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LIDHJA E VENDIMEVE JURIDIKE ME STANDARTET NGA GJYKATA EUROPIANE E TË DREJTAVE TË NJERIUT

Pjereta Agalliu, Alem Bedhija

Fakulteti i Drejtësisë, Universiteti i Tiranës

Përmbledhje

Çdo shtet demokratik synon të ndërtojë dhe zbatojë një shtet të së drejtës si bazë të funksionimit të duhur të tij. Të drejtat dhe liritë e njeriut janë po aq komplekse, sa edhe ndërluftuese. Miratimi i Kushtetutës sonë në vitin 1998, sanksionoi një rol të rëndësishëm kyç në marrëveshjet ndërkombëtare si një nga burimet kryesore të ligjit të rendit të brendshëm shqiptar. Shpesh ndodh që pushtetet të kapërcejnë kufijtë e tyre përkatës, duke vënë në pikëpyetje mbajtjen e kushtetutshmërisë dhe të drejtave të njeriut. Metodologjia e përdorur në këtë shkrim është kërkimi sasior, duke iu referuar rasteve praktike të zhvilluara në Shqipëri dhe çështjeve të mbajtura nga Gjykata Evropiane e të Drejtave të Njeriut. Përdoren metoda cilësore dhe të përziera, duke iu referuar rasteve praktike në Shqipëri, sidomos atyre, që u dërguan edhe në Gjykatën Evropiane të të Drejtave të Njeriut. Duke ndjekur analizën e jurisprudencës së Gjykatës Kushtetuese dhe asaj të Gjykatës Evropiane të të Drejtave të Njeriut, standardi i interpretimit në Shqipëri duhet të avancojë. Përfundimet e këtij shkrimi unifikojnë qasjen kushtetuese sipas standardit evropian. Treguesit cilësorë të të dhënave na tregojnë një mospërputhje në lidhje me raportin midis standardeve të përdorura, lidhur me procedurën e ndjekur për të trajtuar të drejtat kushtetuese.

Fjalë çelës: *Gjykata Evropiane e të Drejtave të Njeriut, kushtetutshmëria, sundimi i ligjit, marrëveshjet ndërkombëtare, çështjet praktike.*

THE COMPLIANCE OF JURIDICAL DECISIONS WITH THE STANDARDS BY THE EUROPIAN COURT OF HUMAN RIGHTS

Abstract

Every democratic state aims to construct and enforce a state of law as the base of its proper functioning. Human rights and freedoms are as much complex, as they are warring. The adoption of our Constitution in 1998, sanctioned an important key role in international agreements as one of the

main law sources of the Albanian internal law order. It often occurs that powers cross their respective borders, questioning the upholding of constitutionality and human rights. The methodology used in this paper is quantitative research, referring to practical cases held in Albania and cases held by the European Court of Human Rights. Qualitative and mixed method approaches are used, referring to practical cases in Albania, especially those, which were also sent to the European Court of Human Rights. By following the case law analysis of the Constitutional Court and that of the European Court of Human Rights, the interpretation standard in Albania oughts to advance. This paper's conclusions unify the constitutional approach as per the European standard. Qualitative data indicators show us a discrepancy in regards to the ratio between used standards, relating to the procedure followed to address constitutional rights.

Key words: *European Court of Human Rights, constitutionality, rule of law, international agreements, practical cases.*

Hyrje

From the earliest times until today, the history of human rights has appeared quite diverse, with an indisputable dynamism of development and progress. People throughout history have interacted with each other in very complex ways. Due to human interaction and the endless developments of history there have been beginnings, turns, advances, support influenced by domestic and international politics in relation to power. This explains the fact that many achievements have not been complete and why today there are so many, even more serious, violations of human rights. Hierarchical and authoritarian regimes demanded unconditional obedience from the majority of the population. Many suffered because of exploitation and especially the economic and social class they belonged to. Another part suffered because of skin color, racial difference, belief and religious affiliation, because of ethnicity, language, etc.

According to the American sociologist William Graham Sumner (1919: 470), that reality lived by the oppression and denial of basic human rights is understood as:

-all history is a long story with this consequence: men have struggled for power over other men in order to gain the goods of the Earth at the expense of others and to be able to throw the burdens of life from their shoulders to their own shoulders of others.

It was this ground where the way was seen to change this reality and to leave aside the history of war, oppression, slavery, torture, etc. An effort was needed beyond territorial borders, to respect the basic rights of people, aspiring for equality and equal treatment among all categories, whether they are ruling or subjugated. On June 26, 1945, the Charter of the United Nations (UN, 1945) was signed, where in its preamble the main objectives were:

Ø Saving future generations from the impact of war;

Ø Belief in basic human rights, in the equal rights of men and women as well as of large or small nations.

In 1946, the United Nations created the Commission on Human Rights, and on December 10, 1948 in Paris, the Universal Declaration of Human Rights (UN, 1948) was approved by the General Assembly. 1 Universal Declaration of Human Rights it is the foundation of freedom, justice and peace in the world. It was drafted in response to the aftermath of the horrors of World War II and

represents the first global effort to protect what many believed to be fundamental rights owed to all human beings.

1. The Council of Europe and (its) legal framework

The Council of Europe (hereafter EC) was established on May 5, 1949 by 11 European states as a European organization to promote and develop inter-governmental and inter-parliamentary cooperation. Its purpose was to achieve a greater unity between the member states in order to preserve and realize the ideals and principles which are their common heritage as well as to enable their economic and social progress. In the genesis of this organization, its founding states were: France, Britain, Belgium, Ireland, Italy, Denmark, Luxembourg, Norway, the Netherlands, the United Kingdom and Sweden. This institution operates on the basis of the main principles such as: the rule of law, respect for human rights and pluralistic democracy, as defined in the founding Statute of the Council of Europe (Statute of the Council of Europe, London, 5.V.1949). Since 1989, after the fall of the Berlin Wall, the number of countries that have become part of the EC has increased, including countries from the former Eastern Bloc. Albania joined the EC in 1995. The main human rights instruments with which the Council of Europe constitutes decision-making in accordance with the purpose of its creation are:

- Convention for the Protection of Fundamental Rights and Freedoms, with Additional Protocols (EC, 2010);
- The European Social Charter, with the additional protocol of 1988, the amendment of the additional protocol of 1991 and the additional protocol of 1995 that provides for a system of collective complaints (EC, 2007);
- The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment of Punishment of 1987, with the two protocols of 1993 for relatively less important technical issues (EC, 2002);
- Framework Convention for the Protection of National Minorities (EC, 1995).

1.1. Albania and the EC through the European Convention on Human Rights

The European Convention on Human Rights (hereinafter the Convention) was adopted in 1950 when Albania was under the communist regime. After the 90s, among the changes and innovations brought about by the overthrow of the system was not only the adoption of the Convention on Human Rights, but especially Albania's membership in the Council of Europe on July 13, 1995¹. Membership in the Council of Europe was an extraordinary achievement, since in the international arena it gave us recognition as a country that had finally entered the path of democracy. Given the content of the Convention, it constituted encouragement for the strengthening of democracy. The European Convention was signed on November 4, 1950 and entered into force in September 1953 (Jacobs, 2010). Our country achieved membership with full representation rights in this Council through the fulfillment of several obligations such as: coherent political, economic, legal development and the transition to a free and democratic society. We undertook these obligations of the above-mentioned nature, especially the legal ones, in order to fulfill them within the specified deadlines. On October 2, 1996, Albania ratified the Convention and several of its additional Protocols.

¹ Albania's membership took place with the signing of the Framework Convention for the Protection of National Minorities on June 29, 1995, and on July 13, 1995, Albania became a full member of the Council of Europe.

The Constitution was adopted according to a mixed form between the approval by the Assembly and the Referendum held on November 28, 1998. Article 116 of the Constitution provides for the hierarchy of normative acts where after establishing the Constitution as the highest fundamental law of the country, in second place in the scale hierarchy are the ratified international agreements. In the field of human rights, the place of the international norm in the system of normative hierarchy represents changes from the general hierarchy of norms provided by the above article. The European Convention on Human Rights, ratified by Albania in 1996, is listed among the internal sources with general power, even in terms of limiting fundamental rights, it has equal value with the Constitution (Omari and Anastasi, 2008: 47). Our Constitution directly invokes the Convention and makes it an internal part of it.

Article 17 of the Constitution defines the conditions and criteria for limiting fundamental rights and freedoms. This article expressly refers to the Convention, determining that the restrictions cannot violate the essence of freedoms and rights and in no case can exceed the limitations provided for in the European Convention on Human Rights. It is expressly accepted that indirectly the rights provided for in the ECHR have not been guaranteed a constitutional status in terms of their content, but such a status has been provided for the limitations of these rights. ²This doctrine of the identity of limitations is the most obvious feature of the Constitution, which is not found in any other legal system (Omari and Anastasi, 2008: 84).³

2. The impact of the European Convention on Human Rights on our constitutional system

The Convention is one of the most important international treaties of the Council of Europe, which provides for all the rights and freedoms that its member states have the obligation to guarantee to individuals within their entire jurisdiction. In order to see its applicability, the Council has also created the mechanism of their implementation in the international framework, while states and individuals in case of violation of these rights can turn to the court that deals precisely with the violation of rights, the Court European Commission of Human Rights, based in Strasbourg. The new thing that the Convention brings is precisely the binding character of the application of its norms.

With the adoption of the Constitution of the Republic of Albania in 1998, a special and important role of international agreements was sanctioned, as well as one of the most important sources in the internal Albanian legal order. Article 116 of the Constitution (KSH, 2016) foresees the hierarchy of sources of law. Likewise, in order to further understand the above provision, it is worth continuing with the constitutional provision provided for in Article 122 points 1 and 2 thereof, where it is sanctioned that:

1. "Each ratified international agreement forms part of the internal legal system as it is published in the Official Gazette of the Republic of Albania. It is directly applicable, except in cases where it is not self-executing and its implementation requires the issuance of a law. Changing, supplementing and repealing laws approved by the majority of all members of the Assembly for the effect of ratifying international agreements is done with the same majority.

2. An international agreement ratified by law prevails over the laws of the country that do not agree with it".

² Albania had not fulfilled the legal obligation of signing, ratifying and implementing Protocol No. 6, which in Article 1 sanctions: "Abolition of the death penalty". Moreover, see decision no. 65, dated 10.12.1999 of the GJK of RS.

³ On 02.11.1996, Albania ratified the first 8 Additional Protocols of the ECHR. Protocol No. 11 was ratified on 02.10.1996 and entered into force on 01.11.1998; Protocol No. 12 was ratified on 26.11.2004 and entered into force on 01.04.2005; Protocol No. 13 "On the abolition of the death penalty in all circumstances" was ratified on 06.02.2007 and entered into force on 01.06.2007; Protocol No. 14 was ratified on 03.02.2006 and entered into force on 01.06.2010.

From the reference of these constitutional provisions, it is easy to understand the importance of international agreements in our internal legal order after their ratification by law by the Republic of Albania. In this logic, it is worth emphasizing the privileged role that the Convention has in the Albanian constitutional order compared to all other agreements. If we refer to Article 17 of the Constitution, we will understand precisely its privileged position in the internal legal order.

By means of this provision, it has a constitutional or quasi-constitutional status only as far as the limitation of the protection of human rights is concerned. According to Article 116 of the Constitution, the Convention, as an international agreement ratified by law, ranks immediately after the Constitution in the hierarchy of legal norms (Sadushi, 2012: 448). As a result, it occupies an important place in domestic law and becomes mandatory to be implemented for every state, for all state bodies including here and courts of every level as well as the bodies that implement their decisions. The guarantees affect the interpretation and protection of the rights and fundamental freedoms of the individual expressed by the Constitution of the Republic of Albania.

In addition, the Constitutional Court in its jurisprudence has emphasized that the text of the Convention and the jurisprudence of the European Court of Human Rights (hereinafter ECHR) serve to make the constitutional interpretation and to determine, case by case, the limits of fundamental rights constitutional. This position of the Convention comes as a result of the commitments of the Albanian state to provide a guaranteed protection to basic human rights and freedoms. The practice of this Court is important for the guiding values of its jurisprudence for Albanian courts as well.

2. 1. The relationship between international law and our domestic law

According to the principle that the European Convention of Human Rights rests on the domestic law and the state parties cannot avoid the obligations arising from the Convention is an argument related to the domestic law. The relationship between international law and domestic law is not unknown. International law may be in the rank of domestic Constitutional law, even higher, or may have an intermediate position between Constitutional law and legal acts, or may not have this direct legal validity in domestic law (Puto, : 18).⁴ Decisions taken pursuant to the Convention often require States Parties to make relevant changes in their domestic law in order to bring them into line with the provisions of the Convention.⁵

An important issue is that which concerns the position of domestic law vis-à-vis the Convention bodies. It is understood that domestic law plays a role in the procedures and decision-making by the Convention bodies. In principle, in international law, an international court is not competent to declare the relevant law invalid. It does not directly oblige the respective state to change the law. This stems from the fact that the execution of the decisions of the European Court is not in its hands.

Another important element concerns the effects that the Court's decisions have on our domestic law. These effects may vary according to the content of the trial. If the Court finds a law incompatible with the Convention, the law must be changed. If the European Court has decided that a state has violated the Convention, the state in question is obliged to restore the person concerned to the right he had or could have had. In general, the relationship between the Convention and domestic law is expressed in this connection. This results in two legal orders in relation to each other. The

4 See: "The European Convention on Human Rights in relation to the Constitution of Albania, Comparative View", Puto. A., p. 18.

5 Ibid. p. 20.

Convention represents a superior legal order in the field of human rights, while states are subject to the jurisdiction of the European Court in this particular area. ⁶The ECtHR has an exclusive competence in our legal system. This competence is accepted by our internal legal system, as a result of the implementation of Article 122 of the Constitution, as well as its Article 17/2, which oblige ECJ decisions to be implemented directly. Especially with regard to the decisions of the ECtHR, there is a need for the legislature to take measures to harmonize the internal legislation with the provisions of the ECtHR. If there is no harmonization, that is, if we are in cases of legislative vacuum or when the legal provisions contradict the provisions of the Convention, then judges of every level directly apply the decisions of the ECtHR in accordance with Article 122⁷ of the Constitution and Articles 19 and 46 of ECHR.⁸ The Constitutional Court in its decision-making argues that compliance with the ECHR and constitutional standards is an obligation not only of it, but also of the courts of ordinary jurisdiction, in particular the Supreme Court due to its special powers of a reviewing nature, but also in terms of the unification of judicial practice.

As the ECtHR has also expressed: “The role of a Supreme Court in a contracting party is precisely the resolution of conflicts, the avoidance of divergences and stability.”

The Constitutional Court reasons that the purpose of the constitutional trial regarding the right to a due process of law is to identify possible violations of this right. In the conditions where the ECtHR found violations of the right to a regular legal process against the applicant, due to the exclusive competence of the ECtHR in this regard, this fact cannot be put into question. The purpose of the constitutional process in this case is to abolish those judicial decisions that have brought about a violation of this right and to give opportunities to the judicial bodies to act in accordance with the decisions of the ECtHR, in order to achieve the effective protection of the rights of the individual, in the concrete case his safety and personal freedom.

3. Report of the Constitution and the Convention on Human Rights

Our country has ratified international human rights acts, creating a complete legal agreement between internal and international sources of these rights. Our constitution directly invokes the European Convention on Human Rights. The inclusion of the Convention in the Constitution clearly shows the compatibility of these legal acts.

-What is the relationship between the entirety of international human rights law and the domestic catalog?

To answer this question, we return again to the 1998 Constitution, Article 16 and Article 17 paragraph 2 thereof.⁹ In the interpretation of these two articles, we see that the Constitution directly invokes and makes the European Convention of Human Rights an internal part. The reference made by the legislator to the position of the Convention in relation to the internal laws of the country should be seen in a wide field of action. In this aspect, our Constitution is in parallel with the Euro-

⁶ For more see the European Convention.

⁷ Article 122 of the Constitution in its content determines that: *The provisions of international agreements have precedence over the laws of the country that do not agree with it. The implementation of the decision of the ECtHR should be carried out in the most efficient way possible and without infringing an important element of the right to a regular legal process, precisely the unreasonable duration of the process.*

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⁹ See: Constitution of the Republic of Albania as amended, Article 17: “The limitations of the rights and freedoms provided for in this Constitution can only be established by law... These limitations cannot affect the essence of the freedoms and rights and in no case can they exceed the limitations provided for in the European Convention on Human Rights”.

pean Convention, with this international act of human rights which takes constitutional force in the Republic of Albania regarding the issues of restriction of fundamental rights and freedoms.

In its jurisprudence¹⁰, the Constitutional Court has paid enough attention to the cases of restriction of the fundamental rights of individuals, highlighting in its decision-making the constitutional criteria that must be respected by the legislator in the case of the restriction of fundamental human rights and freedoms. The constitutional provision¹¹ requires the evaluation of the necessity of the legal intervention of the state, depending on the nature of the right, the character of the public interest that must be protected, the concrete circumstances that dictate an intervention to the minimum and as least harmful from the point of view of human rights.¹²

The Constitution, through the reference to the ECHR, has given this document the value of the constitutional standard in terms of the limitation of human rights. The legislator cannot impose restrictions that exceed those provided by the ECHR, but he is not prevented, through the legislation, to expand the space of rights and freedoms and to give a greater dimension to the realization of the protection of the individual,¹³ In this sense, the Court also takes into account the jurisprudence of the European Court of Human Rights (ECHR), which has given life to the standards of the ECHR through their application in concrete cases.

In our essential Constitution is the provision that has been made to the limitations which, in no case, can violate or disrupt the relationship and essence of freedoms and rights and cannot exceed the limitations provided for in the European Convention of Human Rights. So we indirectly conclude that the rights provided for in the Convention are not guaranteed constitutional status in terms of their content, but such a status is provided for the limitations of these rights. This doctrine of the identity of limitations is the prominent feature of the Constitution of the Republic of Albania, which we cannot find in any other legal system.

4. The jurisprudence of the ECtHR and its role in the Albanian constitutional justice

Immediately after the Constitution was drafted, significant changes were made in terms of strengthening these rights. The most important role for the protection of these rights has been and continues to be played by the judiciary. Constitutionalists, judges, jurists, as in many other countries, in Albania too, have been quite active in strengthening and protecting these rights. The Constitutional Court, looking at the protective temple of these rights, has made detailed interpretations of the Constitution in terms of the protection of human rights. In addition to the correct interpretation that she has made of the Constitution, she has also affirmed guaranteeing elements, establishing principles that are not expressly expressed in the Constitution.

The role of this court in ensuring the implementation of fundamental rights and freedoms and principles. Such principles are: the principle of legal certainty, the principle of clarity and precision of norms, the principle of acquired rights and many other important principles. The Constitutional Court, in cases of checking the compliance of laws with the European Convention on Human Rights, takes into account not only the text of the Convention as such, but also the interpretations that the European Court has made of its provisions.

10 Decision no. 9/2010.

11 For more, see Article 17 of the Constitution.

12 See the decision of the Constitutional Court of Albania 39/2007, 41/2007.

13 See the decision of the Constitutional Court of Albania 24/2007.

The issues related to the protection of human rights, which constitute the most important and fundamental aspect of the activity of the Constitutional Court, are summarized in the right to a legal due process. But this is only one of the many rights of the individual that is related to the regularity of an ordinary trial and cannot serve to ensure his other rights. So, this right cannot cover all other constitutional rights of the individual. In other articles of the constitution, we find sanctioned other rights that are directly related to the freedoms and rights of citizens.

Regarding the right to a fair legal process, two essential moments stand out:¹⁴

Firstly, the citizen's freedom, property and constitutional and legal rights must have been violated; *Secondly*, the violation of these rights must have occurred without a proper legal process.

Regarding this definition, it is difficult to make a clear analysis, since no definition is given for the regular legal process. It can be understood not directly from the Constitution, but mainly from the Constitutional practice, which is also oriented in the jurisprudence of the Strasbourg Court. The jurisprudence of the Constitutional Court is constantly being consolidated and moving towards unification. The practice of this court shows that there are changes in its progress, but what is worth emphasizing is its adaptation to the practice and references adopted by the European Court of Human Rights.

The Constitutional Court has reduced the constitutional control for issues related to the protection of basic human rights and freedoms, only to the control for a regular legal process. Constitutional Jurisprudence has dealt with a complete set of components of this right, which consist of:

- a. *Fair public judgment;*
- b. *Judgment by a court designated by law;*
- c. *Judgment within a reasonable time;*
- d. *Gjykim nga një gjykatë e pavarur dhe e paanshme.*

Reference to the jurisprudence of the ECtHR is essential on the part of national courts for the implementation of the principles of law elaborated therein. This is due not only to the fact that in the jurisprudence of the ECtHR one can find cases similar to the cases judged by national courts, which serve as a reference point in the resolution of the case thus facilitating the work of international judges, but also due to the possibility that it exists that the decision given by the national judge, which does not take into account the jurisprudence of the ECtHR, can be contested before it.

Article 5 of the Constitution of Albania provides that the Republic of Albania applies international law binding on it, while Article 122 provides that international agreements are part of internal law in Albania, are directly applicable and have priority over ordinary legislation that does not agree with them.

Article 17 of the Constitution aims to make the European Convention on Human Rights a document, which will serve as a manual for judges, who, although they do not have the right to directly apply the articles of the Constitution, will be gave individuals better protection by using a broader interpretation. Court judges do not have the right not to apply the law due to its unconstitutionality. They can suspend the proceedings and refer the question of the constitutionality of the law to the Constitutional

14 See: *Constitutional Justice in Development*, Sokol Sadushi.

Court. *What Professor K. Traja¹⁵ poses as a problem for this issue results in the question: - What would be the meaning of talking about direct implementation when judges are obliged to implement the law, even when it contradicts the Convention?* This problem Prof. Traja provides a solution by presenting two main problems. *First*, the possibility of direct implementation of constitutional articles, which is excluded in principle and the absence of relevant laws. The absence of law is an opportunity that allows judges to directly apply the Constitution, but this opportunity can be limited by the legislature, so it cannot be thought of as a real power. *Secondly*, the direct application of the articles of the Convention by the courts.

Regarding the second problem, if we refer to Article 122/1 which essentially provides that: Any international agreement duly ratified is directly applicable, except in cases where it is not applicable. The articles of the Convention are almost self-executing. In this way it is claimed that any court will apply them directly. What remains unclear is whether the courts have this power when there is a law which contradicts the Convention. So what will be the stance of the courts? Courts generally have the right to choose between the laws they think are appropriate, to apply them through the rules of judicial practice.

There are different human rights protection systems in many European countries, but our country with the 1998 Constitution occupies a special place, if not a single place in this aspect. The system of normative acts presented in Article 116 and subsequent articles in this regard, makes the implementation of international agreements legally binding in cases where the latter are in conflict with domestic laws. If a certain law is in conflict with the Convention, the latter prevails and will be applied by the courts without the need for them to refer the case to the Constitutional Court for a decision.

At this stage it is not a constitutional problem, but a simple matter of judicial interpretation. What is seen as a problem is when we reach the limitations of these rights. The problem is not only in the conformity of the domestic law but also in its constitutionality. A law related to some certain rights manages to create a problem of constitutional compatibility, when this law fixes some limits on the exercise of these rights. So in this case the two essential problems (compliance with the Convention and the Constitution) are in the same direction.

Conclusions

- Consolidation of judicial practice (jurisprudence) / its unification does not represent any legal obstacle for any Albanian citizen who requests the internal review of criminal decisions based on a decision of the European Court of Human Rights (ECHR) DH-DD (2016)) 298 (Application No. 20134/05)¹⁶.

- Now, not only the aspects of the guarantees of a regular legal process are subject to direct review by the ECJ, but based on the recent amendments to the Constitution and the internal legislation of our country, the cases are also subject to review by the ECJ concrete ones that basically have the protection of the guarantees of essential material rights, such as discrimination, racism, etc.

- If the Court has estimated that a certain citizen's constitutional rights have been violated, this fact

15 Judge at the European Court of Human Rights, Strasbourg for the period 1998-2008 and is one of the most well-known academics in the Balkans, for Constitutional Law.

16 Consil of Europe, Secretariat General, Committee of Ministers, Secretariat of the Committee of Ministers, DH-DD (2016)298, Communication of Albania concerning the case of Alimucaj against Albania, (Application No. 20134/05) page 3.

cannot be subject to an assessment process by anyone, least of all by the Supreme Court, which has the duty to guarantee the correct implementation of criminal, procedural and material law by all courts, in accordance with the Constitution and the decisions of the Constitutional Court.

- Furthermore, based on the wording of Article 17-of the Constitution, the orientation of our country as a member of the community of European liberal democracies is questioned, which precisely through a new social contract have decided that a certain community of rights, including the right to due process of law, consider them inviolable.

- In this particular case, the violation of the individual's right to a proper legal process, guaranteed by the Constitution, comes without a law and, worse, by a high judicial body, which, among others, with attitudes of this nature increases the consequences harmful to a process already declared illegal both by the ECtHR and by this Court with other elements, such as the unreasonable delays in the final resolution of the case.

Recommendations

- If a person has been punished without being offered one of the protection measures of a regular legal process, then the most suitable form for him is "procedural compensation". In principle, it should be a de novo trial or the re-opening of the case trial procedures in accordance with the requirements of Article 6 of the Convention.

- Our country must effectively ensure the implementation of the guarantees of Article 6 and not only of the Convention, to avoid the many costs that this entails.

- To reflect on the problems identified in relation to practicing the profession of lawyer. To leave room for practicing the profession of lawyer, especially in lawyer-client, lawyer-court, lawyer-lawyer relations.

- Reforming the justice system has included constitutional amendments and substantive and procedural codes. This has made the improvement and introduction of standards and special laws inevitable. For this, legal relations and the functioning of institutions (specifically the profession of Advocacy) must be regulated.

- Often the chosen defenders do not make a legal defense, but seek summary judgment. In this way, the prosecution is helped to close the case in a shorter time, not giving the defendant the opportunity to appeal as a right of process against him. This has direct effects on the detained / arrested subject as well as on the justice system.

- To find effective ways (such as training, improvements and reformation of the justice system) to overcome the problems with the defense process and with the implementation of the defendant's rights.

- To improve more and more all our legislation in the field of this right, affecting special categories of individuals, its continuous improvement, the intervention of the Constitutional Court in necessary cases, will follow the possibility that these rights will not only to have compatibility with conventions, treaties and international agreements, but to find applicability which cannot be considered complete, but with the hope that in the future it will give many times better results.

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