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## The Practice of the European Convention of Human Rights Concerning the right to “A Reasonable Time” in Civil Trials. The Impact of the Activity of the Executive Offices in Albania

JONIADA MUSARAJ

Ph. D Candidate

“Aleksandër Moisiu” University of Durrës  
Albania

SAIMIR FEKOLLI

Ph.D Candidate

“Aleksandër Moisiu” University of Durrës  
Albania

Adv. BRIKENA ÇATO

“Aleksandër Moisiu” University of Durrës  
Albania

### Abstract:

*The initiation of a judicial process and procedures provided in the Constitution of the Republic of Albania in the European Convention of Human Rights and other international acts for the protection of human rights and fundamental freedoms, are one of the evaluating elements for a state whether it is democratic or not, if it remains in the framework of the declaration of the rights and freedoms or goes further in their de facto protection. One of the fundamental rights and freedoms is 'the right to be tried within a reasonable timeline. "In this paper we will discuss the factors that affect the non-judicial process "within a reasonable time" and if it is part of the "reasonable period of time "procedure to be followed by executive offices on the execution of final judgments. To arrive at a fair understanding of the implications of the stage of execution of judicial decisions from executive offices, we will analyze the practice of European Court of Human Rights with the Albanian state as a party, where the object of the matter is related to the "reasonable timeline".*

**Key words:** reasonable timeline, executive offices, European Court of Human Rights, judicial decisions.

## **1. The importance of the European Convention of Human Rights for the Albanian state.**

The civil society, but not only, even the state, in their historical development, have come to realize, appreciate and be aware, regardless of place of residence, the importance to the rights and fundamental freedoms. The individual always tends towards democracy, living in the community and seeking what belongs to them (rights and freedoms). Exactly for this reason, can not be left to individual choice of just how he should act, when and where. This clash between the legal and personal requirements, have led to the development/emergence of the state, the national and the international legal order.

Albania has signed the European Convention on Human Rights on 3 July 1996, the date on which it became part of the Council of Europe. The European Convention of Human Rights and Fundamental Freedoms of 1950 is one of the basic conventions of human rights and fundamental freedoms. Its special, unlike the Universal Declaration of Human Rights of 1948 is that the European Convention of Human Rights and Fundamental Freedoms does not stop just in their statement, but guarantees them de facto. It entered into force for the Republic of Albania with Law Nr.8137, dated on 31.07.1996 "On the Ratification of the European Convention for the protection of human rights and fundamental freedoms".

The European Convention of Human Rights and Fundamental Freedoms is the first international instrument of human rights that has aspired to protect a wide range of civil and political rights, by taking the form of a legal binding treaty for the High Contracting Parties, as well as establishing a monitoring system for the implementation of human rights

within the country. Its most revolutionary contribution is expressed perhaps in the inclusion of a provision under which a High Contracting Party may accept the supervision of the European Court of Human Rights, in cases when the one who starts the process is an individual and not the State. A measure of the success of the Convention has been the mandatory and not elective acceptance of the right to individual complaint: all states that have ratified the Convention are already automatically obliged to accept the jurisdiction of the Court for the examination of the individual complaints.<sup>1</sup>

The advancement and protection of human rights and fundamental freedoms is considered as one of the main goals of the organization, therefore the adherence of states in the Council of Europe is conditioned on the provision of human rights and fundamental freedoms for all people.<sup>2</sup>

The European Convention of Human Rights has great importance because it is the first document that has developed declarative rules into contracting rules (making them mandatory); has provided a mechanism, which has to ensure the implementation of human rights and fundamental freedoms among many entities of a region; and finally, that the adherence into the European council depends on the respect for human rights and fundamental freedoms.<sup>3</sup>

The Integration of the Convention in the domestic legal systems of the member states, particularly the requirement for trial within a reasonable timeline, as provided in Article 6, has empowered and fulfilled the requirements of the national legislation of these countries.

The Albanian state considers the European Convention

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<sup>1</sup> Gomien, Donna, "Shortguide to the European Convention on human rights", published by the council of Europe, , translated, Gent Grafik 2005.

<sup>2</sup> The statute of European Council: J.A.S Grenville, the Major International Treaties 1914-1973, London 1974.

<sup>3</sup> Gruda, Zejnullah, "International protection of human rights", Prishtinë 2000, pg 53.

of Human Rights an integral part of its legal system. It is evident in Article 116 of the Constitution of the Republic of Albania, where the acts are recognized as ratified international agreements. As for the above, it is obvious that the jurisdiction of the European Court of Human Rights, which upon its creation in 1998, also extends over the territory of the Republic of Albania. And indeed, until January 2002, in the Court it results to be registered but not yet tried, several claims from Albania, most of which relate to the issue of property and the non-enforcement of the final court decisions.<sup>4</sup> The importance of the European Convention of Human Rights for the Albanian state, according to the Constitution of the Republic of Albania, and clearly stated in its Article 5 "The Republic of Albania applies binding international law" and its Article 21 stipulates "limitations of the rights and freedoms provided in this Constitution may be only imposed by law in the public interest or for the protection of the rights of others. Restriction must be proportionate to the situation that has dictated it. 2. These limitations may not violate the essence of freedoms and rights, and in any case can not exceed the limits provided in the European Convention on Human Rights. "

Regarding the issue about what are the rights that imply the European Convention on Human Rights: In case of conflict between the individual and public power it is not important whether a specific body is acting in the capacity of the civil subject, or the quality of the bearer of the public power, what matters is the character of the specific right that is implied. However, in the interpretation of "civil rights and obligations", the court can not decide independently on the existence of material rights, which are not based on domestic law. Article 6 paragraph 1 of the Convention is applicable if the

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<sup>4</sup> Zaganjori, Xhezair; Hajdari, Artan, "For judgments in the European Court of Human Rights" published in Legal Studies, six months magazine, University of Tirana, Faculty of Law, October 2002, p. 45.

claim is ratable in money,<sup>5</sup> derives from the violation of rights, which also have the same character, regardless of the source of conflict or court jurisdiction. Such a conclusion was reached by the European Court Of Human Rights in the case "Editions Periscope against France". In this case the court held that Article 6 of the Convention deals with and has as its object the civil rights or disputes, whether they are recognized as such in the national law.

Therefore, according to the court, it is important that in order to address to the European Court Of Human Rights we should pretend in cases dealing with civil rights under the European Convention Of Human Rights and not necessarily according to domestic law. According to domestic law, in this case, we are not dealing with any civil right. If we accept the opposite option, then according to them, article 6 of the convention is enforced in any case regardless of the right implicated. According to the European Court Of Human Rights, the right in question is a civil right, regardless of the origin of the dispute and whether or not the judge had the right competence to try the issue. Finally, we can say that there is a possibility that a public right under domestic law, be regarded as civil right under Article 6 of the Convention or vice versa. This article extends to those processes in which decisions are not directly made about civil rights and obligations, but about cases of a great importance to them..<sup>6</sup>

As for the above, the legal status and high authority that the European Convention Of Human Rights has in the legal order of state is evident.

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<sup>5</sup> There are certain rights such as for example that of respect for family life that do not convert into money.

## **2. Reasonable Time, element of Article 6 of the European Convention of Human Rights.**

Article 6 of European Convention of Human Rights , paragraph 1 thereof, provides that : "*In the determination of his rights and civil obligations or of any criminal charge against him, everyone is entitled to have his case heard in a fair and public hearing within a reasonable time by an independent and impartial court. The decision must be pronounced publicly but the presence in the courtroom of the press and public can be excluded during the whole trial process or part of it, in the interest of the morals, public order or national security in a democratic society, when requested by interests of the minor/underage children or the protection of the private life of the parties in the process, or at the extent deemed necessary by the court, when in special circumstances publicity would affect the interests of justice.*" From the content of the provision, it is clearly understood that the "right to a regular process" includes not only criminal trials but also civil rights and obligations. The court interprets this phrase," civil rights and obligations ", through the issues that were presented for review." A specific right is "civil" for the Convention not just because of the legal qualification that it gets in the domestic law, but from the material content and the consequences to which this domestic right is related. This right has to do with the property aspect no matter the origin of the conflict nor the competences of the body reviewing the dispute..<sup>7</sup>

In order to apply Article 6 in the civil context, there should be a "dispute" about a civil right. The Court has stated on several occasions that Article 6/1 applies to the procedure,

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<sup>6</sup> Musaraj, Joniada, "CEDU, il ruolo e la sua importanza. Il concetto di processi civili e l'importanza della loro attuazione, in conformità alle regole procedurali", *Diritto&Diritti*, 2010, ISSN 1127-8579, pg 3.

the result of which has a direct impact on the determination and / or substantive content of a private right or obligation (Koning against Germany/1978). Proceedings before the Constitutional Court are also administered by Article 6 where the results of such procedures will be crucial to a civil right guaranteed by this article (H against France/1989 and Krasku against Switzerland /1993). Even the abstract reviews of a law can be crucial in order to enjoy a civil right, and therefore are covered by the requirements of a fair trial process (Susmann against Germany /1996).<sup>8</sup>

The Court stated in the case "*Anagnostopoulos and others against Greece*" that : "*Contracting States have the obligation to organize their legal systems in such a way as to guarantee to anyone reaching a final decision about their civil rights and obligations within a reasonable time.*"<sup>7</sup>

The right to a trial within a reasonable time is one of the several guarantees that Provision 6 of the European Convention Of Human Rights represents. The defendant, in an unjustified period in relation to the integral features of the civil issue, entails uncertainty and loss of interest of the parties in the trial to await the conclusion of the trial and the final decision. The respect of the right to a trial "within a reasonable time" automatically leads to the question whether to seek justice based on law or to tolerate "the right to trial within a reasonable time" and accept an overstretch of the timeline by "achieving" effective justice. Reasonable time does not mean "short-term". Therefore, in order to know that the reasonable period has exceeded or not, it is important to have a careful and complete examination of all the circumstances of the case, the cause of any delay and not simply by examining the length of

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<sup>7</sup> See further Kristaq Traja, "European Convention Of Human Rights and the fair Process under the Albanian Constitution " special newsletter, Tiranë 2003.

<sup>8</sup> Gomien, Donna, "Short Guide to the European Convention on Human Rights", edition of the Council of Europe, translated Gent Grafik 2005, p. 51.

the time period in question.<sup>9</sup>

Legal dilemma poses the question of whether the duration of the proceedings (the process of the realization of the right) should be defined precisely on time, or the legal standard "trial within a reasonable time" is sufficient. In favor of defining the term is the fact that the lack of a precise deadline constitutes a real risk to the obscuration of the purpose of this institute.<sup>10</sup>

Regarding the claims for trial within a reasonable time, the European Court Of Human Rights states that Article 13 of the European Convention of Human Rights guarantees an effective remedy before national authorities for violations of Article 6/1 of the European Convention of Human Rights. Available effective tools to the litigating parties involved in a domestic system for raising a complaint about the length of the proceedings shall be considered as effective, in the sense of Article 13 of the Convention, if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred. Therefore, Article 13 offers an alternative: a remedy is effective, if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant parties the exercising of a convenient tool for delays up to that moment. However, the European Court of Human Rights stated that the best solution in absolute terms is undoubtedly to prevent the violation. When the judicial system is deficient in relation to the claim about the duration of the proceedings under Article 6/1 of the European Convention of Human Rights, the creation of a remedy to expedite

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<sup>9</sup> Patroni, Paolo, "Durata irragionevole del processo e equa riparazione ai sensi della "legge Pinto" alla luce della recente giurisprudenza" *Diritto&Diritti*, 2007, ISSN 1127-8579.

<sup>10</sup> Radolović Aldo, *Zashtita prava na suđenje u razumnom roku*, Zbornik pravnog fakulteta Sveučilište u Rijeci, br.1 (2008), fq. 7.

procedures in order to prevent their excessive duration is the best solution. This remedy will undoubtedly provide an advantage over a single remedy that regulates compensation, since it prevents further violations regarding the same procedures, thus it does not repair the "a posteriori" breaches, as it usually occurs with a claim with the purpose of compensating.<sup>11</sup>

### **3. Execution of court orders by the executive offices in Albania.**

The execution of the court orders by the state bodies, as an indicator of the functioning and performance of a country's justice, for the extraordinary significance it has, is expressly enshrined in Article 142 , paragraph 3 , of the Constitution of the Republic of Albania , which determined that : " state authorities are obliged to execute the judicial decisions." Thus, obliged! Departmental, ministerial etc. justifications, in the position of the debtor (the court trial - loser) such as "*we have no money* ", "*are not part of the decision*", "*it is not in our jurisdiction*," besides sounding frivolous for the rule of law , the lack of coordination of the administrative bodies and cooperation between governments, show a shocking disregard towards the administration only applicable to the decision of the judiciary and openly violating the rights of creditors . " Liabilities arising from judicial enforcement are borne by the institution itself with the approved funds for the budget year, according to the criteria established by the joint decision between the Ministry of Finance and the Ministry of Justice. "The Ministry of Finance, with the funds made available in the budget of each year, enforces the judicial decisions that directly

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<sup>11</sup> Vorpsi, Arta, "Fair Process in the practice of the Constitutional Court of Albania", Maluka editions, Tiranë 2011, p.248

relate to the obligations of the State Budget and not the obligations of budgetary institutions. This way, the provisions of the Criminal Code are violated, specifically Article 320 thereof, "Obstructions for the execution of court decisions" , which stipulates that : " ... *the performance of other acts committed with the intent to not run or stumble execution of the decision , constitutes a criminal offense and is punishable by fine or imprisonment up to two years.*"<sup>12</sup>

The execution of a court order, should be considered part of the "trial process" for the purposes of Article 6. Delays in execution of an order may be justified in certain circumstances, but should not be such as to impair the essence of the right protected under Article 6/1. The Albanian state has primary obligation to provide legal remedies to protect the basic rights and freedoms of the individual and it is the Albanian state that should clearly define that the execution of the decisions of the executive offices to be part of the right to be tried " Within a reasonable time". The party that has the final court verdict in its favor should not be to mobilize the execution of the decision and executive offices.<sup>13</sup>

In the Resolution No. 3 of the 24th Conference of the European Ministers of Justice, on a "General Treatment and the Ways of Achieving Effective Execution of the Judicial Decisions", held in Moscow in October 2001, it was agreed that "the proper effective and efficient execution, of the judicial decisions is of particular importance for the countries, in order to create, to strengthen and develop a strong judicial system and respect".

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<sup>12</sup> Musaraj, Joniada, "The problem of development of civil trial fairly, within a reasonable time by an independent and impartial court", Masters thesis defense, the International University of Struga, Macedonia, 2009, p. 42.

<sup>13</sup> Look at Beshiri etc. against Albania, 22 August 2006, [GJEDNJ](#).

The justice system and the rule of law, can not continue to delay the execution of court decisions, which lead to a weakening of the role and reliability of the courts. Only by executing court orders within legal deadline, in accordance with the Constitution and the European Convention Of Human Rights, will a country reach the standards of respect for the individual rights of citizens and the real development of the rule of law, enabling the country's European integration.

Opposition of the mandatory enforcement process is disciplined in Chapter IX of the Code of Civil Law Procedure, titled " Means of defense against enforcement decisions" and can be done through: 1 ) the claim for invalidity of the executive title. In any eventual case that the state body disagrees with the execution of the verdict, as the only legal option presented opposing enforcement actions in court, within 5 days, otherwise, their unequivocal implementation. While, the bailiff, after the expiration of a 10 -day deadline notification of the debtor, is obliged to decide on fully enforcing the judgment, by seizing the current bank accounts of the specific state body, when the debtor is not willing to pay the liabilities and does not enforce the court's orders.

Precisely, when the court decision is fully enforced, the right becomes effective, achieving the final resolution of a specific conflict.

Non-enforcement of final decisions and the lack of effective domestic remedies is reviewed again by the European Court of Human Rights even in some other cases. European Court Human Rights has continuously reviewed the urgent need for modification of the domestic legal system with a intention to take appropriate measures for the final resolution of this concern. The European Court of Human Rights stated that the highlight of this vacuum in the domestic legal system exacerbates the responsibility of the Albanian state in the international arena to commitments with the ratification of the

European Convention Of Human Rights. This situation has affected the efficiency of the defense mechanism that is realized through the European Court of Human Rights. The total disregard other general measures repeatedly declared for improving the domestic system, affects the efficiency of the European Court of Human Rights.<sup>14</sup>

If you study the law nr.8730 dated 18.01.2001 in Section 2/1, it states that" the Bailiff Service has the mission of compulsory execution of executive titles, in the cases specified in the Code of Civil Procedure." Therefore, it is very clear to every bailiff and Albanian citizen, that the bailiff has a duty to act and the execution of court orders is not left to his subjective evaluation or to his supervisor's, whether an executive title will be executed or not. The term "mission" used in this paragraph, seeks to give this service a human nature as long as they are subject to executive titles and fundamental rights freedoms. Guarantees for the functioning of the bailiff are formally found in Section 31 "The bailiff who violates the rules stipulated in laws and regulations regarding his duty, or does not apply them, when there is no place for criminal liability, is punishable by one of the following disciplinary acts:

- a) Written warning
- b ) Note warning for dismissal
- c ) Dismissal for duty."

Even in Article 35/dh "when the bailiff does not fulfill the duty provided by law" he/she is dismissed .<sup>15</sup>

The right to a fair trial and, therefore, to be tried within a reasonable time (to avoid a delayed justice process, in fact,

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<sup>14</sup> Ersida Sefa, "The European Court of Human Rights and its impact on the respect of Human Rights in Bangladesh", Tiranë,2008.

<sup>15</sup> Jonuzi, Edison, Musaraj, Joniada "Property rights, and the role of executive titles bailiff offices, "Scholarly Journals Legal Tribune, Nr 85(2) 2010.

coincides with a denied justice system), is therefore an immediate intrusion in the rights and freedoms that initially, through the creation of the Convention, are involved in a regulatory document that embraces the principles pertaining to the realm of ethics and morality of the human feeling (along with the right to live, prohibition of torture, prohibition of slavery and forced labor, the right to freedom and security, the principle of *crimen sine lege nullum*, the right of respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association; the right to marry, the right to an effective complaint, prohibition of discrimination, prohibition of abuse of rights).

The Court also emphasized, that the execution of judicial decisions is a final important element of the right to a fair legal trial process, in the sense of Article 42 of the Constitution and Article 6 of the European Convention of Human Rights. In evaluating the Court, the judgment should not be narrowly conceived, by only providing a judicial decision, but with the completion of this process, because an acquired right remains worthless if not implemented through the execution of the decision. The execution of a final decision of the court is considered as the final stage of the realization of the right judicially acquired. Only after the completion of this phase can the individual establish his acquired right. At this stage should actively participate not only the parties, thus the debtor and the creditor, but also the authorities charged with the execution of the court's final decision. The role of these bodies becomes crucial when the debtor refuses to voluntarily execute its obligation towards the creditor. In such cases it can be said that the process of establishing and executing a specific violated right includes not only the court decision of the given case, but also concrete actions of the responsible bodies charged with the execution of final judicial decisions ( see decisions No. 49 , dated

21.11.2011 , No. 11 , dated 02.03.2012 , No. 13 , dated 21.03.2012 , No. 30 , dated 16.05.2012 of the Constitutional Court )

The Court restates that in a case involving the determination of a civil right, the length of proceedings is normally calculated from the start of the proceedings process, until the decision is given and executed. The executive stage is considered a further stage of the same process. The reasonable length of proceedings , in the sense of Article 42 of the Constitution , should be evaluated considering the circumstances of the case and taking into account the complexity of the case, the behavior and interests of researchers , as well as the behavior of the relevant authorities ( see Resolution No. 9 dated 01.04.2009 , No. 14 , dated 15.04.2010 , No. 21 , dated 03.06.2011 , No. 10 , dated 01.03.2012 of the Constitutional Court )<sup>16</sup>

The Court emphasizes that the bailiff, as a procedural subject in the field of execution, is equipped with all procedural tools that enable the execution of an executive title. Opposite to the final enforced court decisions, all entities, public or private, should respond equally. (see Decision No. 21 ,dated 03.06.2011 of the Constitutional Court).

#### **4. Conclusions**

- Albania is one of the acceding countries in the European Convention of Human Rights, one of the most successful acts of the European Community, where the commitment for minimal guaranteeing of human rights constitute the foundation of its enforcement in many countries. The Albanian state has taken the responsibility to fully carry out all commitments arising from this convention. How these commitments are realized in practice, it is still to

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<sup>16</sup> Vendim i Gjykatës Kushtetuese nr. 49 datë 26.07.2012

be evaluated, however, we need to recognize to Albania its achievement: European Convention of Human Rights is recognized as an integral part of our legal order. Also, the attempts to approximate the national legislation with the European standards and European Community are to be evaluated.

- The European Court of Human Rights is an effective tool for the protection of human rights and fundamental freedoms. This brings reliability since the court is guided by key principles like the democracy, peace, neutrality and independence. First, the individual who claims the violation of his rights and freedoms must exhaust all national remedies and then the international one. The European Court of Human Rights should be regarded as "the last hope for salvation." The European Court of Human Rights is always guided by the European Convention of Human Rights which supervises its operations. The success of the European Court of Human Rights activity is evident in the volume and nature of cases addressed to it, and the ways of solving them. The European Court of Human Rights decisions, in each case, are obligatory from the nature of the status that this court has.
- The right to a fair legal process, seen in its particular aspects as non-execution of the court's final decisions, extension of trial timelines, the right to a fair hearing before an independent and impartial court, the right to defense by a layer, etc.; Obviously, the non- execution of the judicial decisions is one of the issues on which the Albanian state has failed, despite the fact that in some cases our state was punished for this cause. On the other hand, the duration of judicial processes, has led to the success of private parties against the state. The causes which have led to overstretch of the limits have been

numerous and during the process of giving decisions in these cases, the European Court of Human Rights has interpreted Section 6 of the Convention in an expanded manner, an interpretation that should be taken into account by the national courts during the legal proceedings.

- From the entire contents of the paper, it is evident that civil trials in the Albanian courts face difficulty in their fair realization within a reasonable time by an independent and impartial court.
- Factors that cause it have emerged, such as: a performance which is not in accordance with civil law courts, especially when we face a disregard of the procedural rules; Incorrect behavior of the parties themselves in civil trials; Failure to execute the final judicial decisions; Non-implementation of the European Court of Human Rights decisions which are binding and enforceable; The lack of administrative capacity, etc.
- The legal representative in the International Human Rights Bodies is the institution which is responsible for attending the execution of the European Court of Human Rights decisions concerning Albania as a party and to promote the undertaking of certain reforms to efficiently fulfillment of the resulting obligations in a reasonable time.

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