

Guaranteeing the access of citizens to Constitutional Court

Forum of the Balkan Constitutional Courts

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Honorable colleagues,

Honorable guests and participants,

I am delighted to participate today in this activity, which I believe represents a very important event for the institutional cooperation between the constitutional courts of our countries.

I am quite convinced that this forum shall enable us to benefit from our experiences, professionalism and achievements, so that the constitutional justice truly becomes a factor that expresses and materializes the safeguard and respect for the constitutional values and human rights

Mission of Constitutional Court in guaranteeing human rights and freedoms

As the guarantor of the Constitution, Constitutional Court is also its final interpreter. Individual constitutional complaint is an important mechanism that makes possible the effective protection of human rights and freedoms, enabling the Court to play its above-mentioned role (as final interpreter) through its authority to rule through final and enforceable decisions.

The individual constitutional complaint has the following functions:

firstly, it provides a judicial remedy against violations of constitutional rights;

secondly, it serves as a special tool for constitutional review of normative acts/laws;

thirdly, it intends to and may result in the restoration of the violated right.

The first function – as judicial remedy against violations of constitutional rights

Individual constitutional complaint in Albania dates back to 1992, when the Constitutional Court was firstly established. The court at that time had very broad competencies in this regard. The Constitution of Albania of 1998, provided for "*the final adjudication of individuals' complaints for violations of their constitutional rights to fair court trial ...*", limiting the protection

of individuals' rights only regarding the fair court trial, including all the elements and components of such right. The limitation of the constitutional text was further narrowed due to a very conservative and restrictive interpretation given to the individual constitutional complaint by the Constitutional Court itself through its jurisprudence.

The Constitutional and legal amendments made in 2016 in the framework of the Justice System Reform broadened and extended the constitutional jurisdiction in terms of fundamental rights and individuals' access, providing for constitutional review of normative acts and laws together with judicial decision that violates fundamental rights and freedoms. The law of the Constitutional Court has also been amended stipulating the individuals' right to contest the compatibility of law or normative acts with the Constitution.¹, providing also the criteria to be met for submitting an individual constitutional complaint which are:

- i. the individual should prove that is the holder of the constitutional right pretended to have been violated, and has a concrete interest in the case, so that the constitutional review of the case could restore the violated constitutional right;
- ii. should exhaust all the effective legal remedies capable of restoring the alleged violated right;
- iii. the complaint should be submitted within 4 months from the notice of violation;
- iv. the claims should be of constitutional nature.

The second function – Particular procedure that deals only with the constitutionality of the normative acts and laws

In relation to this function, the Court has jurisdiction to:

- (i) review directly and separately the constitutionality of legal and sub-legal acts and;
- (ii) review the constitutionality of laws and sub-legal acts together with the claims for a violation of due process after exhausting after the judicial process at all the three instances of judgement.

In these cases, the Court has considered whether the legislation has provided for legal remedies for the protection of substantial rights and whether these remedies are effective.

¹ Article 49, points 1 and 3, letter "3" of the law no. 8577, dated 10.02.2000.

In its beginnings, during the period from 1992 to 1998, the competencies of the Court regarding the constitutionality of normative acts and laws were very broad and in fact the court did show at some extent a judicial activism, admitting individual complaints resulting in repeal of a considerable laws that violated substantial rights, for example the law on restitution and compensation of the property to the former owners, a very sensitive issue at that time due to the change of regime in Albania,² aiming to follow the German model and practice.

After 2016, the Constitutional Court is again putting great efforts to build its identity in line with the best constitutional practices, as well as with the case-law of ECtHR, trying to ensure a better protection of human rights at national level, aiming to prevent the necessity of individuals to submit complaints to the ECtHR.

With regard to complaints presented directly for the unconstitutionality of law claiming that the laws violated its substantial rights, I would like to mention the case of an individual, who ran as an independent candidate in the general elections in _____. The individual alleged for the violation of the right to be elected and the principle of equality in elections, pretending that the legal criterion of electability threshold foreseen by Election Code was designed taking into account the political parties, thereby discriminating the independent candidates. The Court found a violation of the constitutional right to be elected, in connection with the principle of equality before the law and non-discrimination,³ considering that provision of the same rules on distribution of mandates, based on the same national threshold, constitutes an indirect discrimination of the candidate proposed by the voters.

In most of the cases the individuals file complaints on constitutional review of laws together with their claims of violations of due process after having exhausted all three levels of ordinary jurisdictions. To illustrates this, the Court admitted a complaint concerning the violation of private property right, claiming that the measure of compensation given by administrative bodies for the property expropriated during the communist regime, violated the right to fair compensation guaranteed by the Constitution and the European Convention on Human Rights, and also claiming that ordinary courts had not acted in accordance with the jurisprudence of the Constitutional Court and the European Court of Human Rights (the case *Beshiri and others against Albania*, decision dated 17.03.2020).⁴ In this decision, the Court underlined that it can

² Decision no.10, dated 30.11.1994 of the Constitutional Court.

³ The case of Elton Debreshi – Decision no. 31 dated 04.10.2021 of the Constitutional Court.

⁴ The case Erjon Kusi – Decision no. 33 dated 14.11.2022 of the Constitutional Court.

examine the claims for violation of substantial fundamental rights autonomously, that is, without necessarily connecting them with the fair court trial, where the determining cause of the violation, is not a direct and closely-related outcome of the ordinary court process.

Consequently, the procedure that is set into motion through the individual constitutional complaint, even in cases where its subject matter are the court decisions, provides to the individual not only the right to submit complaints for protection of their substantial rights, but also to request the repeal of normative acts/laws that violates such right.

The third function – constitutional complaint intends to and may result in the restoration of the violated right.

The Court has adopted the concept of victim as elaborated by the ECtHR, in terms of the appropriateness and effectiveness of the corrective legal remedy provided by domestic legislation.

In cases of individual complaints contesting the constitutionality of normative acts when the violation of substantial right derives from their content and not from the execution manner of such legal provision, the Courts decides to repeal it, as the only way to restore the violated right.

Where the Court is set into motion at the end of the judicial process, in most of cases the claimed violation of a substantial right in connection with the right to fair court trial, the Court has considered that the best way to restore the violated right is to a the overrule the decision of the of the ordinary jurisdiction courts and send the case for re-examination to such court.

The Constitutional Court has reiterated the special role of the ordinary courts and particularly by the Supreme Court, in terms of the principle of subsidiarity, in order to examine the claims of constitutional nature, before the Constitutional Court decides on them.

However, in consideration of all methods mentioned above, our Constitutional Court is still discussing and debating on the issue whether the review of substantial right should be made through the optic of the right to fair trial, or directly through the substantial right itself, which in in case of a violation found would result in finding a violation *per se* of the right to a fair trial in the ordinary jurisdiction courts.

In concluding, I think because of these dilemma and other dynamics of unconsolidated matters and constitutional novelties, it is of great importance to have such forums that will provide

concrete mechanism to exchange information and facilitate a dialogue between constitution's professionals.

Thank you!

Statistical data

Individual constitutional complaints have been increased in number year after year, what is an indicator of the increase in awareness and confidence of citizens towards the Constitutional Court. **Since March 2017** (when the individual constitutional complaint become effective), this Court has delivered a total of **1086 decisions** on individual constitutional complaints, out of which **150** have been decided on the merits, while the other remaining **936** are inadmissibility decisions.

Out of this total, **79** applications have requested the repeal of normative acts. For **9** of them the Court has delivered decisions on the merits and the rest has been considered as inadmissible as they did not meet the admissibility criteria.

In terms of individual's access, the Court is currently trying to establish a strategy for communication with the public and the parties, aiming to increase the transparency of its every day activity and decision-making process. The Court official website provides detailed information on how individuals can be addressed to it and notifications about its decision-making activity. Furthermore, it intends to take a number of initiatives for improving communication with the public and increasing the public awareness and information, as well as to organize training sessions with lawyers (although representation by a lawyer is not mandatory for submitting a constitutional appeal), as the time has shown that a considerable number of applications are unsuccessful (inadmissible) due to their non-compliance with the legal criteria or the way how submissions have been presented before the Constitutional Court

Conclusion

In conclusion, it can be easily understood that the best model of constitutional justice for the effective protection of fundamental constitutional rights is not something that can be built in abstraction/in the air. What is more important is the firm belief that protection of the Constitution is a crucial premise for any democratic system.

Thank you very much for your attention!