

The Implementation of Final Court Decisions in the Republic of Albania

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Doi:10.5901/ajis.2015.v4n2s2p208

Abstract

The recognition and enforcement of Human Rights is one of the most important challenges of the democratic system. One of the fundamental freedoms and human rights guaranteed in the Albanian Constitution is the right to a fair court process, where the enforcing a final decision handed down by the trial panel is part of a trial (Decision dates 19 March 1997 Hornsby v. Greece, The European Court of Human Rights, Decision dates 8.8.1995, Schollo v. Italy, The European Court of Human Rights, Decision dates 18.11.2004 Cufaj LLC v. Albania, The European Court of Human Rights.) or judicial process. This article focuses particularly in this important legal issue. The purpose of this paper is related to the analysis of the effective legislation which defines the organization and functioning of the execution of final court decisions and the main problems that arise in its implementation. Experience has shown that there are many cases of non-enforcement of a final decision in the Albania, which has created throughout the years confusion and lack of legal security. The paper aims to show the effectiveness of the implementation of the Code of Civil and Criminal Procedure and laws which institute the governing the execution of final decisions. The study consists of analytical and critical character, as it tends to highlight the typical features that constitute our legislation about this institution and examines the hindrances that arise in its implementation. The paper concludes with the efforts being on the right track, but this path must continue with the consolidation of such a right by guaranteeing, recognizing and restoring the rights to the trial winner.

Keywords: *The implementation of final court decisions, voluntary enforcement, Compulsory enforcement, Enforcement office, Legal security notion.*

1. Introduction

The right to have a fair legal process is one of the fundamental human rights in a democratic society which includes among other basic principles the execution of an irrevocable judicial judgment whose complete and effective implementation is of primary importance.

Ensuring a constant sustainability in the legal relations which is the indispensable feature of any legal process is not only a benefit for the social system but also a general need. Guaranteeing the right gained legally in the trial through the execution of the irrevocable verdict of the Court of Law is one of the main objectives of this study.

After receiving the final form, the court judgment gains the power of "*the judged object*" which means that the winning party may request the compulsory execution of the verdict.

This logic comes naturally since it is the final judgment that definitively and permanently sets the relationship between the parties in conflict, involved in the process.

Over the years, the execution of irrevocable verdict of the Court of Law has become a very controversial issue in Albania. There are many individuals who after having permeated all levels of administrative and judicial procedures still wander for years since the right gained is worthless and has remained unachieved through the non execution of the verdict. For this category the court has decided in their favor, and although the judgment has become final they do not have a solution yet. The phenomenon of justice delaying has brought about justice instability in Albania instead of helping the good functioning of the justice system and that of the state institutions, or what is more important the good functioning of our society. These problems require immediate solution. In this paper we will analyze at great depth the process of final judgment execution in Albania.

2. Research Methodology

This paper aims at making not only an analytical but also a critical analysis of the legislation and its relations to the reality. The theoretical approach is mainly based on the interpretation of the Albanian procedural law. For the realization of this study and the full understanding of the problematic issues related to this process, we have studied real cases and explored the way the final judgment was executed in each of them, as well as we have reviewed many scientific articles, statistics, documents, official papers etc.

3. The process of irrevocable judicial verdict execution

In literature we find that the trial or the civil proceeding has two phases (Lamani A; VC; "The civil procedural law in the popular Republic of Albania", State University of Tirana, Tirana, 1962, page 262):

The first phase involves the full judgment of the case, which aims at making statements on the breach or violation of the law, recognition and restoration of the right with a final judgment. Then this judgment should become final so that the process can pass to the second stage. Cases when a civil judicial judgment becomes final are defined in Article 451 of the Code of Civil Procedure: "... *When the judgment cannot be appealed; When the judgment is not appealed within the legal deadline, or appeal has been withdrawn; When the complaint made is not accepted and if the court judgment is upheld, modified or terminated in the second-level trial.*"

After the court judgment becomes final it enters in the second stage which is known as the compulsory execution or execution phase. In fact, not all court judgments are subject of compulsory execution, only some of them can i.e. only those judgments that declare the obligation of one party in favor of another party. From this point of view we arrive at the conclusion that it is not possible to give the status of compulsory execution to the recognition and certification of the judgments. During the second phase, only the final judgments are executed and the other executive titles which by the law are enforced for execution to the court bailiff offices (Article 510, Code of Civil Procedure in the Republic of Albania, amended. 1996).

Object of study for this paper is only the execution of court irrevocable judicial verdicts. Both phases constitute what is called a civil trial (Lamani A; VC; "The civil procedural law in the popular Republic of Albania", State University of Tirana, Tirana, 1962, Page 262, Page 333; Ceko. S, page 280).

The office in charge of executing the irrevocable judicial verdict (bailiff), does not take into consideration the merits of the claims of the parties involved in the execution in regard to the rightness of the judgment taken by the court or the other executive title. Its job is to completely and accurately execute the verdict that would lead to the realization of a right gained legally.

In civil trials, the phase of compulsory execution begins when the creditor receives the execution order. The execution order is released immediately after the court has taken its final decision, so the party does not have to request it. Generally, it is the court secretary who releases a copy of the order once it becomes executive title. The order of execution is issued together with the court judgment and is executed by the bailiff after the chancellor gives the confirmation. Chancellor confirms the execution order only after he has verified that the court judgment has become final.

Recently, the process of issuing the order of execution has changed, reflecting the changes made to the Code of Civil Procedure by Law no. 122 of 2013, "On some amendments and changes made to Law no. 8116, dated 03.29.1996 "Code of Civil Procedure of the Republic of Albania, amended."

Before the adaptation of this law, the execution order was released by the Court who had taken the final decision based only on the request of the creditor or the prosecutor about the issues they had sued in the court.

The new scheme has brought various advantages in this process by keeping intact the human rights. It saves parties time and has freed from a series of bureaucratic procedures that, for years, have caused great fatigue and were carried out with great expenses. Previously the individuals were forced, after the final judicial decision was made, to go through other four steps in order to get the order of execution which meant more time spent in the court instances. But this is not the end of the story because the winning party had to address the court again, submitting the request for the release of the order of execution, waiting for the results of the lottery, one day spent in the court session and another day to get the written verdict.

The new scheme does not contain any of these unnecessary delays. The changes in law have eliminated a tremendous burden not only for the citizens but also for the judges. It has brought efficiency in the justice system, since it has significantly reduced the delays in judicial proceedings. Thus, the execution order is released immediately after the judgment is taken without application, and it is the court secretary who issues a copy of the order when it turns into

executive title.

In fact, this is a very important part in the process of irrevocable judgment execution and for that reason it is considered to be the main purpose of this study. I think that the initiative to change the law in this regard has arisen as a need born long time ago because it represents one of the most immediate problems that require solutions.

However, we cannot say that everything is solved and runs smoothly. The data show that there is still a large number of final judicial decisions not yet executed. Delays continue, bureaucracy still prevents the parties to benefit from the right gained legally in the court. The first phase of the process of execution of court judgments is the only part of the law that has undergone changes which means that the journey and the efforts to make a wrong right should continue and spread on the other steps too.

Certain legal procedural relations known as executive procedural relations are born between different participants involved in the process of the execution of the executive titles. Subjects of such relations are the court bailiff, who usually is considered a party, the creditor and the debtor and, when appropriate even other participants.

The court is the most important subject in the execution procedure. It issues a warrant of execution and has the power to exercise different means of control in regard to the action or non-action taken by the bailiffs as well as to control the legality of those actions at the stage of compulsory execution (Latifi, J; "The civil procedural law in the Republic of Albania Lessons of Civil Procedure Law, Tirana, 1995 – 2003, page 262).

Even during the compulsory execution procedure there are two parties involved: the creditor that requires execution and the debtor, against whom the enforcement procedure is implemented, as well as their predecessors.

The other participants represent those that in the execution procedure realize any right or legal interest, such as the secured creditor by mortgages or pledge.

The object of the legal procedural relation of execution is the final verdict, which is irrevocable and will be put into execution.

As stated above, the enforcement of the executive title is done only at the request of the creditor or the prosecutor about those issues that they have sued in the executive bodies. After the request is deposited, the bailiff himself carries out the actions as defined in the Civil Procedure Codes upon the execution of the executive title.

In order to start the execution of the executive title issued in the order of execution, the bailiff should first of all make sure that it is within its territorial jurisdiction. To ensure the strict implementation of the requirements of the Code of Civil Procedure on the bailiff's competence Article 516 stipulates that the bailiff is the only competent body to execute the executive title in the place:

- a) where the movable or immovable property or money are situated, toward which the execution is addressed;
- b) where the third person's residence is when the execution is directed against the loan that the debtor has to get from this person;
- c) where the execution of the obligation to perform or not a certain action is undertaken.

The executor starts the compulsory execution by sending a warning notice to the debtor with a deadline of five days when the object of the obligation is payment or food, and of ten days in all the other cases. The debtor is asked to voluntarily execute the obligation contained in the order of execution. The notice for the voluntary execution should include a summary of the order of execution, the address and a warning for the debtor that in case the obligation is not executed voluntarily the compulsory execution would begin. At this stage of execution, the court of first instance, at the request of the debtor, under exceptional circumstances, take into account the debtor's property status or other circumstances related to the case and can extend the deadline of the compulsory execution in cash or can order the payment of the obligation in instalments. (Article 517, Code of Civil Procedure in Republic of Albania, amended. 1996).

The compulsory execution cannot begin before the voluntary execution deadline is met. But when there is evidence or risk that during this time the debtor could conceal his wealth, making impossible the execution, the bailiff can immediately start the compulsory execution (Article 519, Code of Civil Procedure in Republic of Albania, amended.1996), (simultaneously with the notice for the voluntary execution of the liability), sequestering a debtor's property or taking other measures for securing the execution. The order of execution against the debtor may be running against a third person, who has under the law carry the weight of securing the obligation with an item of his own, if the creditor requests execution over this item (Article 521, Code of Civil Procedure in Republic of Albania, amended. 1996).

In the cases where the debtor's residence is unknown, the court of first instance at the request of the bailiff, appoints to the debtor a representative who is initially paid by the creditor.

For every action performed by the bailiff, he is obliged to keep detailed records, where the actions taken by bailiff and the statements made by the parties are reported (Article 524, Code of Civil Procedure in Republic of Albania, amended. 1996). At the beginning the execution the costs are paid by the creditor and after the execution is done they

are paid by the debtor who turns the creditor the amount of money paid by him (Article 525, Code of Civil Procedure in Republic of Albania, amended. 1996).

4. Types of compulsory executions

Compulsory execution is done in different ways, depending on the type of obligation that the debtor has to fulfil. Types of compulsory execution are:

Execution of the obligation in cash against physical and legal persons.

- a. Execution on movable property of the debtor.
- b. Execution on immovable property, navigational and flight equipments.
- c. Execution on debtor's loans and on items which the third parties owe to the debtor.
- d. Execution of obligations in cash to budgetary state institutions.
- e. The execution of amounts in bank accounts
- f. The execution of the obligation to submit a certain object.
- g. The execution of the obligation to perform a certain action.

4.1 Means of protection against compulsory execution

To protect against irregularities in the execution phase the action taken against the illegal activity of the bailiff and the executive title are made known to the parties: the creditor, the debtor and to the third persons who enjoy the property rights.

- a) Protection against the executive title
- b) Rejection of the actions of the court bailiff.
- c) Rejection of the bailiff's actions by a third person.

5. Suspension and termination of execution

5.1 Suspension of the execution

The execution of the executive title may be suspended in cases clearly provided in the Code of Civil Procedure. Under Article 615 the execution is suspended by a court order at the request of the creditor, under the conditions set out in the letters "c" and "ç" of Article 297 of the Code of Civil Procedure and in other cases provided by law.

Suspension of the execution is ordered by the court in cases when it considers necessary the suspension of the actions of execution for a certain time, usually until the case is closed with an irrevocable judgment. For example, the court suspends the execution until the parties resolve their complaints against the actions of the judicial bailiff, under Article 611 of the Civil Procedure Codes or until the trial decides on the validation of the executive title (Article 609, Code of Civil Procedure in Republic of Albania, amended. 1996) etc.

The suspension of compulsory execution at the request of the creditor is fully motivated, because he is the subject interested in suspension, but he has to make an agreement with the debtor on the manner of execution.

The judicial bailiff is obliged to order the suspension of execution when one of the parties dies or the legal person ceases to be considered as such, or when one of the parties has lost or will at a later moment lose the capacity to act as a party and it is necessary to appoint a legal representative. But the suspension cannot be executed for any of the above mentioned causes if at the time of confirmation of one of the causes, the announcement for sale at auction of the immovable property has already been made.

5.2 Termination of execution

The terms and conditions of the termination of the compulsory execution are expressly provided in the section 616 of the Code of Civil Procedure. Under this provision the execution terminates:

- a. when the debtor submits to the bailiff the receipt with the signature of the creditor, which proves that he has paid regularly the amount written in the order of execution or the statement from the post office or the bank which verifies that the amount indicated in the order of execution has passed to the creditor, which means that the obligation is settled;

- b. If the creditor abandons the execution with a written document;
- c. When the execution order is repealed;
- d. When the court judgment becomes final and the claim of the debtor to challenge the actions of bailiffs under Article 610 of this code, or third party claim under section 613 are accepted;
- e. When the bailiff himself or with the help of the creditor does not find within the timeframe of six months any of the debtor's assets, or when the sequestered object is not sold and the creditor has refused to take the object against his credit.

The parties may appeal to the court of first instance against the decision to suspend or terminate the execution, within 5 days from the date of publication or notification. After the suspension of the execution order has become final the bailiff stops the sequester set on the property of the debtor. When the decision to terminate the execution is taken because no property of the debtor is found within 6 months or because the creditor refuses the execution or has not agreed to take the unsold item against his credit, the bailiff rejects the creditor's order of execution. The latter may submit a new request for execution, which will be considered after the date when the termination of execution judgment has become final (Article 617, Code of Civil Procedure in Republic of Albania, amended. 1996).

As can be easily understood, this is an interpretation of the Code of Civil Procedure which seeks to make a detailed foresees all the issues related to this process. Analyzing the process is essential because it helps to make a thorough report on the stages where more problems are encountered. Also, this is an important step because it leads to conclusions in regard to the activities and the engagement of adequate state institutions.

6. Statistics of unexecuted decisions

The enforcing a final decision for its civilian character, as well as the legal process, aims to restore the legal order violated, in the field of individual rights. The statistics of the Ministry of Justice (Ministry of Justice, Republic of Albania – Annual statistic report 2013.page. 243-244) shoes that the number of decisions not executed, over the years have increased:

Executed and pending cases in 2013		
Cases by year	Completely Executed	In Execution (Pending)
2009	6,051	11,205
2010	6,117	15,965
2011	6,659	19,025
2012	5,793	21,205
2013	4,010	21,277

Statistical bailiff analysis in 2009, 2010, 2011, 2012, 2013:

Period	Total cases	Completely Executed	%
2009	22,688	10,278	45%
2010	28,160	11,182	40%
2011	32,453	11,988	37%
2012	32,940	10,717	33%
2013	28,872	7,072	24%

In the course of 2013:

- 28.872 cases were recorded in execution;
- 7072 was given a legal solution and expressed in percentage, 24% of the cases were given legal solution.

This shows that reform efforts towards the rule of law did not bring satisfactory results. These statistics provide a situation of unexecuted decisions before and during the adoption of the law on amendments to the Civil Procedure Code in 2013. This means that this change has improved the situation, but we have no precise data for 2014.

7. Conclusions and recommendations

Many individuals who have traversed all levels of judicial bodies, to which the court said that the final decision was in their favor, has the right to benefit from this decision immediately by the competent authorities for implementation.

From the practice, we see that there are many cases in which decisions not come to life and this creates a distort situation of the competent authorities system and a lack of trust of citizens to justice.

The legislative changes have brought clear benefits and relief to benefit from this fundamental right for individuals, but this is not enough. State bodies should create mechanisms that control this process to reach European standards of law enforcement in Albania.

Failure to comply the orders of execution must be punished criminally constantly and bailiffs should be trained to cooperate with prosecutors, the police and the courts. While the latter should be trained to work better with the bailiffs.

It is known that the Albanian commitment is becoming more concrete, in particular in the field of human rights and concrete steps are being implemented to achieve what we all want, but this should not stop now, more than ever, we need working for a European Albania.

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