STANDARDS OF DUE PROCESS OF LAW IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA: BETWEEN GUARANTEEING INDIVIDUAL RIGHTS AND THE EFFICIENCY OF THE JUSTICE SYSTEM

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Abstract

The right to a fair trial is one of the basic procedural rights, which ensures that everyone whose rights are violated is entitled to a fair and public hearing in front of an impartial and independent tribunal or court within a reasonable time. Such a basic right includes several procedural guarantees, out of which we can mention the right of access to justice, the right to a fair and public hearing and in the end resolving the cases within a reasonable time. The last procedural guarantee is deemed very important so that the courts of the general jurisdiction have to respect it and the subjects of the rights have to get their rights restored without unreasonable delays. In the Republic of Albania, the right to a fair trial is regulated under article 42 of its Constitution, but even though there are procedural guarantees for the parties in the court process, still the shortcomings in the country are visible. Hence, the role of the Constitutional Court of the Republic of Albania is pivotal in not just protecting the right to a fair trial for the individuals, but providing guarantees as well in order to direct the judicial system in the right track so that it cannot cause excessive delays for the parties in the process. In this paper, we are going to analyze the approach of the Constitutional Court toward the right to a fair trial before and after the judicial reform of 2016 with the attention on the new judicial map

KeyWords: *The Right to a Fair Trial, Right of Access to Justice, The Right to a Fair and Public Hearing, Reasonable Time, Constitutional Court*

Introduction

In a democratic society, the guarantee and protection of human rights and fundamental freedoms from the side of the state is a necessity. Article 6 of the European Convention on Human Rights regarding the right to a fair trial is considered one of the basic human rights because it guarantees to the individuals the right of having an effective remedy within a reasonable time in front of an independent and impartial tribunal or court. The right to a fair trial or the principle of due process is embraced by several procedural guarantees such as the right of having access to courts, equality of arms, and providing remedies within a reasonable time. If we pay attention domestically, in the Republic of Albania the right to a fair trial is regulated under Article 42 of the Constitution, guaranteeing the right to a fair and public hearing within a reasonable time. Even though the guarantees are established, yet the challenges in regard of respecting such a basic procedural right are eminent. Therefore, in order to protect such right, it is imperative to have an active Constitutional Court, which in the case of Republic of Albania it became more effective after the adoption of the Judicial Reform in 2016.

In this paper we are going to provide a thorough analysis firstly of the right to a fair trial and continue afterwards with the role of the Constitutional Court of the Republic of Albania in protecting and guaranteeing such vital right in the country before and after the adoption of the judicial reform and the new judicial map. The hypothesis that will cover the paper are:

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a) The importance of the right to a fair trial, tackling from its conceptual and normative foundations;

b) The role of the Constitutional Court of the Republic of Albania in regard of protecting and guaranteeing the right to a fair trial prior to the justice reform in the country;
c) The changes of the mechanisms of the Constitutional Court in the Republic of Albania in protecting and guaranteeing the right to a fair trial and its stance vis'- a – vis' the new judicial map.

As for the methodology used, in this paper we are going to provide qualitative and quantitative research analysis. In the qualitative research analysis, the attention will be first in analyzing primary sources such as the international conventions here to mention the European Convention on Human Rights (ECHR), more precisely the article 6 of the right to a fair trial and examining as well the basic components like access to justice, the right to a fair and public hearing, and restoration of the basic rights within a time-limit. In addition, we will evaluate Article 42 of the Constitution of the Republic of Albania, as well as other organic laws such as the law "*On the Organization and Functioning of the Constitutional Court of the Republic of Albania*". Secondly, we will step into the secondary resources such as: academic writings, international reports and the case studies coming from the ECtHR and the Constitutional Court of the Republic of Albania. In the quantitative analysis, secondary data will be used for the impact of the new judicial map and the overall cases treated by the Constitutional Court for the year of 2025 regarding due process.

1. Understanding the Conceptual and Normative Foundations of the Principle of Due Process of Law

The principle of due process of law, encapsulated as the right to a fair trial, can be considered one of the main principles and basic rights that ensures procedural guarantees for the parties in front of the court. Such principle is emphasized in Article 6 of the European Convention on Human Rights (ECHR), which in its first paragraph states that in the determination of the parties' civil rights and obligations or of any criminal charge against individuals, everyone is entitled to a fair and public hearing within a reasonable time (European Convention on Human Rights, Article 6, paragraph 1 1950, pp.9). Domestically, an interpretation of this article is given in Article 42 of the Constitution of Republic of Albania, precisely in its second paragraph, foreseeing that everyone, under the purpose of protecting their constitutional and legal rights, freedoms and interests or in the event of charges brought against them, has the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law (Kushtetuta e Republikës së Shqipërisë, 2017, Article 42, Paragraph 2).

In this regard, in order to interpret Article 6, paragraph 1 of ECHR, we need to analyze three important factors. The first one starts with "*everyone is entitled…*" that embodies the right of everyone to have access to justice. With the access to justice, according to the European Court of Human Rights (ECtHR) case law, we understand that the litigants should have an effective judicial remedy enabling them to assert their civil rights, meaning that everyone has the right to institute proceedings before courts. The second component is related with "*fair and public hearing…*" encompasses the concept of fairness, which should be applied to the proceedings in their entirety and not be confined only to *inter partes* (transl. between the parties) hearings. Mentioning that, we address the position of the ECtHR construing the right to a fair hearing based on several procedural guarantees, touching not just the organization and composition of the court or tribunal, but as well the conduct of the proceedings such as equality of arms etc.

On another side, the public hearing according to the case law of ECtHR, is important because it protects the litigants against the judicial arbitrariness, meaning the administration of justice in secret with no public scrutiny (European Court of Human Rights, 2013).
The third crucial element is "*...within a reasonable time*". This principle is one of the procedural guarantees within the right to a fair and public hearing. In order to guarantee this right, according to Kamilovska (2021), the principle of "*a trial within a reasonable time*" should be followed by the legislator while procedural rules are created. This principle is as well a direction that must be respected and applied by the courts, while if we look from the perspective of the subjects of rights, it aggregates their legitimate entitlement to get their rights protected and restituted in a time period that excludes undue delays (Kamilovska, 2021). Another international institution, the Venice Commission, have underlined the importance of such principle. According to the Commission, the ECHR has stated the importance of administering justice without further delays, which in turn might jeopardize its effectiveness and credibility (Venice Commission, 2006). It is this specific principle on which we are going to treat it more in the further sections.

2. The Scope of Individual Rights in Constitutional Jurisprudence: The Mechanisms of the Constitutional Court Regarding Procedural Safeguards in the Republic of Albania

Despite the protection and guarantee of the right to a fair trial, provided under article 6 paragraph 1 of ECHR and enshrined in the domestic Constitutions, still in the judicial systems of the signatory countries of the Convention, including here the Republic of Albania, exists a tendency to surpass such a fundamental right, causing as a result violations. Therefore, in the Republic of Albania, the role of the Constitutional Court remains necessary not only because it preserves the fundamental rights anticipated in the Constitution, but it raises as well the standards of the judiciary. Anyhow, the position of the Constitutional Court of the Republic of Albania in relation with the violation of the right to a fair trial was different prior to the judicial reform. This can be documented with the cases brought in front of ECtHR regarding the violation of the right to a fair trial, the first case of which it came in 2005. In regard of the length of proceedings, before the judicial reform, the Constitutional Court did not fulfill the criteria for becoming an effective judicial remedy and this was mentioned strongly by the ECtHR (Dobjani, N.D). In the case of Marini v.Albania, the Court highlighted that there was a failure from the government of that time to produce any case in which the Constitutional Court had ruled on a complaint with the object on the length of the proceedings, making it impossible to consider it as an effective remedy concerning the violation of this specific right (Case of Marini v.Albania, application no. 3738/02, 2007).
This is closely related with the declarative nature of decisions of the Constitutional Court based on the complaint, not granting any redress or relief for the subjects of violation pertaining to the excessive length of proceedings. Such aspect is mentioned in the case of Gjyli v.Albania, where according to ECtHR, the Constitutional Court did not offer any adequate redress, which means that it didn't offer any clear perspective to prevent the alleged violations or their continuations (Gjyli v.Albania, 2009, application no. 32907/07). However, everything changed with the advent of the judicial reform in 2016, which it was considered as a condition for furthering EU accession talks (Hoxhaj, 2021, p. 159; Maxhuni & Cucchi, 2017, p.3, cited by Rystemaj and Vokshi, 2023). The aim of the reform was to strengthen the independence and accountability of the judiciary (Anastasi, 2018, p.4 cited by Rystemaj and Vokshi, 2023) and most importantly to offer guarantees for a fair trial (Albanian Parliament, 2015a, p. 15, cited by Rystemaj and Vokshi, 2023). An important component of the judicial reform was the adoption of the Vetting process for judges and prosecutors (Rystemaj and Vokshi, 2023), aiming at reducing the corruption and as well increasing the public trust.

The judicial reform had an effect also in the constitutional justice with the amendments of the law "*On the Organization and Functioning of the Constitutional Court of the Republic of Albania*", bringing *inter alia* the mechanism for compensation in case of protracted proceedings before the Constitutional Court (Chubric, & Bogdani, 2017, p.11. cited by Rystemaj and Vokshi, 2023). This is reflected in Article 71/ç stipulating the right to seek fair compensation from the Constitutional Court in cases of excessive duration of proceedings before the Court or in judicial proceedings in front of ordinary courts (Law No.8577, date 10.02.2000, Art.71/ç, Par.1).

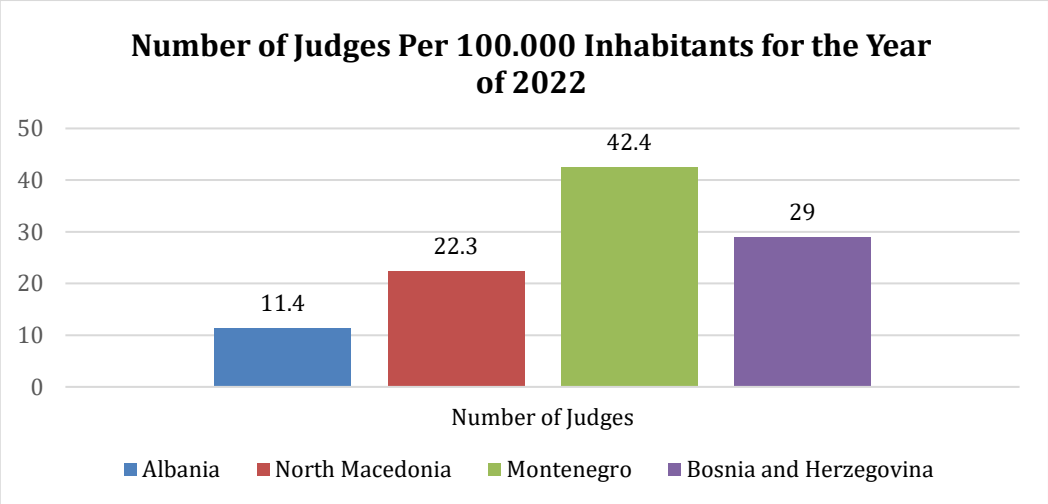
It is important to note that the Constitutional Court of the Republic of Albania with its jurisprudence have contributed on consolidating the most important constitutional principles as well as the basic constitutional human rights (Zaganjori et.al., 2012, cited by Tafani and Karamuco, 2021). Therefore, these principles and rights, such as the right to a fair trial, can only come to life and take the value that they deserve as a result of the interpretations made by the Constitutional Court (Tafani and Karamuco, 2021). Nevertheless, even though the Constitutional Court had a consolidated and an effective constitutional-juridical mechanism with the amendments done, still it didn't escape the Vetting scanner which lead to two years of its non-functionality from the year of 2018 until 2020. Back then, the Constitutional Court was unable to fulfill its mandate due to the absence of a quorum according to article 32 paragraph 1 of the law "*On the Organization and Functioning of the Constitutional Court of the Republic of Albania*" which foresaw that the Constitutional Court can examine cases with no fewer than two/thirds (six judges) of all judges (Law No.8577, date 10.02.2000, Art.32, Par.1). According to the European Commission report for the year of 2019, out of nine members, the court had only one that remained in the office, whereas the others left due to resignations, retirements and the vetting process (European Commission, 2019). This meant that even the quorum of six judges out of nine was not successfully fulfilled.

The stagnation of the constitutional justice would cease by the end of 2020, with the completion of seven judges, thus regaining its necessary quorum of minimum six members in accordance with article 32, paragraph 1 of the organic law and being fully functional on preserving the constitutional values. According to the statistics drawn by the European Commission, from December 2020 until mid-June 2021, the Constitutional Court has adopted twenty-seven (27) decisions, out of which fourteen (14) applications of non-constitutionality were accepted and thirteen (13) applications were rejected. Since 2020, the court has started to fully exercise its functions, including here the adjudication on pending constitutional disputes of competence between state powers and institutions (European Commission, 2021). While stepping now precisely on the approach of the Constitutional Court towards the right to a fair trial, we will evaluate as well the changes in the judicial system that came because of the vetting process and here we refer to the new judicial map.

The new judicial map came because of the hardships that the judicial system faced from the vetting process, leading into a huge number of judges removed, a high backlog of cases for the remained ones as well as an excessive time-length in resolving these cases. It started with the establishment of an inter-institutional working group from the High Judicial Council (HJC) on 2019, consisting of members of the High Judicial Council (HJC), representatives of the Ministry of Justice, representatives of the courts of first instance of general jurisdiction, courts of appeals of general jurisdiction, administrative courts and the High Court, as well as the support staff of the Council. Three years later, on 21st July 2022, the council of ministers approved the decision for the new judicial map where out of twenty-two (22) courts of general jurisdiction there would be thirteen (13), out of six (6) appellate courts there would be only one (1) and from six (6) administrative courts of first instance there would be only two (Skendaj, 2023).

The major purpose of the new judicial map was to guarantee the access to justice for the citizens and ensure an efficient judiciary while providing remedies within a reasonable time. But such a change was faced with a lot of seatbacks along the way. Based on the rule of law report prepared by the European Commission, only for the year of 2023 the disposition time on solving the cases further increased for all categories in first and second instance, but more in particular for the second instance criminal cases. Same goes for the administrative cases in the second instance where the disposition time remains very high (European Commission, 2025), but more severe are the civil and commercial cases again in the second instance, where according to CEPEJ (European Commission for The Efficiency of Justice) the disposition time reached 5.496 days which is a particularly high value (CEPEJ, 2022). That means that it will take years to resolve all the cases in the second instance for this category. There are many reasons why such an issue is still present, but the main one has to do with the judicial vacancies (European Commission, 2025). In the table below let's look at the number of judges per 100.000 inhabitants in the Republic of Albania comparing with the other regional countries prepared by CEPEJ.

Table 1



Source: European Commission for the Efficiency of Justice (CEPEJ), 2024

As we see, based on the latest findings of CEPEJ, in 2022 the total number of judges per 100.000 inhabitants in the Republic of Albania remains lower comparing with the other regional countries where the biggest number is in the Republic of Montenegro with 42.4 judges per 100.000 citizens. The situation in the Republic of Albania is critical, putting the number of judges in misbalance with the average number in the other Western Balkan countries. Conversely, the Constitutional Court had a different constitutional-legal opinion regarding the new judicial map. Specifically for this issue, the Court stipulated that there was a reasonable connection between the situation and the need for intervention. Because of the effects that the judicial reform brought, the Court underlined that it was necessary to intervene in order to ensure a functional system. Moreover, the Court considered the position of the High Judicial Council, which reiterated that the creation of more courts of appeal was impossible due to the human resource constraints, therefore this was the best solution (Vendim nr. 70 datë 27.12.2023, V-70/23).

But if we look at the statistics, the situation is different. In the last year of 2025, the Constitutional Court had increased its activity when it comes to the protection of the right to a fair trial. Only for the year of 2025 there are 85 final decisions taken, where in a large scale the subject matters are remitted towards the right to a fair trial. In order to have a clear tabloid,

let's have a look on the division of decisions taken based on the subject-matter in the table below.

Table 2. The Number of Decisions Taken by The Constitutional Court for the Year of 2025

Subject Matter of the Applications	Number of Applications Filed
Annulement of Decisions of Ordinary Courts	56
Failure to Adjudicate within a Reasonable Time	13
Incompatibility of laws (or their specific provisions) with the Constitution	6
Violation of law as a result of failure to adjudicate within a reasonable time	3
Correction/judicial expenses of decisions of the Constitutional Court	2
Abolition of decisions of the Council of Ministers as incompatible with the Constitution	2
Termination of the mandate of a judge of the Constitutional Court	2
Conflict of competences	1
Total	**85**

Source: Constitutional Court of the Republic of Albania, 2025

Based on the observations, the second highest number of cases decided were on the subject matter of the failure to adjudicate within a reasonable time. In such cases, the Constitutional Court highlighted that a long period of inaction cannot be justified solely by the judicial reform or the workload placed upon judges. In advance, the Court underscored that factors like the judicial reform, which are of a general nature, may be considered to an appropriate extent when assessing the duration of proceedings, but in no way they are sufficient to justify excessive delays (Vendim nr. 63, datë 02.06.2026, V- 63/26). In this regard, the Constitutional Court have paid attention to the "*applicant's interest and the risk posed to them by the excessive length of proceedings*", which constitutes an important aspect in the assessment of the reasonable duration of trials. According to the Court, certain categories of cases require the expedience of the judicial process. This means that cases which are "*personal and vital*", or those where there is a possibility that the applicant might pass away before the proceedings are concluded, must be handled with priority and urgency (Constitutional Court, 2024).

Conclusions

The principle of due process of law, encapsulated as the right to a fair trial, can be considered one of the basic rights that ensures to the parties the right to be heard in front of an impartial tribunal or court and get their case solved within the stipulated time limit. The right to a fair trial is anticipated in Article 6 of the European Convention on Human Rights (ECHR), which in its first paragraph states that in the determination of the parties' civil rights and obligations or of any criminal charge against individuals, everyone is entitled to a fair and public hearing within a reasonable time. Domestically, according to Article 42 of the Constitution of Republic of Albania in its second paragraph, everyone under the purpose of protecting their

constitutional and legal rights, freedoms and interests or in the event of charges brought against them, has the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law.

However, even though the protection and guarantee of the right to a fair trial is provided under article 6 paragraph 1 of ECHR and enshrined in the domestic Constitutions, still in the judicial systems of the signatory countries of the Convention, including here the Republic of Albania, exists a tendency to cause even sever violations of such a fundamental right. Therefore, the role of the Constitutional Court remains necessary not only because it preserves the fundamental rights anticipated in the Constitution, but it raises as well the standards of the judiciary. The position of the Constitutional Court of the Republic of Albania in relation with the right to a fair trial changed when due to the judicial reform an amendment of the law "*On the Organization and Functioning of the Constitutional Court of the Republic of Albania*" was conducted, bringing *inter alia* the mechanism for compensation in case of protracted proceedings before the Constitutional Court.

Because of the high number of removed judges due to the Vetting Process, the high backlog of cases left unresolved and an excessive time-length in resolving these cases, on 21st July 2022 the council of ministers approved the decision for the new judicial map where out of twenty-two (22) courts of general jurisdiction there would be thirteen (13), out of six (6) appellate courts there would be only one (1) and from six (6) administrative courts of first instance only two would be active. Challenges remained in this aspect, but yet the Constitutional Court considered this measure as necessary because of the effects that the judicial reform brought. Furtherly, it is important to mention the evaluations that the Court did after the judicial map changed, while underlining that the judicial reform is not a reason for an excessive delay of proceedings. In the end, the role of the Constitutional Court of the Republic of Albania in protecting the right to a fair trial is important since it is considered the guarantor and protector of the values of the Constitution, one of which are human rights and fundamental freedoms.

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