



Pre-Trial Detention and Asset-Based Measures in Criminal Proceedings: Duration, Review, and Cumulative Impact

Ilir Panda

Dr., Judge of the Supreme Court of Albania, Albania

Received: 13 February 2026 | Accepted: 11 June 2026 | Published: 23 July 2026

© 2026 Ilir Panda

DOI: 10.56345/ijrdv13n204

Abstract

This article examines the legal and human rights standards governing pre-trial detention and asset-based measures in criminal proceedings, with particular reference to Albanian judicial practice and the jurisprudence of the European Court of Human Rights. Focusing on Article 5 of the European Convention on Human Rights and Article 1 of Protocol No. 1, the article analyzes the requirements of legality, necessity, proportionality, individualized reasoning, and effective judicial review. It also considers the cumulative impact that may arise when deprivation of liberty and seizure of property are imposed simultaneously, especially in cases involving organized crime, corruption, and financial offences. Through a qualitative legal-doctrinal methodology, the article evaluates relevant Strasbourg standards and the response of the Albanian Supreme Court in strengthening judicial reasoning, examining alternatives to detention, and ensuring proportionality in property-related restrictions. The analysis argues that such measures remain legitimate instruments in the fight against serious crime only when they are carefully justified, continuously reviewed, and applied in a manner compatible with the rule of law, the right of defence, and fundamental human rights.

Keywords: pre-trial detention; asset seizure; proportionality; European Court of Human Rights; judicial review; Albanian Supreme Court

1. Introduction

Pre-trial detention and asset protection measures are among the most intensive state interventions against the individual. They are issues that lie at the intersection of individual freedom, the right to property and the need for effective criminal justice, directly affecting the essence of the rights guaranteed by Article 5 of the European Convention on Human Rights (the Convention) (right to liberty and security of person) and by Article 1 of Protocol No. 1 thereto (protection of property).

When these measures are applied simultaneously in proceedings related to organized crime, high-level corruption, and financial criminal offences, their cumulative impact may generate significant tensions between individual rights and the legitimate aims of the state to safeguard public order and ensure effective criminal prosecution. It is the duty of supreme judicial courts, as the highest judicial

instances, to balance these tensions with legal rigor, in respect of the principle of proportionality and with unwavering commitment to fundamental guarantees.

The jurisprudence of the European Court of Human Rights (ECtHR) has provided invaluable guidance to the Albanian judiciary. Through its judgments, particularly those against Albania, the ECtHR has identified deficiencies in the legal system which must be addressed and improved both through general legislative measures and judicial practice, in line with the standards of the Convention.

From a comparative perspective, I wish to address these judgments and present the manner in which the Supreme Court has sought to respond to the concerns articulated by Strasbourg, by strengthening coherence, reasoning, and proportionality control in Albanian jurisprudence.

2. Literature Review

The use of pre-trial detention and asset-based measures in criminal proceedings raises complex questions concerning liberty, property, proportionality, and the effectiveness of judicial review. In European human rights law, these measures must be understood not only as procedural tools for securing criminal proceedings, but also as serious interferences with fundamental rights. The scholarly literature emphasizes that such measures require individualized justification, strict necessity, periodic review, and safeguards against excessive cumulative impact.

Stevens (2009) argues that pre-trial detention creates an inherent tension with the presumption of innocence and Article 5 of the European Convention on Human Rights. Although the European Court of Human Rights formally requires detention to be exceptional and justified by relevant and sufficient reasons, Stevens notes that European practice often remains more expansive than the principle of liberty would suggest. This argument is directly relevant to the present paper because it supports the view that domestic courts must avoid stereotyped reasoning and must justify detention through concrete risks, such as absconding, interference with evidence, or reoffending.

Martufi and Peristeridou (2020a) further develop this issue by examining the purposes of pre-trial detention and the search for alternatives. They emphasize that detention before trial should not become a routine instrument of criminal policy, but should be used only where less restrictive measures cannot secure the aims of the proceedings. Their analysis supports the principle that courts must examine alternatives such as house arrest, reporting obligations, travel bans, or other supervisory measures before ordering or extending detention. This is especially important in complex cases involving organized crime or corruption, where the seriousness of the accusation alone cannot replace individualized judicial reasoning.

In a related study, Martufi and Peristeridou (2020b) examine pre-trial detention within EU law and argue that, although pre-trial detention is not fully harmonized at EU level, existing procedural rights instruments and mutual recognition mechanisms increasingly interact with national detention rules. Their work is useful for the present paper because it shows that detention standards are no longer purely domestic matters; they are part of a broader European legal space where mutual trust depends on respect for liberty, procedural safeguards, and effective judicial control.

Empirical research also confirms that pre-trial detention has consequences beyond the immediate loss of liberty. Dobbie, Goldin, and Yang (2018), using data from randomly assigned judges, found that pre-trial detention significantly increases the probability of conviction, mainly through guilty pleas, and negatively affects later employment outcomes. Similarly, Leslie and Pope (2017) found that pre-trial detention increases the likelihood of conviction and affects sentencing outcomes. These studies are important because they show that detention before trial may place defendants under structural pressure, affecting their ability to defend themselves and influencing the course of the criminal process. This supports the argument that courts must consider not only the formal legality of detention, but also its practical and cumulative effects.

The same concern for proportionality applies to asset-based measures. Simonato (2017) explains that confiscation and seizure measures have become central instruments in the fight against serious crime, corruption, and organized criminality, but they also carry significant risks for fundamental rights. According to Simonato, different forms of confiscation—criminal, civil, preventive, extended, or

non-conviction-based—must be assessed through the lens of legality, proportionality, property rights, and procedural fairness. This is particularly relevant where assets are frozen or seized before a final conviction, because such measures may restrict the defendant's economic capacity, affect third parties, and interfere with the right to peaceful enjoyment of possessions.

More recently, Hryniewicz-Lach (2024) stresses that asset confiscation can be effective only if it remains legally justified and fair. She argues that the aim of depriving offenders of illicit gains must not lead to excessive interference with fundamental rights. Confiscation and freezing measures should therefore be limited to what is necessary to achieve legitimate aims and must be supported by clear reasoning, evidentiary justification, and adequate procedural safeguards. In another study, Hryniewicz-Lach (2025) focuses on extended confiscation and warns that evidentiary simplifications, presumptions, reversal of the burden of proof, and lower standards of proof may endanger defence rights and property rights if they are not carefully controlled by courts.

Taken together, this literature supports the central argument of the present paper: pre-trial detention and asset-based measures are legitimate tools in the fight against serious crime, but they must remain exceptional, individualized, proportionate, and continuously reviewable. The cumulative effect of detention and seizure is particularly important. When a person is deprived of liberty and simultaneously deprived of access to property or economic resources, the combined impact may weaken the right of defence, affect family life, and create disproportionate pressure before final adjudication. For this reason, courts must evaluate not only each measure separately, but also their combined effect on the individual, third parties, and the fairness of the proceedings.

3. Methodology

This article adopts a qualitative legal-doctrinal methodology, based on the analysis of international human rights standards, domestic criminal procedure, and judicial practice. The study examines the interaction between pre-trial detention and asset-based measures in criminal proceedings, with particular attention to the principles of legality, necessity, proportionality, effective judicial review, and the right of defence.

The analysis relies primarily on the jurisprudence of the European Court of Human Rights concerning Article 5 of the European Convention on Human Rights and Article 1 of Protocol No. 1, together with relevant decisions of the Albanian Supreme Court. Particular attention is given to cases concerning Albania, as these judgments provide direct guidance for assessing the compatibility of domestic practice with Convention standards.

The methodology combines doctrinal interpretation with comparative case-law analysis. First, the article identifies the main legal standards developed by the ECtHR regarding pre-trial detention, property restrictions, judicial reasoning, and procedural safeguards. Second, it examines how these standards have been reflected in the jurisprudence of the Albanian Supreme Court, especially in decisions concerning the continuation of pre-trial detention, the review of alternative measures, and the proportionality of seizure and confiscation measures. Third, the article evaluates the cumulative impact of simultaneous restrictions on liberty and property, considering whether such measures remain justified when assessed together rather than in isolation.

This approach allows the article to assess not only the formal legality of security measures, but also their practical consequences for individual rights, defence guarantees, and the fairness of criminal proceedings. The analysis is therefore normative, interpretative, and jurisprudential, aiming to clarify how domestic courts should apply Convention-based standards in serious criminal cases involving organized crime, corruption, and financial offences.

4. Personal precautionary measures: Pre-trial Detention

4.1 CtHR findings for Albanian courts

The Court has consistently emphasized that pre-trial detention must constitute a measure of last resort (*ultima ratio*), applicable only when every alternative measure proves insufficient to ensure the proper conduct of the criminal proceedings. The burden of proof rests on the State, which must demonstrate with concrete and individualized facts that deprivation of liberty remains necessary. Domestic courts, for their part, are obliged to provide relevant and sufficient reasons for any restriction on personal liberty, in accordance with the requirements of Article 5 of the Convention.

Gëllçi v. Albania revealed fundamental shortcomings in Albanian practice. The Court found a violation of Article 5, since the applicant had been held in pre-trial detention for seven months and 26 days without adequate and specific reasoning. The domestic courts had not clearly specified which pieces of evidence the prosecution sought to obtain and in what concrete way the applicant could interfere with them or obstruct the investigation.

Along the same lines, in *Hysa v. Albania*, the Court concluded that the lower courts had not provided sufficient reasoning for the imposition of pre-trial detention measure. It further found that neither the Supreme Court nor the Constitutional Court had effectively and fully examined the allegations raised by the applicant in the available remedies. That judgment clearly established the principle that persons deprived of their liberty retain a legitimate interest in challenging the measure of pre-trial detention even after their release or after its substitution with a less severe measure, and that constitutional courts may not refuse to examine such claims on the ground of lack of interest or standing.

These judgments forced the Albanian judges to confront uncomfortable institutional realities: (i) domestic courts had not examined, with the required depth, alternatives to pre-trial detention; and (ii) the mechanisms of judicial review in Albania had not reflected the substantive rigor demanded by Article 5 of the Convention, both in terms of reasoning and of the effectiveness of judicial oversight.

4.2 Supreme Court response and current practice

In response to the ECtHR's guidance and following internal review and reflection, the Criminal Chamber of the Supreme Court has assessed, case by case, balanced approaches to pre-trial detention. The practice of this Chamber has placed emphasis on the responsibility of all courts to provide concrete, individualized reasoning closely tied to the specific facts of the case for every decision to order or continue pre-trial detention¹. Moreover, special emphasis has been placed on the temporal dimension of pre-trial detention, both in the handling of such cases and in decision-making. In this context, and with regard to the review of personal precautionary measures and their inherently urgent nature, the Chamber has specifically addressed all cases of this kind within a 15-day timeframe.

Meanwhile, in accordance with the Code of Criminal Procedure (CCP), pre-trial detention is subject to periodic review and any extension requires fresh justification based on the updated circumstances of the case. The mere passage of time, particularly when linked to a lack of continued action by investigative or prosecuting authorities, undermines the legitimacy of pre-trial detention continuation; likewise, unjustified delays or requests for adjournment by the parties cannot indefinitely prolong the trial².

The Criminal Chamber has determined that appellate proceedings are set initiated *ex-officio*, though not exclusively, at the initiative of the parties through the filing of an appeal, thereby leaving the choice to the parties whether to participate in the trial. Fulfilling the obligation to summon and hear the parties at first instance trial, as well as notifying the parties of the date of the appellate hearing and giving them the opportunity to appear and be heard, guarantees the standards established by the the

¹ Decision no. 00-2024-1625 (195) - M. M.

² Decision no. 00-2025-1007 (82) - Xh. K.

Convention within the framework of respect for the adversarial principle and equality of arms. The fact that parties choose not to appear in the appellate procedure which is initiated and limited by the scope of the appeal does not justify delaying the proceedings. Consequently, a party's unjustified non-appearance does not prevent the appellate court from examining the appeal against the decision on the personal precautionary measure within reasonable time limits.

Through its unifying practice³, the Criminal Chamber has emphasized that, in the review of pre-trial detention measures, prosecutors must continuously present a personalized justification of the active risks that motivate the request for continued pre-trial detention⁴. General references to the defendant's absconding, destruction of evidence, or the commission of other criminal offences do not satisfy the constitutional and Convention standard of reasoning. Courts must identify precisely:

- a) which specific pieces of evidence remain to be obtained;
- b) in what real and credible manner the accused could interfere with them; and
- c) why less restrictive measures are insufficient to neutralize these risks.

Furthermore, the Criminal Chamber has required that courts of fact carry out a structured and reasoned assessment of alternative measures such as house arrest⁵, duty to appear periodically, or a prohibition on leaving the country before ordering pre-trial detention. The refusal of these alternatives must be accompanied by clear and convincing reasoning and must not be a *stereotyped decision* that fails to analyze the individual under investigation⁶. On numerous occasions the Criminal Chamber has quashed decisions that did not meet this standard or has dismissed recourses⁷ while making clear that the court cannot be satisfied by formal assertions or general formulations. Conversely, in cases where the Chamber has found the lower courts' decision-making to be in accordance with the applicable law and the principles established over time by domestic and European jurisprudence, it has upheld the measures.

These developments do not merely represent a formal compliance with obligations arising from ECtHR jurisprudence, but rather they reflect a careful balancing exercise between the legitimate interests of criminal prosecution and the protection interests of the parties in the proceedings.

5. Asset-Based Measures: Seizure of Property

5.1 Legal basis and the Criminal Chamber's practice regarding legitimate aims

Seizure of assets in the context of criminal proceedings serves several legitimate aims: preservation of evidence, prevention of dissipation or alienation of the means and proceeds of the offence, and securing enforcement of the eventual confiscation. In the Albanian legal system these measures are governed by the Criminal Procedure Code, the Criminal Code, and Law No. 10192/2009 "*On the prevention and combating of organized crime, trafficking and corruption through preventive measures against property*" (the so-called Anti-Mafia Law).

The **Criminal Procedure Code** regulates seizure procedures during the criminal investigation as a security measure for preserving evidence related to the criminal offence (preventive seizure Articles 274–276) or to guarantee enforcement of a judicial decision (conservatory seizure Articles 270–273).

The **Criminal Code**, in Article 36, provides for confiscation as a criminal sanction and foresees that where property is the product of a criminal offence or has been used to commit it, the court shall transfer such property to the State.

The so-called "**Anti-Mafia law**", Law No. 10192, dated 3.12.2009, "*On the prevention and suppression of organized crime, trafficking and corruption through preventive measures against property*" (as amended), establishes preventive measures against the property of persons suspected of

³ Decision no. 00-2025-1007 (82) - Xh. K.

⁴ Unifying decision no. 7, dated 14.10.2011

⁵ Decision No. (Registry) 61007-00630-00-2025 – A. R.: the Supreme Court upheld the Court of Appeal's decision to substitute pre-trial detention measure in prison with house arrest on justified grounds.

⁶ Decision registry no. 61004-00481-002025 – K. U.

⁷ Decision no. 61006-00447-00-2025 – E. B.

involvement in organized crime, trafficking and corruption. Its objective is the seizure and confiscation of assets acquired unjustifiably and unlawfully, i.e., where no lawful economic source can be attested. The law permits courts to order seizure and confiscation even in the absence of a final criminal conviction, operating as civil measures against property. The scope of the law includes suspects in criminal activities and, where appropriate, their family members or associates when assets appear unjustified.

Pursuant to Article 101 of the Constitution, the Council of Ministers may, in cases of necessity and urgency and under its own responsibility, issue normative acts having the force of law in order to adopt temporary measures. In accordance with this constitutional provision, **Normative Act No. 1/2020** was subsequently approved by the Assembly of the Republic of Albania through Law No. 18/2020, entered in force immediately and was intended to remain in force for a period of one year. Thereafter, by Normative Act No. 35, dated 16 December 2020, the Council of Ministers introduced an addition to Normative Act No. 1/2020. This amendment expressly provided that requests for the imposition of preventive measures submitted by the General Director of the State Police up to 31 December 2020 would continue to be examined by the competent court and the competent prosecutor's office, in accordance with Article 9 and pursuant to the jurisdiction, rules and procedures laid down in the original normative act.

Subjects of this normative act are persons who, up to the moment of entry into force of this normative act, have been convicted by a final criminal decision, inside or outside the territory of the Republic of Albania, or are under investigation (with the exception of persons for whom there is a decision of acquittal) for the commission of crimes which the legislator has considered serious⁸, including criminal offences committed within the framework of a structured criminal group. Unlike the law on the prevention and combating of organized crime, the Normative Act envisaged a broader scope of offences falling within its field of application, including those of organized crime and other serious criminal offences (Article 5 thereof).

It should also be noted that, in 2021, the normative act was brought before the Constitutional Court, with claims that certain measures it introduced infringed fundamental rights and failed to comply with the principle of proportionality. This constitutional challenge underscores that the act was not merely formal in nature, but had tangible and immediate effects, being perceived as a powerful emergency instrument whose compatibility with constitutional guarantees was subject to serious scrutiny. The Constitutional Court reasoned that, notwithstanding what had been submitted in the complaint, it observed that the legislation in force provides the necessary legal means for the protection of the affected interests during the adjudication of the case by the courts of ordinary jurisdiction, including subsequently constitutional protection. As a consequence, via Decision No. 58 dated 02.04.2021, it decided on the dismissal of the claim.

The normative framework allows the seizure not only of the direct proceeds of the criminal offence but also of assets that are manifestly disproportionate to the lawful declared income of the person under investigation, an instrument of particular importance in cases related to high-level corruption and organized crime. These measures may also extend to assets formally held by third parties where the investigation demonstrates that they serve to conceal unlawfully acquired property⁹. With regard to guaranteeing the rights of the rights of affected parties, the Chamber emphasised that confiscation measures require a stringent procedural standard, particularly in protecting the interests of third parties. It held that the failure to summon certain persons holding property rights over the seized assets constituted a violation of their right to be heard, and accordingly ordered the case to be remitted for retrial.¹⁰

Furthermore, the Criminal Chamber has determined that allegations regarding the legality/provability of ownership over the seized property cannot be raised anew before the Supreme Court. In other cases, in exercising the balancing of the rights claimed by the parties and the public

⁸ As provided in Articles 77, 78, 78/a, 79, 79/a, 79/b, 79/c, 109, 109/b, 110/a, 114, 117, 128/b, 134, paragraph three, 136, 138/a, 139, 140, 141, 151, 152, 278/a, 282/a, 283, 283/a, 284 and 284/a of the Criminal Code

⁹ Decision no. 60011-00484-00-2023

¹⁰ Decision no. 00-2025-832 (131)

interest pursued by criminal prosecution, the Chamber has assessed the proportionality of the measures taken for preventive seizure¹¹. The Chamber has also addressed the procedural position of claimant parties asserting good-faith ownership of assets confiscated in the criminal proceeding as proceeds of the offence of forgery. Thus, in one case where the courts of fact had found that the assets subject to confiscation belonged to the State and that it was the owner deprived unlawfully of its property, the Chamber concluded that, in that case, the victim of the criminal offence is the State and not the third parties to whom the property in question had passed (from the accused and/or other persons) and who claim to have acted in good faith. The appropriate procedural remedy for the protection of their property rights is to bring an action before the civil judicial jurisdiction by other legal means; therefore, the limitation of cassation of interested parties did not constitute an infringement of access insofar as they were not entitled as parties in the criminal proceedings, but had other effective means to seek their rights in civil proceedings¹². At its core, the State's interest in applying these measures is indisputable. Criminal structures generate considerable unlawful gains that finance the continuity of criminal activity. If these assets can be freely transferred, hidden or legalized during lengthy judicial proceedings, the very purpose of the criminal justice system is fundamentally undermined. Likewise, allowing convicted persons to enjoy the proceeds of the offence runs counter to the rule-of-law principle and damages public trust in the justice system.

The Criminal Chamber has also addressed the proportionality of these measures in relation to unjustified intrusions into private and family life. It once found that the appellate decision was flawed for lack of an effective and individualized review of two essential allegations. First, the Court of Appeal had not specifically verified whether among the seized items there were materials of a family nature or related to children, which were not connected to the object of the investigation and could constitute unjustified interference in private and family life. Second, the proportionality of the prolonged seizure of the journalist's work equipment had not been analyzed in relation to the exercise of the profession and the risk of compromising sources, as well as the possibility of achieving the investigative aims through less intrusive measures, such as copying the data and returning the devices. For these reasons, the Criminal Chamber decided to quash the appellate decision and to return the case for retrial in the same court, with the obligation to examine in depth and with reasoned consideration the claims in the light of the principle of proportionality and procedural guarantees.

5.2 *Judicial reasoning of the decision and proportionality*

Following the consolidated standards of the ECtHR, the Criminal Chamber of the Supreme Court has sought to systematically incorporate an in-depth analysis of proportionality into decision-making on the seizure of assets. Starting from the now-established principle that the court must clearly identify the specific assets affected by the measure, the factual and legal basis that creates a reasonable suspicion of their connection with the alleged criminal offence, as well as the reasons why the seizure is necessary and proportionate in relation to the pursued aims. The Criminal Chamber has assessed that the appellate court's decision presented insufficiency of reasoning, since the latter had not directly analyzed *the indicia* for the existence of the criminal offence of laundering the proceeds of the criminal offence or activity, which is an autonomous offence and may exist even when prosecution for the predicate offence is time-barred or has not resulted in a final conviction¹³. Likewise, the appeal had not fully confronted the evidence submitted by the prosecution, including the accounting expert report and the information received from the Italian authorities, with the evidence presented by the interested parties regarding lawful sources of the assets. Conversely, the Criminal Chamber decided to dismiss appeals against preventive seizures where the reasoning of the courts of first instance had been exhaustive, individualized for each seized asset and for their connection with the criminal activity¹⁴.

¹¹ Decision no. 60008-00716-00-2024

¹² Decision no. 00-2025-1657 Decision (262); See also decision no.00-2024-1856 (283)

¹³ Decision no. 00-2023-1602 (272)

¹⁴ Decision no. 60008-0075300-2024

In essence, Albanian jurisprudence, as well as the ECtHR, accepts that the right to property is not absolute, but requires a careful balancing with the legitimate interests of criminal prosecution. Where there are strong indicia of serious criminality and the risk of dissipation or alienation/transfer of assets is real and concrete, broad restrictions may be justified. But these elements must be proven and argued clearly; they cannot rest merely on abstract assertions or general assumptions. The Criminal Chamber has a rich case law concerning the reasoning on the assessment and appraisal of evidence in criminal proceedings¹⁵. The truthfulness and probative value of evidence are determined on the basis of the importance of the examination and the verification of each piece of evidence.

One of the most challenging dimensions of modern criminal proceedings, particularly in cases related to organized crime, corruption and economic crime, is the cumulative effect created when pre-trial detention and seizure of assets are imposed simultaneously. In these circumstances, an individual may find themselves not only deprived of personal liberty, but also stripped of the financial means to mount an effective defense, to support their family or to ensure the continuity of their economic activity.

This double burden can produce a form of structural pressure. When both measures are applied in parallel, courts must vigilantly monitor their combined effect. This comprehensive and rights-sensitive approach does not exclude harsh measures against serious crime, but requires that such measures be genuinely necessary, carefully calibrated and subject to continuous and substantive review.

6. Proceedings Related to Organized Crime and High-Level Corruption

We must acknowledge that cases involving organized criminal networks, high-level corruption or sophisticated financial crimes present real challenges that may require stricter security measures. Defendants in such proceedings often possess considerable financial resources, international connections and the capacity to abscond, to exert pressure on witnesses or to destroy evidence. The public interest in prosecuting these offences, which undermine democratic institutions and the rule of law, is particularly high.

Nevertheless, the gravity or complexity of an alleged offence alone is not sufficient to justify prolonged pre-trial detention or the unreasonable seizure of assets. Demonstration of the existence of concrete, individualized and proven risks in relation to the specific person under investigation are essential elements. General assertions that “high-level corruption cases always present an absconding risk” or that “defendants for organized crime inevitably interfere with witnesses” do not meet the required standard of reasoning. In this context, the Criminal Chamber, in exercising control over the legality of these measures, has verified whether the first instance courts have accurately identified:

1. the concrete risk posed by the defendant;
2. the reasons why this risk cannot be neutralized by less restrictive alternative measures; and
3. how the measure imposed is tailored to respond to the identified risk.

Only through this individualized and reasoned standard can it be ensured that severe interferences with liberty and property remain within the limits of the rule of law and the Convention.

7. The Supreme Court as a Corrective and Supervisory Authority

7.1 Role and responsibilities

The Supreme Court occupies a key position in safeguarding the rights guaranteed by the Convention. It is not merely a final instance of appeal, but a corrective and supervisory authority, entrusted with the unification of judicial practice, the assurance of legality, and compliance with constitutional and international standards.

¹⁵ Decision no. 25, of 15.02.2017

This role encompasses a dual function. First, the Supreme Court corrects errors in individual cases, annulling unlawful pre-trial detention measures or insufficiently justified seizures of property, while providing clear guidance to lower courts. Second, the Supreme Court exercises a systemic *nomophylactic* function, developing principles and standards that influence the entire judicial system. Through its jurisprudence, the Supreme Court contributes to shaping judicial culture and decision-making practice. In carrying out these functions, the case law of the European Court of Human Rights plays a highly significant role. Its judgments against Albania have considerably heightened our awareness of this responsibility. Its judges strive not to be content with a merely formal approach to appeals before the Supreme Court, nor with an avoidance of factual assessments made by courts of first instance, but rather to go further actively verifying whether legal standards have been correctly applied, whether reasoning is sufficient, and whether the rights guaranteed by the Convention have been substantively respected.

7.2 Standards of reasoning and judicial review

Several judgments of the European Court of Human Rights against Albania have highlighted shortcomings in the reasoning of domestic courts, including at the level of the Supreme Court. In the case of *Jaupi v. Albania* (Application no. 23369/16, 29 April 2025), the Court found a violation of the right to a fair trial, as the applicant had not been given the opportunity to effectively challenge the witnesses whose statements had served as the decisive basis for the conviction. Although the ECtHR did not accept the claim of lack of reasoning on the part of the Supreme Court considering that the latter had addressed the legal arguments raised, with the exception of factual issues that fall within the jurisdiction of the courts of fact the judgment emphasized the importance of a full and effective review at the appeal stage. In its practice, the Criminal Chamber has returned the cases for retrial to the Court of Appeal, on the grounds that the latter, by omitting to analyze the evidence on which the accusation was based in their interrelation rather than separately, had infringed the principles of appraisal of evidence¹⁶.

These decisions have reminded to the Albanian judges that the quality of reasoning is not a formal or secondary element, but a fundamental legal obligation. Every judgment, especially one that affects personal liberty or property rights, must be comprehensible, logically structured, and supported by evidence and law. When the Criminal Chamber disagrees with the rulings of lower courts, it must clearly explain the reasons for its intervention in that decision-making. Conversely, when the Criminal Chamber finds their judgments to be proper and lawful, it must demonstrate that the appellant's claims have been genuinely and thoroughly examined.

In this regard, concrete steps have been taken to improve practice in Albania. The decisions of the Criminal Chamber now contain more detailed analyses of the facts, the applicable legal framework, and the reasoning that supports our conclusions. Also, the necessity of directly integrating the Convention's standards into legal analysis has been emphasized, not treating the Convention as a secondary reference, but as an essential component of judicial reasoning. In this context, reference to the principles of the Convention has become an additional safeguard for the parties in trial, who are able to assess the court's arguments alongside the findings of the European Court of Human Rights.

7.3 Guaranteeing the right of defense

At its core, the legitimacy of security measures, whether pre-trial detention, asset seizure, or a combination thereof, depends on the fairness of the procedures through which they are imposed and reviewed. Defense rights are not an obstacle to justice; they are its foundation.

In the case of *Lazaris v. Albania* (Application no. 48806/06, 20 June 2023), although not of a criminal nature, the Court found a violation of Article 6 of the Convention, as the applicant had not been notified and had no opportunity to participate in the proceedings before the Supreme Court. Such

¹⁶Decision no. 00-2024-1244 (174)

findings have been taken seriously by all three Chambers of the Court and have been addressed with concrete measures to remedy the violations. Nevertheless, such cases remain sporadic, as courts at all levels are sensitive to situations where defendants lack the means to engage a defense lawyer and take appropriate measures, whether through free legal aid or the appointment of a counsel *ex officio*.

Besides the reform led procedural changes before the Supreme Court, *in camera* – or the Chamber, although conducting hearings in absence of the parties, effectively and substantively guarantees adversarial proceedings by giving the parties full opportunity to submit submissions, claims, and arguments. Decisions are delivered within reasonable time limits, since delays in reviewing pre-trial detention or property restrictions undermine the very purpose of judicial oversight. These principles are now consolidated in our jurisprudence. We consider them not merely as formalities, but as essential elements of a fair and effective criminal justice system.

8. Discussion: Judicial Independence, Public Debate, and the Use of Pre-Trial Detention

The application of pre-trial detention cannot be examined only as a technical matter of criminal procedure. It also operates within a broader institutional and social context, where judicial decision-making is observed, discussed, and sometimes contested by public opinion, political actors, and international institutions. While courts must decide exclusively on the basis of law, evidence, and Convention standards, they cannot be understood as institutions entirely isolated from the social and constitutional environment in which they function.

This issue is particularly relevant in Albania, where the use of pre-trial detention has become part of a wider public debate. On the one hand, part of public opinion, shaped by past perceptions of impunity, tends to support a stricter use of pre-trial detention, especially in proceedings involving corruption, organized crime, or serious financial offences. On the other hand, political and institutional actors have increasingly criticized the frequent and prolonged use of pre-trial detention, arguing that it may reflect a punitive approach inconsistent with the presumption of innocence and the standards of the European Convention on Human Rights.

Recent institutional developments illustrate this tension. At the opening of the Judicial Year 2026, the Minister of Justice emphasized that more than half of the persons held in Albanian penitentiary institutions were in pre-trial detention, whereas in the European Union the average is considerably lower. He also noted that the average duration of pre-trial detention in Albania was substantially longer than in many European jurisdictions. This concern was later addressed in a high-level conference on the right to liberty and personal security, with particular attention to the implementation of Strasbourg standards at the national level.

Similar concerns were reflected in a technical document prepared by international experts engaged by the Council of Europe, which emphasized the need to reduce excessive reliance on pre-trial detention and to strengthen the use of alternative measures. In the same context, the Director General for Human Rights and Rule of Law at the Council of Europe underlined that reducing prison overcrowding requires not only infrastructural solutions, but also active limitation of the use and duration of pre-trial detention, greater prioritization of alternatives, and full respect for the presumption of innocence.

These developments raise an important constitutional and institutional question: how should courts preserve judicial independence while remaining attentive to legitimate concerns about excessive pre-trial detention? The answer cannot be found in either judicial isolation or external pressure. Judicial independence requires that courts remain free from political or public influence in individual cases. However, it does not prevent courts from reflecting on systemic data, European standards, and institutional concerns regarding the excessive or prolonged use of detention before trial.

Accordingly, the proper balance lies in principled judicial reasoning. Courts should not reduce the use of pre-trial detention merely because of political criticism, nor should they order or maintain detention because public opinion demands a harsh response to serious crime. Instead, each decision must be based on individualized assessment, concrete evidence, necessity, proportionality, and

periodic review. The seriousness of the alleged offence may be relevant, but it cannot by itself justify prolonged deprivation of liberty.

This approach is consistent with the case law of the European Court of Human Rights, which requires domestic courts to provide relevant and sufficient reasons for detention and to examine whether less restrictive measures may adequately address the identified risks. It is also consistent with the developing practice of the Albanian Supreme Court, which has emphasized the need for concrete reasoning, careful assessment of alternatives, and effective judicial control over both personal and property-related precautionary measures.

Therefore, the debate on pre-trial detention should not be understood as a conflict between judicial independence and public accountability. Rather, it should be seen as an opportunity to strengthen the quality of judicial reasoning and to align domestic practice more closely with Convention standards. In a democratic society governed by the rule of law, courts must remain independent, but their decisions must also be transparent, reasoned, proportionate, and capable of demonstrating that deprivation of liberty is truly a measure of last resort.

9. Conclusions

The analysis of personal precautionary measures, particularly pre-trial detention, and property-related measures, especially seizure, demonstrates that these instruments cannot be treated merely as technical mechanisms of criminal procedure. They lie at the core of the judicial function in a state governed by the rule of law, because they directly affect two fundamental interests: personal liberty and the peaceful enjoyment of property.

Pre-trial detention and seizure remain indispensable tools in the fight against serious crime, organized criminality, corruption, and financial offences. However, their legitimacy depends on the manner in which they are applied, justified, and reviewed. These measures must not become automatic consequences of the seriousness of the accusation. They must instead be based on individualized assessment, concrete evidence, necessity, proportionality, and continuous judicial scrutiny.

The jurisprudence of the European Court of Human Rights has played an essential role in shaping and clarifying these standards for the Albanian legal system. The Court's case law has highlighted the need for relevant and sufficient reasoning, effective review, genuine examination of alternative measures, and careful balancing between the public interest in criminal prosecution and the protection of individual rights. In this respect, Convention standards should not be understood as external constraints, but as integral components of domestic judicial reasoning and constitutional legality.

The analysis also shows that particular attention is required when pre-trial detention and seizure are applied simultaneously. Their cumulative impact may place the individual under significant procedural, personal, and economic pressure, affecting the right of defence, family life, professional activity, and the fairness of the proceedings as a whole. For this reason, courts should assess not only each measure separately, but also their combined effect.

The ongoing development of Albanian judicial practice indicates progress toward a stronger culture of individualized reasoning, proportionality review, and Convention-oriented interpretation. Nevertheless, this process remains continuous. Any restriction of liberty or property must be legally grounded, clearly reasoned, proportionate to the legitimate aim pursued, and subject to effective judicial control. Only through such an approach can the fight against serious crime remain compatible with the rule of law, human dignity, and the fundamental rights guaranteed by the European Convention on Human Rights.

10. Acknowledgment

The authors declare that artificial intelligence tools were used during the preparation of this manuscript. Specifically, AI-assisted tools were used for language editing, grammar correction, and improvement of clarity. The intellectual content, analysis, interpretation of results, and final approval of the manuscript remain the sole responsibility of the authors.

References

- Constitutional Court of Albania. (2021, April 2). Decision No. 58.
- Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms.
- Council of Europe. (1952). Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Council of Ministers of the Republic of Albania. (2020). Normative Act No. 1/2020.
- Council of Ministers of the Republic of Albania. (2020, December 16). Normative Act No. 35.
- Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201–240. <https://doi.org/10.1257/aer.20161503>
- European Court of Human Rights. (2023, February 21). Hysa v. Albania (Application no. 52048/16). HUDOC.
- European Court of Human Rights. (2023, June 20). Lazaris v. Albania (Application no. 48806/06). HUDOC.
- European Court of Human Rights. (2025, April 29). Jaupi v. Albania (Application no. 23369/16). HUDOC.
- European Court of Human Rights. (2025, February 25). Gëllçi v. Albania (Application no. 15468/23). HUDOC.
- Hryniewicz-Lach, E. (2024). Improving asset confiscation: In the quest for effective and just solutions. *ERA Forum*, 25, 231–247. <https://doi.org/10.1007/s12027-024-00806-8>
- Hryniewicz-Lach, E. (2025). Evidentiary proceedings in extended confiscation cases: Where to draw the line? *ERA Forum*, 26, 225–247. <https://doi.org/10.1007/s12027-025-00847-7>
- Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law and Economics*, 60(3), 529–557. <https://doi.org/10.1086/695285>
- Martufi, A., & Peristeridou, C. (2020). Pre-trial detention and EU law: Collecting fragments of harmonisation within the existing legal framework. *European Papers: A Journal on Law and Integration*, 5(3), 1477–1492. <https://doi.org/10.15166/2499-8249/423>.
- Martufi, A., & Peristeridou, C. (2020). The purposes of pre-trial detention and the quest for alternatives. *European Journal of Crime, Criminal Law and Criminal Justice*, 28(2), 153–174. <https://doi.org/10.1163/15718174-bja10002>
- Republic of Albania. (1995). Criminal Code of the Republic of Albania.
- Republic of Albania. (1995). Criminal Procedure Code of the Republic of Albania.
- Republic of Albania. (2009, December 3). Law No. 10192 “On the prevention and combating of organized crime, trafficking and corruption through preventive measures against property”.
- Republic of Albania. (2020). Law No. 18/2020.
- Simonato, M. (2017). Confiscation and fundamental rights across criminal and non-criminal domains. *ERA Forum*, 18, 365–379. <https://doi.org/10.1007/s12027-017-0485-0>
- Stevens, L. (2009). Pre-trial detention: The presumption of innocence and Article 5 of the European Convention on Human Rights cannot and does not limit its increasing use. *European Journal of Crime, Criminal Law and Criminal Justice*, 17, 165–180. <https://doi.org/10.1163/157181709X429132>
- Supreme Court of Albania, Criminal Chamber. (2011, October 14). Unifying decision no. 7.
- Supreme Court of Albania, Criminal Chamber. (2017, February 15). Decision no. 25.
- Supreme Court of Albania, Criminal Chamber. (2023). Decision no. 00-2023-1602 (272).
- Supreme Court of Albania, Criminal Chamber. (2023). Decision no. 60011-00484-00-2023.
- Supreme Court of Albania, Criminal Chamber. (2024). Decision no. 00-2024-1244 (174).
- Supreme Court of Albania, Criminal Chamber. (2024). Decision no. 00-2024-1625 (195) [M.M.].
- Supreme Court of Albania, Criminal Chamber. (2024). Decision no. 00-2024-1856 (283).
- Supreme Court of Albania, Criminal Chamber. (2024). Decision no. 60008-00716-00-2024.
- Supreme Court of Albania, Criminal Chamber. (2024). Decision no. 60008-0075300-2024.
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 00-2025-832 (131).
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 00-2025-1007 (82) [Xh.K.].
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 00-2025-1657 (262).
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 61004-00481-002025 [K.U.].
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 61006-00447-00-2025 [E.B.].
- Supreme Court of Albania, Criminal Chamber. (2025). Decision no. 61007-00630-00-2025 [A.R.].