

Execution of final court decisions as part of a fair trial

Amanda Gjyli (Vrioni)
Albanian University

Abstract

Execution/enforcement of the final court decisions is now a procedural element which has been long dealt with as an integral part of the right to a fair trial. This right has been expressly embodied in the Constitution of the Republic of Albania as a fundamental right of the individual. This point of view grants to this right not only an important role on the protection of human rights but consequently a strong impact on the court performance in our country as well. The object of this paper shall be precisely the analysis of the legal institution of execution of final court decisions, as part of a fair trial. The process of enforcing a final decision is enshrined in our legislation. But after following procedural steps many individuals still find themselves with an enforcement order remaining void for a long period. This constitutes a violation of a fair trial/due legal process. Article 42, paragraph 1 of the Constitution mentions the fair trial, but without assigning any real sense thereto. What the Constitution fails to contemplate, has been tried to be afforded by the practice of the Constitutional Court, which has been mainly oriented in the jurisprudence of the European Court of Human Rights and the European Constitutional Courts. This paper will analyze one of the Constitutional Court decisions, which for the first time has addressed the non-execution of decisions having become final, as a violation of a fair trial and further to this, the most important stipulations related to this argument made from its jurisprudence and that of the Strasbourg Court. In conclusion we note that this process has been put in place quite late in our country. Still today we often find cases of Constitutional Court practice involving claims filed against the violation of this right. To resolve this situation, many recommendations have been introduced which require a serious commitment and well-established structures from the Albanian government.

Keywords: Execution/enforcement, final decision, fair trial, effective remedy, the Constitutional Court, the Strasbourg Court.

Introduction

The issue related to the topic in question is specifically the violation of the fair trial by state bodies relating to non-enforcement of the law. Everyone should be guaranteed the right to a fair trial, as a fundamental right of the individual. Whoever addresses the court to defend one's own interests, as the most appropriate and effective state body to achieve this protection by virtue of its decisions, should avail oneself of this right and accomplish it. All our domestic law sources related to the fair trial clarify the obligation of the Albanian state to enforce the court decisions having become final, but this does not suffice to comply with them. In these conditions, the situation is still unsolved, but this is the high time where the Albanian state should no longer waste time, but should instead take all measures for the implementation of these rights while this will accordingly affect the reduction in the number of complaints with the Strasbourg Court and pursuant to the directives of the latter, it will also fulfil

our obligation to make the Constitutional Court an effective remedy of guaranteeing rights. The Constitutional Court, in the light of the recommendations of the European Court of Human Rights (ECHR), has been activated and invested in solving this problem by virtue of its decisions, but to what extent the efficiency of such investment lays? In this context, this paper will analyze their jurisprudence by elaborating the most typical cases brought by the practice and by analyzing the solution given to this problem.

1. Research Methodology

This paper has an analytical and interpretative character. Since this is a question of a legal argument, the analysis in this case does not concern the law, but the decisions of the Constitutional Court of Albania and the European Court of Human Rights, whose jurisprudence constitutes a source of law and is binding. Such an analysis best introduces to us a summary of the main terms that stipulate the execution of final court decisions, as an integral part of the right to a fair hearing.

In view of realizing this paper and understanding the problematic issues of this process, concrete cases of the practice of these courts as well as scientific research articles, statistics, official documents, etc., have been studied.

2. The jurisprudence of the Constitutional Court relating to the execution of decisions

Since the adoption of the Constitution of the Republic of Albania, the Constitutional Court's jurisprudence periodically recognizes and treats the right to a fair trial, thereby guaranteeing the protection of this fundamental right of the individual. The execution of final decisions has not been considered as an integral part of a fair trial pursuant to Article 42 of the Constitution and Article 6 of the ECHR until recently, when under the ECHR decision the latter noted that the Constitutional Court is the competent authority to examine the claim of the applicant company about the execution of a final decision, as part of its jurisdiction to secure the right to a fair trial.¹ In this context, since that moment, failure to execute/enforce a final court decision has been incorporated in the Constitutional Court jurisprudence.

At this point, of special importance is the analysis of one of the decisions of the Constitutional Court, which deals with finding the violation of a fair trial as a result of the non-enforcement of a final court decision. After the ECHR afforded directions to examine these cases, the Constitutional Court applied this rule in subsequent cases by amending its jurisprudence. These amendments have been now consolidated by a significant number of decisions rendered by this court.

Decision No. 6, dated 31.03.2006 was the first decision in which the Constitutional Court considered that the right to seek execution of a final court decision within a reasonable time limit of a court final decision, should be considered as a constituent part of the right to a fair trial within the meaning of the Constitution of the Republic

¹ Decision dates 18.11.2004, Cufaj LLC vs Albania, The European Court of Human Rights. (para. 40-42).

of Albania and the European Convention on Human Rights.² In my opinion, this decision has brought innovation and paved the way for this practice in solving problems of highly important legal nature.

In this specific decision, the applicant has claimed to find the violation of the right to a fair trial because the relevant authorities who are obliged to enforce the decision failed to meet this obligation.

Regarding the case in question, the Constitutional Court investigated and found that we are facing refusal to enforce final decisions for subjective reasons, as the Municipality of Tirana and Tirana Bailiff Office failed to meet their legal obligations for the execution of a final court decision, by not resuming the applicant to his/her previous job and not paying him/her the full salary in accordance with stipulations of the above cited decisions.

An important part of this decision is that the Constitutional Court considers that the trial/hearing for the implementation of a right, as a complex process, consists of two phases³, which are inextricably linked with each other:

- *The first phase*, or trial in its strict sense, deals with the recognition or pronouncement of the right which as a rule comes to an end when the court decision becomes final. The state authorities are obliged to enforce the court decisions, which not only are binding to the parties, but also to their successors, to the individuals who deprive the parties of their rights, to the court that has taken the decision and to all courts and other institutions. Pursuant to Article 146 of the Constitution "The courts take decisions *"In the name of the Republic"*". This constitutional statement proves the fact that the court decisions have been considered by the Constitution, both in terms of their nature and their consequences for citizens and the society as a whole. The whole court process, often difficult and problematic, would not be valid if it were not followed by a process directly connected to the performance of the bailiff bodies, upon the execution of the decision and the implementation of the right attained.
- *The second phase*, when mediation is needed, whether or not taking coercive measures to enforce them, it is achieved what we call the scope of justice. At this phase, the right is safe, but it is required to be complied with, whether or not taking coercive measures if the voluntary implementation fails to yield the appropriate results.

Considering it this way, the decision should not be strictly conceived as just securing a court decision, but as the completion of this process, because if a right gained is not implemented through the decision being executed, it shall remain null and void.⁴

This decision is of special importance from a different point of view related to the competences of the Constitutional Court to establish the violation of a fundamental right by the bodies dealing with the execution of final court decisions.

As seen, this Court in this case found the violation committed by the relevant authorities, which have failed, without justified reasons, to execute a final court decision. In these conditions we note that the Constitutional Court also undertakes

² Decision No.6, dated 31.03.2006, The Constitutional Court of Albania. (Page 5).

³ Decision No.6, dated 31.03.2006, The Constitutional Court of Albania. (Page 4).

⁴ Decision No.6, dated 31.03.2006, The Constitutional Court of Albania. (Page 5).

assertive or declarative decisions, regardless of the fact that the nature of its decisions under Article 132 of the Constitution, as a rule, is related to the right to abolish the acts subject to its examination.

The question is whether the Constitutional Court, in case it finds a violation of human rights due to non-execution of final court decisions by the public administration bodies, meets the criterion of being 'an effective legal remedy', and how shall the effects of this decision be governed?

Under this decision, the Court acknowledges that it may render assertive or declarative decisions and that these decisions have effects, even though not being of a nature that abolishes a specific act. Also it holds that the Constitutional Court is an effective remedy⁵ to claim the non-execution of court decisions before the individual addresses to the ECHR, and that any authority with obligations from the relevant decision is obliged to take the necessary measures to execute the decision in full and in compliance with the provisions of the Civil Procedure Code.

By virtue of this decision, the Constitutional Court has brought to attention the ECHR practice as well, while the latter has dealt with this problem. According to it, "in a case involving the settlement of a civil right, the length of proceedings is normally calculated from initiation of the proceedings, until when the decision is rendered and enforced"⁶, or "the enforcement phase should be calculated, that is, to be considered as a further phase of the same process."⁷

The Constitutional Court in its decision has also cited a recommendation⁸ on the execution of administrative and judicial decisions of the Committee of Ministers of the Council of Europe, adopted on September 9, 2003, which inter alia recommends the Member States of the Council of Europe to provide an administrative authority, to execute court decisions within a reasonable time and in order to give full effect to these decisions, they should take all necessary measures in line with the law. It also recommended that in case of non-execution of a court decision by an administrative authority, an appropriate procedure should be envisaged to enable execution thereof, particularly via a court order or a mandatory fine. It is worth emphasizing that this document recommends that court decisions shall mostly be executed by public officials already tasked to that effect. Under this recommendation, in the event they do not fulfil their legal duties properly, they may be charged with legal individual responsibilities.

Worth noting is that this part of the Constitutional Court decision is the position of the European Convention on Human Rights in the Albanian domestic law. This court renders it clear that since the legal basis upon which such a claim has been submitted deals directly with the concept of the European Convention on Human Rights, under Article 116 of the Constitution, the Convention, as a ratified international treaty by law in the hierarchy of legal norms comes immediately after the Constitution. Consequently, it occupies an important place in domestic law and its enforcement becomes binding in every state for all state bodies including courts of all instances and

⁵ Decision No.6, dated 31.03.2006, The Constitutional Court of Albania. (Page 7).

⁶ Decision dates 19.02.1999, Giralanci vs Italy, The European Court of Human Rights.

⁷ Decision dates 25.05.1991, Vakaturu vs Italy, The European Court of Human Rights.

⁸ Decision No.6, dated 31.03.2006, The Constitutional Court of Albania. (Page 7).

for the authorities enforcing their decisions. The guarantees of the Convention affect the interpretation and protection of the fundamental human rights contemplated by the Constitution of the Republic of Albania.

In addition, the Constitutional Court deems that the text of the Convention and the jurisprudence of the European Court of Human Rights serve to make constitutional interpretations and to determine, on a case by case basis, the limits of fundamental constitutional rights. This position of the Convention is due to the commitments of the Albanian State to provide a guaranteed protection of human rights and fundamental freedoms.

Such a position should also be seen in relation to the principle of legal certainty which requires that final court decisions shall be enforced without hesitation.⁹The Constitutional Court has also established a practice of its own stating that "The enforcement of the decision constitutes an essential element of the concept of the rule of law and the very notion of a fair trial" and that "no governmental body can question the fairness of final court decisions. Every governmental body is obliged to take appropriate measures for their enforcement".¹⁰

Following its jurisprudence, the Constitutional Court has adopted the same position in decision-making and has acknowledged that: "... constitutional principles regarding the fair trial, referred to in Article 42/2 of the Constitution and Article 6 of the ECHR, as well as the obligation to execute court decisions set out in Article 142/3 of the Constitution underline the fact that any citizen who addresses a competent court to achieve implementation of a right, cannot wait endlessly to make it happen". Further, "... the execution of the decision constitutes an essential element of the rule of law and of the very notion of a fair trial. No state body can put in dispute the fairness of final court decisions. Each state body is obliged to take appropriate measures for their implementation".¹¹

3. Strasbourg jurisprudence relating to the execution of decisions

Pursuant to Article 46 of the ECHR, Albania has explicit legal obligation to take measures regarding execution of final domestic decisions and going through an effective appeal in the event of non-execution of these decisions. In its ongoing practice, ECHR has considered the right to request the execution of a final court decision as an integral part of Article 6/1 of the ECHR.

By virtue of the decision dated November 18, 2004, *Cufaj & Co. Sh.P.K. v. Albania*, no. 54268/00, ECHR has addressed the issue of non-execution of court decisions in Albania. This is the first decision taken by this Court against Albania, which concerns the execution of a court decision. In fact, in the commonly known case *Hornsby v. Greece*, March 19, 1997, 107/1995/613/701, the Strasbourg Court had noted that the right to a fair trial would remain an illusion if the domestic law permitted that a final

⁹ Decision dates 28.10.1999, *Brumares vs Romania*, The European Court of Human Rights.

¹⁰ Decisions of the Constitutional Court no. 9, dated 02.04.2003; p. 39 and Decision No. 11, dated 10.03.2003; p. 47. Summary of Decisions, 2003.

¹¹ Decision no.43, dated 19.12.2007; Decision no.1, dated 19.1.2009; Decision no.6, dated 6.3.2009 of the Constitutional Court.

decision remain unenforceable to the detriment of one of the parties to the process. Delayed execution of a decision cannot be justified if it is to the detriment of the essence of the right protected under Article 6/1 of the Convention. Nor do financial difficulties of state bodies constitute an excuse for non-execution of court decisions. Still, our Constitutional Court did not take this decision into consideration.

In the case of *Cufaj & Co v. Albania*, ECHR, since the final decision in favor of the company was not executed, the company appealed to the Constitutional Court, which dismissed the claim on the grounds that the execution of court decisions fell beyond its competence. The European Court of Human Rights held that the Albanian state has violated Article 1 of the Convention by not guaranteeing the execution of the decision as an integral part of the judicial process.

ECHR notes that the Albanian legal system affords a remedy – in the form of an application complaining of a breach of the right to a fair trial which was available to the applicant company in theory.¹² The company unsuccessfully attempted to avail itself of that remedy, but its appeal to the Constitutional Court was dismissed. In the light of the foregoing considerations, the Court holds that the fair trial rules in Albania should have been interpreted in a way that guaranteed an effective remedy for an alleged breach of the requirement under Article 6/1 of the Convention. Therefore, in the ECHR' opinion, the Constitutional Court was competent to deal with the applicant company's complaint relating to non-compliance with a final decision as part of its jurisdiction to secure the right to a fair trial.¹³

ECHR has considered several decisions as to whether the Constitutional Court is a means of appeal under Article 35¹⁴ of the Convention and whether it is an effective remedy under Article 13 of the Convention. According to the principle of subsidiarity¹⁵, the individual shall appeal to the ECHR if he/she has exhausted the domestic instances of appeal and therefore it is worth dealing with the Constitutional Court as an effective means of appeal in accordance with the ECHR jurisprudence.

In its jurisprudence, the ECHR has underlined that non-enforcement of final decisions is likely to lead to situations incompatible with the principle of the rule of law, which the Contracting States undertook to comply with when ratifying the Convention. Hence, the execution of court decisions rendered by each court should be seen as an integral part of the trial to the effect of the Article"¹⁶.

Overall, we can say ECHR has a particular role and place in our Constitution. The

¹² Decision dates 18.11.2004, *Cufaj LLC vs Albania*, The European Court of Human Rights. (para. 40-42).

¹³ Decision dates 18.11.2004, *Cufaj LLC vs Albania*, The European Court of Human Rights. (para. 40-42).

¹⁴ Article 35 of ECHR: The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

¹⁵ Decision dates 10.05.2001, *Z and Others v. the United Kingdom*, The European Court of Human Rights. (para. 103).&Decision dates 26.10.2000, *Kudla vs Poland*, The European Court of Human Rights.(para. 152).

¹⁶ Decision dates 21.02.1975, *Golder vs the United Kingdom*, The European Court of Human Rights.

ECHR has been incorporated in the Albanian Constitution and even in some of its provisions we can ascertain the important position attached to it while having a clearer picture of its position as compared to the Constitution and domestic legislation. Article 17 of the Constitution, via its second paragraph, accords the ECHR a higher place, that is above the interpretation of the provisions of the Constitution proper.¹⁷ Seen in this light, the rights enshrined therein have a great impact on the legislature, the courts and the executive.

The ECHR as the interpreting authority of the Convention plays a vital role in establishing the jurisprudence of the Constitutional Court in compliance with standards thereof. At the national level to some extent, the ECHR decisions yield a kind of *erga omnes* effect, because indeed the ECHR decision is *inter partes*, but the Albanian state should not necessarily for the same cases go through the same calvary of links bringing termination of the case upon its being fined, therefore the latter (judicial and executive bodies included) should take into consideration the effects of the decision for the same cases.

Conclusions and Recommendations

In conclusion, we note that the process of execution of final court decisions as part of a fair trial has been put under way rather late in our country.

It is precisely the ECHR that contributed to the solution of this problem through its jurisprudence, initially to other states and subsequently to Albania.

Additionally, the Constitutional Court, in compliance with the ECHR directives and international bodies recommendations, has established that:

“The right to seek enforcement of a final court decision within a reasonable time limit should be considered as an integral part of the right to a fair trial within the meaning of the Constitution of the Republic of Albania and the European Convention on Human Rights; The decision should not be only strictly conceived as securing a court decision, but as the completion of this process, because the right gained, if not achieved through execution of the decision, shall remain null and void; The Constitutional Court is an effective remedy for claims of non-enforcement of court decisions before the individual addresses to the ECHR, and that every authority endowed with the obligations under this decision is obliged to take the necessary measures to enforce the decision in full and in line with the requirements of the Civil Procedure Code.”

The aforementioned and other quite valid conclusions regarding the continuity of the recognition of the right to execution of final decisions further consolidate the strengthening of such a right.

All sources of our domestic law related to a fair trial, now clarify the Albanian state obligation to automatically execute the court decisions having become final, but this does not suffice to comply with them. Still today, we find typical cases of the Constitutional Court and the ECHR practice with claims lodged against the violation of this right. But precisely at this moment the Albanian state can no longer

¹⁷ These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

waste time, but should instead take all measures for implementation of the rights; this shall accordingly affect the reduction in the number of complaints filed with the Strasbourg Court and pursuant to the directives of the latter, will also fulfill our obligation to make the Constitutional Court an effective remedy of guaranteeing rights. One of the most important and difficult steps in order to raise awareness of the state bodies in relation to the restoration of law and finding the most appropriate way to achieve this, is to build up the institutional mechanisms for supervising the enforcement processes following court decisions. Such institutions shall enable equal and effective access to all subjects of the law as to securing execution of final decisions, thereby making justice right. Rather, what we notice from practice are numerous cases failing to enforce decisions which in turn leads to misleading and unbalanced situation as well as a profound lacking trust of citizens in the judiciary.

References

- Constitution of the Republic of Albania, 1998.
Code of Civil Procedure in Republic of Albania, amended.
Decision No. 11, dated 10.03.2003, The Constitutional Court of Albania.
Decisions No. 9, dated 02.04.2003, The Constitutional Court of Albania.
Decision No.6, dated 31.03.2006, The Constitutional Court of Albania.
Decision no.43, dated 19.12.2007, The Constitutional Court of Albania.
Decision no.1, dated 19.1.2009, The Constitutional Court of Albania.
Decision no.6, dated 6.3.2009, The Constitutional Court of Albania.
Decision dates 21.02.1975, Golder vs the United Kingdom, The European Court of Human Rights.
Decision dates 25.05.1991, Vakaturro vs Italy, The European Court of Human Rights.
Decision dates 8.8.1995, Schollo vs Italy, The European Court of Human Rights.
Decision dates 19.03.1997, Hornsby vs Greece, The European Court of Human Rights
Decision dates 19.02.1999, Giralanci vs Italy, The European Court of Human Rights.
Decision dates 28.10.1999, Brumares vs Romania, The European Court of Human Rights.
Decision dates 26.10.2000, Kudla vs Poland, The European Court of Human Rights.
Decision dates 10.05.2001, Z and Others v. the United Kingdom, The European Court of Human Rights.
Decision dates 18.11.2004, Cufaj LLC vs Albania, The European Court of Human Rights.
European Convention on Human Rights, 1950.