

Individual Appeal to Albanian Constitutional Court The object of control, the subjects that are legitimized, the conditions of legitimacy

The German model as a guide to internal jurisprudence over the control of public act

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Abstract

The new constitutional changes brought about a reform of the legal system for the protection of fundamental civil and political rights and liberties. In this regard, for the first time in the Albanian legal system is provided the institute of "**Individual Appeal**" at the Constitutional Court, which legitimizes the subjects of the right to address to the Constitutional Court for violating the fundamental rights and freedoms set forth in the constitution. This institute, unlike the previous constitutional complaint, extends the circle of rights to which citizens, entities of the right can address to the Constitutional Court.

The dissertation will focus on the innovations of this constitutional reform, the distinction between the previous system of appeal to the Constitutional Court and the current system, but also the distinction between "*individual appeal*" and "*popular claim*". Particular attention will be paid to the conditions that constitutional and legal norms provide for the legitimization of subjects, enriched with the practice of the Constitutional Court. The individual appeal institute being a new model will be compared with the case law of the European Courts, mainly of the German Federal Constitutional Court, in order for this practice to serve scholars and applicants for as long as possible legally.

Key Words: Individual appeal, actipopularis, public act, effective access.

1. Introduction to the model of the individual appeal

In the context of the constitutional and legal changes, also known as the "*justice reform package*", the provisions related to the scope of the Constitutional Court as regards the model and powers of constitutional control were also amended and the circle of rights legitimize physical persons to invest in the Constitutional Court. With previous provisions, the role of the court as a "*guarantor*" of fundamental rights and freedoms was limited, as they were included in the area of constitutional action only when their violation was committed in violation of the due process. In this way, Article 134/2 of the Constitution unchanged, provided that "*the entities provided for in subparagraphs dh, e, ë, f and g of paragraph 1 of this Article may apply only for matters relating to their interests.*" This sphere of constitutional action meant that the role of the court extended to the formal control of constitutional rights rather than to those of a substantive nature. That is, the individual could not ask the Constitutional Court

to "control the constitutionality of a law or other public act". In this line, the Constitutional Court stated, "The Court considers that the obligation to initiate an incidental check before it belongs to the courts of ordinary jurisdiction when they consider that the law on which the case law is to be based is unconstitutional. The parties have the right to request the court to initiate a concrete anti-constitutional review, but in the end it is the court that decides and the parties can not directly seek such control before the Constitutional Court. For this reason, the Court considers that the applicant is not one of the subjects that may require the initiation of an incidental check before this Court¹."

This competence of the Court, in the way it has been exercised so far, focusing only on the procedural control of the process and not the substantive aspect, has been criticized. The wording of Article 42 of the Constitution according to which freedom, property and constitutional and legal rights cannot be violated without a due legal process, speaks about substantive constitutional rights, and therefore individuals are justified in seeking protection of the rights of their constitutions through a due legal process and not merely the rights conferred by fair trial². For these reasons, the lawmaker deemed it reasonable in the function of a more effective protection of human rights and fundamental freedoms to expand the competences of constitutional court also in terms of substantive control. In this regard, Article 131/1 of the Constitution provides that the Constitutional Court *has the competence "the final judgment of individuals' complaints against any act of public authority or a court decision that violates the fundamental rights and freedoms guaranteed by the Constitution after being exhausted all effective remedies for the protection of these rights, unless otherwise provided in the Constitution"*³. This constitutional norm for the purpose of its implementation is also channeled into the "Law on Organization and Functioning of the Constitutional Court of the Republic of Albania". According to article 49 of this law "The right to put into motion the Constitutional Court for the compliance of the law or other normative acts with the Constitution or with international agreements is made by individuals when they claim that they are directly and directly violating the rights and their freedoms set forth in the Constitution after exhaustion of all legal remedies for this purpose, and when the act that objects is directly applicable and does not foresee the issuance of sub-legal acts for its implementation⁴."

2. Legitimacy in the case of "individual appeal" and the difference with 'actiopopularis'

Taking into account the normative, constitutional and legal context, legitimacy in the Constitutional Court is done when certain conditions are met. In lieteral but also teleological interpretation of Article 131/1 / f of the Constitution in conjunction with Article 49 of the Law on the Constitutional Court, these conditions are: **(i) Individuals have been violated a right** **(ii) the right to be violated of a constitutional nature;** **(iii)**

¹ Decision No. 23 of 20.04.2016 of the Constitutional Court of the Republic of Albania.

² TrajaKristaq, a former judge at the ECtHR, "The due legal process"
<http://www.gjk.gov.al/>.

³ [web/kushetuta_e_integruar_me_ndryshimet_e_2016_1648.pdf](http://www.gjk.gov.al/ëeb/ligj_per_organizimin_dhe_funksionimin_e_gjykates_kushetuese_2016_1648.pdf).

⁴ http://www.gjk.gov.al/ëeb/ligj_per_organizimin_dhe_funksionimin_e_gjykates_kushetuese_2016_1667.pdf.

the violation is real and straightforward; **(iv)** have exhausted the ordinary remedies **(v)** the act is directly applicable to the individual and it is not necessary the issuance of a sublegal act based on and for its implementation. For the purpose of understanding the above conditions, it is estimated by importance of reference in the decision of the CC before constitutional and legal changes. In this regard, the CC on terms "**real and direct violation**" states that "**The interest to act must be safe, direct and personal. This interest consists of a violated right to real or potential damage rather than the theoretical premise on the unconstitutionality of the norm that has brought about this infringement of the interest. Only the fact that the disputed provisions may have or have had an effect on the applicant, is sufficient to determine whether he is legitimized in filing the claim**".⁵ The direct and real violation of constitutional rights and freedoms is related to the interest that the individual should have as a subject to exercise the individual constitutional appeal. In the constitutional judgment, interest remains always linked to the fact that without the intervention of the Court, the subject may be violated in its own right⁶. The individual must prove the connection between the norm that opposes and the violation of constitutional rights and freedoms. The link between the norm and the violation of the individual's right is dealt with by the Constitutional Court, which states: *The Moving Entity The court has to prove in what way it can be affected in one aspect of its situation, so it must prove the direct and individual relationship that exists between its situation and the norm it opposes. The interest to act must be safe, straightforward and personal*⁷. "Referring to this position of the CC, it is evidenced that physical or legal persons⁸ with the purpose of applying the institute of "**individual appeal**" should be affected in their rights. Touching or punishing should be real, which means that it has brought about a legal, formal or material consequence, **or the touch will potentially occur in the near future with high security**. The fact that the norm represents constitutional problems, "*constitutional vices*" that can hypothetically affect a right, is not enough to put the constitutional court in motion. In this way the individual complaint is not intended to protect the public interest, which is recognized as such in the legal systems that guarantee the 'popular suit' as otherwise known as 'actiopopularis'.

Among '*individual grievances*' and '*popular claims*' there are subtle differences, both from the goal they intend to pursue and realize, as well as the circle of legitimate subjects to invest the court. While the former safeguards personal or individual interest, the latter aims to protect the public interest. At another point of view, in the case of individual appeal, the individual is affected by the norm, who is legitimized to invest the court. Meanwhile, '*actiopopularis*' legitimizes any person who considers a non-constitutional norm to invest in the Constitutional Court. The Law on the

⁵ Decision No. 14, of 21.03.2014 of the Constitutional Court.

⁶ SokolSadushi - Constitutional Justice in Development, Tirana 2012, p. 283.

⁷ Decision no. 33 dated 08.06.2016 of the Constitutional Court of the Republic of Albania.

⁸ Article 71 of the Law on the Constitutional Court provides that "Every individual, a natural or legal person, subject to private and public law, when he is a party to a legal process or who is a party to the fundamental rights and freedoms provided for by the Constitution shall have right to challenge before the Constitutional Court any act that violates the rights and freedoms set forth in the Constitution, in accordance with the criteria set forth in Article 71/a of this law".

Constitutional Court does not recognize "*actiopopularis*"⁹ie the legitimization of any entity to seek the abolition of laws or normative acts. Consequently, the individual must prove the subjective right to be violated according to the '*public act*', a violation that must be real, straightforward, and not probable and hypothetical. To illustrate with an example, '*the issue of discrimination*' is taken into consideration. If a group of persons are discriminated against for various reasons, they are legitimately referred to the constitutional court only when the act has individually affected the right of each of them. Whereas, according to *actiopopularis*, even an individual who is not properly addressed can cover the issue before the constitutional court in order to protect it from discrimination¹⁰. An essential distinction lies in "*access*". In the case of an individual complaint, the individual should exhaust the streets of ordinary jurisdiction, while in the case of *actiopopularis*, the individual may address to the Constitutional Court directly.

Referring to the special law, in addition to the above conditions, an important aspect in the context of legitimization is the fulfillment of the burden of proof by the claimant that he has exhausted the ways of ordinary jurisdiction. Exhaustion of the streets of ordinary jurisdiction has often been subject to assessment by the Constitutional Court, positioning the position that "*Exhaustion of remedies means that the complainant should use in a normal way legal remedies that are appropriate, available and effective for a concrete matter. The remedies are exhausted when, depending on the circumstances of the case, the procedural rules do not foresee other remedies. The exhaustion of funds constitutes a prerequisite that must be met by the applicant who before addressing the Constitutional Court must prove that he has used all legal remedies known to him by law and sufficient to restore the rights violated*"¹¹. "In one another decision the Constitutional Court states that "*the applicant is an individual and is provided as a subject that puts into motion the Constitutional Court from Article 134/1 of the Constitution. The conditions to be met by this person to address the Constitutional Court, except for justification of his direct interest under Article 134/2 of the Constitution, are the exhaustion of all effective remedies for the protection of the rights the applicant claims to be have been violated by the act that opposes. Thus, an individual cannot set in motion the Constitutional Court without the concrete application of a normative act, on the basis of which an individual act that violates the fundamental rights and freedoms of the applicant must arise. Under these conditions, the individual must exhaust the other remedies provided by the legal system before addressing this Court*"¹². "

In addition to the exhaustion of ordinary jurisdiction, the "**public body**" which applies must be directly applicable, ***without being the subject of the issuance of a subsidiary act of an individual nature***. At first glance, the placement of the last two conditions seems to create an "***in absurdum***" and a "***dilemma***" on the appropriateness of an individual's familiar vehicle to publicize the act, referring to the constitutional

⁹ Actiopopularis is the rejection of a law or public act by any person, without having to prove the direct violation of his rights. In such a model there are Croatia, Liechtenstein, etc.

¹⁰ ÇaloskaDimovksa from the Helsinki Committee "We ask to be excluded the current practice foreseen by the Law on Discrimination, which we are obliged to provide for compliance by victims to raise lawsuits against discriminators. NGOs are currently limited in cases of seeking justice for victims who are often unaware of the discrimination they are doing".

¹¹Decision No. 60, of 21.09.2015 of the Constitutional Court of the Republic of Albania.

¹²Decision no. 23 of 14.02.2017 of the Constitutional Court of the Republic of Albania.

norms governing the Court's object of control Constitutional, it is evidenced that the only body that can control the constitutionality of a law is the Constitutional Court. In this sense, the question that is raised is that in *what way an individual should overcome the ways of ordinary jurisdiction when the latter are not competent to assess the constitutionality of a law*. The current system refers to the situation where ordinary courts when assessing that the laws are in violation of the Constitution, they do not apply them, but suspend the trial and the judge 'a quo' sends the case to the Constitutional Court¹³. On this format, the Constitutional Court stated: "*The request for the incidental control of the legal norm, which constitutes the accessory of the court of ordinary jurisdiction in the constitutional judgment, is regulated by Article 145/2 of the Constitution, according to which judges the laws are in violation of the Constitution, do not apply them, but suspend the trial and send the case to this Court to express its constitutionality*"¹⁴.

Is the exhaustion of ordinary means an absolute obligation? The new Law on the Organization and Functioning of the Constitutional Court, in its Article 71, provides that the individual has the right to address directly the Constitutional Court without exhaustion of remedies in two cases: **(i)** where remedies are ineffective in the sense of Article 13 of the ECHR, **(ii)** Where domestic legislation does not provide for effective remedies available. According to Article 13 of Kedd and the ECHR practice "*a tool is the effect if the internal authority regardless of whether it is a court or an administrative body is capable of solving the case practically by restoring the violated right to the country*"¹⁵. In a number of judgments the Court, the Constitutional Court has designed the lines of "*effective access*". The Court, in the ECHR jurisprudence, regarding the interpretation of Article 13 of the ECHR, which sanctions the term "effective complaint", has emphasized that it is important to determine what means, as the case may be, are available to the individual and whether they create him a realistic opportunity to resolve the dispute effectively¹⁶. In this regard, it has been evidenced that one of the criteria that must meet a complaint to be effective is to provide the means of clear and secure resettlement instead of the violated right¹⁷. It has also determined that the means to be effective should be appropriate, available and effective for a concrete matter¹⁸.

We are of the opinion that these standards have been taken into account by lawmakers in drafting the law. It is true that courts of ordinary jurisdiction cannot ascertain the unconstitutionality of a law, but the individual to whom the right has been violated, *by addressing the court with a lawsuit with the object of compensation of damages requires at the same time the suspension of the trial as the applicable rate to him in the concrete case there are grounds to be in contravention of the constitution, thus making "the effective means available"*. It should be said that the refusal of the plaintiff's request to exercise incidental control by the Court does not render the latter ineffective, as long as the individual is guaranteed an appeal to a higher court, this

¹³Article 145/2 of the Constitution of the Republic of Albania.

¹⁴Decision no. 5 of 5.2.2015 of the Constitutional Court of the Republic of Albania.

¹⁵Look at Cufaj Against Albania. In this case, the ECHR held that the Ombudsman cannot be considered an effective remedy as long as its role is established and advisory.

¹⁶See Decision no. 27, of 20.06.2007 of the Constitutional Court.

¹⁷See Decision no. 6, of 31 March 2006 of the Constitutional Court.

¹⁸See Decision no. 42, dated 25.06.2015 of the Constitutional Court.

is in accordance with the practice of GJ .K that "The remedies are exhausted when, depending on the circumstances of the case, the procedural rules do not foresee other remedies." However, the premise under which "the law should be directly applicable" remains problematic. The doctrine of rightly acknowledges that laws by their nature are of general and abstract character in the sense that they do not address one or more particular persons. In this way, it is difficult to argue that the law will be applied directly to a particular person and consequently affect him a right.

3. The German model of the Constitutional Control (Some aspects)

Referring to the Law on the Organization and Functioning of the German Federal Constitutional Court, the jurisdiction of the Court is governed by the "numerus clausus" principle, according to which the Court's powers are defined in a taxation manner¹⁹. Within this principle, the role or the competence of the Court to exercise the constitutional control of laws, court decisions, and administrative acts through the individual "*individual appeal*" (**Verfassungsbeschwader**)²⁰ is also evidenced. The 'Verfassungsbeschwandder' institute is provided for in Article 93/4 of the aforementioned law in reference to which "*every person has the right to invest a constitutional court if he is subject to fundamental rights and freedoms (constitutional rights) or similar rights with them*". From the content of this norm, there are two important notions that define the lines of constitutional action, such as: (i) fundamental rights and freedoms and (ii) similar rights. Regarding the nature of the rights, the constitutional court differentiates itself by taking as predictability criteria the predictability in constitutional norms and their function. The nature of the "control object" law applies also to domestic and foreign legal entities. In this line it is worth mentioning that, domestic legal entities of a legal nature enjoy the same rights and guarantees as are offered to German nationals. However, considering the fact that legal entities are considered "spirit and soul" entities, "*the rights of German citizens*" apply to local legal entities, as far as possible²¹.

Regarding the type of legitimate subjects, the German Verfassungsbeschwarde has supported the broader model, giving legitimacy to natural persons, legal entities and public bodies. In relation to natural persons, the right to go to court ceases to exist if the person dies (physical and legal death). However, in the event that death has come after the person has referred to the Constitutional Court, the trial may continue, provided that the decision is accompanied by financial consequences to the heirs²² or when the decision has an effect on the "rehabilitation" of the deceased figure of the deceased person²³. In addition to the natural and legal persons whose activity is found in private law, the German model of constitutional control generally deny or does not legitimize public legal entities in seeking to control the constitutionality of laws or decisions because they are considered part of the structure state and that they

¹⁹Verdict B verf 33, 303, accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²⁰Memorandum Prepared by Second-year Judges at the School of Magistrates "Legitimizing the individual for filing claims for the repeal of laws or normative acts".

²¹Decision BVerg GE 21, 362, [369] accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²²Decision BVerfGE 3, 162 (164) accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²³Decision BverfGE37, 201 (206), accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

do not enjoy subjective rights²⁴. But, exceptionally, some legal entities that are part of the public law are legitimated in the context of constitutional control when they are subject to the (over and above) application of fundamental rights. For example, universities or faculties²⁵ or public or state (public)²⁶ television or radio (s) for the protection of rights that essentially guarantee their function, such as the right to express or inform²⁷.

It should be noted that the lack of legitimization for public legal entities (except for exceptional cases) finds its application only within the framework of fundamental rights and freedoms. This means that legal persons are legitimized in the search if the right intended to be protected is of a procedural nature and is not included in the category of fundamental rights and freedoms²⁸. In the practice of the German Constitutional Court, a special place is devoted to legal persons without legal personality. In this sense, legal entities without legal personality may invest the Constitutional Court in the event that the act or legal act affects or infringes a fundamental or fundamental right for the function that this person exercises in society²⁹. But even in this case, the organization should have this "*public status*", as it may be a religious organization. While the legitimization in the material sense, implies subjective or objectively violated law, an important place also occupies the legitimacy in the procedural sense³⁰, or otherwise the ability to act before the Constitutional Court. In this line, the German Constitutional Court has a solid practice regarding the representation of the rights of children, minors, and persons suffering from a mental illness of that level that prevents the process and the entirety of the rights that it enjoys and is guaranteed. According to this Court, *children*³¹, *minors*³² and *disabled persons*³³ defend their rights through legal representation, exercised by their parents or legal custodian, quality brought about by law or court decision.

Regarding the object of constitutional control, referring to Article 90 of the Law on the German Constitutional Court subject to constitutional control may be acts issued *by public bodies that have the nature of the law*³⁴, *court decisions*³⁵, and *public administration bodies as an expression of executive power*³⁶. According to German law, in the context of constitutional control, the public body should not only understand the expression of the legislative, executive and judicial power, but also the expression of the will of non-state bodies acting in their name and for their account³⁷. They are not subject to constitutional control, acts issued by a state body belonging to

²⁴Decision BVerg GE 61 82 [108], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²⁵Decision BVerg GE 15, 256 [262], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²⁶Decision BVerg GE 31, 315 [322], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²⁷Decision BVerg GE 64, 256 [259], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

²⁸Article 101/1, 103/1 of the Law on the German Constitutional Court.

²⁹Decision BVerg GE 3, 383 [391], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

³⁰ See Article 22 of the Law on the German Constitutional Court.

³¹Decision BVerg GE 72, 122 [134], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

³²Decision BVerg GE 28, 243 [255], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

³³ Decision BVerg GE 65, 317 [321], accessed at <http://www.servat.unibe.ch/dfr/bv030173.html>

³⁴ Decision BVerg GE 65 325 [320], accessed at <http://www.servat.unibe.ch>

³⁵Decision BVerg GE 62 117 [153], accessed at <http://www.servat.unibe.ch>

³⁶ Decision BVerg GE 84, 90 [113], accessed at <http://www.servat.unibe.ch>

³⁷B. Szmulik, " Skargakonstytucyjna. Polski model natleporównawczym ", Warsaw 2006, p. 184.

another state, acts issued by organs over national³⁸ (international organisms)³⁹. But, according to the practice of this court, the laws that ratify an international agreement may be subject to constitutional control⁴⁰. In addition to the acts issued by these bodies, which are not included in the area of constitutional control, the possibility of constitutional control of acts issued by religious organizations, which, according to a majority position, have no binding force, has been questioned affect rights and consequently cannot be subject to constitutional control⁴¹.

Regarding the conditions for the individual's legitimization to the German Constitutional Court, the applicant is required **(i)** to enjoy a subjective right that enters the category of constitutional rights or similar. **(ii)** The act required to be subject to constitutional control must be appropriate and capable of prejudicing⁴² (*affecting, infringing or hindering*)⁴³ constitutional or similar rights⁴⁴. Consequently, individual complaint does not constitute an *actiopopolaris*, which forces the applicant to identify the subjective right (*proprio iure*) and the act that opposes this constitutional right⁴⁵. **Thirdly**, based on the legal norms governing individual appeal to the Constitutional Court, its appearance is only possible *if all legal remedies or all other steps of ordinary jurisdiction have been exhausted, which have the legal possibility to prohibit the continuation of the violation of the alleged right to be violated*. But despite the concepts derived from the above decisions, the German Constitutional Court notes some exceptions, in that individual appeal can be addressed immediately to the constitutional court without exhausting the paths of ordinary jurisdiction in two cases: *Firstly, when the exhaustion of roads common would have a severe and irreparable consequence for the individual*⁴⁶; *Secondly, in the case where the object of constitutional control is the laws, because for these there is no exhaustion of legal ways*⁴⁷. It is worth pointing out that the "exclusion of laws" from the principle of subsidiarity does not apply, inter alia, to normative acts for which there is the possibility of legal control through courts of ordinary jurisdiction⁴⁸.

Conclusions

1. Referring to the Law on Organization and Functioning of the Constitutional Court, natural persons as well as public and private legal persons who have been violated in one or more of the fundamental rights and freedoms set forth in the

³⁸Same place.

³⁹Decision BVerg GE 77, 170 [209], accessed at <http://www.servat.unibe.ch>

⁴⁰Decision BVerg GE 84, 90 [130], accessed at <http://www.servat.unibe.ch>

⁴¹P. Haberle- The Verfassungsbeschwader in the German constitutional justice system, Milan 2000, p.53.

⁴²Decision BVerg GE 60, 360 [370], accessed at <http://www.servat.unibe.ch>

⁴³Memorandum Prepared by Second-year Judges at the School of Magistrates "Legitimizing the Individual to Apply Requests for the Abolition of Laws or Normative Acts", p. 28.

⁴⁴Decision BVerg GE 53, 30 [48], accessed at <http://www.servat.unibe.ch>

⁴⁵Same place.

⁴⁶Decision BVerg GE 63 230 [242], accessed at <http://www.servat.unibe.ch>

⁴⁷"Il ricorso diretto in Polonia come strumento di tutela dei diritti fondamentali, anche con riferimento ad altre esperienze europee" Dottoranda: Martyna Marzena Solocheëcz p: 40.

⁴⁸Decision BVerg GE 69, 122 [125s], accessed at <http://www.servat.unibe.ch>.

Constitution enjoy the right to file an Individual Appeal⁴⁹. Compared with the German model, it is evidenced that public legal entities do not enjoy active legitimation as a rule. But, exceptionally, some legal entities are part of the public law legitimated in the context of constitutional control when they are subject to the (over and above). For example, universities or faculties⁵⁰, televisions or public (State)⁵¹ radios for the protection of rights that essentially guarantee their function, such as the right to be expressed or informed⁵². According to the German model of individual appeal, unlike the Albanian legal framework, a special legal status within the legitimacy is offered to organizations which, while lacking legal personality under legal definitions, enjoy a "*public status*", provided that the legal act affects or violates a fundamental or fundamental right to the function that this person exercises in society.

2. From the comparative analysis it turns out that the Law on the Organization and Functioning of the Albanian Constitutional Court does not explicitly state the continuity or not of the judgment initiated upon the request of a dead person. But referring to the general rules provided by law, it results that "***For matters related to procedures not regulated by this law or by the Rules of the Constitutional Court, the Constitutional Court also takes into account the legal provisions governing other proceedings, taking into account the legal nature of the case***"⁵³. This provision gives the Court the opportunity, as appropriate, to assess whether the provisions of the Code of Civil Procedure apply to "*procedural passage*"⁵⁴. Meanwhile; referring to the German model, in these cases as a rule the trial is dismissed, because "individual complaint" is considered a non-heritable right. Exceptionally, the trial may continue, provided that the decision is accompanied by financial consequences to the heirs or when the decision has an effect on the "rehabilitation" of the deceased figure of the deceased person.

3. Referring to the Constitution of the Republic of Albania⁵⁵ subject to constitutional control are judicial decisions and acts of public authority. The Constitution itself does not define what should be understood by an *act of public authority*, but indirectly it is understood from the specifications made in the law on the Constitutional Court under which the subject of constitutional control through individual appeal are ***laws, normative acts, decisions litigation, as well as any other act affecting fundamental rights and freedoms***. Meanwhile: Referring to the German model, public acts do not include only court decisions, normative acts, as well as individual administrative acts, but also acts issued by bodies which although not exercising executive and mandatory activities, ie not public bodies, exercise a function public through legal authorization or order.

4. Among the formal conditions that the individual has to fulfill for the purpose of his legitimization is the exhaustion of remedies, expressed in the exhaustion of the

⁴⁹Article 70 and 71 of the Law on Organization and Functioning of the Constitutional Court, as amended.

⁵⁰ Decision BVerg GE 15, 256 [262], accessed at <http://www.servat.unibe.ch>

⁵¹ Decision BVerg GE 31, 315 [322], accessed at <http://www.servat.unibe.ch>

⁵²Decision BVerg GE 64, 256 [259], accessed at <http://www.servat.unibe.ch>

⁵³Article 1 p.2 of the Law on Organization and Functioning of the Constitutional Court.

⁵⁴ Article 199 of the Code of Civil Procedure.

⁵⁵Article 131.

search for unconstitutionality in the courts of ordinary jurisdiction. Referring to the law on the German Constitutional Court, unlike the Albanian model, *the exhaustion of judicial organs of ordinary jurisdiction is presented as a applicable criterion in no case at all*. Thus, the individual does not have the legal obligation to exhaust these routes *if the act is of general importance or if the appeal to other courts would create an inevitable disadvantage for the applicant*. "In addition to the legal criteria, the German Constitutional Court in interpreting the principle of "effective remedy " has stated that the laws, in the conditions when the control over their constitutionality is the exclusive competence of the Constitutional Court, does not apply the criterion of "exhaustion of other legal remedies", since in any case the Courts of Common Jurisdiction may only avail themselves of the case for incidental control and not to say about the constitutionality of the norm.

5. In addition to the above criterion, referring to the law on the Constitutional Court, it is worth mentioning also the criterion that the individual should have a personal interest. So; the claim must be filed by the individual or by another person authorized by him, the legal act or the court decision. The law does not provide exceptional cases, implying that no one else but the affected person can invest the constitutional court. Even in those cases where the search is submitted by a third party, they act in the capacity of a representative or guardian, not personally. Meanwhile, according to the German model, personal interest does not mean interest that can be protected by the person himself. The German Constitutional Court itself has defined certain exceptions, such as the executor of the will, which essentially protects the inheritance interests of the heirs.

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