rights and freedoms, as well as based on the entirety of Article 46 of the Constitution itself, not even the constitution-maker intended it as such. If the majority had used the interpretative techniques properly, affirming the meaning of the constitutional norm, it should have reached the conclusion that the law subject to challenge has not violated Article 46, paragraph 2, of the Constitution, with regard to the powers granted to the chancellor for other registrations.

15. Moreover, as resulted in the constitutional review of this case, the legislator's aim was to reduce the workload of judges in cases related to the verification or desk review of documentation, facts, or law that do not require in-depth judicial analysis. In this aspect, in our assessment, the tool chosen by the legislator, namely the chancellor's decision-making, does not constitute, in relation to the purpose for which it was established, a disproportionate restriction. It was not proven that the legislator's choice is at such a level as to affect constitutional values linked to the substance of the freedom of organization; moreover, clearly, the applicants with their arguments have not succeeded in overturning the presumption of constitutionality, as they focused on elements of independence and impartiality of the chancellor, which, had they been analyzed by the majority according to constitutional standards, would have led to the conclusion that this administrative body fulfills them to a considerable extent. If the applicants' arguments and a series of other powers granted to the chancellor by law were accepted, it would result in the unconstitutionality of his role and functions within the court throughout the judicial power system. This is because the chancellor has a number of functions and some of them relate to the administration of justice, in particular, his role as supervisor of the process of organizing and documenting the allocation of cases by lot, as well as being responsible for the functioning of the case management system in the court, in accordance with current legislation on technology and information security and the supervision of the accurate collection and processing of data, as well as the guidance and supervision of the work of the court's judicial civil servants, after consultation with the

President of the Court. (*see Article 39, point 1, letter “a”, as well as point 2, letters “a” and “ç”, of the law*). Also in this context, the arguments of the majority analyzing the competences of the chancellor according to the law subject to challenge, as not in

in accordance with the competences of the chancellor of judicial management and administration, under Law No. 98/2016, (*see para. 51 of the decision*), do not fall within constitutional jurisdiction, because as this Court has emphasized over the years, it is not its duty to examine conflicts and incompatibilities between laws. Likewise, the manner of harmonization between the provisions of laws, with other laws, are not matters that pertain to constitutional review, and consequently are not subject to examination by the Court (*see decisions no. 5, dated 05.02.2015; no. 2, dated 03.02.2010 of the Constitutional Court*).

16. On the other hand, in our assessment, the ability of the system to be corrective cannot be overlooked, since any action of the chancellor may be appealed in court, and in this sense, the legislator has not infringed the balance of constitutional principles, whereby, on the one hand, it responds to the public interest of judicial efficiency and avoids burdening judges with additional procedures, while, on the other hand, in case of illegality in the actions of the chancellor, the organization or association has the right to appeal to the court, just as with any other administrative decision.

17. In conclusion, for all the reasons stated above, the articles which determine the competencies of the chancellor regarding other registrations of organizations or associations under the law subject to challenge, were not proven during the proceedings to infringe constitutional principles and values, therefore this part of the claim should also have been dismissed.

18. In addition to the above, we wish to emphasize that we have voted in favor of repealing the provision regarding the competence of the chancellor, pursuant to Article 49, point 6, of Law No. 80/2021, for the imposition of a fine in cases of administrative offense, but not with the majority's argument that it is incompatible with the nature of this function. (*see para.52 of the decision*). In our assessment, considering the legal clarity that the whole provision must have, which sets out the calculation and the amount of the fines, (points 2 to 4), as well as the chancellor according to the law *primarily* makes findings regarding the declaration of false data or that the organization has not fulfilled the obligations for initial registration, or other registrations according to the law (point 5) and that imposes fines according to the criteria of the legislation on administrative offenses, (point 6) makes the provision mandatory for review from the perspective of legislative clarity and accuracy of the legal norm, for as long as all was repealed except for point 1 of it.

**Members: Elsa Toska, Marjana Semini**

**Decision of the Constitutional Court**

**Applicant: Albanian Helsinki Committee**

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