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## The change in the legal classification of the criminal offense and the right to defense in the trial

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### Abstract

Due process of law is not just a right. As a constitutional principle, it extends to some basic human rights and freedoms, with which legal procedures are carried out. It is a guarantee of vital importance in any democratic society, the responsibility for ensuring which falls on the justice system.

The right to due legal process is characterized by duality. On the one hand, it is presented as a guarantee for every citizen against the unjust actions of state authorities and on the other hand it constitutes an obligation not to violate the rights of citizens without a regular legal procedure. In order to make the protection of basic human rights and freedoms as efficient as possible, the constitutional legislator has provided legal means of constitutional control. The control exercised by the Constitutional Court, when the individual claims the violation of this principle, also appears in the form of a fundamental right in itself and becomes possible through an individual constitutional appeal. Respect for due legal process according to the Constitution is sanctioned by article 42 of the Constitution of Albania where *“freedom, property and rights recognized by the Constitution and by law cannot be violated without due process of law.”* This provision obliges all public authorities to respect freedom and other human rights.

As a guarantee for a due legal process, every person has the right **for his case to be heard in a due, public, legal process and within a reasonable time by an independent and impartial tribunal, established by law, which shall decide both disputes concerning his rights and obligations of a civil nature, as well as for the validity of any criminal charges against him.**

Article 15 of the Constitution of the Republic of Albania provides that basic human rights and freedoms are indivisible, inviolable and underlie the entire legal order. Based on the constitution, during the criminal process, everyone has the right to be informed immediately and in detail about the accusation against him, about his rights, as well as to be given the opportunity to notify his family or relatives. Everyone has the right to defend himself or with the help of a legal defense lawyer of his choice, to communicate freely and privately with him and to be provided with free defense when he/she does not have sufficient means.

The right of defense must be real and its exercise must not be hindered, but the courts must take all legal measures in function of the fair process in order to give the individual the

opportunity to defend himself in compliance with the principle of equality of arms, creating the opportunity for the accused to familiarize himself with the materials, evidence and results of the investigation in advance, to prepare and to exercise an effective defense with arguments in his favor in order to oppose the charge brought. Each party must be given a reasonable opportunity to present its case, under conditions, which do not place it in a less favorable position vis-à-vis the opponent.

Main objective of this manuscript is the right of defense of the individual during the change of the legal qualification of the criminal offense, analyzing the criteria for its realization in the ordinary trial and further specifically in the trial.

**Keywords:** law, defense of the defendant, due process of law, special trial, jurisprudence.

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