

## Extraordinary legal means against final criminal decisions in Albania

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### Abstract

This paper aims to address the extraordinary legal means against a final court decision in a criminal process, which means the review of a court decision at the Supreme Court of the Republic of Albania. In jurisprudence and practice of procedure, the usual means against a final court decision consist of complaint or appeal to the Court of Appeal and Recourse to the Supreme Court.

The Criminal Procedure provides importance to common means of appeal against a final decision in general and to the extraordinary means of retrial for a final decision in particular. In reality, the extraordinary means against a final criminal decision is nothing but the application that the parties address to the Supreme Court in order to review and decide on the final decision of the lower courts. However, in this case, the application for review must contain *new evidence*, which was not known and could not be known by the parties in all instances (arbitration levels), an evidence of great importance in the judicial process that can change the entire course of the previous judicial process. In this sense, the criminal college of the Supreme Court, in the consultation chamber, through the evaluation and assessment of the new evidence, may perceive his conviction so as to decide to uphold or reverse the final court decision and the delivery of the case for review to the lower competent court which has given the previous final decision for the defendant.

The goal of addressing the review means of final decisions in criminal processes is that justice be served, taking and examining the criminal process, all evidence related to the offense, or the facts and circumstances of its commission, which were not previously known and received, but that may affect the guilt or innocence of the defendant. The paper starts with an introduction and it is divided into several sub-topics which first show the legal means, the extraordinary legal means, the review of the final criminal decision, and finally the conclusions.

**Keywords:** Review tools, final decision, final decision, court, prosecutor, defendant, lawyer, new evidence.

### Introduction

This scientific paper shall address a topic on extraordinary legal means, types of extraordinary means, terms for their submission, court competence, persons authorized to submit these means, etc.

Despite the guarantees provided in criminal proceedings, which aim at uncovering the truth, despite the fact that the judgment of a criminal proceeding aims at the proof or substantiation of the factual situation, the way the occurrence took place in case of commission of the offense, it is not excluded the possibility that the court's decision be incorrect, or the court decision to have been taken in serious breach of material law and the criminal procedural law.

The causes which lead to taking an unfair decision or not based in law, may be

different, for example: errors, erroneous estimation of the evidence administered in court session, or revealing new evidence, very important for the whole process, because the final court decision had been given. However, on one side, the feedback and requirements of society are such that the final court decision is fair and lawful. On the other hand, it is a fact that it is not in the interest of society to implement a final court decision, which contains significant procedural flaws.

In order to prevent the legal effect of such decisions, the Criminal Procedure Code of the Republic of Albania anticipates a certain system of procedural protection means that the parties and certain entities that have legal interest can make use of against decisions made by the court. The duty of procedural subjects is that in the phase of judicial control review to avoid making a wrong decision, in such a way that a lawful, fair and final decision is reached.

A final decision has the power of law on the specific criminal issue, which is determined based on the evidence reviewed, debated by the parties and administered by the court hearings; therefore it should be implemented when there are no legal obstacles for its execution. Taking a final court decision and its effect is based on the need and interest of society, so that any litigation has its termination. In the circumstance attested based on the experience, the case tried and which has become final, in most cases, is simultaneously a case with proved factual situation and a case adjudicated in a fair and legal manner. However, it is possible and it happens that a criminal case is tried and the decision becomes final unfairly due to the errors of factual nature, legal errors or procedural violations. For this reason, the Criminal Procedure Code allows us the possibility of appeal and judicial review of the final decision through the use of extraordinary legal means.

### Legal means

Legal means are procedural actions through which the parties and other authorized persons provided for in the criminal procedure, challenge or object the final decision of the competent court, which they consider unfair and illegal. These subjects require that the court, after legitimizing their claim, prove the merits of the allegations and claims of each party, as well as administration and evaluation of new evidence, unknown and unexamined before, and eventually decide for the upholding, modification or cancellation of this decision and taking a new decision. The procedure followed by these legal means is in direct relation with the principle of arbitration in several instances, which enables that some courts in some instances decide for a certain legal case. This way creates the possibility to eliminate the eventual flaws of a court decision in a lower level.

The legal means that are used to challenge or object a court decision can be divided into regular legal means and irregular legal means or extraordinary means. *Their borderline is the final form of the court decision.* Thus, the regular legal means is exercised against the final decision of the judicial district court of first instance or the Court of Appeal, which has not yet become final and as such it hinders achieving or obtaining a final decision until the court of highest instance finally decide on taking its decision on the appeal of the parties. While, unlike the normal means of appeal against a decision

that has not become final, the extraordinary legal means are used against decisions which have become final. (which have acquired or received the absolute form) Regular legal means are considered the complaint or appeal against a final court decision of the first instance and court of appeal, as well as recourse to the Supreme Court.

Meanwhile, exceptional means are considered the application for the review of a final criminal decision and the application for protection of lawfulness required the prosecutor and not provided in the new code of the criminal procedure. Below, we will deal with the revision of the criminal decision that has become final as an extraordinary legal means.

### **Extraordinary legal means against a final court decision**

The criminal court decision of first instance, in its legal review criteria, can be challenged or objected by appeal or appeal in second instance, or through recourse to the Supreme Court. Upon the end of the trial in the last instance of the trial, put in motion by procedural entities through appeal means, or when the parties explicitly or tacitly waive or withdraw the appeal against the judicial decision challenged, the court decision becomes final. The final court decision, as a rule, is definitive and immutable. Whatever is determined in a final decision, if returned for trial, becomes a matter of judgment (*res iudicata*).

However, there is a possibility and it happens that a criminal case which has become final was judged improperly by the court because of its violations of the substantive law or criminal procedural law. Thus, the court upon making such a decision might err on the legal qualification of the offense, in certifying the facts, management, review and its improper estimation of evidence, or new facts and evidence have been submitted of which it is obvious that the factual situation was not determined correctly, or for reasons and new conditions for whose existence the court had not been aware, which show that the court acting within the limits of the law has given more severe punishment. In this regard, despite the views that the case tried is considered as a case of factual state fairly proved and tried according to the law, and in order to prevent the implementation of decisions with certain flaws, the Criminal Procedure Code of the Republic of Albania, exclusively allows the possibility of challenging or objecting the final decision with *extraordinary legal means*.

Challenging or objecting the final court decision with extraordinary legal means may be due to factual nature errors or legal errors.

Extraordinary legal means include: review of a final decision, application for extraordinary mitigation of sentence and application for protection of lawfulness. In our code of criminal procedure under Article 449, it is anticipated only the review of decisions that have become final, even when the sentence has been executed or ceased. Common to these three extraordinary legal means is that they are directed against the final decisions of the courts, but that naturally differ from one another. The application for review and the application for extraordinary mitigation of the sentence are related to the improvement of the actual situation, while the application for the protection of lawfulness is related with the avoidance of legal violations.

Another distinguishing feature is that the application for reviewing the final decision and the application for an extraordinary mitigation of punishment are legal means of the party in the trial, and as such they have exclusive and unilateral character, while the application for legal protection is a legal means which may be implemented by the State Prosecutor.

### **Review of the final criminal decision**

The criminal judicial process, which has finished upon taking a final decision or with the declaration of the final decision, at the application of the interested subject or authorized person, can be reviewed only in cases and under the conditions provided in Article 450 of the Criminal Procedure Code.

Review of the final court decision, related to the criminal court procedure, as an extraordinary legal means, is directed against the factual situation certified with the final decision through which the criminal case has been settled. Following such application, the decision cannot be challenged due to violations of the law. It can neither be required that an extraordinary procedure should include the evaluation of the certifying material, which has been estimated in regular judicial procedure, because that would mean opening a judicial instance or the principle of *res judicata*. The application for review of a final criminal decision may be filed against the decision by which the criminal procedure is ceased or against a decision towards which it is indicated that the factual situation is proved unfairly. However, this step must be justified by *new facts and evidence* about which the court did not know and did not have any possibilities to know that they existed, or they have been discovered later after the termination of the judicial process with final decision. In the jurisprudence of this type of trial some variants of reviewing criminal procedure against the final decision are known such as:

Upholding a final criminal decision, changing a final decision judgment without reviewing the criminal procedure, the continuation of the procedure, reviewing the criminal procedure by final judgment, reviewing the criminal procedure ended with a final verdict.

### **Amendment to a final decision**

According to doctrine and judicial practice, a final criminal decision may be amended without reviewing the criminal procedure when:

1. In two or more decisions of the same convicted person several sentences have been announced with final decisions, without applying the provisions related to the merger of sentences given to a single sentence;
2. in the case of a single sentence under the provisions for merged criminal offenses, the punishment included in the sentence announced according to a previous court decision for merged offenses has also been considered; or
3. The final decision, through which a unique punishment was given for some offenses, can not be executed partly due to the amnesty, pardon or for other legal reasons.

In the first case, the court with a new decision amends the previous decision for given sentences and it gives a single sentence. Taking a new decision is the competence of

the court that tried the case on its merits and has given the most severe measure of punishment. When sentences of the same type have been given, the new decision is taken by the court which has given the most severe punishment, whereas, when the penalties are the same, the decision is taken by the court which last reviewed the criminal case and has given the respective punishment.

In the second case, the decision is amended by the court, which on the occasion of giving such unique punishment has erroneously included the punishment that is involved in any other previous decision.

In the third case, the court which adjudicates in the first instance, amends the previous decision regarding the punishment and gives a new sentence, or determines what part of the sentence given with the previous decision shall be executed.

The Criminal College takes a new decision in court hearing with the proposal of the state prosecutor when the procedure was initiated at his application or of the accused, but after hearing the opposing party.

### **Continuation of the review procedure**

When the charge of the prosecutor is rejected because there are circumstances that exclude criminal liability or the procedure was conducted without the application of the state prosecutor, the required proposal of the convicted or his guardians has been missing, and when the legal inheritor has died, at the application of the state prosecutor, the procedure continues as soon as the reasons for taking such a decision cease.

### **Review of the ceased criminal procedure with a final decision**

The criminal procedure ceased with a final decision is reviewed when the state prosecutor withdraws from the charge and it is proved that the withdrawal is the consequence of the criminal act of misusing the official position of the state prosecutor. When the charge (indictment) is rejected due to the lack of sufficient evidence, in order to support the reasonable doubt, based on the fact that the defendant has committed the criminal act anticipated and should new facts and evidence be discovered and collected, a new indictment may be raised, when the criminal college reviews the case decides that the new evidence and facts justify such action.

The criminal procedure terminated by a final decision may be reviewed only in the following cases (Article 450 of the Criminal Procedure Code):

- a) when the facts of the grounds of the sentence do not comply with those of another final sentence;
- b) when the sentence is relied upon a civil court decision which after has been revoked;
- c) when after the sentence new evidence have appeared or have been found out which solely or along with those ones evaluated prove that the sentenced is not guilty;
- ç) when it is proved that the conviction is rendered as a result of the falsification of the acts of the trial or of another fact provided by law as a criminal offence.

The Criminal procedure terminated by a final court decision may be reviewed only in favor of the defendant, unless proved that the decision was based on forged documents

or false statement of a witness, expert or interpreter, or it is proved that taking the final decision is a consequence of the offense committed by a judge or a person who undertook investigative actions, are a consequence of the offense committed by the defendant or the person acting on his behalf against a witness, expert, interpreter, state prosecutor, judge or their relatives.

Review of the criminal procedure against *the decision of innocence* of the defendant is allowed only within five years from the time of announcing the final decision.

In cases when it is proved that the decision was based on on forged documents or false statement of a witness, expert or interpreter, or it is proved that the decision is a consequence of the of the offense committed by a judge or a person who undertook investigative actions, upon a final decision, should it be proved that these persons have been declared guilty for the respective offenses or not? When the procedure against these persons cannot be implemented because they have died or certain circumstances exist which exclude their criminal prosecution, the facts in these cases may be proved with other evidence as well.

The review of a criminal procedure may be required by judicial parties, which means: the convicted or his custodian and the prosecutor. After the death of the convicted, the review may be required by his legal inheritors or relatives such as the ancestors and descendants, spouse, brothers, sister, uncle, aunt, nephews, nieces, children of brothers and sisters, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, stepson, stepdaughter, stepfather and stepmother. Such legal criteria are determined in Article 460 of the Criminal Procedure Code.

The application for the review of the criminales procedure may be set out even after the convicted have served the punishment, without taking into account the limitation, amnesty or remission of sentence.

The application for review of the decision is submitted at the Supreme Court, as provided in Article 453 of the Criminal Procedure Code.

The application for review of a criminal procedure with final decision is decided by the Criminal College at the Consultation Chamber without the presence of the parties. Upon deciding for the review application, the judge, who has participated in taking the decision in the previous procedure, does not participate in the college.

The application shall include the legal basis, according to which the review is applicationed, and the evidence which argument that facts where the application relies upon. If the application does not contain such data, the Court, based on Article 453 of the Criminal Procedure Code, upon a judicial decision, rejects the application of the party.

When the court does not reject the application, based on the results of the judicial investigation, it decides to reverse the decision and delivery of the case for retrial by another panel of judges to the first instance court which has given the decision or the court of appeal, where an application has been made only against its decision. The decision is final. In the court's decision granting the review of the criminal procedure, the court shall order the immediate assignment of a new judicial review or return of the case to the investigation stage, or the beginning of the investigation when the investigation has not been conducted before.

For the new procedure implemented under the decision granting the review of the

criminal procedure, the same provisions as those of the previous procedure apply. In the new procedure, the court is not bound by decisions taken in the previous procedure.

Upon taking a new decision, the court cancels or amends the previous decision or only a part thereof, or upholds the previous decision. In the sentence given by the new decision, the court must calculate the conviction served by the defendant, and when review is allowed only for any offense for which the accused has been convicted or acquitted, the court gives a new sole sentence according to the provisions of the Criminal Code.

In the new procedure the court shall comply with the principle of "reformatio in peius", according to which if an appeal is filed only by the defendant, the decision regarding the legal qualification of the offense and the criminal sanction can not be altered to his detriment. (Article 425 of the Criminal Procedure Code)

The application for extraordinary mitigation of punishment may only be exercised in favor of the defendant. The application for extraordinary mitigation of sentence requires that the final decision be changed as regards the decision on punishment.

### **Conclusions**

In the end of this paper, we come to synthetize the very important and key role that legal means have for the review of a final decision of the court as common tools in general, and the means for the review of a final decision as an exceptional tool in the criminal process in particular.

Review of final decisions is an extraordinary tool for combatting final criminal decisions. As a rule, it is made for certain reasons, tied to the merits of the decision in law and in fact. The application for review of the judgment can be made at any time even if the sentence has been executed, but even when it has been ceased. While, in the case of reviewing decisions of innocence, the review is allowed only for decisions given for crimes and when 5 years have not elapsed following the decision.

### **References**

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