

The Principle of the Separation of Powers in Relation to Judicial Power and Disputes of Competence in Albania

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Abstract

This paper examines the principle of the separation of powers in relation to the judicial power and the jurisdictional disputes that may arise between them. Issues related to the interference of the judicial authority in the functions of other branches of power, and vice versa, are of particular interest at a time when various states are increasingly displaying authoritarian-inspired tendencies. The study is based on an analysis of recent cases encountered in practice and explores various perspectives regarding judiciary's interference in the functions of other branches of power, as well as the interference of those branches in the exercise of judicial functions. Specific cases include the suspension of a minister, seen as a direct interference in the functioning of the highest executive authority, and the creation of legal situations that can be considered contrary to the powers granted by the Constitution to both the Government and the Parliament regarding the formation and functioning of the Council of Ministers. The analysis of the influence of the judicial power on the executive power through the imposition of preliminary measures, considered as individual decisions of a criminal nature, confirms that no conflict of powers arises between the branches of government within the meaning of Article 131 of the Constitution. Furthermore, the analysis of constitutional jurisprudence supported by a comparative analysis confirms that judicial decisions are reviewed only by the highest court. No other authority can assess their legality as long as they have not been amended or annulled by a higher court. Any intervention by other state authorities in this regard constitutes a violation of constitutional principles.

Keywords: separation of powers, judicial power, constitutional jurisprudence, dispute of competence, executive power.

JEL Classification: K10, K41

DOI: <https://doi.org/10.62768/ADJURIS/2026/7/02>

Please cite this article as:

Guli Hoti, Paulina. "The Principle of the Separation of Powers in Relation to Judicial Power and Disputes of Competence in Albania." In *Comparative and International Law in an Era of Global Transformation: Sovereignty, Justice, Cooperation, and Emerging Technologies*, edited by Liliana Tymchenko and Paulina Guli Hoti, 33–45. ADJURIS – International Academic Publisher, 2026.

<https://doi.org/10.62768/ADJURIS/2026/7/02>

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1. Introduction

The principle of the separation and balance of powers, as a constitutional principle, constitutes one of the fundamental pillars of the rule of law, is guaranteed by the Constitution² and must be respected by the holder of each power. The dispute of competence between the executive power and the judicial power, expressed in the conflict produced by an interim security measure imposed by the court against organised crime and corruption upon a minister³, has provoked significant debate regarding the principle of the separation and balancing of powers in ensuring the rule of law.

The Council of ministers has recently⁴ argued that a court of the judicial power has no jurisdiction over matters relating to the mandate of a minister, a member of parliament, or other high constitutional officials, since they are not ordinary administrative bodies but constitutional bodies. According to this view, the Constitution does not envisage the suspension of a minister as a preventive measure and, consequently, such a measure cannot be applied.

Claiming that the principle of the separation and balance of powers has been violated, the executive power has brought the matter before the Constitutional Court, emphasizing that the suspension from office of a member of the Council of Ministers by a court exercising judicial power constitutes an interference with the executive power as a constitutional body. This is because the suspension measure impedes the fulfilment of the minister's competences, as regards the part concerning decision-making for that field of state responsibility. Furthermore, the Council of Ministers is unable to consider or issue acts for any initiative in the field covered by the minister against whom the suspension measure is taken.

According to the application of the Council of Ministers, the constitutional competence to propose the composition of the Council of Ministers is attributed solely to the Prime Minister and may not be exercised by any other entity, regardless of the power to which it belongs. Indeed, the courts are not vested by

² Constitution of the Republic of Albania, art. 7: "The system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers"; Luan Omari and Aurela Anastasi, *E drejta kushtetuese* (Tiranë: Dajti 2000, rev. ed. 2017); Sokol Sadushi, *Drejhtësia kushtetuese në zhvillim: Trajttime teorike dhe të praktikës së gjykimit kushtetues* (Tiranë: Toena, 2012), 497 ff.

³ The interim security measure suspending the Deputy Prime Minister and Minister of Infrastructure and Energy was claimed to have impaired the activity of the Council of Ministers and the Prime Minister by interfering with their competences as constitutional bodies. The measure suspended the minister's activity in the field of infrastructure and energy and was argued to oblige the Prime Minister to propose the dismissal of the incumbent minister and the appointment of a new one.

⁴ Constitutional Court of the Republic of Albania, Decision No. 8, February 6, 2026, para. 11.1.

the Constitution with any authority regarding the appointment, removal, or suspension of them.⁵

The Albanian Constitution, in Article 103⁶, provides that a member of the Council of Ministers is granted the immunity afforded to a Member of Parliament, specifically the guarantees set forth in Article 73 of the Constitution and Article 242 of the Code of Criminal Procedure.

In light of the above, it is important first to examine the general elements of the principle of the separation and balancing of powers in relation to the judicial power, and subsequently to address in detail the elements recently interpreted by the Constitutional Court.

2. The Separation and Balancing of Powers in Relation to the Judicial Power

2.1. Montesquieu's Principle of the Distribution of Power and the Prevention of Its Abuse

Although in its narrow conception, power is one and belongs to the state, it is divided into three branches and must be exercised by different bodies that are independent of one another, so as to avoid the danger of its concentration in the hands of a single body and the abuse thereof. In this sense, the principle of the independence of the judiciary is an indispensable element for securing the principle of the rule of law and the principle of the separation of powers in the spirit of Montesquieu. The protection of fundamental human rights and freedoms can be achieved only through an independent and impartial judicial power⁷.

The constitutional enshrinement of the principle of the separation and balancing of power, together with the conferral upon the Constitutional Court of jurisdiction to adjudicate disputes of competence between the powers, constitute the first guarantees for securing the rule of law.

The Constitution obliges all bodies of public power to exercise their competences only within the framework of, and on the basis of, constitutional norms and the law. It regulates the relations between the executive, legislative and judicial powers through the instruments laid down in the constitutional norms and on

⁵ Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 11.3 (applicant's submissions): "the suspension of a member of the Council of Ministers is not recognised by the juridical-constitutional system of the Albanian state."

⁶ Constitution of the Republic of Albania, art. 103(3): "Members of the Council of Ministers enjoy the immunity of a deputy."

⁷ Constitution of the Republic of Albania, arts. 42(2), 145; Omari and Anastasi, *E drejta kushtetuese*; Sadushi, *Drejtesia kushtetuese në zhvillim*, 497 ff.; Xhezair Zaganjori, Arta Vorpsi, and Denar Biba, *Parime kushtetuese dhe të drejta themelore në jurisprudencën e Gjykatës Kushtetuese* (Tiranë: Adelprint, 2012), 37; Xhezair Zaganjori, Aurela Anastasi, and Eralda (Methasani) Çani, *Shteti i së drejtës në Kushtetutën e Republikës së Shqipërisë* (Tiranë: Adelprint, 2011), 28.

the basis of the principle of the separation and balancing of powers.

The general principles of the rule of law, the principle of the separation of powers, the principle of legality, the principle of equality before the law, and the principle of the independence and impartiality of the courts, constitute the elements of the security of a democratic state and rest upon the idea of a judicial power free from external pressures, and in particular free from the pressures of politics and of the executive. They also rest upon a sound organisation of the judicial system.

2.2. The Independence of the Judicial Power in Relation to the Two Other Powers

The independence of the judicial power translates into the right to an independent and impartial tribunal, which is guaranteed by a series of international and domestic instruments⁸ and is regarded as an essential element of the rule of law itself. Consequently, the consolidation of the rule of law through an independent and impartial justice system is an obligation and a function of the state itself.⁹ Only in this way can the state guarantee respect for fundamental human rights and freedoms¹⁰.

The independence of the judicial system is enshrined in Article 145/1 of the Constitution: “*Judges are independent and subject only to the Constitution and the laws.*” The rules that are to govern the activity of the judge in the exercise of his competences derive from the Constitution and are sanctioned in substantive laws. And since the function of the judge is to apply the law and to decide who is right in the event of a conflict, guaranteeing the independence of the judiciary is and remains an obligation of the state itself.

⁸ International instruments include the Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14; European Convention on Human Rights, art. 6; United Nations, *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985) and endorsed by UN General Assembly Resolutions 40/32 (November 29, 1985) and 40/146 (December 13, 1985); and Council of Europe, Committee of Ministers, Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges (October 13, 1994). Domestic instruments include the Constitution of the Republic of Albania; Law No. 98/2016, “On the Organization of the Judicial Power in the Republic of Albania”; and Law No. 96/2016, “On the Status of Judges and Prosecutors in the Republic of Albania.”

⁹ United Nations, *Basic Principles on the Independence of the Judiciary*, principle 1: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.”

¹⁰ Constitution of the Republic of Albania, art. 42(2): “Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.”

With respect to the principle of the independence of the court, the Constitutional Court¹¹ has provided its interpretation, emphasising that this principle must be understood in two main aspects. First, as *substantive independence*, that is: a right of the court to take impartial decisions, uninfluenced by the two other powers. Second, as *structural independence*, that is: the appointment and dismissal of judges must be provided for in the Constitution. Structural independence also implies *organisational and financial independence*. In its interpretation it continues: “*Respect for this principle is a necessary condition for the protection of fundamental human rights and freedoms (...). In this sense, this independence is not a privilege but one of the fundamental duties of judges and of the court, deriving from the human right to have an impartial arbiter in a conflict, guaranteed by the Constitution (...). On the other hand, the independence of the judiciary cannot be understood without the independence of the judge within the very structure of the judiciary, through which it is ensured that no judge may interfere in the activity and conviction of another judge.*”

In interpreting the constitutional provision¹² on the immunity of a deputy, it is understood that the latter is a means serving as a guarantee for achieving the protection of his duties, that is the deputy's right to exercise his duty a purpose realised through the establishment of the procedural guarantee of prior authorisation by the Assembly for acts of the judicial power that restrict the deputy's personal liberty, making it impossible for him to exercise his constitutional function. The reasoning applied by analogy also to the suspension of a minister is that which holds that a deputy may not be suspended from duty by an act of the judicial power; indeed, even acts that indirectly bring about the consequence of de facto suspension from the exercise of duty may not be taken without the authorisation of the Assembly.¹³

¹¹ Zaganjori, Anastasi, and (Methasani) Çani, *Shteti i së drejtës në Kushtetutën e Republikës së Shqipërisë*, 28.

¹² Constitution of the Republic of Albania, art. 73: “1. The deputy is not held responsible for opinions expressed in the Assembly and votes cast by him in the exercise of the function. This provision is not applicable in the case of defamation. 2. A deputy cannot be arrested or deprived of liberty in any form, nor may a personal search or a search of the residence be exercised against him, without the authorisation of the Assembly. 3. A deputy can be arrested or detained without authorisation when he is captured during or immediately after the commission of a crime. The General Prosecutor or Chief Special Prosecutor immediately notifies the Assembly, which, when it finds that there is no room for proceedings, orders the lifting of the measure. 4. For the cases provided in paragraphs 2 and 3 of this article, the Assembly may hold discussions in closed sessions for reasons of data protection. The decision is taken by open voting.”

¹³ In its submissions before the Constitutional Court, the Assembly likewise maintained that the security measure imposed by a judicial body infringed the separation of powers: “Judicial interference in the composition of the Council of Ministers approved by the Assembly constitutes a direct infringement of constitutional competences. The suspension of a minister creates a situation in which the judicial power interferes directly in the functionality of the highest constitutional executive body, as well as in its ability to take decisions in the field of responsibility of the suspended minister, thereby creating a factual impossibility for the exercise of the constitutional competences of the Council of Ministers. The interference of the judicial power cannot be justified merely by the

In this legal debate over the claim of interference by the judicial power in the executive power, the legislative power has stated that the imposition of the security measure by the judicial power has created “*a legal situation that conflicts with the competences which the Constitution has recognised to the Assembly in the process of the formation and functioning of the Council of Ministers, since it creates a factual state of affairs that conflicts with the Assembly’s decision to grant a vote of confidence. The suspension creates an unforeseen constitutional situation that directly affects the functional relationship between the Assembly and the Council of Ministers. (...) Likewise, the suspension creates legal confusion regarding the status of the acts that the President has issued for the appointment of the minister, since it suspends constitutional acts without following the constitutional procedure for their revocation*”¹⁴.

According to the legislative power, the constitutional provision of Article 103, point 3, which equates the immunity of a member of the Council of Ministers with that of a deputy, serves to ensure the functioning as a whole of the Council of Ministers as the holder of the executive power. Indeed, the legislative power reasons that “*the suspension of a minister from duty would impair executive activity in an entire field of state responsibility, would lead to the obstruction of the implementation of the governing programme for which the people voted, and would create an institutional vacuum that would damage the public interest.*”¹⁵

Meanwhile, the President of the Republic, before the Constitutional Court, has maintained the position that criminal prosecution as a direct and exclusive function of the bodies of justice has no bearing on the relations between the powers.¹⁶ He has added that the suspension of activity connected with the exercise of a duty or a public service, provided for by Article 242 of the Code of Criminal Procedure, is not a measure specific to members of the Council of Ministers.¹⁷ Nevertheless, the President, although of the view that it is the Constitutional Court that must pronounce on whether or not the prohibitive measure constitutes interference in the prerogatives of another power, does not stop at this observation but also offers his own interpretation.¹⁸ In light of this interpretation, the following questions arise: do prohibitive measures constitute an instrument of

need for criminal investigation, since the Constitution has provided special procedural guarantees for high state officials.” Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 12.1.

¹⁴ Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 12.1.

¹⁵ Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 12.2.

¹⁶ Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 13.1.

¹⁷ Code of Criminal Procedure of the Republic of Albania, art. 242(2), which excludes persons elected under the electoral law from the prohibitive measure of suspension from the exercise of a public duty or service.

¹⁸ The President of the Republic submitted that, if suspension from office imposed on a member of the Council of Ministers affects the free functioning of the executive branch, the measure assumes the character of an instrument of checks and balances; if it does not affect that functioning, it remains within the sphere of criminal law. Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 13.1.

checks and balances in the hands of the judicial power, and does this instrument condition the functioning and composition of the executive power?

The case that gave rise to this inter-institutional debate over disputes between the executive power and the judicial power concerns the suspension of the Deputy Prime Minister and Minister of Infrastructure and Energy. This suspension has been considered by the Prime Minister to be an infringement of the Constitution under letter “ç” of point 1 of Article 131 thereof. Considering the proposal of ministers to be within his discretion, as recognised by the Constitution and the case-law of the Court the head of government takes the view that there has been interference by the judicial power in the executive power, and that the prohibitive measure of suspension would have had to be expressly provided for.

3. The Functional and Procedural Guarantees of the Executive Power in Relation to the Principle of the Separation of Powers

3.1. Functional Guarantees for Special Legal Protection

Under Article 103(3) of the Constitution, members of the Council of Ministers are granted the immunity of a Member of Parliament. Since this constitutional provision treats the minister’s immunity as identical to that of the deputy, it is Article 73 of the Constitution that defines the nature and scope of parliamentary immunity. Pursuant to Article 73, point 1 of the Constitution, a deputy bears no responsibility for opinions expressed in the Assembly and votes cast by him in the exercise of his function. This provision does not apply in the case of defamation. Meanwhile, under point 2 of the same article, a deputy may not be arrested or deprived of liberty in any form, nor may a personal search or a search of the residence be exercised against him, without the authorisation of the Assembly. The cases in which a deputy is caught during or immediately after the commission of a serious crime are provided for in point 3 of Article 73 of the Constitution, according to which a deputy may be detained or arrested without authorisation, while the General Prosecutor or the head of the Special Prosecution Office immediately notifies the Assembly, which, when it finds that there is no room for proceedings, orders the lifting of the measure. The rules provided for in Article 73 of the Constitution are applicable also to a minister and constitute the constitutional regime of his immunity.

After the 1990s, the transition from a centralised system to a model of governance founded on the principle of the rule of law and on the separation and balancing of powers marked the strengthening of the institutional independence of the powers and constitutional bodies.¹⁹ Immunity was conceived as a functional guarantee to protect the holders of high state offices from undue pressures

¹⁹ Law No. 7491 of April 29, 1991, “On the Main Constitutional Provisions,” art. 22, provided that a Member of Parliament enjoyed immunity and could not be obstructed in the performance of par-

or interference that could impair their autonomy in the exercise of their function. With the consolidation of the constitutional order and the strengthening of democratic institutions, a phase began of raising the standards of public accountability and of guaranteeing the principle of equality before the law.²⁰ As a result, the regime of immunities has progressively narrowed, not only for deputies and ministers, but for all public officials.

With reference to the case-law of the Constitutional Court, Article 103, point 3, of the Constitution grants members of the Council of Ministers, by virtue of their important state function, a special legal protection. By equating the legal protection of a member of the Council of Ministers with that of a Member of Parliament, the Constitution has given the same juridical meaning to the immunity of this category of officials. Furthermore, since the Constitution places the immunity of a member of the Council of Ministers on an equal substantive footing with that of a Member of Parliament, the procedure governing the lifting of parliamentary immunity, as prescribed by Article 73 of the Constitution, shall likewise apply to a member of the Council of Ministers who does not hold a parliamentary mandate.²¹

Following the constitutional reform of 2012, Article 73 limited the inviolability of a deputy from criminal prosecution. Article 73 guarantees a deputy immunity in two forms: “*substantive immunity — in the sense of non-liability for opinions expressed in the Assembly and votes cast by him in the exercise of his function (first paragraph), and procedural immunity — in the sense of inviolability, that is, that a deputy may not be arrested or deprived of liberty in any form, nor may a personal search or a search of the residence be exercised against him, without the authorisation of the Assembly (second paragraph).*”²² In its jurisprudence, the Constitutional Court has emphasized that the rules concerning the inviolability of Members of Parliament in criminal proceedings should not exceed what is necessary to achieve legitimate objectives and must be interpreted restrictively.²³

For the Constitutional Court,²⁴ the regime of immunities, in every case,

liamentary duties or in obtaining non-secret information; search, detention, arrest, or criminal prosecution required Parliament’s consent, except in cases of a serious offence caught in flagrante delicto. Members of the Council of Ministers were accountable for the activities of their ministries (art. 39), and criminal proceedings against them could be initiated only with Parliament’s approval (art. 41). See also Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 44.

²⁰ Constitution of the Republic of Albania (1998), art. 73 (original text), required Assembly authorisation for the criminal prosecution or arrest of a deputy; art. 103(3) expressly equated a minister’s immunity with that of a deputy. See also Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 45.

²¹ Constitutional Court of the Republic of Albania, Decision No. 38, June 23, 2000.

²² Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 47.

²³ Constitutional Court of the Republic of Albania, Decision No. 81, November 21, 2024.

²⁴ Constitutional Court of the Republic of Albania, Decision No. 81/2024; Decision No. 1, January 17, 2025.

aims to guarantee the calm and uninfluenced exercise of important public functions by high state officials, who should not fear that their state activity might become the cause of personal consequences such as, for example, a civil suit or a criminal charge. Nevertheless, it must be emphasised that a deputy's immunity is not a personal privilege and its main purpose is the protection of parliament itself and its proper functioning. The inviolability of a deputy must be applied only in cases where there are grounds to suspect that the decision to prosecute the deputy contains party-political elements.

As regards procedural immunity, Article 73, point 2, of the Constitution guarantees a deputy in this case a minister special protection from those procedural acts undertaken by law-enforcement bodies in the course of criminal proceedings which restrict his personal liberty. In such cases, the Constitution itself provides for a safeguarding mechanism, namely the authorization of Parliament, which is required whenever restrictive measures imposed on a Member of Parliament entail the restriction or deprivation of personal liberty. Such measures affect the Member's right to be elected and, consequently, the exercise of his or her rights and functions as a Member of Parliament, including parliamentary activity itself.²⁵

The system of governance rests on the fundamental principle of the rule of law, which means that every holder of public functions, without exception including ministers as members of the executive power, is subject to the legal order and bears responsibility in the event of a violation of the law. This principle requires that the exercise of state competences take place within the limits set by the Constitution and the law. Furthermore, the principle of the rule of law is intrinsically connected to the principle of equality before the law, pursuant to which no individual may enjoy privileges or exemptions from the application of the law on account of the office he or she holds, save where an objective and reasonable justification exists under Article 18 of the Constitution. In this context, the minister's immunity does not amount to a personal privilege or a form of absolute immunity from criminal jurisdiction; but, it constitutes a limited functional safeguard designed to secure the free and independent performance of official functions. Such a safeguard cannot be construed as an impediment to criminal prosecution or the exercise of judicial authority beyond the circumstances expressly prescribed by the Constitution.

All state bodies have the duty to act within the basis and limits of the law, and privileged treatment is considered incompatible with the principle of equality before the law in the absence of a reasonable and objective justification. The principle of the rule of law requires that responsibility and accountability be essential elements of the exercise of public functions. In this sense, a member of the Council of Ministers bears political responsibility before the Assembly for the exercise

²⁵ Constitutional Court of the Republic of Albania, Decision No. 8/2026, para. 51; Decision No. 81/2024.

of his governing functions. This responsibility runs through the mechanisms of parliamentary oversight provided for in the Constitution and may lead to his dismissal. At the same time, he also bears individual criminal responsibility if, during the exercise of his duty, he commits a criminal offence. The minister's immunity is intended solely to guarantee the free and independent exercise of public function, protecting him from undue interference or attacks of a political nature. This immunity constitutes neither a personal privilege nor a shield against the application of criminal law. A minister, like any individual, remains subject to criminal responsibility and is obliged to submit to criminal rules and sanctions before the competent bodies in the event of the commission of a criminal offence.

3.2. Procedural Guarantees in View of the Principle of the Separation and Balancing of Powers

The protection of the representative function and respect for the principle of sovereignty according to which sovereignty belongs to the people and is exercised by them through their elected representatives is guaranteed by Article 242, point 2, of the Code of Criminal Procedure. This point of Article 242 provides that the prohibitive measure of suspension from the exercise of a public duty or service does not apply to persons elected under the electoral law. In the jurisprudence of the Constitutional Court²⁶ such a provision has been considered a specific procedural guarantee afforded to persons elected in accordance with electoral legislation. Since the electorate delegates to the elected person the right to decide on matters relating to the governance of the country, immunity serves to guarantee the integrity of the representative mandate and of the will of the electorate.

The principle of the separation and balancing of powers, enshrined in Article 7 of the Constitution, according to the case-law of the Constitutional Court means that no body whether or not part of one of the three powers may interfere in the handling and resolution of matters that, as the case may be, would constitute the central object of the activity of other constitutional bodies or institutions.²⁷ We share the view that immunity does not exclude or protect from criminal prosecution. We also consider that the free and independent exercise of functions must be guaranteed, and that Article 242 (2), has as its purpose the guaranteeing of the exercise of functions by persons elected under the electoral law, and constitutes a procedural guarantee necessary to enable the exercise of the constitutional function. In the case of a member of the executive power, these guarantees apply only if two principles are simultaneously respected: the principle of the effectiveness of criminal prosecution and of the exercise of the judicial function, and the principle of the free exercise of the executive function.

²⁶ Constitutional Court of the Republic of Albania, Decision No. 4, February 23, 2011.

²⁷ Constitutional Court of the Republic of Albania, Decision No. 15, April 15, 2010.

It is evident that, where a restrictive measure is imposed upon a member of the Council of Ministers, a careful balancing exercise must be undertaken between the public interest in the formulation and implementation of governmental policies and the political administration of the State, on the one hand, and the public interest in ensuring effective investigation and criminal prosecution, on the other. We consider that the public interest requires that public officials not enjoy privileges capable of facilitating the avoidance of criminal accountability, and that the procedural safeguards deriving from immunity cannot impede the exercise of the constitutional powers entrusted to the judiciary.

In the case of a member of the legislative power, so long as the suspension measure is such as to have consequences for the exercise of the constitutional functions of the legislative power, an assessment by the Assembly of the measure requested by the prosecuting body is necessary. The assessment by the Assembly of the prohibitive measure is regarded as a mechanism of institutional check and balance and is expressly provided for in the constitutional provisions.

The prior authorisation of the Assembly for a member of the legislative power in respect of the following measures: arrest, deprivation of liberty in any form, personal search, and search of the residence. However, the measure of suspension from duty is not expressly provided. We are of the opinion that although a member of the Council of Ministers enjoys the immunity of a deputy, the absence of the suspension measure from the text of Article 73 does not open the way to obtaining prior authorisation from the Assembly.²⁸

4. Conclusions

Given that the principle of the separation and balance of powers implies a structured interaction in accordance with the mechanisms expressly provided in the Constitution, it is these structural mechanisms that enable the powers to limit one another. The constitutional bodies themselves must remain faithful to the system of governance so that the principle of the rule of law is respected. The exercise of judicial powers through restrictive measures or decisions adopted in the course of criminal proceedings, even when affecting a member of the Council of Ministers and, consequently, the executive power, must be carried out in compliance with constitutional limits.

The imposition of a restrictive measure against a member of the executive power in criminal proceedings does not constitute interference by the judicial power in the activity of the executive power. The presentation of constitutional immunity as legal protection for the exercise of public duty does not entail exemption from criminal jurisdiction, since constitutional immunity is regarded only as a *limited balancing mechanism* for cases that are expressly provided for. In this regard, there is no jurisdictional dispute as long as the restrictive measure

²⁸ Constitutional Court of the Republic of Albania, Decision No. 8/2026, paras. 72–73.

does not affect the institution itself and does not result in the compulsory reorganization of the Government.

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