

RIGHT TO A FAIR LEGAL PROCESS IN THE REPUBLIC OF ALBANIA

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ABSTRACT

This subject is addressed due process of law, the rights and obligations of entities criminal proceedings. Originally topic addresses the emergence and historical development of human rights, their origins, from 'Manga Carta Libertatum', and to international and domestic legal provisions of today. Historical treatment is necessary and will therefore appear in any period of time after its 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. The regulation that makes due process, the European Convention of Human Rights, is a special part of this paper handling. Is this convention, which provides minimum standards under which the Albanian state cannot come in the framework of realization of 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. This paper aims at identifying the subjects that faced the proceedings for implementation of legal requirements in the context of a regular process. Identified problems indicate that identifies practices which case solutions enforced, due to inadequacy in full with the legislation, or because the interpretation and so not fair to him. The cost of this impact falls on the party falls on procedural entity that is interested in a fair trial. What is understood in general terms with the concept due legal process? Due process is a fundamental constitutional principle enshrined in the Constitution of 1998, as a fundamental right.

Keywords: Process, orderly, law, penology, Albania, procedure, trial.

INTRODUCTION AND THEORETICAL RELIANCE

The right to a fair hearing a constitutional right of individuals, through which they seek the realization of fair procedures and fair legal. On the one hand this constitutional right is presented as a guarantee for citizens against unjust actions of state authorities and, on the other hand, it is an obligation for the latter not to infringe the rights and freedoms of citizens without providing them with respect regular legal procedures. European Convention for the Protection of Human Rights and Fundamental Freedoms in its Article 6, entitled "The right to a fair hearing", has sanctioned the right of citizens to be heard fairly, publicly and within reasonable by a court independent and impartial tribunal established by law - as a fundamental right of citizens. In this article of the Convention are included, also the principle of the presumption of innocence for the accused, until their guilt is fully proved by a court decision, as well as some important rights of the accused related to the criminal proceedings against him.

The judiciary and, ultimately, only the judiciary can eventually determine who emerges victorious in inevitable conflict between individuals; between government and the governed, including those accused by the state that have violated the law; between individuals and society and between organizations, both public and private.

The atmosphere that surrounds the courts and formal events in court is unusual and because the courts are unique. They resolve conflicts by applying the law to the facts of particular cases, independently and impartially. When the law applies to the facts that are brought to court, each party has the absolute right to have an arbitrator who is independent of the parties to the case and their lawyers.

Trials should reflect the goals of the court, such as individual justice in individual litigation, the visibility of individual justice court cases individually, getting a trial to resolve disputes, protection of individuals against arbitrary use of government power and registration legal status. Individual court cases must be given individual attention. The law should apply to every case. Regardless of economic status, for all there should be equal access to the court. Anyone who comes before the court and should be treated with respect, fairly and equally. Litigation and law enforcement on the facts in individual cases should be stable and predictable.

METHODOLOGY

During this research and scientific research I have determined those working method which enables more and provide more extensive opportunity to come to the necessary data and simultaneously ensure the proper degree of rationality, economy and self-denial. I used methods which are:

- Use of official documents
- Method of interviewing
- Method of conversation,
- Statistical-processing method results

With the first method was used official documents from the Ministry of Justice, courts in the counties of Tirana, Shkoder, Elbasan etc. (For more details see chapter 7), OSCE reports, HELINK, judicial institutions, etc. Also during the research work I used the laws of different periods of time, by-laws, administrative guidelines, various decisions, directives and regulations, programs treatment of prisoners, the internal rules of the institutions, domestic order, the files of convicted persons and literature professional from this scientific field. During my research it has also helped staff the Prosecutor and the Office of my lawyers, who have contributed to the collection of materials and reports of interest. Following this method of data collection I used the interview method, in order to collect research data more accurate and concrete.

The birth and development of the rule of law: historical overview

Democracy cannot exist without respect for the rule of law and the latter is inconceivable without democracy. The rule of law is one of three elements functionally related to each other: the rule of law, democracy and human rights, which are the three values that make up a whole. The rule of law is guided by values, which means that basic rights and democracy as a right of the individual to self-determination are its constituent elements. The rule of law is mainly based on respect for the Constitution. The country already has pure legality

constitutionality as busy main features of the rule of law¹. The rule of law is defined as institutional ideal, which aims to ensure a balance between the law in terms of material and process, as well as between the democratic decision-making power, its ultimate authority and guarantees of justice in the totality of forces on which to build democracy².

Theories or schools of thought on the rule of law have evolved continuously, enabling the contemporary theory of the rule of law, implemented in countries, such as Albania, come in the most perfect. Despite the evolution of the concept of the German school of public law, the concept of school French or Kelzenit theory on the rule of law, this theory today still represents the most controversial issue and also the most important political and legal perspective. The rule of law is considered as the means by which the system of democratic values penetrates the legal mechanisms, so he cannot be a right state whatsoever. If state ceases human rights, it turns into a state of injustice; however the presence of hierarchy of norms and procedures for such a state is contrary to the system of values that created it. The rule of law is the state that within the limits of constitutional norms, respecting the norms, provides, through its legislative activity, the guarantee of human rights under the control of a specific body tasked to verify compatibility between these laws and human rights³.

I ignored for a long time by philosophy, which is often viewed as a single entity concept, even -ideologjik concept of law -shtet today enjoys a very considerable prestige in contemporary philosophy, which coincides, of course, also with recent developments in domestic politics of democracy and international law⁴. The end of the twentieth century saw the disappearance of the conservative authoritarian regimes of the West European (Spain, Portugal, Greece), climbing up the constitutional jurisdictions in most democracies, the collapse of communist regimes in Central and Eastern Europe and, Finally, emergency, although problematic, for a fair international th, which is supposed to limit the sovereignty of states allowing, of course, under certain conditions, sanctions against governments guilty of gross violations of fundamental rights; no doubt that these processes can be thought of as heterogeneous, but ama -shtet centered around the concept of law, so as to make it appear all opposition among states -totalitare, -autoritare or at least -arbitrare and a superior model of state defined by its conformity with th right, without understanding whether the issue is to simply the existence of a hierarchy of norms sanctioned as appropriate, or, more radically, if it comes to complying with the state to metajuridike rates such as those of th human rights; in addition we can see that the actors of these transformations are often the same who directed -shtet concept of law to legitimize its actions, as the head of government in transition, constitutional jurisdictions or last communist leaders in an effort to save something from regimes that were dependent (Mikhail Gorbachev wanted to make the Soviet Union a socialist -shtet right)⁵.

¹ Arnold, Reiner, constitutional law and politics: the separation of powers versus the rule of law ?, published in Sharing and balance between powers: the role of kushtetues control, international conference on the occasion of the 20th anniversary of the Constitutional Court, Tirana 7-8 June 2012, fq.92

² Morlino, L. & Palombella, G., Rule of Laë and Democracy: The Rule of Law as an institutional ideal, 2010, Volume 115, IDC Publishers

³ Luan Omari, principles and institutions of public law, Tirana 1993, .27

⁴ Raynaud Philippe, right, state judge. The issue of security policy challenges 2006-2007 (Accessible at <http://www.nyustraus.org/publications.html>)

⁵ Raynaud Philippe, right, state judge. The issue of security policy challenges 2006-2007 (Accessible at <http://www.nyustraus.org/publications.html>)

To recognize the rule of law are the three main requirements: First, the existence of a written constitution, in which defines the principles and basic rules for the exercise of state power. It should be given as clearly the duties and powers of the central state bodies and the recognized principles and basic values of democratic governance. Also, the constitution must serve as the basis and the main source of all laws and other legislation to which the state and society needs. Secondly, recognition and respect for human dignity and fundamental rights and freedoms of citizens. On this basis, also framed a good part of the duties and obligations of the state, among which mention the guarantee of equality of citizens⁶. It is the duty of legislation in general and, especially, the Constitution clearly stated that the obligation of recognition and respect for human dignity and human rights and fundamental freedoms by all state bodies. Thirdly, the requirement for the exercise of all state and social activity in accordance with the constitution and laws, conceived it as one of the most fundamental components of the rule of law. Of course priority have constitutional norms on the basis of which subsequently discussed and approved the laws enacted by parliament. On the other hand, the latter serving as the basis and the main orientation for all legal acts and norms which mainly operates the executive authorities on the activities of the judiciary and dispensation of justice in general.⁷

At the foundation of the rule of law is the principle of separation of powers. It has been more than 200 years since the first projection of this principle, however, life has shown that the rule of law, separation of powers was and remains a fundamental value, which gained new meaning and meaningful. One of the greatest contributions of the fathers of the American Constitution was the inclusion in the theory of separation of powers doctrine of checks and balances, which turned into a year's worth of the Constitution of 1787. It is of crucial importance that through a system of checks and balance principle of separation of powers static gains a dimension -dinamik⁸.

In Albania, the democratic changes of the 90s, was born also need radical changes in the organization of new Albanian democratic state and its institutions. In 1991, the Albanian Parliament approved the law no. 7491 -For the main constitutional provisions, which represents the first constitutional foundation for the construction of the new state, a state of law, democratic and social, based on values and principles such as respect and protection of human dignity, the of his rights and freedoms, private property, equality before the law, separation and balance between the three branches of government (legislative, executive and judicial), etc. This law, in Article 3 thereof, sanctioned: Basic -Parimi state organization is the separation of the legislative, executive and judicial. The people exercise power through their representative bodies and by referendum. Representative bodies are elected by free, general, equal, direct and secret. Provisions of constitutional law at the time the effects spread to 1998, when the Assembly of Albania, by law no. 8417, dated 21.10.1998, approved the Constitution of Albania, the fundamental law of the state. In its Preamble, among others note that: We, the people of Albania, proud and aware of our history, with responsibility for the

⁶ Xhezair Zaganjori, Aurela Anastasi, Eralda (Methasani) Cani, the rule of law in the Constitution of the Republic of Albania, by Adel Publishing House, Tirana, 2011, 70-82

⁷ Xhezair Zaganjori, Aurela Anastasi, Eralda (Methasani) Cani, the rule of law in the Constitution of the Republic of Albania, by Adel Publishing House, Tirana, 2011, 70-82

⁸ Harutyunian, G., President of the Constitutional Court of Republic of Armenia, Characteristics of constitutional justice in the countries of young democracies, presented at Ibero - American Constitutional Conference, Mexico, 2009,157

future, with faith in God, with the determination to build a state of law, social democratic, to guarantee the rights and fundamental freedoms, with a spirit of tolerance and religious coexistence, the commitment to protect the human dignity and personality, and to the prosperity of the whole nation, for peace, welfare, culture and solidarity social ..., establish this Constitution ... ". Later, Article 3 states that: -Pavarësia State ... human dignity, rights and freedoms, social justice, constitutional order, ... are the bases of this state, which has a duty "to respect and to "I protect", while Article 4 further added that: -The law constitutes the basis and the boundaries of state activity. The Constitution is the highest law in the Republic of Albania ... ".⁹

It is natural that there are also many other provisions of the Constitution, which directly or indirectly, related to the principle of the rule of law. In accordance with their implementation has a series of other legal acts adopted with expertise or international consultants, mainly the Council of Europe, through which aims fulfillment of general normative framework guaranteeing specific elements of this principle in everyday life. Taken as a whole, it can be said that the Constitution and legislation create a full and lasting for recognition and implementation of the principle of rule of law in the Albanian reality. (Zaganjori, Anastasi, Methasani)¹⁰

The meaning of due process under the provisions of the ECHR

Article 6 states that everyone is entitled to a fair hearing. This expression includes many aspects of due process of law, as the right of access to court for a hearing in the presence of the accused, the right not to contribute to their self-incrimination, equality of arms, the right to hearings the opposing party and a reasonable judgment. There is no express guarantee of the right of access to a court in the text of Article 6, but the European Court has held that this provision secures to everyone the right to make any claim in connection with the rights of his / her civil and obligations before a court or tribunal. Article 6 includes the right to be presented in court, in which the right to access, which means the right to start proceedings before courts in civil matters, constitutes one aspect only¹¹.

The Court held in United Kingdom Golder customers that if Article 6 (1) shall be understood as concerning exclusively the conduct of an action which has been brought before a court, a Contracting State could, without acting in breach of that text must abolish courts, or take away their jurisdiction limited in making decisions for some civil actions and entrust it to organs dependent on the government. . . It would be impossible in the opinion of the Court that Article 6 (1) to describe in detail procedural guarantees afforded to parties in a pending lawsuit and should not be defending it was first possible to benefit from guarantees given, d. m. th. Excess court. Characteristics of a fair judicial process, open and fast will have no value at all if there will be no judicial proceedings. However, the right of access to court is not an absolute right. The Court continued by stating in the United Kingdom Golder customers that its very nature calls for regulation (which may change over time and location according to the

⁹ Zaganjori/Anastasi/Methasani (Cani), Shteti i së drejtës në Kushtetutën e RSH (2011)fq.20

¹⁰ Çani, fq.20

¹¹ 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 on 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

needs and resources of the community and individuals) drawn up by the State, though such regulations must not to violate the essence of the law at all, nor to enter into conflict with other rights enshrined in the Convention. In its case law the Court has held further that any restrictions would be in accordance with Article 6 if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be fulfilled,¹²

The question of *Golder v the United Kingdom* had to do with a prisoner who had been refused permission to contact his lawyer to present his case to civil defamation against a prison officer. The Court held that this was a violation of Article 6 - the right of access to court must not only exist, but should also be effective. The Court also held that the failure of a prisoner to have confidential consultations except the court hearing with a lawyer depriving him of the right to access to court.¹³

In some case the court rejected the excess due to the nature of litigants. The Court has recognized that restrictions on access to a court for minors, persons with mental problems and disturbing litigants do not follow a legitimate aim. In the case of the Catholic Church against Greece broke a court ruled that the applicant had had no legal personality in Greek law. This led to the suspension of the issue of up to make the assessment of his right to property. The European Court, however, stated that it had damaged the core of the right to a court and that he had found a violation of Article 6. The court also found violations when legal proceedings can be treated only by another body apart from the direct interest of the applicants in proceedings. In the case of *Philis against Greece*, the applicant who was an engineer by profession he sought remuneration for work done. This can be followed only by the Technical Chamber of Greece. The Court held that while this procedure may have provided engineers Benefits for specialized legal representation at little cost, was insufficient to justify the removal of the applicant's capacity to pursue an action in his claim.¹⁴

CONCLUSIONS

Right for a due process constitutes a the rights provided in our Constitution and the European Convention which relates to the guarantees offered to parties during a trial in terms of respect for those principles which constitute the essence of the process. Standards such constitutional right to justice the right to defense, impartiality in the trial, public hearing, presumption of innocence. Constitute the main elements that the Constitutional Court has consolidated in its jurisprudence for understanding as to complete the right to a fair trial. Right for a due process some of them are of Constitutional Rights that guarantees the right of every person protection the interests of his legitimate address the court or competent bodies.

Fair trial among them complex concept was however reduced to a judgment that held by a court of competent jurisdiction under the relevant laws. Some of them right which includes

¹²Aurela 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 on 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

¹³Edmira Agaj, right to a fair hearing, St. GoVlora, Vlora, 2012

¹⁴Aurela 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 on 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

all trial as the criminal and civil cases. There may this none legitimate reason to deprive any person or any category of this right is important. A series of articles in the other of the Constitution that guarantee the rights of citizens in general and the rights of individuals in criminal proceedings, directly linked to right to a fair trial (right to defend itself or through counsel legal, right for the rich time and convenience necessary to prepare the defense of their own.) So they can be obviously subject to judgment by our Constitutional Court where the latter takes into consideration the requirements of individuals for a due process.

Right for a due process some of them are a cornerstone in the system of fundamental rights of people, so it is the duty of all bodies state and not only the Constitutional Court to pay the more attention respect to this fair. For this topic can be written more but emphasize that respect for the fair from all levels of the judge system be a guarantee enough important for all and would increase the credibility of the judicial system. The functioning of district courts observed no significant improvement, however, needs a better management of them.

The principle of publicity of court hearings is generally respected in all courts observed. Despite improvements in court infrastructures, still have problems which lead to the neglect of the principles and the publicity of hearings. The independence of the courts and remarks or allegations of corruption continue to be of concern to the Albanian justice system. It has shaken up to some extent the trust of citizens in the judiciary, which has also affected the demand for disqualification of judges. The organization of work in courts leaves much to be desired. Delays or postponements of court are phenomena common in the courts surveyed. Delays in proceedings have been one of the reasons for seeking the disqualification of judges from the trial. They have an impact on reducing public confidence in the judicial system.

Although many citizens complain about delays and postponements unmotivated hearings, to date there appears to be taking any action against judges concerned. Effective management of the judicial system depends on the functioning of links to other public administration, especially the local government. Deficiencies of information for addresses, street names, failure of the citizens are some of the causes that affect the smooth running of the judicial system. Service Bar not always enables timely development and quality of judicial processes. The right to inform the public at large is respected. Inform parties trial sessions displayed in visible places. Yet there is still room for further improvement. Citizens are provided the opportunity for direct contacts with leaders and judges of the courts. Waiting times of people in general respected in all courts observed.

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