

EQUALITY OF DUE LEGAL PROCESS IN COURTS IN THE REPUBLIC OF ALBANIA

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ABSTRACT

In this topic treated due process of law, the rights and obligations of the parties to criminal proceedings. Originally topic addresses the birth and historical development of human rights, their origins, from the 'Magna Charta Libertatum', and to national and international legal provisions of today. Historical treatment is necessary and will therefore appear in any period of time after it's due to make an analysis regarding the evolution of the concept of human rights was in its infancy, to be completed in days, achievements and efforts made to a due process. Regulation that makes the due process, the European Convention of Human Rights, is a special part of this paper handling. Is this convention, which provides minimum standards below which the Albanian Government cannot come in the framework of realization of the rights of the individual by ensuring a fair trial? In this regard, the interpretation of law by the court should be such as not to restrict further, predicting what the European Convention, in relation to rights and fundamental freedoms.

Keywords: Equality, law, due process of law, protection penalty trial.

EQUALITY OF DUE LEGAL PROCESS IN COURTS

Protecting individual approaching clause of due process is not limited to the rights contained in the Constitution, but also the rights recognized by law. Constitutional formulation gives widespread due process for any offense. He identifies the due legal process as a guarantor not only against arbitrary actions that can perform state authorities over liberty, property and their rights and legal Constitutional individual, but also the procedures of fair trial rights. From the content of Article 42 of the Constitution shows that constitutional protection will be present and necessary in any intervention if realized two basic conditions related to violation of the rights of the money required to liberty, property, and constitutional rights or legal been violated, and second, that this violation of rights be conducted without approaching a fair trial and legal right.² The individual enjoys certain rights and freedoms indivisible, without objectionable and specifically provided by law. Due Process in itself means the integrity of those principles specifically sanctioned by law, on the base of which the actiyeary of procedure against him. Putting the individual in relation to a process accomplished by being led by the regularity criterion, regularity that should be completely based on legal provisions.

Due Process is a constitutional right enshrined in the Constitution specifically the Republic of Albania in Section 421të her in the head to talk about personal rights and freedoms. Another

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² <http://www.avokatipopullit.gov.al/sq/e-drejta-p%C3%ABr-nj%C3%AB-proces-t%C3%AB-rregullt-ligjor>

forecast as strong guarantees about due legal process is in Article 6 of the ECHR, which is enshrined in the individual's right to a fair trial.

In Article 131 / f and 134 / g the Constitution of the Republic of Albania is determined that individuals are subjects that put the Constitutional Court when the claim that they had not developed a due legal process but once exhausted all means of other remedies envisaged by law for the protection of the right to a fair trial, and then as a final judging scale. In this way individual claims cannot be filed before the Constitutional Court for the protection of other fundamental rights because they directly protects individual in court.

Constitutional Court enters not an issue at trial, but examines whether the trial process has involved a fair trial. For all the constitutional rights of the individual can seek protection from the courts in the country, which should provide him a fair trial. This means that the individual in the Republic of Albania cannot be addressed CC to protect the rights or fundamental freedoms of its other, except for the protection of one of them, what a fair hearing.

For this reason, individual constitutional complaint is considered as effective and constitutional court itself, as such, is considered as a court of human rights, to the possibilities for the development of a due process hearing. Individual constitutional complaint itself is important as it has functions: Firstly, through individual complaints made possible materialization and effectiveness of fundamental rights and secondly control exercised by the Constitutional Court in these cases is immediate and direct effect on the individuals who put it moving. Individual demand has thus subsidiary character.

It appears in the CC as exhausted all other avenues of administrative and judicial appeals. Furthermore, the claim for breach of the right of a fair trial must be concrete, not supposed and demand meet the other elements required for claim in MC e.g. she filed no later than two years from the finding of a violation or the date of notification of the decision of the competent body, to be in Albanian language, clear and understandable. Statistics indicate an increase in the number of decisions of the Constitutional Court as a result of individual applications.

Due Process is one of the fundamental principles of law and one of the rights and fundamental freedoms under the Constitution. There are always an analysis approach the "right to a fair trial" provided for in the Constitution of the Republic of Albania with the "right to a fair trial" provided by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, although it must be said that the right to a fair trial is broader than that for a fair which relates primarily judicial bodies, but also quasi-judicial.

This approach is important for understanding the fact that the right of the right to a fair hearing would have broad reference to interpretations that made the ECHR on the right to a fair trial, but may not be limited to the . Although mentioned in the Constitution clear definition of this right is not there, even though we must not forget the meaning that the fundamental rights of RA, any right of the European Convention of Human Rights, and the interpretation that becomes the right to a fair included. Meanwhile, the Constitutional Court through its jurisprudence has consolidated the sense not only in direct interpretation of the Constitution but also in reference to Article 6 of the ECHR or GEDNj practice.

The Constitutional Court has not attempted to replace the judiciary, but give the meaning of the right to a fair trial as a constitutional right. Thus, in its case the Constitutional Court closely guaranteeing the right to a fair hearing and its components with the concept of the rule of law by considering the first essential element of the rule of law.

Having imperative, issuing the situation as stable and realistic I've researched the materials provided by the Judicial Councils of first instance, as the base, and the equivalence of broad civic vulnerability. Courts interest in this process have been those of Tirana, Shkoder, Elbasan, it concerns the monitoring of the judicial process.

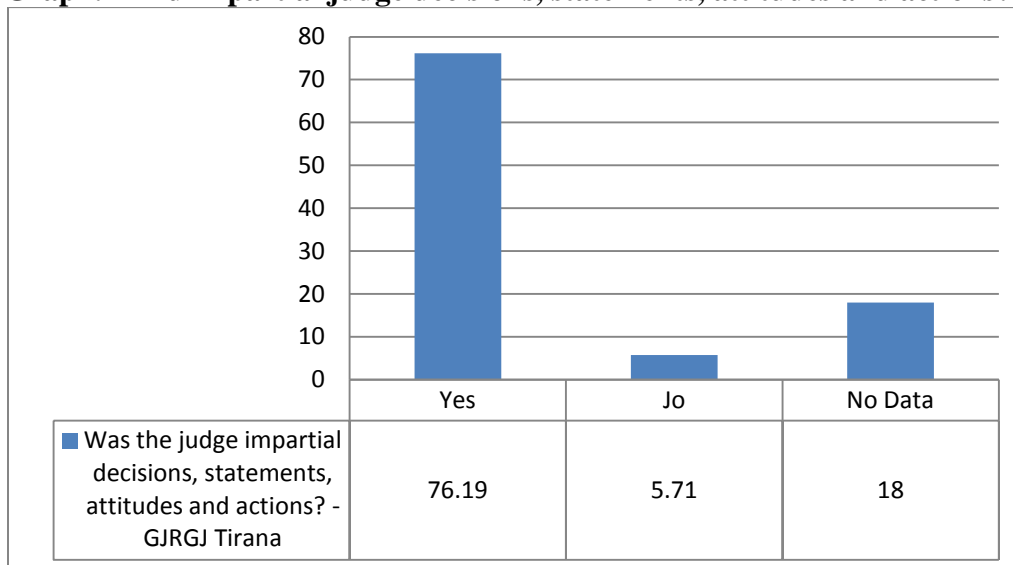
Given here that I monitor spike made only authentication data delivery and surveys with citizens on this point can be said that the process is one that has honoured itself statistical analysis of data from secondary sources using the monitor them closely, with the case they take the connotation of primary data by adding the survey results made us to be more stable and reliable.

Recognizing the importance of due process of its primary imperative done us is the judge's impartiality. Given the importance that represents behaviour impartial judge to strengthen the judiciary and increase public confidence in him, our attention focused on monitoring the external behaviour of judges during hearings.

To conclude about the above, I consider these interests, which aimed to pull out if, judge's actions create the perception of bias in the process, right? For example, one question was generalizing: Was impartial judge decisions, statements, attitudes and actions?

Results provided by Tirana District Court resulting in answered yes, in 76.19% of sessions, not on their 5.71%. Meanwhile, in 18% of sessions, no answer was given because of processing delays.

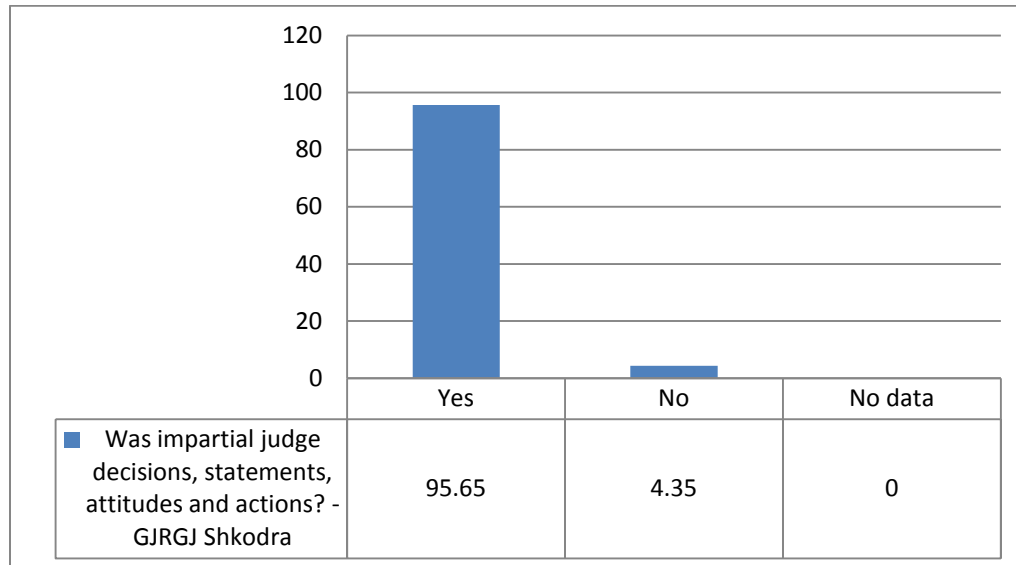
Graph. 1 Did impartial judge decisions, statements, attitudes and actions? - GJRGJ Tirana



Source: Aurela Anastasi, Research Issues of enhancing the efficiency, transparency and public confidence in the Judiciary, the results of the monitoring of hearings and study of judicial

jurisprudence concerning the protection of the principle of equality and non-discrimination, the judicial districts of Tirana, Elbasan Shkoder, Vlore. Monitoring period: February 2012 - October 2013, Tirana, 2013

Graphic. 2 Was impartial judge decisions, statements, attitudes and actions? - GJRGJ Shkodra



Source: Aurela Anastasi, Research Issues of enhancing the efficiency, transparency and public confidence in the Judiciary, the results of the monitoring of hearings and study of judicial jurisprudence concerning the protection of the principle of equality and non-discrimination, the judicial districts of Tirana, Elbasan Shkodra, Vlora. Monitoring period: February 2012 - October 2013, Tirana, 2013

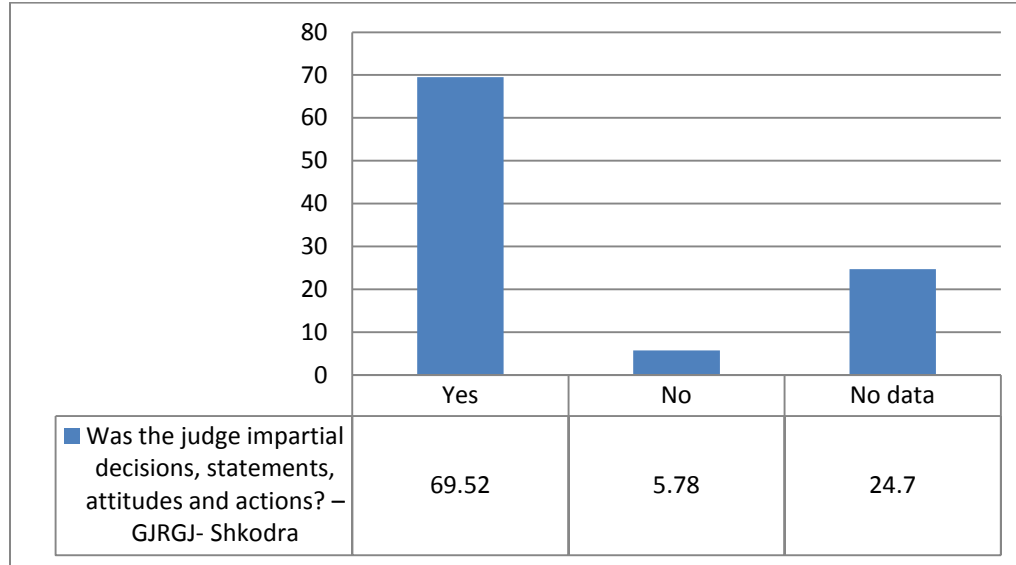
Impartiality in this process can be explained by the behaviour of judges as follows³:

1. Judge rights were explained to both parties in the process.
2. Judge was attentive equally as against the plaintiff and against the defendant
3. Judge does not favour any party in relation to the other party.
4. Judge brought equal conditions for all parties.
5. Judge was right and objective about both sides.
6. Judge is not in session insulting tone used against any party.
7. Judge II addressed the lawyer's representatives of the parties with respect and communicated with them with professional language.
8. Judge equity offered to any party in presenting its case.

Bringing the court to attorneys representatives of the parties creates different perceptions, often bias. So, for example, the question: Do you judge advocates treated with respect and as professionals? In Tirana District Court in 69.52% of cases the answer was yes and only 5.78% of them answered no.

³ Këto komente janë evidentuar nga skedat e monitorimit të sipërcituar. Ato ndodhen pranë bibliotekës së Qendrës për Nisma Ligjore Qytetare, Rruga Vaso Pasha, Tiranë

Figure 3. Was the judge impartial decision, statements, attitudes and actions? – GJRGJ-Shkodra



Source: Aurela Anastasi, Research Issues of enhancing the efficiency, transparency and public confidence in the Judiciary, the results of the monitoring of hearings and study of judicial jurisprudence concerning the protection of the principle of equality and non-discrimination, the judicial districts of Tirana, Elbasan Shkodra, Vlora. Monitoring period: February 2012 - October 2013, Tirana, 2013

The answer no, no these perceptions:

- Judge did not allow a lawyer to speak;
- Do not accept, asked permission from the Centre where he was employed as a lawyer;
- Judge not regarded lawyer and the plaintiff;
- No, did not allow a lawyer to speak;
- Judge was a bit stiff in communication with counsel;
- insulted Judge advocate of the plaintiff;
- When laying out the other side, Judge addressed the lawyer with the words "open ears".

Theoretically, these comments can be left trigger to conceive that in some cases, the behaviour of the court is not in line with its principle of neutrality, in his appearance, making easier the allegations of an irregular legal process. As explained, the harsh tone or offensive to the parties, not the attention and insulting words towards them, as well as harsh tone against lawyers, create doubts that reduce the credibility of the court. This despite the facts that create a disincentive to participation of the parties at trial and not allow them to express themselves freely. Also, they affect the position that the judge must hold as super parts.

From what we have treated above, the question arises: Are these perceptions can be used as reasonable grounds to appeal the verdict to a higher court? What would be the attorney sensitivity to these perceptions derived from monitoring? Some of them may remain only in the context of the ethics of the judge, but the others think are of such magnitude that undermine the judicial process, e.g. absence of an opportunity to bring complaints before the court, or the violation of time of one party in relation to the other party, or failure of the relevant articles of

the Code of Civil Procedure, the procedures for appointing an expert etc., can be made by lawyers as reasons that violate the principle of fairness and violate the right to a fair trial. However, these requirements should be based on evidence, as for instance, in the record of the hearing. In this regard, the establishment of auditory electronic registration system will create opportunities for a better process more reliable.

The effectiveness of the judicial process; Effectiveness of the judicial process is a complex phenomenon that consists of several elements of important factors. He closely related to the duration of the trial, implementing procedural deadlines and effective use of time.

The duration of trials in cases related to divorce, the District Court of Tirana: In the District Court of Tirana were monitored in 29 sessions, in 24 cases the subject of divorce. These cases were monitored from the date of registration of the case in court, until the date of judgment, and the issues that continue to be in the process until the final hearing date set by the court.

The table below reflects the length of hearings on issues completed the subject of divorce, as presented in the graph no. 1.

Table no. 1: The length and number of hearings on the subject of divorce cases completed, GJRGJ Tirana (16 issues)			
The date of registration	Total session	Date of decision	Duration
22.04.2011	5 sessions	20.03.2012	10 month e 26 days
21.09.2011	13 sessions	22.04.2013	1 year e 7 month
27.09.2011	3 sessions	09.03.2012	5 month e 10 days
04.11.2011	3 sessions	09.05.2012	6 month e 5 days
01.03.2012	4 sessions	03.10.2012	7 month e 2 days
08.03.2012	6 sessions	07.06.2012	3 month
11.05.2012	3 sessions	13.11.2012	6 month e 2 days
21.06.2012	4 sessions	29.04.2013	10 month e 8 days
11.09.2012	3 sessions	05.11.2012	1 month e 26 days
12.09.2012	6 sessions	10.04.2013	7 month
08.11.2012	8 sessions	07.05.2013	6 month
09.11.2012	5 sessions	26.04.2013	5 month e 17 days
04.12.2012	4 sessions	11.04.2013	4 month e 7 days
10.12.2012	4 sessions	02.05.2013	4 month e 22 days
18.01.2013	2 sessions	29.04.2013	3 month e 11 days
07.02.2013	6 sessions	01.04.2013	1 month e 24 days

Source: Aurela Anastasi, Research Issues of enhancing the efficiency, transparency and public confidence in the Judiciary, the results of the monitoring of sessions and study of judicial jurisprudence concerning the protection of the principle of equality and non-discrimination, the

judicial districts of Tirana, Elbasan Shkodra, Vlora. Monitoring period: February 2012 - October 2013, Tirana, 2013

From the data of the table above that the best duration of litigation with the subject of divorce is from 1 to 3 months, while the average time is from 4 to 7 months.

CONCLUSIONS

Right for due process constitutes a from the rights set out in our Constitution and the European Convention which relates to the guarantees offered to the parties during the trial in terms of respecting those principles which constitute the essence of the process.

Constitutional standards such as the right to address the court the right to defence, impartiality in the trial, public trial, presumption of innocence. Constitute the main elements of the constitutional court has consolidated in its jurisprudence to the fullest sense of that right to a fair trial.

Right for due process constitutional right among them it guarantees the right of every person for protected of its legitimate interests, to address the court or competent bodies. Among them fair trial complex concept was however reduced to a judgment that held by a court of competent jurisdiction pursuant to relevant laws. Some of them are right that includes all judicial process as the criminal and civil. There may this is no legitimate reason to deprive any person or category of persons from this important right.

A number of other articles of the Constitution that guarantee the rights of citizens in general and individual rights in the criminal process, right to a directly related to fair trial (right to defend himself or through legal counsel, right rich for time and convenience necessary to prepare the defence of their own). So they may be subject to judgment by the Court obviously our constitutional where the latter takes into consideration the requirements of due process for individuals.