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## **IMPLEMENTATION OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN ALBANIA**

### **ABSTRACT**

The aim of this article is to present an overview of execution of court decisions in the Republic of Albania, seeing in the light of decisions which are given by the European Court of Human Rights. Many countries in the world have as their main goal strengthening of the rule of law. Albania, as a democratic and social country, has the responsibility of guaranteeing basic human rights and freedoms and is committed to the protection of human dignity and personality. The European Convention of Human Rights is the core concept of building governance and democracy, which has as its main goal the protection of human rights. This paper will analyze the implementation of ECtHR decisions in the Albanian Judicial System with a focus on the criminal system.

The effective execution of the final decisions of the European Court of Human Rights is one of the main commitments of the High Contracting Parties, which through the ratification of the European Convention on Human Rights and its additional protocols, have the obligation to respect the decisions of the ECHR in any case where they are a party.

This paper brings attention to the process of executing the final decision, which remains a complicated process, influenced by the social, economic and political situation of the contracting states and the mechanisms that serve to eliminate obstacles and difficulties, making it possible to execute final decisions in the most effective way

**Keywords:** *European Court of Human Rights, European Convention on Human Rights, Albanian Judicial System, execution of judicial decision*

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### **The relationship between international law and domestic law**

The relationship between international law and domestic law is not unknown. Based on the constitutional principles, the European Convention of Human Rights rests on the domestic law and the state parties cannot evade the obligations arising from the Convention. International law may be in the rank of domestic Constitutional law, even higher, or may have an intermediate position between Constitutional law and legal acts, or may not have this direct legal validity in domestic law.<sup>3</sup>

The Convention can also be placed in the ranks of ordinary legal acts as an integral part of the internal legal system of the country. But it can also be placed on legal acts. After its ratification in 1995, the Convention has precedence over the laws of the country, when these laws do not agree with it. Consequently, the European Convention on Human Rights occupies a prominent place in Albanian legislation. However, the issue of the relationship between domestic law and international human rights law has several aspects<sup>4</sup>:

- a. In contrast to other treaties and conventions, the ECHR aims to protect the individual from unjust actions by the authorities of his state;
- b. The ECHR intervenes in the internal legal order by requesting, for example, the adoption of a necessary law in a democratic society to fulfill a right guaranteed by the Convention;
- c. It has created its own bodies, especially the court, to supervise the fulfillment of its provisions by the national authorities.

Within it, individual petitions to the Court are envisaged, breaking down the usual barrier that exists between a particular person and international law. The decisions taken on the basis of the Convention by its organs often require the state parties to make relevant changes in the law. their internal so that they comply with the provisions of the Convention.<sup>5</sup>

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<sup>3</sup> The European Convention on Human Rights compared to the Constitution of Albania, Arben Puto, Tirana 2000 fq. 31

<sup>4</sup> The European Convention on Human Rights compared to the Constitution of Albania, Arben Puto, Tirana 2000 fq. 46

An important issue is that which concerns the position of domestic law vis-à-vis the convention bodies. It is understood that domestic law plays a role in the procedures and decision-making by the Convention bodies. In principle, in international law, an international court is not competent to declare a law invalid and it does not directly compel the state to change the law. This stems from the fact that the execution of the decisions of the European Court is not in its hands.

The supervision of the execution of these decisions is entrusted to the Committee of Ministers, which provides that:

"The final decision of the Court is transmitted to the Committee of Ministers which supervises its implementation."

A special case is also when there are no internal legal provisions. What is more important and worth emphasizing is the fact that the internal law must be adapted to the European standards for the protection of human rights. A necessary condition for consideration of individual requests by the court is what is called "*exhaustion of internal remedies*".<sup>6</sup> This means that the case must have passed all the procedures before the internal bodies. The ECHR stipulates that:

"The Court cannot be set in motion, except when internal legal remedies have been exhausted, and within a period of six months from the date of the final internal decision".

Another important element concerns the effects that the Court's decisions have on our domestic law. These effects may vary according to the content of the trial. If the Court finds a law incompatible with the Convention, the law must be changed. If the European Court has decided that a state has violated the Convention, the state in question is obliged to restore the person concerned to the right he had or could have. Full refund depends on the concrete circumstances and can be done as much as possible. The relationship between European law and domestic law has a close relationship, which is expressed in the direction of the application of general norms of law, in the direction of the exhaustion of domestic means, the interpretation of norms and the effects of the implementation of the decisions of European Court in domestic law.<sup>7</sup>

In general, the relationship between the Convention and domestic law is expressed in this connection. This results in two legal orders in the relationship between them. The Convention represents a superior legal order in the field of human rights, as long as the states are subject to the

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<sup>6</sup> Manual Towards practice: how to use the jurisprudence of the European Court of Human Rights at the domestic level, Ledi Bianku, Tirana 2020; fq 34

<sup>7</sup>The ABC of European Union Law Borçard, Klaus Diter, 2010 fq. 210

jurisdiction of the European Court in this particular sphere. The ECtHR has an exclusive competence in our legal system. This competence is accepted by our internal legal system, as a result of the implementation of Article 122 of the Constitution, as well as its Article 17/2, which oblige ECJ decisions to be implemented directly<sup>8</sup>.

On the occasion of the ratification of the ECHR, the Assembly of the Republic of Albania, as a representative of popular sovereignty, has assumed obligations that are enforceable by all state bodies of the Republic of Albania, including courts of all levels, regardless of their type . For the above, the obligations carried by each of the powers for the implementation of the final decisions of the ECtHR are different. If these obligations are immediately recoverable for the executive, such as in the case of the payment of damages imposed by the ECtHR, as far as the other two powers are concerned, there is room for interpretation.

Especially with regard to the decisions of the ECtHR on criminal proceedings, there is a need for the legislature to take measures to harmonize the internal legislation with the provisions of the ECtHR. If there is no harmonization, that is, if we are in cases of legislative vacuum, or when the legal provisions contradict the provisions of the Convention, then the judges of each level directly apply the decisions of the ECtHR in accordance with Article 122 of the Constitution and Articles 19 and 46 of KEDNJ. Article 122 of the Constitution expressly states that the provisions of international agreements have precedence over the laws of the country that do not agree with it. The implementation of the decision of the ECtHR must be carried out in the most efficient way possible and without infringing an important element of the right to a regular legal process, precisely the unreasonable duration of the process. The Constitutional Court in its decision-making argues that the respect of ECHR and constitutional standards is an obligation not only of it, but also of the courts of ordinary jurisdiction, in particular the Supreme Court due to its special competences of a revisionary nature, but also in terms of the unification of judicial practice.<sup>9</sup> As the ECtHR has expressed in one of its decisions:

"The role of a high court in a contracting party is exactly the resolution of conflicts, the avoidance of divergences and stability."

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<sup>8</sup> The European Convention on Human Rights - A living instrument EU, 2020 fq. 86

<sup>9</sup> Jurisprudence Guide on Torture and Human and Degrading Ill-treatment, Debra Long, 2020 fq. 60.

In fact, in the case under review, the Supreme Court itself became the source of uncertainty by undermining public confidence in the legal system and the rule of law.<sup>10</sup>

### **The need to improve criminal legislation**

Since 1995, in which it was adopted, the Criminal Code has been amended more than 17 times, while the Constitutional Court has issued decisions to repeal certain provisions of this Code. These changes are very high, compared to the changes that laws have undergone in other European countries. The numerous interventions that have been made and are being made to the Criminal Code are estimated to have affected over 70% of the provisions of this Code, which has caused damage to its structure and the balance of the criminal offenses provided for by it, added sub-paragraphs upon sub-paragraphs, which have created breaks in the logical line between articles<sup>11</sup>. These changes are rarely made on the basis of a very broad public discussion and are well thought out and with a long-term perspective. The sharp changes point to a penal policy without long-term planning and coordination. So, in any case, these proposals for changes in principle need to be discussed and evaluated longer, especially in relation to the new figures of criminal offenses which are foreseen in the code for the first time.

A genuine revision of the Code should end the continuous additions, harmonize the structure as well as the changes that have been made so far, unifying them with international standards and contemporary criminal policy in response to forms of crime. The consultation of these changes should be extensive and in particular with criminologists and pedagogues of special criminal law. It is understandable that due to the volume and extremely dynamic developments that the justice reform has had, there may have been difficulties in the overall reformation of the Criminal Code. Consequently, the complete revision of the Penal Code had to remain an objective of a later moment, which could coincide with the first results of the implementation of the law reform.

**Harmonization of criminal legislation with EU standards**The European Parliament and the Council, by means of directives adopted under the ordinary legislative procedure, may establish minimum rules regarding the definition of criminal offenses and sanctions in the areas of

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<sup>10</sup> Court decision, "Ceka v. Albania", Strasbourg 23.10.2012 fq. 134

<sup>11</sup> The European Convention on Human Rights - A living instrument EU, 2020 fq. 67

particularly serious crimes with a cross-border dimension resulting from the nature or impact of the offenses such or from a special need to fight them.<sup>12</sup>

Based on law 36/2017 in the Strategy Document<sup>13</sup>, specifically in objective no.5, the improvement of the Criminal Code was foreseen in order to harmonize it with EU standards. The draft law paid special attention to minors as the subject of criminal offenses by adding the types of alternative punishments in order to rehabilitate them, creating opportunities for the justice bodies in cases where the criminal offense was committed by a minor to apply educational measures to him and not a prison sentence, such as:

- i) reprimand;
- ii) seeking forgiveness from the victim;
- iii) the recovery or compensation of the damage caused by the criminal offense or the payment of the fine, according to his abilities, income and assets;
- iv) involvement in the work of humanitarian organizations or in activities related to the community or the environment;
- v) not going to certain places or entertainment activities or staying away from certain persons who have a harmful effect on him;
- vi) undergoing professional medical treatment or treatment for drug addiction or other addictions with the prior consent of his legal representative;
- vii) not leaving for a long period of time from his place of residence or usual place of residence, without special approval from the center for social welfare.

The number of children in conflict with the law in Albania has been increasing. One of the indicators is precisely the increase in the number of repeaters. In an analysis of the main causes that bring children into conflict with the law, it is undoubtedly the lack of social-economic measures in the direction of families, but also the lack of a national and local reference system has brought such a problematic situation<sup>14</sup>.

In recent years, positive steps have been taken in Albania in the approach of national legislation to international standards guaranteed in international acts. Article 37 of the Convention on the Rights

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<sup>12</sup> Lectures Towards a European Criminal Law Code, Debra Long, Luxembourg, 2011 fq.121

<sup>13</sup> Law No. 37/2017, Code of Criminal Justice for Minors art.5 fq. 18

<sup>14</sup> European Union: Philippe Samyn, Valle, Happold, "European Union Council", 2018 fq. 136.

of the Child <sup>15</sup>contains the prohibition of torture and cruel, degrading, inhumane treatment. There should be neither capital punishment nor death penalty nor life imprisonment for children; arrest, detention or imprisonment of a child must be in accordance with the law and used only as a measure of last resort and for the shortest possible time, every child deprived of liberty must be treated humanely, must be separated from adults and must always be in contact with his family; children deprived of their liberty have the right to legal assistance and the right to contest the deprivation of their liberty and to have a quick decision regarding the case, etc.

Finally, the initiatives in the framework of harmonization have to continue with the improvement of the legislation in the relevant judicial institutions, in order to progress with the finalization of the new judicial map, the creation of a unified methodology for the collection of judicial statistics. According to the recommendations of the EC, special attention should be paid to the harmonization of judicial practice and the implementation of the decisions of the European Court of Human Rights.<sup>16</sup> In the field of prisoners' rights, it is necessary to increase the training capacities of the General Directorate of Prisons, and take an awareness initiative, which aims to inform prisoners about their rights and the mechanism established for their protection.

#### **The impact of the European Convention on Human Rights.**

The ECHR is one of the most important international treaties of the EC, which provides for all the rights and freedoms that its member states have the obligation to guarantee to individuals within their entire jurisdiction<sup>17</sup>. To see their applicability, the EC has not created the mechanism of their implementation in the international framework, while states and individuals in case of violation of these rights can turn to the court that deals precisely with the violation of rights, ECJ, based in Strasbourg.

The new thing brought by the ECHR is precisely the binding character of the application of its norms. With the approval of the Constitution of the Republic of Albania in 1998, it was sanctioned a special and important role of international agreements as well as one of the most important sources in the internal Albanian legal order. Article 116 of the Constitution foresees the hierarchy

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<sup>15</sup> Law No. 37/2017 Code of Criminal Justice for Minors

<sup>16</sup> "Horizontal Instrument for the Western Balkans and Turkey" 2019-2022 fq. 89

<sup>17</sup>The European Convention on Human Rights - A living instrument EU, 2020 fq. 80

of sources of law, starting with the Constitution, International Agreements, laws and acts of the Council of Ministers. Likewise, to further understand the above provision, it is worth continuing with the constitutional provision provided for in Article 122 points 1 and 2 thereof, where it is sanctioned that:

1. "Each ratified international agreement is part of the internal legal system as it is published in the Official Gazette of the Republic of Albania. It is applied directly, except when it is not self-applicable and its application requires the issuance of a law. Changing, supplementing and repealing laws approved by the majority of all members of the Assembly for the effect of ratifying international agreements is done with the same majority<sup>18</sup>.

2. An international agreement ratified by law prevails over the laws of the country that do not agree with it".

From the reference of these constitutional provisions, it is easy to understand the importance of international agreements in our internal legal order after their ratification by law by the Republic of Albania. In this logic, it is worth emphasizing the privileged role of the KEDN in the Albanian constitutional order compared to all other agreements. If we refer to Article 17 of the Constitution, we will understand precisely its privileged position in the internal legal order, specifically Article 17 of the Constitution sanctions that:

1. "Limitations of the rights and freedoms provided for in this Constitution can only be established by law for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it<sup>19</sup>.

2. These restrictions cannot violate the essence of freedoms and rights and in no case can exceed the restrictions provided for in the European Convention on Human Rights".

By means of this provision, the ECHR has a constitutional or quasi-constitutional status only with regard to the limitation of the protection of human rights. According to Article 116 of the Constitution 4, the Convention, as an international agreement ratified by law, ranks immediately after the Constitution in the hierarchy of legal norms. As a result, it occupies an important place in domestic law and becomes mandatory to be implemented for every state, for all state bodies including here and courts of every level as well as the bodies that implement their decisions. The

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<sup>18</sup> The European Convention on Human Rights - A living instrument EU, 2020 fq. 98

<sup>19</sup> Constitution of the Republic of Albania Amended by Law No. 76/2016, dated 22.7.2016



guarantees of the Convention affect the interpretation and protection of rights and freedoms fundamental rights of the individual expressed by the Constitution of the Republic of Albania. In addition, the Constitutional Court in its jurisprudence has emphasized that the text of the Convention and the jurisprudence of the European Court of Human Rights serve to make the constitutional interpretation and to determine, case by case, the limits of fundamental constitutional rights.

This position of the Convention comes as a result of the commitments of the Albanian State to provide a guaranteed protection to basic human rights and freedoms. Another important aspect concerns the obligations deriving from the jurisprudence of the European Court of Human Rights: for the parties participating in the trial, the contracting parties, upon ratification of the Convention, are obliged to guarantee the compatibility of domestic legislation with the Convention. The practice of this Court is important for the guiding values of its jurisprudence for Albanian courts as well.

### **Conclusion**

The special status that KEDNJ has in the hierarchy of normative acts and the dimension in which this position appears thanks to the constitutional jurisprudence, has made possible the provision and guarantees for the protection of fundamental rights and freedoms at the national level.

The jurisprudence of the ECtHR has contributed not only to the alignment of our legislation according to the required standards, but also to the strengthening of the constitutional order by including in it the best European values and principles, as the only way to go towards a state legal and democratic.

Our state must effectively ensure the implementation of the guarantees of Article 2, 3, 5, 6 and not only, to avoid the many costs that the violation of these rights brings. Continuous enrichment with principles, recommendations from the best European practices constitute an important value for our jurisprudence, but which in no case can diminish the role and responsibility of our responsible authorities. Under the idea of social justice, emphasis is placed on the fact that public authorities must ensure an essential contribution to the development process of any state.

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Thanks to the need for regulation and harmonization of criminal legislation, the numerous changes in the Criminal Code indicate a criminal policy without long-term planning and coordination. These changes are rarely made on the basis of following due process. Under the influence of the pandemic situation, provisions were created which provided for maximum penalties. These provisions issued within the framework of preventive measures against Covid-19, have been disproportionate, hasty and unjustified

The system of the Convention and its complementary nature in relation to our legal system compels our authorities to take the necessary measures to make the guarantees stemming from the Convention as effective as possible. The increase in the number of applications to the ECtHR and the decisions that this court addresses to our courts is an indication that we still have violations and violations of the rights, principles, and standards of the Convention by the Albanian authorities in our legal system.

The role of constitutional jurisprudence for the elimination of these shortcomings is primary. Continuous enrichment with principles, recommendations from the best European practices constitute an important value for our jurisprudence, but which in no case can diminish the role and responsibility of our responsible authorities. Under the idea of social justice, the emphasis is placed on the fact that public authorities must ensure an essential contribution to the development process of any state.

The Constitution attributes the power of the internal law and sometimes even the supremacy over the latter should no longer be an excuse for the states to not implement their constitutional obligations and the international obligations arising from them.

A genuine review of the Code should put an end to the continuous additions, harmonize the structure as well as the changes that have been made so far, unifying them with international standards and contemporary criminal policy in response to forms of crime. The consultation of these changes should be extensive and in particular with criminologists and special criminal law pedagogues.

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