



Research Article

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Limitation of the right to appeal against the decision to take the case to court

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Abstract

The Albanian code of criminal procedure regulated with Law 35/2017, dated 30.3.2017, was amended by bringing a subject to procedural delays. The decision of the judge of the preliminary hearing is related to the acceptance of the request to send the case to trial, the dismissal of the accusation or the case and the change of the legal qualification of the criminal offense.

One of the decisions that the Law has given to the judge of the preliminary hearing is the transfer of the case to the court, which takes this decision if it conclusively considers that there is sufficient evidence to send the case to trial, therefore this decision is not allowed to appeal. Therefore, the lawmaker has limited the right to appeal against this decision.

The right to appeal against a court decision is one of the fundamental rights guaranteed in the Constitution of Albania, Article 43 of which sanctions that: "everyone has the right to appeal against a court decision to a higher court, except when otherwise provided in the law for minor criminal offenses, civil or administrative cases of minor importance or value", in accordance with the conditions provided for in Article 17 of the Constitution. Referring to the Criminal Procedural Law, the Lawmaker stated that the court has a "decision" and an "order" (paragraph 1, Article 112 CPC). In disciplining appeals, the lawmaker in his article 407, paragraph 1, explicitly provided that "the Law determines the cases in which court decisions and orders may be appealed, as well as the remedy for appeal". Referring to Article 332/g, it is provided that no appeal is allowed against the decision to refer the case to court. Therefore, due to this provision, the right of appeal is limited. This article will address the problems of bringing the case to trial without completing the necessary investigative actions, as it limits to the individual one of the rights that is not only procedural but also material such as the request for a shortened trial which brings not only economic benefits for the proceeding body but also a 1/3 reduction of the sentence for which he can plead guilty. A decision which cannot be appealed to a higher court.

Keywords: Judge, preliminary hearing, case, court, right of appeal.

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