

Execution of final court decisions as part of a fair trial

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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.

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