

DUE PROCESS IN ALBANIA

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Abstract

Civil procedural law principles are rules or fundamental thesis on which are based norms that regulate the activity of the court and other entities of the civil process. These rules find a cause, get applied and are valuable through all the stages of litigation. The basic principle which governs all the civil procedures is the principle of a due process which means: An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual. Within this principle, we find engraved other rules which form the basis of this fundamental principle and each one will be treated singularly during this paper. Principles of due process are well-administration of justice, access to court and the implementation of court decisions. European Convention on Human Rights provides that every individual has the right to benefit from the principles which govern a due process. It must be said that on the basis of these principles are built legal institutions that constitute civil procedural law. Precisely here lies the importance of the civil procedural principles. The structure of the paper will have: in the center a theoretical analysis of the notion and its associated principles, the legal institutions that are built on the basis of this principle, the notion viewed in the light of the European Court of Human Rights, case law at national and international level and conclusions. The whole paper will have not only an analytical approach but a critical one also, based on the procedural legislation and the judicial practice in our country, the applicability of the rule and the improvement of its current situation, conclusions and recommendations on the improvement of legislation and the implementation of this rule as one of the priorities we should have in the context of our accession to the European Union.

Keywords : *Due Process, well-administration of justice, access to court, the implementation of court decisions.*

INTRODUCTION

The fair process is a fundamental constitutional principle, sanctioned in the 1998 Constitution as a fundamental right. Moreover, this principle goes beyond our domestic rights, emerging to European levels, sanctioned in Article 6 of the European Convention on Human Rights and also wide acknowledged by the European Union legislation as an important principle which is taken into consideration at the European Court of Human Rights.

The Constitution of the Republic of Albania, the highest and the fundamental law in the country provides for the right to a fair legal process in certain articles, but does not provide a clear definition. However, the meaning of a fair process shall be provided by the Albanian juridical doctrine, and most importantly, the decisions of the Constitutional Court shall be mentioned as the latter is the one which interprets the Constitution. *The Constitution is what its court says about it.*

But the right to a fair legal process extends beyond the court processes. Also, the term “legal” used in the Constitution aims to intend that the right to a fair process shall not be limited only inside the Court. The Constitutional Court, in some of its decisions undertakes to provide the meaning of this principle, regardless that there is no specific article to define the principle of a fair legal process. This court has extended its obligation to a fair legal process not only in court processes, but also in administrative ones or in reviewing of the cases from the parliamentary commissions.

Elements of the constitutional right related to the fair legal process are numerous; they have been developed after each case, reflecting on the requests submitted by individuals. They include *access to trial, proceeding from an independent, impartial Court assigned by the law, in a reasonable timely manner, the right to complaint, the right to defend, the right to participate in the own trial, equality of arms, the execution of the decision, the reasoning of the decision, etc.*

THE UNDERSTANDING AND IMPORTANCE OF THE RIGHT TO A FAIR LEGAL PROCESS

The right to a fair legal process gains legal power not only from the procedural law, but also from the Constitution of the Republic of Albania, which is the main source standing in the highest hierarchical position of our right of law, and also from the European Convention on Human Rights. Its provision in these acts gives the right to a fair legal process not only a great importance, but includes it in the human rights category. What are human rights? Article 1 of “The Universal Declaration of United Nations on Human Rights” begins as follows: “All human beings are born free and equal in dignity and rights”.

The human rights are the individual rights to protection against the interventions of the state, provided to him due to his existence as a human being. The responsibility for the protection of human rights falls on the states and this responsibility is reflected on their obligation to provide the human rights with their daily structure, their continuous stability, their understanding, guaranteeing and respect by investing in the improvement of the legal framework, the institutions and various mechanisms.

From the constitutional meaning given to the right to a fair legal process, the jurisprudence of the European Court of Human Rights and especially of the Albanian one, is acknowledged that the fundamental elements of this right are applied for court procedures, as well as for the parliamentary and administrative procedures. *Values such as the independence of the judicial, the untouchability and the immovability of the judge related to their status and protection within the constitutional framework, the control over decision-making, the impartial judgements, the right to be heard and defended, etc., are treated as fundamental elements of the right to a fair legal process in the constitutional jurisprudence.*¹ The failure to respect the procedure for the achievement of these standards in a legal process is considered as a threat to its core.

The right to a fair legal process is presented as a guarantee for the citizen against the unfair actions of government bodies, and at the same time constitutes an obligation for anyone to not threaten the rights and freedom of the citizens without assuring them the respect of fair legal proceedings. Each public government body, during the exercise of its constitutional and legal function is obliged to respect the widely accepted democratic standards, which are reflected in the constitution.

I. ACCESS TO COURT

The right to a fair legal process in the constitutional provisions, is assembled in the freedom and individual rights chapter. In the framework of the right to a fair legal process is included the right to address the Court (access to the Court) which is considered as a fundamental right which should be provided to every individual, without which the other rights would have no value. The fair legal process is considered as the only constitutional right, which violation constitutes legal grounds for individuals to access the Constitutional Court, after all the other judicial means for the protection of these rights are exhausted.²

The state of law cannot be conceived without recognizing the individuals the right and opportunity to address the Court. Regardless of not being expressly stated, Article 42 of the Constitution does indeed provides anyone the right to protect their rights, freedoms and constitutional and legal interests. Just as KPrC does in its 1st Article.³ This right is also closely related to Article 6⁴ of the European Convention on Human Rights.

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- 1 Decision no. 17, dated 12/11/2004 CC P.4
 - 2 Thus, in Article 131/f of the Constitution is provided the following: *“the final judgement of the individual complains for violations of their constitutional rights to a fair legal process, after the exhaustion of all judicial means for the protection of these rights”*.
 - 3 Article 1 of KPrC: *The Court shall not refuse to review and decide on cases submitted for review with the justification that the law is missing, is incomplete, is contradictory or unclear.*
 - 4 Article 6: *The right to a fair process: Each person has the right that his case shall be heard fairly, publicly from an independent and impartial Court. Each person accused of a criminal offence is presumed innocent until*

If we could define the access to Court, first of all this right means the right of anyone to file a suit to the Court, but it also means the obligation of the government bodies to guarantee this opportunity to him, thus the obligation of the Court body to consider the individual requests, hear all his claims and answer each of them. The courts shall not deny fairness. Each individual enjoys the right to address the court in order for the later to review a case and the court shall consider and hear all the claims that the parties address. Also, the court cannot refuse a request whose scope is the compromise of the principle of the access to court with the justification that it lacks the competencies and such right is not provided for in any specific article. If the right to address the court is not guaranteed, then the right to file civil claims to a court is compromised.

The government bodies, respecting this principle shall not approve laws which deny the right to address the court, the Court itself shall not issue decisions which deny the right to complaint. The courts are forbidden to act by prohibiting access to court; they shall not challenge, limit or inhibit this right, for example with the justification that the actual case depends on the solution of another case. In case such right is refused, the process is considered irregular, as the access to court is a fundamental condition to accomplish the protection of other rights, considering that it is the starting point to a court process.

The concept of a fair legal process and especially the right of access to court has been the scope of jurisprudence of the Constitutional Court, which has interpreted this principle, by defining the access to court as: “...*the right of each individual to file a claim to a court which has the full jurisdiction to solve the case, which itself sanctions not only the right of the individual to address the court, but also the obligation of the government to guarantee such access.*”⁵ Moreover, the Constitutional Court emphasises that: “...*the right to address the court does not only include the right to initiate a process, but also the right to have a final solution of the conflict from the court*”⁶, by staying in this line, the Constitutional Court states that: “...*in case such right is denied, the process is considered irregular, because the access to the court is first of all a fundamental condition for the accomplishment of the protection of other rights. The state of law cannot be conceived without recognizing the individuals the right and opportunity to address the Court.*”⁷

1.1 The effectiveness of the right to access to court

Two elements which should always be considered by the judicial authority in analysing the principle of access to court are:

- Are there any effective judicial means where the claim is addressed?
- Has the law set any barriers limiting the right of access to court?

The principle of rule of law would not make sense if we would not have *effective access* to the court. As a principle, the access to the court should be an effective right, the courts should provide the parties with adequate opportunities, bearing sufficient conditions to submit their access to court. In order to have an effective access to court, the judicial process should be

proved guilty by law. Each person has the right to be assisted by a lawyer, who is paid by the state in case the person is poor.

- 5 Decision no. 17, dated 19/06/2009 CC P. 4
- 6 Decision no. 12, dated 28/04/2009 CC P. 2
- 7 Decision no. 18, dated 08/07/2009 of CC, P. 5

organised and simplified in such a way to provide the parties with reasonable opportunities to present their claims duly and adequately and for the court to be independent, impartial and competent. The court should review the case based and with regards to the law, related to the juridical consequences.

The threat of the right to effective access consists when the parties do not have effective opportunity to file their claims before the court.

Other elements of access to court effectiveness: The courts shall behave as courts with full competence and jurisdiction.⁸ *The state of law presumes, amongst others that the intervention of the executive authorities to the rights of the individual shall be the scope of an effective control which normally belongs to the judiciary, which offers the best guarantee to an independent, impartial and fair process.*⁹

- The guarantee of a fair process should be applied in all levels of the court in reviewing the claims filed by the parties in the court.
- The court should takes all necessary measures to notify the parties.

*The judgement from a fair, independent, impartial court, assigned by law is defined from the constitution as part of a fair legal process. This right should not just be formal, i.e. provided by law, but should be obvious that it is respected.*¹⁰

1.2 Cases when the access to the court may be limited

Access to court is not an absolute right, it is limited and may even be revoked. The limitation or revocation of the right of access to court may only happen in the following conditions:

- When the individual himself withdraws from the right of access to court, or may withdraw only from certain elements of the full access process. This willingness should be expressly clear. (*Revocation*)
- The legislation may limit the access due to procedural reasons, in order to guarantee the well-administration of justice. (*Limitation*)

II. WELL-ADMINISTRATION OF JUSTICE

A well-administration of justice, pursuant to a fair and right legal process is a very important and addressed case. Such case, in the framework of the state of law, has been implemented in the Civil Procedure Code¹¹ and in the Constitution of the Republic of Albania¹², where, amongst others, is defined that the right constitutes the fundamentals of the state of law.

Such provisions, in themselves, aim at providing the missing or denied justice, always respecting the basic principles on with the activity of the courts in the judicial process is guided or based, as bodies specialised and assigned by the Constitution and the law to give justice.

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- 8 Decision no. 18, dated 08/07/2009 of CC, P. 5
 - 9 "Klass vs. Germany" case, dated 06/09/1978, A series, no. 28, P. 25-26.
 - 10 Aurela Anastasi, Eralda Methasani-Cani, Xhezair Zagonjari, "Shteti i së Drejtës në Kushtetutën e Republikës së Shqipërisë", Tiranë 2011. f. 57.
 - 11 Articles 1-4; Articles 6; Articles 19-20; Articles 28; Articles 30-31; Article 18; Article 63; Articles 72-76; Articles 130-144; Articles 155- 156; Article 171; Article 173; Articles 175-176; Article 181; Article 327; Articles 435,443; Article 467; Article 472;
 - 12 Article 42 of the Albanian Constitution.

The guaranteeing of a fair legal process is and should be the main obligation and aim of our courts. Such obligation is also found in Article 6 of KEDNJ and failure to adhere to them is considered as a severe violation of the constitutional principles and of the state of law.

An additional guarantee for a fair legal process is the constitutional prediction, which assigns the Constitutional Court as the organisation of constitutional guarantee.¹³

A good administration of justice consists of the following rules:

- a) Obligation to a fair trial;
- b) Obligation to a public trial;
- c) Obligation to a timely trial;
- d) From an independent and impartial court;
- e) Assigned by law.

a) Fair trial¹⁴

The right to a free trial, also known as “*fair guidance of justice*”, represents the milestone of a democratic society aiming at “*the rule of law*”. The fair trial contains the obligation of all countries to approve domestic laws, guiding that the judges shall review all facts, arguments, submissions, information, proof and other data by not prejudicing the relevance they have to the particular case. These obligations are guided not only towards the approval of organic laws, such as the Civil Procedure Code, but other laws related to the activity of judges, so they could act as such. The rule to a fair trial in itself contains certain elements which shall be mentioned below, but this list is not exhaustive:

➤ *Equality of arms in the process*

The court, during the case review, shall give the opportunity to the parties to protect by equal means, to the extent possible, by avoiding the favouring of a certain party; therefore, their equal treatment in position and manners. Such treatment is accomplished by the decisions of the Constitutional Court, by assigning the obligation of the court, which in the framework of the judicial process equality, treats the parties equally. This principle provides equal opportunities for the parties in the process in order for them to present their case so that none of the parties is disadvantaged compared to the other, the equal access that the parties should have to the documentation and minutes, access to be introduced with the acts that the court file is containing in its whole.¹⁵

➤ *Contradiction principle (transparency)*

The judicial debate or the contradiction in the civil process “*audiatur et altera pars*” which once translates as “*let the other party be heard*”, constitutes one of the fundamental principles in the process, where the parties are given the opportunity for their claims to be heard.¹⁶

Therefore, the contradiction is the development of the trial in a contradictory way, which means that the person filing a claim, presents the court with the facts on which he grounds his research and presents proof to verify these facts, whilst the opposing party has the same right to

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- 13 Thus, Article 131, letter F states that: “The Constitutional Court decides on the final judgement of individual complains of constitutional right violations to a fair legal process”.
 - 14 Decision no. 33, dated 08/12/2005 CC
 - 15 “Zank vs. Austria” case, 15 DR 70, GJEDNJ.
 - 16 Article 33 of the Constitution: “Everybody has the right to be heard before judgement”.

contradict these facts and present proof against these facts or present the claims which oppose the facts presented by the other party.¹⁷

The lack of provision in the Constitution, does not directly imply less importance in relation with other principles, because such principle has a direct relation with the principle of a fair legal trial and the failure to respect it would result in an unfair, therefore unconstitutional process.

Thus, the principle of contradiction and the obligation of transparency is related to the circulation of the information provided by the parties or from third parties; the opportunity of effective argumentation and their opposition; the opportunity that each party understands each information and move made by the other party; the opportunity of the party to become part of the information receiving process.

➤ *The right to be present in a court proceeding*

It is the obligation of the court to assure the personal presence of the party (individual presence) in a process. This right does not extend to all phases of the proceeding. But the courts are obliged to guarantee the right to be personally present in the process.

This principle has not been expressly integrated in all resources, but it is known to be applied in the concept of a fair trial. It is truly important that the parties are personally present in the courtroom and to be coherent with the process. If the presence of the party constitutes a key element in the structuring of the opinion of the court in order to take the decision and there are no reasonable causes to deny this right, this violates the principle of a fair trial. If the parties withdraw from their right to be present, they should state it expressly and in a written form. If the parties are not present in a process, the court cannot close the case but it should assure that the notification is made and that the notification was effectively understood by the party.

This rule itself consists of various rights:

- The right to be present and the right to an adequate defence;
- The right of the party of hearing sessions;
- The right recognised to parties that the courts shall not inhibit the continuance of the judicial process;
- The right of the parties to reasonable judicial decisions.

b) Public trial¹⁸

The public trial is of an utmost importance because the open-doors process increases the sensibility of the citizens towards their rights. Apart from this, closed-doors trials have also been forecasted, but always for entirely limited and well-defined cases. Thus, the Constitution and the Civil Procedure Code define that only adult citizens may participate, for the only scope of protecting the individuals under 16 years old in favour to their development.¹⁹

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- 17 Article 18 of the Civil Procedure Code of the Republic of Albania: “None of the parties shall be judged without being heard or submitted to trial”; Article 20: “The court should follow and ask for the application of the contradictory principle”
 - 18 “Fischer vs. Austria” case, 26 April 1995, GJEDNJ.
 - 19 Article 173/2 of KPrC: Pursuant to Article 26 of the Code, the trial of cases in fully or partially closed-doors sessions is allowed only by a reasonable decision of the court only when: b. trade secrets, inventions are mentioned, for which their disclosure would threaten interests protected by the law. Article 173, last paragraph of the Civil Procedure Code: “...The decision is disclosed publicly”; Constitution Article 146/2: “Judicial decisions are publicly disclosed in any case”.

Such constitutional and legal provisions are in line to the ones found in Article 6 of KEDNJ.²⁰

At the heart of the applicability of the public trial principle we should understand that we guarantee: ***The protection of the parties, individuals from the trial where the public is excluded; the respect of public interests. The faith in Court should be preserved.***

The elements which should be taken into consideration by the court in case of a public trial and when the trial is conducted in closed-doors are: The protection of the interests of the parties in the process; The protection of public interest.

However, there are some judicial causes, defined by law, which make the process not public: ***Public order; The protection of national security; The protection of the interests of the parties in the process; The protection of minors.***

The trial processes are conducted in open-doors, this is the basic principle and for both the parties and the court is not necessary to submit a request related to this.

Anyhow, the parties have another possibility if they claim that their right to a public trial or closed-door trial has been threatened by the judiciary authority, they have the right to address to the Court of Strasbourg.

Regardless that the trial is conducted in closed-doors due to reasons that the court has taken in consideration and finds them reasonable, the decision it takes shall in all cases be disclosed publicly. The decision is called publicly disclosed²¹ when the court reads it at the conclusion of the trial session, and when it posts it in its official gazette and online in its official website.

c) The completion of the trial within a timely manner²²

The completion of the trial within a timely manner is very important and constitutes a constitutional guarantee which also emerges directly from it.²³ Sometimes, the delays in the judicial process result in the denial of the right, based on an ancient principle: *“justice delayed, justice denied...”*. The same definition with the constitutional provisions is provided by Article 28 of the Civil Procedure Code where *“The court should declare the decision within a reasonable time period”*. Such definitions are in accordance with the ones provided by the European Convention on Human Rights, more specifically in Article 6: *“Each individual has the right of his case to be heard within a reasonable time period”*, which in certain cases has caused the annulment of court decisions, which in general context have shown contradictory to this principle. To assess whether or not a case has been treated in a timely manner by the court, one should logically define the moment of starting and of the completion of a judicial process:

- ***Dies a quo*** (the starting moment of a judicial process);
- ***Dies ad quem*** (the completion moment of a judicial process);

The starting moment of a judicial process (*dies a quo*) is related to the moment when the request or suit is submitted to the court in writing²⁴, but if the current case has also followed the

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- 20 Article 6 of KEDNJ: *“...The decisions shall be publicly disclosed, but the presence to the courtroom may be inhibited...in a degree estimated as very necessary from the court, when in special circumstances, the publicity would damage the interests of the justice”*.
 - 21 *“B vs. United Kingdom” case, 14 September 1999 decision, GEDNJ.*
 - 22 *“K vs. Switzerland” case, 19 April 1993, GJEDNJ*
 - 23 Article 42 of the Constitution: *“Every individual has the right to a trial... within reasonable time...”*.
 - 24 Article 174 of KPrC.

administrative way to its resolution, the *dies a quo* moment shall start to be calculated from the moment when the party has addressed to the competent bodies through an administrative official request or complaint. On the other hand, *dies ad quem* consists of the moment when the competent bodies come out with a final decision.

With regards to the definition or reasoning, for the reasonable trial period or whether or not decision should be considered contradictory to this principle, we should refer to certain important indicative elements, such as: ***The complexity of the case; The behaviour of the parties in the process; The analysis of the behaviour of the government and court authorities.***

The domestic courts are presented with a very special task: to guarantee that all factors which play a procedural role are doing their best to avoid any unnecessary delays.

The consequences resulting from the acknowledgment of the delay of the process oblige the authorities to compensate the party which is damaged due to such delay.

Often, the judicial authorities reason the delay of the process with the fact that they are very busy, but this does not justify it. The court shall define reasonable procedural periods in order not to make the parties feel insecure or passive.

In these cases, the reason of the court may be accepted only if it proves that: ***The busy period is temporary and that it has taken effective measures and these measures have been taken in a timely manner.***

The Court of Strasbourg has set up a standard for a certain group of cases which should be resolved within a short period, such as: Cases related to the individual's civil status; pensions; cases related to juridical capability; cases of compensation and remuneration in case of accidents, etc.

The threatening of the judgment principle within a reasonable period applies not only to processes lasting in time, but also to ones which are completed within a very short time, not allowing the parties to present every juridical mean to defend.

d) Trial from an independent and impartial court.

Such a guarantee comes directly from the Constitution of the Republic of Albania, thus guaranteeing the fairness of the process, and by guaranteeing the parties to the impartiality of the judge who reviews the case as an arbiter, without relating or being affected by the parties.²⁵ Such provisions are in full conformity to the definitions made in Article 6 of KEDNJ, which stresses the impartiality and the independence of the courts in making decisions. Regardless the constitutional and legal guarantees, in our practise we have encountered cases when they were not respected.

The role of independent and impartial courts is one of the key elements to the functioning of the rule of law, in the framework of a judicial system. According to the principle of the division of powers, the judicial power should be fully separated from the legislative and executive power.

• 25 Article 42/2 of the Constitution: "Each individual has the right to a fair trial...by an independent and impartial court, assigned by law". Article 145/1: "The judges are impartial and obey only to the Constitution and the laws"; The same guarantee is expressed in law 9877, dated 18/02/2008 "On the organisation of the judicial body in the Republic of Albania".

➤ *The criterion of independence*

The court exercises its function independently from the other divisions of the power. Thus, we are speaking of the independence of authorities who judge or make decisions for certain cases, which are independent from the other divisions or powers, with regards to the development of the trial process and most importantly to their decision making.²⁶

An element of the criterion of independence is the non-dependence of subjects fitted with judicial power from each other, and this is achieved through the method of assigning the members and their competences. The independence criterion is closely related to the guarantee criteria which this principle provides to external pressure. The courts or more generally, the court authorities are to be given a guarantee, so that the latter ground their opinion on their free beliefs, without being affected by the external pressures, but on grounds of argumentation of the cases being submitted during the process.

➤ *The criterion of impartiality*

When making a decision, the judge should avoid subjectivity. The judges should avoid the risk of being influenced from any information coming from outside of the courtroom and from any other pressure, but to ground their opinion on their free beliefs, from what has been submitted to the trial.

The impartiality, as an element may be expressed as in both subjective and objective impartiality.²⁷

- The subjective approach to impartiality deals with the personal belief of the judge.
- The objective approach to impartiality is related to:
 - Organisation;
 - Functioning;
 - Coincidence of competences;
 - Continuity of functioning.

The objective impartiality is easier to prove compared to the subjective one. In order to achieve that, we need to consider certain moments where we could rely to define whether or not we are before an impartial court, expressed objectively.

e) Trial from a court assigned by law²⁸

The rules for the organisation and functioning of the court or of the judicial power should not be regulated by the executive power through normative acts, but through a separate law. This is generally related to the competences of the judges in the respective courts. If the courts exceed their competences, we could complain about the fact that the court was not assigned by law. The purpose of this request aims to guarantee the independence of the court from other powers. The Court of Strasbourg is expressed in “Zand vs. Austria” case that the object and aim of the Article 6 (1) clause is to require that courts “*are assigned by law*” and that the judicial organisation in a democratic society does not depend from the executive power, but to be regulated with a law issued by the Parliament.

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- 26 “*Sramk vs. Austria*” case, 22 October 1984, GJEDNJ.
 - 27 “*Piersack vs. Belgium*” case, 1 October 1982, GJEDNJ.
 - 28 Decision no. 31, dated 01/12/2005 GJK.

III. EXECUTION OF DECISIONS

The execution of court decisions made by a board of judges or their executions should be viewed as an integral part of the judgement²⁹ or of a judicial process. As such, we may conclude that in this phase of the judgement, the implementation of all regulations included in the right to a fair legal process is an obligation. In this framework we may say that each individual who has undergone a trial and now possesses the final decision of the court has the right to profit from the enforcement of this decision, which is made immediately to his favour by the bodies authorised for this enforcement.

Some of the reasons which the bailiff authorities give to justify the non-execution of these final decisions is the lack of funds. GJEDNJ has considered this argument as unacceptable. The lack of funds does not comprise a justification and the government cannot deny responsibility for this case.

When the execution of the decision cannot be achieved because it depends on the resolution of another related conflict, the execution of the court decision is suspended. The suspension of the execution of the court decision is presumed to be done only in legal ways.

The legal rule is that when a decision is of a final form, this decision can be no longer complained, but there are exclusive cases such as the raising of the recuses in the interest of the law. This situation results in the threatening of another principle, that of the juridical security, which is part of the fair legal process regulations.

The principle of juridical security is also another important element of the state of law. The main formal standards of a certain country are accuracy, clarity and stability of the entire juridical order.

The relatively short time that the Constitutional Court has dedicated to this case was insufficient to consolidate a stable practise in this direction. However, as you shall notice below, this constitutional principle has been applied successfully in many cases and also important standards have been established related to its acknowledgement and implementation³⁰.

As a conclusion we may say that the execution of the final decision of the court is considered as the final phase of the achievement of the right gained through the court. Only after the achievement of this phase we may consider that the individual has fully gained the right to win. The delay in the execution of a decision may be justified in special circumstances, but it cannot be justified to the extent where it could damage the fundamentals of the right.

Therefore, the process of establishing a violated right includes not only the taking of decisions from the court, but also the actual actions of the responsible bodies, assigned to execute the final decisions of the court.

CONCLUSIONS

In my assessment, the respect of the guarantee to a fair process as part of human rights is one of the most important steps to orientate the society towards a contemporary democracy, aiming at a judicial order for each subject of the judiciary.

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- 29 Decision of 19 March 1997, "Hornsby vs. Greece", decision 08/08/1995, "Schollo vs. Italy", decision 18/11/2004, "Qufaj vs. Albania" GJEDNJ.
 - 30 Decisions of the Constitutional Court of the Republic of Albania 2005, Tirana 2006. P. 3.

Following the resources of the judicial in force, anyone should be guaranteed the right to a fair legal process. Each individual should address the court to protect his own interests, as the most adequate and effective state body to achieve this protection through its decisions.

The addressing of the right to a fair legal process has an added value to the practical spectrum, apart from the theoretical one. Following the deep analysis of the principles and guarantees of the trial, I conclude that our country actually has a rich legislation in the framework of the right to a fair legal process, but it surely needs improvement in forecasts related directly to the guaranteeing of these rights. The respect of these regulations comprises a necessity and affects the stability of the court organisation and functioning, provides the Albanian society with strong credibility in judicial authorities by orientating them towards the judicial system for the resolution of disagreements, contrary to a resolution outside the judiciary, which may affect negatively, by pushing their conflict further.

Another suggestion, coming as a result of the study of the actual situation is the institutional strengthening, in such a way that it guarantees the right administration of the judiciary, e.g. through the training of the judges by international organisations.

In the end, I emphasise that the right to a fair legal process is a fundamental right of the individual, where the subject enjoys this right in each phase of the judicial process, as well as the entirety of norms regulating the activity of the court and other subjects of the civil process to a European standard.