Organization of the Albanian Judicial System

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Abstract

All the countries of the former communist bloc, after the fall of totalitarian regimes in the early 1990s, established new governments oriented towards democratic reforms, following the model of countries with high standard democracies, which put the focus on the individual and his freedoms and rights. A distinctive feature of these new democracies in relation to their socio-political tradition was the drafting of liberal constitutions in which state power is distributed among different institutions to achieve a separation of powers, where a functional component of any government is the separation of the judiciary by the executive. The Constitution of the Republic of Albania clearly reflects the intention of the people for the construction of the rule of law, ie a state where the rule of law shall prevail and where everyone is equal before the law. The Constitution, based on the state-building philosophy, accepts the principle of separation of powers1. By sanctioning this principle in the given Constitution, the powers in the Republic of Albania are separated and exercised by different state bodies in such a way that no power can exceed its competencies, without being subject to control and counteraction by other powers. Based on the principle of separation of powers, the judicial function is exercised only by the courts. This is the reason why the exercise of judicial function by other powers shall be prohibited, since it violates the independence of the judiciary2.

Keywords: Republic of Albania, standard democracies, freedoms and rights, Constitutionate

1. Introduction

The judiciary plays an important role in safeguarding and guaranteeing the freedoms and rights of the individual. This requires a special position of the judiciary, independent in the sense of having a suitable organization separated from other powers. This is what is called the institutional Judicial Independence. Independence is also reinforced by the acceptance of self-government in each court. The self-administration of the courts has made it impossible to influence the powers of other organizations in appointing a concrete judge in the trial of a particular case.

Furthermore, in order to guarantee the activity in compliance with the constitution and the law, the judiciary needs an independent constitutional structure that represents, protects and controls the activity of first instance courts and courts of appeals, such as the Supreme Council of Justice. The latter is responsible for the transfer and dismissal of judges of the first instance and courts of appeals, while proposing their appointment to the President of the Republic.3

Thus, the Constitution thus guarantees that the initial appointment, transfer, promotion and dismissal of judges of the courts of first instance and courts of appeals are within the competence of a constitutional body (Supreme Council of Justice) where judges elected by their colleagues in the Judicial Conference Nationals make up the majority of members.4

1 Constitution of the Republic of Tirana 1998. Article 7
2 Decision of the Constitutional Court no. 33 dated 24.11.2003
The principle of separation of powers may also sanction an independent judge. An independent judge shall be free from any influence, also helps to maintain impartiality in the trial and guarantees the non-arbitrariness in the exercise of duty. The constitution also guarantees the judge personal independence by setting strict rules for selection, appointment, promotion, transfer, dismissal and retirement. The Constitution of the Republic of Albania pursuant to Article 138 sets standards that provide for an independent judge: "The tenure of judges in office cannot be limited". The Constitution also guarantees another element, that of not reducing the salary and benefits of the judge (Article 138). "Judges are independent and subject only to the Constitution and laws" – pursuant to Article 145/1 of the Constitution. This constitutional provision shall mean the freedom guaranteed to the judge by the influence of superiors or colleagues in dictating the resolution of the case.

2. Judicial Independence

In this way, judges in making court decisions shall be protected from legal obligations or instructions given by their superiors, the head of the court, the legislative or executive power. To emphasize the personal guarantees that the Constitution recognizes for judges to be free, unaffected especially by the executive, the Constitution provides them with immunity from prosecution (Legal immunity).

For judges of the Supreme Court, the Constitution stipulates that they can be prosecuted only with the approval of the Assembly. While in case of arrest in flagrante delicto cases, it is the Constitutional Court that must issue the petition within 24 hours. While other judges can be prosecuted only with the approval of the Supreme Council of Justice. In the event of the arrest or subsequent arrest of a crime or immediately thereafter, the Supreme Council of Justice must give its consent within 24 hours5.

In addition to the recognized guarantees, the Constitution stipulates that being a judge is not compatible with any other state, political or private activity (Article 143), in order to preserve "internal independence", the fact that a judge would be part of politics, head of an institution or to conduct profitable activities, would bring the loss of objectivity in resolving the case as a result of direct or indirect implication with the case at trial. The internal independence of the judge requires that the legal provisions be applied objectively and not subjectively, which would lead to the distortion of the principle of impartiality.

Following internal independence, judges, pursuant to the applicable law in force, in a particular case, shall be free not to apply it when they deem the law to be in conflict with the Constitution. In such a case they shall suspend the trial and refer the matter to the Constitutional Court.6

The given provision of the Constitution increases the independence of the judge, but not the independence of the Constitution and law.

3. The Albanian Judicial System

"The system of government in the Republic of Albania is based on the separation and balance between the legislative, executive and judicial powers."7 Thus, the Constitution defines the judiciary as one of the judicial functions and the exclusivity for the three powers in charge of exercising the provision of justice. The Constitution explicitly stipulates that the judiciary shall be exercised only by the courts and defines a three-tier system of judiciary, which is organized with the following structure.

- Courts of First Instance
- Courts of Appeals8
- Supreme Court9

In addition to the above structure, in Article 135/2 of the Constitution, the Assembly is recognized the right to establish courts for specific areas based on the applicable law. Thus, in addition to the ordinary courts, special laws have been established, such as:

- Court for Serious Crimes10
- Electoral College11
- Court-Martial

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3 Constitution of Republic of Albania 1998 article 136/4; article 147 / 5,6
4 At the same source, article 147/1
5 "Constitution of Republic of Albania 1998, article 137
6 Constitution of Republic of Albania, article 145/2 15
As well as with the approval of law no. 49/2012 "On the organization and functioning of Administrative Courts and adjudication of administrative disputes" were established the Administrative Courts, which are organized based on the following structure:

- Administrative Court of First Instance
- Administrative Court of Appeal
- Administrative College of the High Court

4. Ordinary Courts

4.1 Judicial District Courts

The functioning of the ordinary court is regulated by Law no. 8436 dated 28.12.1998 "On the organization of the judiciary in the Republic of Albania" Pursuant to Article 11, it is provided that "Courts of first instance are organized and function in judicial districts throughout the territory of the country ".

The territorial competence and the gender of the exercise of their activity shall be determined by a decree of the President of the Republic of Albania on the proposal of the Minister of Justice, after the opinion of the Supreme Council of Justice has been obtained. By Decree of the President of the Republic of Albania, 29 judicial districts have been established.11

In each judicial district there is a judicial district court, which means that in the Republic of Albania there are 29 courts of first instance. The number of judges working in these courts is determined by decree of the President of the Republic of Albania pursuant to law no. 8436 dated 28.12.1998 article 12, which stipulates that the total number of judges shall be determined by decree of the President of the Republic of Albania with proposal of the Minister of Justice, after the opinion of the Supreme Council of Justice has been obtained. Also regarding the manner of trial and the number of judges participating in a process, this number is regulated based on the Civil Procedure Code and Criminal Procedure Code, which determine the cases to be tried by a judge or a three or five-judge panel.

4.2 Courts of Appeals

The number of Courts of Appeals shall be regulated by the decree of the President of the Republic of Albania no. 2110 dated 29.05.1998, in the territory of the Republic of Albania, six courts of appeals carry out their activity. They have their center of activity in Shkodra, Durrës, Tirana, Vlora, Korca and Gjirokastra 11.

Courts of Appeals review appeals against decisions of district courts (first instance courts).

Cases in the Courts of Appeals shall be adjudicated by a three-judge panel. These courts may undermine the legal grounds of district court decisions or may adjudicate cases of fact.

At the end of the trial, the Court of Appeals shall issue a decision, which is final and binding on the parties and their heirs as well as on all other courts and institutions.12

4.3 The Supreme Court

Article 136 of the Constitution of the Republic of Albania defines precisely the manner and bodies responsible for the appointment of members and the President of the Supreme Court as well as the duration of their commission, but it does not specify their number, which is determined by the law. 13

The Supreme Court has mainly reviewing jurisdiction, but in certain cases defined by law it also, it has initial jurisdiction when adjudicating criminal charges against the President of the Republic of Albania, the President and members of the Council of Ministers, deputies, judges of the Supreme Court and judges of the Constitutional Court. 14

7 Constitution of Republic of Albania 1998, article 7
8 At the same source, article 135
9 Law on the organization and functioning of the Courts for Serious Crimes, No. 9110 dated 24.07.2003
10 Electoral Code of the Republic of Albania, Article 146
11Decree of the President of the Republic no. 2110 dated 29.05.1998
12 Decree of the President of the Republic no.2110 dated 29.05.1998
13 Law No. 8587 dated 15.03.2000 "On the organization and functioning of the High Court
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In other cases it has a reviewing jurisdiction. Regarding the way of organizing the trial of cases, the Supreme Court is organized in the Criminal College, the Civil College and the Joint Colleges. Criminal cases are adjudicated by the Criminal College, while other cases are adjudicated by the Civil College, which judges in a panel of five judges. Joint Panels adjudicate appeals against decisions of the Supreme Council of Justice as well as other cases provided by law. The Joint Colleges also have the Constitutional task of unifying or changing case law. 15

5. Courts for Special Areas, Established by Law

5.1 Court for Serious Crimes

One of the most important courts established by law is that of Serious Crimes15. The Law on the Organization and Functioning of the Courts for Serious Crimes, No. 9110 dated 24.07.2003 provides for a two-tier system for the trial of serious crimes. The decisions given by these courts shall be reviewed in the third instance by the Supreme Court.

By the decree of the President of the Republic of Albania 3993 dated 29.10.2003 in the territory of the Republic of Albania are established and function the Court of First Instance for Serious Crimes and the Court of Appeals for Serious Crimes, which have territorial jurisdiction throughout the territory of the country and have their headquarters in Tirana. They have in their staff respectively 16 judges of the court of first instance and 11 judges in the composition of the Court of Appeals for serious crimes.

Nominations for vacancies in the Serious Crimes Courts and the Courts of Appeals for Serious Crimes are reviewed by the Supreme Council of Justice and the decision to propose their appointment to the President of the Republic is taken by a majority vote of all members of this Council. 16

They have a 9-year term and at their request can be reappointed to the given position. These courts review in a panel of five judges.

5.2 Electoral College

The Electoral College of the Court of Appeals of Tirana consists of eight judges selected by lot by the Supreme Council of Justice.

The lot carried out by the Supreme Council of Justice for the selection of eight judges, which make up the Electoral College of the Court of Appeals, Tirana, shall include the names of all judges of all courts of appeals of the Republic of Albania, except the judges to whom it is decided to initiate a criminal case, a disciplinary measure is in force or disciplinary proceedings have been initiated17.

5.3 Court-Martial

Court-Martial was established by law no. 7574 dated 24.06.1992. According to this law, five first instance military courts and one court of appeals have been established. The territorial boundaries of their activity are determined by the decree of the President of the Republic no. 1143 dated 03.07.1995.

11 Code of Civil Procedure 1996, Article 151 / a
12 Law No. 8587 dated 15.03.2000 "On the organization and functioning of the High Court
13 Constitution of Republic of Albania 1998 article 141 / I
14 Constitution of the Republic of Albania article 141/2
Based on the given decree, five military courts have been established with headquarters in Shkodra, Tirana, Vlora, Korca and Gjirokastra. The Court of Appeals is headquartered in Tirana and consists of five judges. Court-Martial shall be competent over the prosecution of the military personnel, prisoners of war and other persons for criminal offenses provided by the Military Criminal Code and other legal provisions. Despite the fact that the establishment of the military courts of first instance was determined by law, they have in fact functioned as military criminal sections at the courts of the judicial districts.

5.4 Administrative Court

Based on the approval of Law No. 49/2012 "On the organization and functioning of Administrative Courts and adjudication of administrative disputes" The competent court for the review of administrative disputes, shall be the administrative courts of first instance, the Administrative Court of Appeals and the College Administrative of the Supreme Court. Pursuant to the above-mentioned law, the courts of first instance for territorial extension and number of courts are organized like the courts of the civil appeal. Regarding the criteria of appointment, career of judges, their status, responsibility for disciplinary violations, disciplinary proceedings, administration of services in court, as well as judicial reorganization are regulated according to the provisions of law no. 9877, dated 18.2.2008 "On the organization of the judiciary in the Republic of Albania.

The criteria for the appointment of first instance judges in the administrative courts are as follows: The candidate must have not less than 5 years of experience in the capacity of the judge, there shall not be disciplinary measures taken against him, with regards to Judges of the Administrative Court of Appeals, the criteria for their appointment are the same as those of the first instance, except for the requirement of 9 years of experience in the capacity of the judge.

The list of judicial candidates who meet the above criteria for the Administrative Court of First Instance and the Court of Appeals is forwarded to the School of Magistrates which organizes the examination. Candidates, who successfully pass the exam, are selected by the Supreme Council of Justice taking into account the results of the selection examination.

6. Constitutional Court

6.1 The Constitutional Court

It is not part of the judicial power but plays an important role in safeguarding and guaranteeing constitutional freedoms and rights. Thus, it decides on the final judgment of the complaints of individuals for the violation of their constitutional rights for a regular legal process after all legal remedies for the protection of these rights have been exhausted.

In the Republic of Albania, the Constitutional Court is the one that carries out the control of the constitutionality. According to the Constitution of the Republic of Albania, "The Constitutional Court decides on the compatibility of the law with the Constitution or with international agreements". The Constitutional Court consists of 9 members, who are appointed by the President, with the consent of the Assembly and remain in office for 9 years. At the head of the Body of Judges stands as a distinct figure, the President of the Constitutional Court, who is elected from their ranks, for a three-year term.

6.2 Judgment of Laws

The control of the compliance of laws with the Constitution and with the international agreements ratified by the Republic of Albania, is also the main activity of the Constitutional Court. This activity affirms the Court as the main body that controls the compliance of the principle of sovereignty of the people and that of the rule of law.

15Law on the organization and functioning of Serious Crimes Courts, No. 9110 dated 24.07.2003
16At the same source article 3/2
17Electoral Code of Republic of Albania, article 148
18Electoral Code of the Republic of Albania, article 146
19Law No. 49/2012 "On the organization and functioning of Administrative Courts and the adjudication of administrative disputes
20Law No. 49/2012 "On the organization and functioning of Administrative Courts and adjudication of administrative disputes" Article No. 5/4
When we talk about the control of the compatibility of laws with the Constitution, we have in mind that the following are subject to the judgment of the Constitutional Court:

a. law
b. international agreements before their ratification;
c. normative acts that shall have the force of law,
d. normative acts of other central and local bodies.

With regard to the more concrete definition of acts that have the force of law, the opinion has been defended that the object of review of the Constitutional Court shall be only the primary sources of law. The review of acts and bylaws goes beyond the scope of review of the Constitutional Court.

They shall always be examined by the ordinary courts.23 Whereas, that this division (between the acts to be tried by the Constitutional Court and those to be tried by the ordinary courts), has as main criterion first, the nature of the act, if it has individual or normative content, and second, claim to the content of the act, if its illegality or unconstitutionality is requested.*24 So, in addition to laws, other bylaws with normative content, may be subject to review by the Constitutional Court, in terms of other acts of individual character, the ordinary courts shall be competent to review the illegal content of the individual act and consequently its repeal. In terms of the problem that may arise in relation to individual acts which have unconstitutional content, in this case the Constitutional Court is competent to review the content of the individual act.

6.3 Early stages of the Constitutional Court

Pursuant to Article 134 of the Constitution, the Constitutional Court is set in motion only at the request of:

a. President of the Republic;
b. The Prime Minister;
c. not less than one-fifth of the deputies;
d. Head of the Supreme State Audit;
e. every court, according to the case of article 145 point 2 of that Constitution;
dh. The ombudsman
f. local government bodies
e. bodies of religious communities;
g. other political and organizational parties;
h. individual

The subjects provided by sub-paragraphs dh, e, ê, f and g of paragraph 1 of this article can make a request only for issues related to their interests.25

From the interpretation of Article 134 of the Constitution we can make a sub-categorization, from which it would result that the Constitutional Court is activated:

a. Upon the request of public authorities:
b. Upon the request of ordinary judges;
c. Upon the request of individuals.

Taking into account the possibility that, according to the Constitution, the legitimate entity has to submit a request, the Constitution has provided that, the entities that can activate the Constitutional Court are divided into two groups *:26 a. Entities that can submit an unconditional request and (b) entities that may apply under the condition "just for issued relating to their interests".

From what was analyzed above, it is clear, the very important and special role of the Constitutional Court in the administration of constitutional law. As the only body that reviews the constitutionality of the content of the legal norm, the Constitutional Court has been decided outside the judicial system, also separating it from the other two powers, the legislature and the executive. But it must be said that although Constitutional Court stands outside the three powers, it is not indirectly related to the three powers. The appointment of the members of the CC is made by the President of the Republic with the consent of the Parliament27 although they stay out of powers, however it is related to the legislative power, because as stated above the Assembly appoints the members of the CC, Regarding the connection with the executive power is the fact that the majority in the Assembly belongs to the political force that leads the government.

22Constitution of the Republic of Albania" article 131 "
23"Loloçi K., Constitutional Law, Tirana,
24"Sadushi S, Administrative Law 2, Tirana,
7. Constitutional and legal guarantees

The independence of the judiciary from other powers is a condition for the existence of the rule of law and the guarantee of the individual rights. The Constitution and the law have attributed a series of guarantees in order to enable the separation and non-influence of the court from other powers.

25 Constitution of the Republic of Albania "Article 134"
26 The interpretation of Article 134 of the Constitution was performed by the Constitutional Court with Decision no. 49, dt.31.07.2000 "
27 Constitution of the Republic of Albania "Article 125, point

7.1 Non-transferability of the judges of the appellate and first instance courts

In order to protect the independence of the judiciary, the Constitution of the Republic of Albania has clearly provided for the cases of movement of judges, thus guaranteeing their immobility. The immobility of judges of the courts of first instance and the court of appeal from the performance of their duties is sanctioned in Article 138 of the Constitution, which states that: "The term of office of judges in office cannot be limited." This guarantee is recognized to first instance and appellate judges in order to limit the pressure that can also be exerted on them to increase responsibility in the performance of their duties.

In the Constitution, in addition to determining the position of judges in office for an indefinite period (Article 138), it has also defined the cases in which the judge of the courts of first instance and appellate courts can be dismissed. "A judge may be dismissed by the Supreme Council of Justice for committing a crime, for acts and conduct that seriously discredit the position and figure of a judge, or for professional inadequacy. Against this decision, the dismissed judge has the right to appeal to the Supreme Court, which decides with Joint Colleges." 28.

But in addition to the cases defined in Article 147/6 in the Constitution of the Republic of Albania, the legislature has provided several other cases, for the removal of a judge from office "Judges may be removed from duty when: they resign; are criminally punished by a final court decision; it is concluded that they are physically or mentally incapacitated or according to the criteria set by law; their professional insufficiency is concluded, disciplinary measures are taken against them by the competent body according to the cases provided by the law; when performing actions or holding functions that are incompatible with the performance of the duty of a judge62. In this way the judge can be removed from office for breach of discipline. Pursuant to the law "On the organization of the judiciary" violations of discipline are considered as:
1. committing actions that pursuant to the law are incompatible with the role/function of a judge;
2. disclosure of the sensitive information of investigations, counseling room or other data of an intimate nature
3. heavy or systematic delays in performing the duty
4. non-observance of the rules of solemnity
5. unjustified absences at work
6. committing improper, immoral acts inside or outside working hours
7. committing actions contrary to the regular fulfillment of the duty or non-performance of obligatory procedural actions, when it does not constitute a criminal offense
8. non-compliance of the given disciplinary measure

Through the definition of the indefinite duration of the exercise of the function of a judge and the strict determination of the cases when a judge shall be removed from office, the Constitution has guaranteed one of the main requirements on the independence of the judiciary, the immobility of the judge of the first instance court and appeal court.

7.2 Non-transferability of judges of the Supreme Court

The Constitution stipulates that the Chairman and members of the Supreme Court remain in office for 9 years without the right of reappointment.29.

In addition to determining the duration of the mandate/term of judges of the Supreme Court, the Constitution in its Article 139 has provided on cases when the mandate of a judge of the Supreme Court terminates.

28 Constitution of the Republic of Albania 1998, article 147/6
His term terminates when:

- is punished by a final court decision for committing a crime
- does not appear in office without reason for more than 6 months
- turns 65 years old
- resigns and is declared incompetent of acting by a final court decision

The termination of the judge's term/mandate is declared by a decision of the Supreme Court. The Constitution provides for cases in which a judge of the Supreme Court shall be dismissed. He shall be dismissed by the Assembly with two-thirds of all its members: for violation of the Constitution, for committing a crime, for mental or physical disability and for acts and behavior that seriously discredit the position and figure of the judge. This provision contains four constitutional reasons, on which the Assembly shall be based to motivate the decision to dismiss a judge of the Supreme Court. The function performed by the Assembly, in the case of the dismissal of judges of the Supreme Court, is of a special nature, deviating from its usual activity as a body that adopts laws. In the constitutional provisions, Article 140, it is left to the Assembly to assess the character and importance of the violation committed as well as the fact whether the act or action is of such a nature that it can discredit the figure of a judge.

The concrete constitutional provision also engages the Constitutional Court in this activity. It exercises constitutional review by examining the decision of the Assembly dismissing the judge and verifying whether there is one of the constitutional reasons for the dismissal. The Constitutional Court examines not only the dismissal procedure but also the substance of the case. When it proves that there is one of the reasons mentioned in the Constitution, it declares his dismissal.

The provision in the Constitution of the length of tenure, cases of termination of the mandate and cases in which judges of the High Court can be dismissed guarantees the immobility of the judge of the High Court, as one of the essential requirements to have independent judges and an objective, impartial decision-making, based on law and the Constitution.

7.3 Retirement of a Judge

Pursuant to Article 138 of the Constitution, the term of office of judges cannot be limited.

The Constitution itself makes an exception to this general principle when it defines a nine-year term for judges of the Supreme Court (Article 136/3 of the Constitution).

However, the 9-year term may terminate prematurely if the Supreme Court judge reaches the age of 65 (Article 139/e). So it is the Constitution itself that determines the retirement age for members of the Supreme Court. While there is no provision in the Constitution for the retirement age of judges of first instance and appellate courts. Such a gap is filled by the law on "Organization of the judiciary in the Republic of Albania" where Article 25 stipulates that "Judges may remain in office until the age of 65. So in the interpretation of this article, judges of the courts of the first instance and of the appellant retire at the age of 65 years.

The guarantees and privileges recognized by the Constitution and the law, make possible the awareness in the rigorous exercise, professionalism of the duty, in the correct and impartial interpretation of the law by the judge. But are these guarantees sufficient for the realization of the separation of powers? I think that in addition to these guarantees, the creation of the rule of law requires the contribution of the three powers, the legislative, the executive and the judiciary itself, who must be aware of their self-limitation and exercise of activity within the space provided by the Constitution and law. Thus, in addition to this, it shall be necessary that in a country like Albania with a small state tradition, it would be very positive to benefit from the experience of developed western countries in consolidating the rule of law.

The steps of European countries must be followed in consolidating the rule of law, taking advantage of the information and legislation they have, to avoid mistakes, to move confidently towards a European future that the Albanian people deserve.
8. Economic - Financial Independence

Based on the principle of separation of powers, the judiciary is one of the three powers. One of the main elements related to guaranteeing the independence of the judiciary is its financial independence. Financial independence is a guarantee for a fair decision, independently and impartially.

In order to guarantee the economic independence of the judiciary, it is necessary for it to be equipped with all the means and income for which it needs to perform its function correctly.

Thus, in order to enable the economic and financial independence of the judiciary, the Constitution explicitly stipulates that: "The courts have a special budget, which they administer themselves. They propose their budget pursuant to the law." This constitutional guarantee enables the self-administration of courts which have an independent budget, thus creating opportunities for them to exercise their function independently.

For the administration of the court budget, the Office for the Administration of the Judicial Budget is established by law no. 8363, dated 01.07.1998. The drafting and implementation of the budget of the courts shall be subject to the rules and legal procedures for the drafting and implementation of the State Budget in the Republic of Albania. The Office administers budgetary funds intended for the courts, ensuring the implementation in principle of the independence of the judiciary from other powers. The office is governed by a board of 8 judges and by a representative of the Ministry of Justice. The chairman of the board is the President of the Supreme Court. The day-to-day administration of the Office is done by its director, who is appointed and dismissed by the board. Based on the data for the needs of the courts of the three levels collected by the Office, the board approves budgets draft. Each budget includes the salaries of judges and court administrative staff, operating expenses, capital and a reserve fund of about 2% of the judiciary budget.

The Ministry of Finance and the Council of Ministers finally decide on the proposed budget measure for the judiciary and submit it to the Assembly, but through the Office of Judicial Budget Administration.

In addition to the guarantees for an independent judiciary, the Constitution of the Republic of Albania also sanctions the economic independence of judges. Article 138 thereof provides: "... the salaries and other benefits of judges may not be reduced". In order to guarantee the sanctioning of the Constitution, the salaries of judges are determined by law. The salaries of Supreme Court judges are determined by the Law on the Supreme Court, while the salaries of other judges are determined by the Law on the Judiciary and the Law on the Serious Crimes Court. In this way the salary of the judge of the Supreme Court is related to the salary of the minister, while the other judges are closely linked the salary of the judge of the Supreme Court. Economic-financial independence and the legal determination of judges' salaries have a great impact on the independence of the judiciary, as they cannot be used as a punitive measure or pressure on the courts to perform their function in accordance with the Constitution and applicable laws.

9. Conclusions

Judicial power is constructed in such a way as to enable a hierarchical internal control of judicial decisions. This not only ensures the independence of the judiciary in relation to other powers, especially the executive, but better guarantees the freedoms and rights of the individual. A court decision can only be overturned by a higher court and is binding on all state or private bodies.

Based on the principle of separation of powers, the legislative and executive branches are excluded from the possibility of interfering in the decision-making of the judiciary. But in addition to guaranteeing the independence of the judiciary as a whole of individuals, it is also necessary guaranteeing the independence of judges. The independence of judges aims to ensure their impartiality in the exercise of judicial office, avoiding misinterpretation of the law and arbitrary decisions by them, as a result of the influence of other powers.

The guarantees provided by the law on the independence of the judge have to do with their selection (by an independent body such as the magistrate school), their appointment and promotion (by the decree of the President of the Republic of Albania, with the consent of the KLD as a body composed mainly of judges, ie individuals independent of politics and consequently of the other two powers).

However, and why there are a number of guarantees in the constitution and law that remove the judge from politics and its influence in the judicial process, in our reality the judge is not fully immune to these pressures. The reasons that lead the judge to fall prey to the influence of other powers can be many, one of these is the short democratic tradition of governance which must be changed on the examples of developed countries.

It must be said that from the very beginning the court has been a good tool for the protection of the rights and freedoms of the individual. The fact cannot be hidden that in different states and in different periods the courts have
played a different role from that of the which exist(giving justice), serving as a mechanism for punishing contradiction of regime.

This dark period of distortion of the role of the courts and the function of the judge in favor of the regime has been recognized by the Albanian judiciary in the years 46-90, where in an unprecedented way the judiciary has been transformed into a party weapon for the purge of full opponents, and although throughout history we can find many negative examples, the need for the services provided by the courts has never been questioned.

In all countries with developed democracies, the judiciary is at the forefront of institutions, in defense of the freedoms and rights of the individual. It is the judiciary that with its valuable contribution has helped in the achievements towards the guarantee of democracy.

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