



Research Article

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Received: 21 August 2022 / Accepted: 10 October 2022 / Published: 5 November 2022

Issues of Implementation of the Fair Trial in the Albanian System: Analysis in the Framework of the Constitutional Court and ECHR's Jurisprudence on Albania's Cases

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DOI: <https://doi.org/10.36941/ajis-2022-0149>

Abstract

The process of a fair trial constitutes an important part of human right standards, for which Albania is making efforts to develop. Article 6 (1) of the European Convention on Human Rights (ECHR), being the main tool in the area of fundamental rights and freedoms, lists the components of a fair, independent, impartial, legal and public trial within a reasonable time applicable in both civil and criminal trials. The paper aims to present an overview of the evolution of this principle in the Albanian constitutional system in order to understand how this principle has evolved in a former dictatorship such as Albania and how much this principle conforms to the standards sanctioned under Article 6 (1) of the ECHR. As one of the most significant legal events in Albania, judicial reform's impact on the justice system is also analysed regarding the application of the standards of a fair trial. Naturally, all components of a fair trial are of essential importance, but considering gaps in enforcement and issues of their practical misinterpretation, this paper is focused in components such as: access to justice, trial within a reasonable time and trial by an independent and impartial court. Through the jurisprudence of the Albanian Constitutional Court and European Court of Human Rights on cases against Albania, the present paper outlines and seeks to address the matters of enforcement of such components in the Albanian system, such as: How is the constitutional defence of a free trial provided and what has been the Constitutional Court's role in this regard? How have ECHR's guidelines on cases against Albania affected the correction of misinterpretations in the national system? How has the judicial reform affected the enforcement of such components, and what are the subsequent problems and challenges? In conclusion, we present some opinions regarding the need to increase the standard of the defence of these components referring to a fair trial, particularly in the area where the largest number of problems have been identified by the practice.

Keywords: Fair trial, appeal, jurisprudence, Constitutional Court, ECHR

1. Introduction

The enforcement of a fair trial in the Albanian system is yet a complex process. In developed democratic societies, the right to a fair trial has long been established with proper priority. In former

dictatorships like Albania, the recognition and enforcement of such principle has been a long and difficult process.

The communist dictatorial regime in Albania was characterized among others by the denial of fundamental rights and freedoms. The defence mechanisms of such rights were absent as courts were dependent on the regime and no Constitutional Court (CC) existed throughout the dictatorship.

Constitutions adopted during the dictatorship only sanctioned some formal principles of fair trial that were of a merely declarative nature. Constitutionalism began to take place in Europe over the past 50 years in the post-communist countries of Central and Eastern Europe, in the early 1990s (Fabbrini, 2014).

As in the other Eastern European countries, the fair trial principle receives great attention after the democratic changes of the '90s. The adoption of Law no. 7491, dated 29 April 1991 "On the Main Constitutional Provisions" and establishment of the first Constitutional Court in Albania by Law no. 7561, dated 29 April 1992 were important steps in this regard.

Article 24/9 of the Law gave clear competences to the Constitutional Court to resolve appeals of individuals on the violation of any of their constitutional rights provided by Law no. 7491, dated 29 April 1991.

Firstly, the CC's practice has not followed the same approach as the ECHR's guidelines, which is indicated by the large number of cases covered by the ECHR where Albania was a party and being settled in the appellants' favour. Although the CC's practice, as will be covered below, has positively evolved in accordance with the ECHR's practice, the Albanian judicial system still demonstrates problems in the understanding and enforcement of this notion.

The judicial reform process also had a significant impact on the observance of some components of a fair trial.

From 2016, Albania has been included in a judicial reform process. A consequence of the reform was also the transitional evaluation process for judges and prosecutors, also known as the Vetting Process. For this purpose, Law no. 84/2016 "On the Transitional Re-Evaluation of Judges and Prosecutors in the Republic of Albania" was adopted. The ongoing Vetting Process has caused the layoff of more than half of judges due to not fulfilling criteria related to assets, background and proficiency. The inability to promptly replace the judges led certain courts of different instances of the judicial system to cease their functions, such as: The High Court and Constitutional Court. Indeed, these vacancies have significantly affected the ability to observe the fair trial principle.

The content of this paper will focus on the above-mentioned problems related to the enforcement of some fair trial components referring to the CC's practice and ECHR's jurisprudence on cases that Albania was party to. Simultaneously, these components will be analysed in regarding the impact caused by the judicial reform.

For the purpose of this analysis, it is important to understand the constitutional defence and position held by the fair trial principle in the Albanian constitutional system.

2. Reflection on the Constitutional Defence of the Fair Trial Process

Before the adoption of the Constitution, this principle was firstly sanctioned under Article 40 of Law no. 7692, dated 31 Mar 1993 "On Fundamental Human Rights and Freedoms". However, the enforcement of such principle in practice was gradual and with considerable issues.

Human rights organizations have noticed a series of violations that were considered to be partly due to lack of knowledge of the new law order and failure to break free from the old totalitarian regime's practices. Several violations were considered to be due to political pressure on the courts' work (Human Rights Watch/Helsinki, 1996).

The fair trial principle is accepted as an international standard with the ratification by the Albanian Parliament on 02 October 1996 of the ECHR, considered as the most effective international system on the defence of human rights (Drzemczewski, 2017).

The Convention's ratification brought the exercise of the ECHR's competence of cases against

Albania. The exercise of this court's jurisdiction, which has long been considered as a constitutional court for civil liberties of Western Europe (Buergenthal,1988), marked a turn in the concept of the fair trial constitutional notion in Albania. This also occurred due to the ECHR's position in the hierarchic scale of legal norms in the Albanian system.

In case that a state is a party of an international treaty (such as a human rights treaty), which has entered into force, scholars arise the question whether and how the provisions of that treaty can become part of the state's domestic law (Sieghart,1984).

Article 17/2 of the Constitution of the Republic of Albania (RoA) grants the ECHR a more privileged status compared to other international agreements ratified by Albania. This article gives it the same status as the Constitution on matters related to the limitation of fundamental rights and freedoms. In this sense, Albania is classified in the group of the world's most monist states such as Bosnia and Hercegovina, Austria, Netherlands and Norway, which in their constitutions attribute a constitutional rank to the ECHR (Cozzi et al., 2016).

In the legal doctrine, this regulation is interpreted as if the Constitution twins with the ECHR, which assumes constitutional power in the Republic of Albania regarding the issue of limitation of fundamental rights and freedoms. This would mean that, should a law be declared in violation of the Convention, the law would be declared anti-constitutional (Omari & Anastasi, 2000). Therefore, the ECHR's direct enforcement in the domestic system was acknowledged in the determination of fundamental rights and freedoms, which is a principle also supported by Albanian legal doctrine (Polloshi, 2012).

With the adoption of the first democratic Constitution by Law no. 8417, dated 21 October 1998, the fair trial principle assumes the status of a constitutional guarantee with the same standards as those regulated by Article 6 (1) of the ECHR. The fair trial is now conceived not only as a right, but as a constitutional principle ranging several fundamental human rights and freedoms (Vorpsi, 2011).

In the Constitution of the RoA, this principle is classified under Chapter II as part of personal rights and freedoms. Article 42/2 determines that: *Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of charges against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.*

As regards the legal status, this principle also became of particular importance compared to other constitutional rights with the adoption of the Constitution. This status comes from Article 131/f of the Constitution, which gave competences to the Constitutional Court to only judge rights violations related to the fair trial.

In this sense, the years following the adoption of the 1998 Constitution, are recognized in the doctrine as the phase of limited constitutional appeal (Zaganjori et al., 2011) as the CC's competences were limited only to appeals of individuals related to the fair trial. On the other hand, the right to a fair trial seemed to be the only right provided by the Constitution that had gained the status of a CC-defended right (Omari & Anastasi, 2000).

This solution also came due to a series of problems of enforcement of guarantees deriving from a fair trial, particularly those related thereto. These problems are also reflected in the quite diverse experience of the Constitutional Court in reviewing appeals related to the violation of the right to a fair trial in the period after the adoption of the Constitution. Only after the 1998-2001 period, the CC abolished as unconstitutional 43 court decisions due to the violation of the right to a fair trial by the courts (Albanian Helsinki Committee, 2006).

The Constitutional Court's role as a guarantor of the enforcement of constitutional safeguards has gradually grown. This role is also revealed due to the fact that the number of fair-trial-related cases currently hold a considerable place in this court's activity. Misinterpretations in the execution of this principle, practice gaps and the influence of the judicial reform have been some of the causes in this regard.

These causes have significantly contributed to increasing the number of appeals directed to the CC, where only during 2021, 82 out of 160 requests accepted by this court are related to objections of court decisions on grounds of an unfair trial (Constitutional Court of the Republic of Albania, 2022).

These appeals mainly refer to components such as: access to justice, trial within a reasonable time and trial by an independent and impartial court, which will be all analysed below.

3. Problems of Enforcement of Fair Trial Components in the Judicial System

3.1 *The right to access to justice*

Article 6 (1) not only contains procedural guarantees in relation to judicial proceedings, but also grants the right to a judicial procedure that is the right to access the court (Dijk et al, 1990). The ECHR has first acknowledged this principle in the *Golder v. United Kingdom* (1975) case on 21 February 1975 (Kondo, 2012). In the Albanian system, the access to justice is now recognized as an integral part of the fair trial principle and considered as the main condition to defend other rights related to a fair trial (*Case V-7/08 & V-14/12*, CC).

In paragraph 2, Article 42 of the Constitution of RoA, the right of each individual to trial is recognized in any case where his constitutional and legal rights, freedoms and interests are prejudiced, or in the case of charges brought against him. In interpreting this article, the Constitutional Court has affirmed that the provision guarantees prejudiced subjects the right to access a court, which shall hear their claims and pronounce a verdict after a fair, public and impartial trial (*Case V-10/2007*, CC).

In a series of decisions, the Constitutional Court interprets this right as a right that ensures the effective enforcement of a fair legal proceeding and is purposed to guarantee the parties of a trial the right to be heard and established equally before the court (*Case V-15/03 & V-9/03*, CC).

In its jurisprudence, the court has also analysed access to justice in the perspective of the courts' obligation to pronounce final decisions, conceiving this right not merely as the right to be heard, but also as the right to have final resolution from the court regarding the dispute subject to trial (*Case V-28/08, V-14/09 & V-16/10*, CC).

In its decisions, the CC has considered the dismissal of personal appeals as a prejudice against the right of access to justice due to the courts' misinterpretations related to the calculation of appeal terms, issues of competence and court jurisdiction, refusal of recourse to the High Court due to non-signature by the defence, etc. (*Case V-4/05, V-22/06, V-8/11 & V-10/11*, CC). In the same logic, the lack of reasoning of court decisions in case of dismissal of appeals has also been considered as denial of access to justice (*Case V-33/05 & V-5/11*, CC).

The CC's practice has gradually changed by reflecting the ECHR's interpretations on access to justice, where the court has ruled in favour of the appellants in a large number of cases.

In the ECHR's jurisprudence on cases against Albania, the denial of access to justice has referred in large part to cases of non-execution of court decisions. This phenomenon has also occurred due to the wrong position of the CC of not recognizing the execution of court decisions as part of a fair trial in its beginnings.

The Constitutional Court's practice changed with the ECHR's decision on the *Qufaj CO. SHPK. v. Albania* (2004) case, where the Court affirmed that:

"The right of access - which is the right to start a judicial proceeding for civil cases- is one of the aspects of the right to a fair trial. However, this right would be illusionary if a domestic legal system of a member country would allow for a final court decision to remain inoperative by damaging a party".

In a series of other cases, the ECHR repeats its position that the right of access to trial that is guaranteed by Article 6 § 1 of the Convention, would fail to be real if the domestic legal system of a Member Country would allow for a final court decision to remain inoperative by damaging one party (*Bocari et al. v Albania*, 2007 & *Beshiri et al. v Albania*, 2006). Therefore, the right of access to court not only includes the right to start a process, but also the right to ensure dispute resolution by the court (*Ramadhi et al. v Albania*, 2007).

In other cases, as well as in previous decisions (*Golder v United Kingdom*, 1975 & *Delcourt vs Belgium*, 1970), the ECHR extends the obligation for decision making by courts beyond the final decisions to those decisions determining on the admissibility of requests.

Beyond the ECHR's guidelines, the High Court, which is the highest court of the judicial system in Albania, has held a wrong position when deciding on returning recourse requests by the chancellor of the High Court without having the request reviewed and its admissibility decided by a judge, as provided by Article 154/a, point 3, of the Code of Civil Procedure (CCiP). This wrong practice is found and corrected in a series of the CC's decisions (*Case V-33/21*, *V-34/21*, *V-35/21* & *V-37/21*, CC).

Although the CC's interpretative decision was amended positively, the right to access to justice remains to date one of the most prejudiced components due to vacancies caused by the judicial reform. With the vacancies of judges laid off due to the reform not being promptly filled within a reasonable time, some courts ceased to operate. This happened even in the highest instances such as the High Court and Constitutional Court for several years by prejudicing the right to access justice.

3.2 Trial within a reasonable time

In the framework of the evaluation of the "reasonable time" standard as per Article 6 of the ECHR, Albania is found to have the longest civil and criminal processes in Europe relative to other countries in a 2015 comparison study (European Commission, 2015). In the appeal trial, this fact was related to long delays and vague provisions of the Code of Criminal Procedure (CCrP) and Code of Civil Procedure (CCiP). In the High Court, there is a backlog of thousands of cases awaiting trial, for which no decision has been pronounced yet (Albanian Helsinki Committee, 2015). Currently, the Albanian judicial practice still reflects a finality issue of the largest part of judicial cases beyond a reasonable time.

These problems were reflected by a considerable number of cases covered by the CC and ECHR on cases where Albania was a party. Even in cases where Albania was a party, the ECHR, as per its previous positions where no final time limits were determined, affirms that the reasonable duration of proceedings must be evaluated based on some specific circumstances of the case, particularly regarding the case's complexity, appellants' and relevant authorities' behaviour, as well as the appellants' interests in the dispute (*Marini v Albania*, 2007 & *Luli et al. v Albania*, 2014).

The CC has reaffirmed the ECHR's interpretative criteria on the reasonable time notion in a series of decisions (*Case V-1/09*, *V-16/2021* & *V-76/2017*, CC). Simultaneously, it has sanctioned the obligation of courts to avoid any unnecessary delay in the judicial proceeding (*Case V-42/17*, *V-22/17*, *V-12/12* & *V-14/16*, CC).

Although these decisions may seem as if the court has determined a guiding and binding line of action for the judicial system in observing the reasonable time, the reality is quite different. Provisions of the legal, civil and administrative legislation are deemed not to have a proper approach harmonic to the content of the Convention in this regard as they left gaps for the prolongation of proceedings to lengthy time limits. The community of lawyers has expressed ideas on determining precise procedural deadlines by arguing that the lack thereof fosters a lack of responsibility and causes the system to stoop to a position where non-observance of the standard becomes the rule (Abdiu, 2018).

Another problem of the Albanian practice in this regard has been the effectiveness of appeal to the CC on violation of reasonable time. As such, appeal to the CC is only enabled upon the exhaustion of all effective legal remedies of appeal as per the stipulation by Article 131, point 1, letter "f" of the Constitution.

In this sense, an appeal to the CC would lose its effectiveness as it wouldn't contribute to the prevention of delays, nor it would ensure adequate remedy to violations or delays up to this moment (Vorpsi, 2011).

The ECHR's jurisprudence on cases of Albania has also affirmed that the Albanian legal system did not provide an effective appeal remedy that could be used to address appeals on the duration of

procedures, and the appeals to the CC did not constitute an effective remedy in this regard (*Bocari et al. v Albania*, 2007, *Beshiri et al. v Albania*, 2006, *Marini v Albania*, 2007 & *Berhani v. Albania*, 2010).

Problems found by the ECHR and the requests directed to Albanian authorities to adapt the system to the Convention's requests (*Mishgjoni v. Albania*, 2010) eventually led to the 2017 legal amendments. By law no. 38/2017, dated 30 March 2017, Chapter X titled "Trial of requests on finding the violation of the reasonable time, expedition of proceedings and damage compensation" (articles 399/1 – 399/12) was added to the CiPC.

These amendments set reasonable deadlines for the end of investigations, trials or executions of final court decisions and provided the opportunity of appeal and seeking redress for unreasonable durations of cases. Article 399/2 of the CiPC determines the reasonable time limits of civil, administrative and criminal trials, as well as the corresponding deadlines related to the execution of decisions.

Administrative trials of the first instance and appeal must end within one year from their start in each instance. In civil cases, trial for each instance (Court of First Instance, Court of Appeal and High Court) must end within a 2-year deadline. This article's feature is setting a reasonable time for criminal trials as well. Regarding criminal trials, point d of Article 399/2 sets as a reasonable deadline:

As regards for first-instance criminal trials, the time limit is 2 years for crimes and 1 year for misdemeanours, whereas the end of trial is 1 year for crimes and 6 months for misdemeanours on appeal trials. Meanwhile, in the High Court, the end of trial is 1 year for crimes and 6 months for misdemeanours.

Beyond the positive effect, setting a reasonable time for criminal cases in the CiPC seems to be an anomaly as this stipulation could have been provided in the Criminal Procedure Code. Article 399/2 has caused an incoherence by determining deadlines of criminal trials and referring the fact that the maximum duration of investigations of criminal offenses must be provided by the CrPC. In the same logic, the deadline of criminal trials could and should have been provided by the CrPC.

In all cases, the most important item under Article 399/2 is the right of parties to seek the finding of prolongation of proceedings and expedition of trial. The request for violation of reasonable time is reviewed by the competent court within 45 days. In case of a positive verdict by the court, the parties have the right to seek redress.

With the introduction of these amendments, the CC has deemed that the domestic legislation now provides an effective appeal remedy that guarantees both the expedition of the judicial proceeding and compensation. This does now provide a concrete result regarding the reinstatement of the violated right for a judicial process conducted within reasonable time limits (*Case V-80/2017*, CC).

Although this amendment was quite important, its enforcement faces many issues due to the vacancies caused by the vetting process. As such, concerns have been raised currently on the terrible 3-to-10-year-delays seen in serving justice due to the lack of resources to fill vacancies in the High Court, Constitutional Court, Tirana Court of Appeal and Tirana Administrative Court of Appeal (Halimi, 2021). Based on the review of statistical data of the Tirana Court of Appeal, it is found that 31,767 cases constituting 78.82% of cases reviewed by the court up to 09 May 2019, last 721 days or longer (Court of Appeal of Tirana, 2022).

The High Court, being a competent court for the review of appeals on prolongation of time limits in the Tirana Court of Appeal upon article 399/6 of the CCiP, has not only not observed the 45-day time limit of review of requests for violation of reasonable time, but has dragged them on for several years with no ruling in certain cases.

As a consequence, the largest part of the CC's latest decisions of 2021 refers to appeals on request processing procedures for violation of reasonable time at the High Court (*Case V-33/21*, CC). The ECHR has concluded in the same line that the remedy provided under Articles 399/1 *et seq* of the CrPC is effective in principle, but to be such in practice, the request for finding violation of reasonable time and expedition of procedures based on Article 399/6, point 1 of the CrPC, must be reviewed promptly by the court (*Bara & Kola v. Albania*, 2021).

The observance of reasonable deadlines takes more vital importance in criminal cases considering one of the issues of Albanian judicial practice, namely the issue related to the prompt execution of the imprisonment measure. In such cases, the time of a trial is even more important considering that people of deprived liberty are being tried. From the perspective of promptness in trial and considering these problems, CC has given a priority to criminal cases affirming that, “*in principle*”, civil cases are presented with less priority compared to criminal cases consisting in the deprivation of individual freedom (*Case V-33/2021*, CC).

Based on an analysis of the ECHR’s jurisprudence, it is also though in general that the ECHR will allow a state more leeway with respect to the length of the civil proceeding than the criminal one (Gomien, 1998). In criminal cases, the condition of reasonable time guarantees that a judicial decision gives an end to a person’s insecurity on a criminal charge against him within a reasonable time (Mole & Harby, 2003).

In cases of people tried in detention, scholars connect the request for a reasonable time more closely to Article 5/3 of the Convention as this provision refers to cases of criminal trials for persons in detention, whereas the subject of Article 6 (1) of the ECHR is broader (Kondo, 2012). In particular, this concern is raised for juveniles and the execution of the precautionary measures of imprisonment against them (Gjonaj, 2015).

Currently, this situation is resolved for juveniles through the adoption of the Criminal Justice Code for Juveniles. This Code has determined precise deadlines for the proceedings’ phases starting from the crime’s investigation to the judicial review of the case. However, this issue will still continue to be present in the Albanian judicial system as the backlog of cases, particularly in the higher instances of the judicial system such as the Court of Appeal and High Court, renders impossible the observance of reasonable time limits determined by law.

3.3 Court’s Impartiality

Guaranteeing an independent and impartial judicial system was one of the most important objectives of the judicial reform. The objectivity and impartiality in the case’s judicial reform are considered as elements on which the court’s very authority largely depends (Jaho, 1995). In the framework of standards sanctioned by the ECHR (*Delcourt vs Belgium*, 1970), the right to be tried by an independent and impartial court enables not only that justice be served, but be seen to be served (*Case V-14/06, V-38/07 & V-23/08*, CC).

The principle of impartiality is not subject to constitutional regulation, but mostly pertains to the area of civil and criminal procedural standards. The Constitution of RoA provides for the removal of judges’ immunity solely for decisions made due to personal interest or in bad faith. Furthermore, the CrPC and CiPC determine cases that constitute prejudice of the principle of impartiality and provide for the judge’s resignation or exclusion from the civil or criminal trial in case certain circumstances are verified.

The ECHR’s jurisprudence has given a valuable contribution on the meaning of the notion of impartiality. This court deems that impartiality implies that the court has no prejudices and is not biased regarding the case, and the existence of such may be proved in different manners (*Driza v. Albania*, 2007). Even in cases where Albania is party, the ECHR affirmed its position that the evaluation of impartiality refers to two criteria: the objective and subjective one (*Boçari et al. v. Albania*, 2005, *Berhani v. Albania*, 2010 & *Driza v. Albania*, 2007).

In accordance with its jurisprudence, the CC has considered that:

“the principle of impartiality includes in and of itself: (i) the subjective element that is closely related to the inner conviction the judge forms for the resolution of the case in trial, and (ii) the objective element that implies the provision of guarantees necessary for impartial trial by the court itself through avoidance thereby of any legitimate doubt in this sense” (Case V-11/08, CC).

The CC has brought its perspective in the practical enforcement of criteria related to impartiality. As regards the subjective criterion, the court refers to elements related to the judges' inner conviction and their freedom in decision making in accordance with their conscience and interpretation of facts in application of the standards of law.

Regarding the objective criterion, the court refers to the problem of the constitution of the trial panel so as to avoid from the case judgement the judges who do not have the guarantees required for impartiality in the objective sense (*Case V-16/03 & V-7/11, CC*).

Naturally, strict observance of the impartiality principle has never been very easy in practice. This has occurred in part due to the limited number of judges and vacancies created by the vetting process, which has caused for the same judges to take part in a case more than once in different phases of the proceedings or judgement. Such issue was present even in the highest instance of the judiciary represented by the High Court.

For these reasons, this fact was mainly the subject of appeal in those cases where the lack of impartiality has been claimed in cases against Albania.

The ECHR has held the position that the participation of the same judges in different stages of judgement does not always constitute prejudice against the principle of impartiality. To determine whether there were violations of the principle of impartiality, the ECHR has referred to the nature of such involvement more than the judge's involvement in the preliminary phases.

Thus, the ECHR has reaffirmed its position that the mere fact that a judge has already made a previous decision is insufficient in and of itself to support doubts on his impartiality. What is important is the purpose and nature of actions performed by him during the judicial process (*Boçari et al. v. Albania, 2007*)

Based on this logic, the ECHR has not found violations of the principle of impartiality when two out of three judges who decided for the appellant's case in the first instance had previously dismissed his request for violation of deadlines, but without any evaluation of the facts available or evidence presented (*Berhani v. Albania, 2010*)

In other cases, where some judges had been trial panel members and decided against the appellant twice, the ECHR affirmed a violation of the impartiality principle. In such cases, the court has analysed the objective test of impartiality and has deemed that besides the personal behaviour of each trial panel member, it must be proved whether there are convincing facts that there are behaviours that put impartiality in question. With respect to the objectivity of the appellants' doubts on impartiality, the Court affirmed that it must be reviewed whether these doubts' objectivity was sufficiently provable. The conclusion regarding the above depends on concrete circumstances of the case.

In this case, three of the judges who had pronounced a negative decision on the case, would decide whether to admit the request for recourse related to the first instance of the case. As a result, all three judges would decide whether they had been wrong in their previous decision. In such case, the Court found that the principle of objective impartiality had been violated (*Driza v. Albania, 2007*).

Although the number of appeals related to impartiality is not too high, Albanian public opinions highly perceives a lack of impartiality of judicial bodies. Polls conducted for research purposes have found that in 52% of cases, the judges' behaviour in hearings led the poll respondents to perceive bias (Bajri, 2016) The Vetting Process undertaken in the framework of the judicial reform in Albania targeted and targets the assessment of assets, integrity and professional competence of judges and prosecutors. To date, in the framework of the reform, roughly 50% of judges in the judicial system have been laid off. This illustrates the numerous issues of integrity and elements that have prejudiced public trust on the judicial staff.

3.4 Court's independence

The court's independence principle implies that judges shall be free to decide on their cases on the basis of facts and in compliance with the law, and with no intervention, pressure or undue influence

from the executive or any other branch of power. Thus, the independence of courts implies that people appointed as judges be selected above all based on their legal skill (Amnesty International, 1998).

Efforts to create an independent judicial system in Albania have been and remain one of the most fundamental challenges. The Constitution of the RoA conceives the independence of the judiciary as closely tied to the principle of separation and balance of powers. The Constitution sanctions that judges are independent and subject solely to the Constitution and laws. Any intervention in the courts or judges' activity leads to liability according to article 145 of the Constitution of the RoA.

The only competent body that has the right to change a court's decision based on appeal is the higher court (Jaho, 1995). The execution of legal guidelines and interpretation by a higher court does not prejudice on the foundation of the court's independence.

Due to its importance, the Constitution defends the judiciary's independence through a series of components such as: mechanisms of recruitment to office and dismissal or resignation from office of judges, qualification criteria for judges of the High Court and Constitutional Court, guarantees regarding the duration of holding office, salaries and other benefits, immunity and guarantees for the exercise of criminal prosecution, stops and arrests, and incompatibilities with the judge's duty.

The constitutional regulations are in line with the ECHR's guidelines on criteria of independence of courts from the executive and parties (*Le Comte et al. v. Belgium*, 1981). In fact, appeals at the ECHR based on the lack of independence of the court, have almost been absent and this does not conform with public perception in Albania on the judicial system's independence. This may be related to the difficult provability, where influence of other powers or state bodies against the judicial system does not manifest directly. Thus, there is a lack of evidence or concrete facts.

The role of the CC is undoubtedly important in this regard for the interpretation of the notion of independence of the judiciary and setting its standards regarding the courts' independence. The CC considers this criterion as an indispensable condition for the protection of fundamental human rights and freedoms (*Case V-11/08*, CC). As such, this independence is not a privilege, but one of the fundamental obligations of judges and the court deriving from the human right to have an independent arbiter in a dispute as guaranteed by the Constitution (*Case V-11/08 & V-26/09*, CC).

This principle implies that the legislative, executive and judiciary are separate, effectively independent and a balance must exist between them. In accordance with their obligations provided by the Constitution, each of them is equipped with sufficient power to have the ability to make decisions freely and independently. The principle of independence enables that no other body or institution, whether it constitutes one of the three powers or not, may intervene in the treatment and resolution of cases subject to the activity of constitutional bodies (*Case V-19/07 & V-11/08*, CC).

The legal-constitutional doctrine concludes that the CC has conceived the independence of the judicial system in several aspects. Firstly, it is conceived as a fundamental independence, that is, an authority of courts to render decisions impartially and with no influence by other branches of power. Secondly, it is conceived as a structural independence requiring the provision by the Constitution of the institution that performs the appointment and dismissal of judges. Thirdly, it is conceived as an organizational and financial independence that is an integral part of structural independence (Zaganjori et al., 2011).

In its decisions, the CC has analysed each of these elements. In its practice, the court has evaluated the system of guarantees related to the judge's status and the independence of judges and courts as closely intertwined. Constitutional guarantees on the judge's status are related to their appointment, inviolability and non-transferability from their office without legitimate cause, non-prosecution either criminally or disciplinarily without a reasoned decision by the High Justice Council, as well as financial guarantees (*Case V-11/04*, CC).

Thus, the CC has connected the notion of independence of judges with the constitutional guarantees related to the judge's status such as their appointment, inviolability and non-transferability from office without legitimate cause, non-prosecution either criminally or

disciplinarily without a reasoned decision of the HJC, as well as financial guarantees (*Case V-11/00 & V-26/09*, CC). The court connects independence with another fundamental element, namely the principle of separation and balance of powers.

Although a long period of transition has passed from the dictatorship, independence of courts in Albania remains quite a sensitive issue in Albania. One of the greatest challenges in this regard is precisely the independence of the judiciary from the executive and political power.

As such, one of the criticisms against the High Justice Council as a former body that executed policies of appointment, transfer and dismissal of judges and prosecutors, was the presence of the Minister of Justice as a representative of the executive in this council and this was considered as the path that the executive could use to attack the judiciary (Heba, 1997). The High Judicial Council, that is, the new body established in the framework of the judicial reform replacing the High Justice Council, has an entirely new formula of constitution forming a balance between the powers. Influence towards the judiciary's independence remains a challenge beyond legal guarantees.

4. Conclusions and Recommendations

The components of a fair trial are inherent of constitutional protection provided by the Constitution of the Republic of Albania and defended by the Constitutional Court. The jurisprudence of the Constitutional Court has evolved significantly by shifting from a close and strict interpretation to a wider one in accordance with the ECHR's jurisprudence. Misinterpretations have been corrected by the ECHR's decision making in cases where Albania is party. The same for the standards determined by this court in interpreting the components of a fair trial.

In accordance with the international standards, the constitutional framework and domestic legislation have formed a good theoretical basis for the execution of the right to a fair trial. Amendments made in the procedural legislation in the framework of the judicial reform have brought positive effects in this respect, particularly in relation to aspects referring to trial within a reasonable time.

In the practical context, observance of a fair trial's components has been and remains a continuous challenge.

In the practice of the execution of law by domestic courts, a series of gaps are noticed regarding the right of access to justice, duration of processes or perception over the impartiality and independence of courts.

The judicial reform's target was to reach new standards in the judicial system and enhancing professional, intellectual and moral integrity among the judicial staff. On the other hand, vacancies created in the judicial system due to the vetting process have caused several issues in conducting trials in accordance with the criteria of the right to a fair trial. The most significant gaps in this sense are those related to the duration and prolongation of judicial proceedings, and access to justice. As a consequence, fulfilling vacancies is now an imminent issue and it is necessary to be achieved as swiftly as possible.

Simultaneously, the selection of candidates in the judicial system who are qualified and with high moral integrity will contribute to increased public trust in the judiciary and guarantee of the exercise of the judge's activity in impartiality.

Practical observance and guaranteeing of the judiciary's independence against any intervention constitutes another major step that would further guarantee administration of justice in accordance with the fair trial principle.

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