

Independence of the Judiciary and the Rule of Law Index
Madrid, 3 – 5 March 2024

Dear friends and colleagues,

It is a great pleasure for me to have the opportunity to meet you again in another important event. I am delighted also to address this panel, which is focused on issues that represent the main indicators of the level of democracy and respect for human rights in a country.

Introduction

Like other courts in Eastern European countries, Constitutional Court of Albania was established after the change of the totalitarian regime into a democratic one. The Albanian Constitution has foreseen the Constitutional Court as its final interpreter and the guarantor. The court has developed and elaborated the concept, notions and standards that remain the basis of rule of law principle.

Law on the main constitutional provisions of 1991

The Law on the fundamental constitutional provisions, adopted in 1991, provided that “*Republic of Albania is a legal and democratic state*”. In conformity with the “*legal state*” concept, Constitutional Court has been called upon to resolve the constitutional conflicts that had to do with;

- freedom of organization of political parties;
- superiority and binding nature of its decisions;
- organization and functioning of the judicial power;
- conflicts of competencies between organs of public power;
- role of lawyers in democracy;
- right to private property, as one of the most important issues that followed the transition period, but not only;
- right to fair trial.

The jurisprudence of that period was a clear indicator of the status of institutional and social developments in Albania. **The Court failed to elaborate and define in a comprehensive manner**

the elements and indicators that determine the measuring level of respect for the rule of law principle.

The Albanian Constitution of 1998 provided among other important principles that "***the law constitutes the basis and boundaries of the state's activity***".

Principle of the rule of law in constitutional jurisprudence

During its 30-year activity, Constitutional Court has influenced to a great extent the development of democracy and constitutional justice.

- **Abstract Control**

The court has emphasized in the abstract control when reviewing the constitutionality of laws or disputes of competencies that:

“the rule of law principle implies ruling of law and avoidance of arbitrariness, in order to respect and guarantee the human dignity, justice and legal certainty”.

- *“the rule of law, being one of the basic principles in a democratic society, constitutes an independent constitutional norm, therefore its violation is a sufficient basis for repealing a law on unconstitutional grounds.*

- **Individual complaints**

The Court has been referred to the principle of rule of law also when examining the individual constitutional complaints, underlying that:

- everyone's right to a fair trial, before an independent and impartial court established by law, derives and originates from the principles of rule of law;

- this right could not be restricted artificially and its implementation should not be impeded unreasonably;

- the individual's right against the unlawful actions of other individuals or state institutions should not be protected only formally. Such protection should be a meaningful and effective one in reality.

- ❖ The constitutional court jurisprudence has elaborated **some of the main elements of this principle**, such as:

- principle of separation and balancing of powers;
- adoption of laws in conformity with the Constitution;
- respecting the hierarchy of norms;
- activity of executive bodies being based only on laws;
- guaranteeing of fundamental human rights and freedoms;
- continuity and consistency of constitutional jurisprudence;
- principle of legal certainty, as one of the most important sub-principles of the rule of law, which means:
 - ❖ accuracy, clarity and stability of the legal order;
 - ❖ protection of legal expectations and non-violation of acquired rights;
 - ❖ obligation to enforce final court decisions;
 - ❖ avoidance of legal gaps;
 - ❖ prohibiting the application of retroactive laws, except for the favorable criminal law, etc.

Principle of separation and balancing of powers

Principle of separation and balancing of powers has been treated as closely related with the principle of rule of law, with a view to define the role, position, competencies and functions of each of the three powers; legislative; executive; and judicial one.

- The Court has emphasized that three central powers should be exercised **not only independently, but also in a balanced way**.
- This is achieved by means of constitutional solutions that guarantee mutual control and a certain degree of balance between the powers, without infringing or interfering with each other's competencies.
- Although these powers **are separated in terms of functional autonomy and independence** in the exercise of duties assigned by Constitution, **they are balanced by respecting, encouraging, supporting and controlling each other.**

Independence of judicial power

The Court has paid special attention to the independence of judiciary as one of the central pillars of the rule of law, due to its position and the role it plays in a democratic society. Courts have the exclusive right to render justice and no other state institution or public official can exercise this function.

It is this very function that actually determines not only the position of judiciary in the system of state power institutions but also the status of judges.

Article 145 of the Constitution has provided that judges are independent and subject only to the Constitution and laws, and in line with this constitutional provision, interference in the activity of courts and judges is prohibited.

In the Court's jurisprudence, the independence of judiciary is understood as:

- *substantial independence*, which means "the freedom of courts to render decisions, which are not based on the interests of any other branch of power";
- *structural independence*, which is related to the way an institution is established or composed;
- *organizational independence*, which includes the internal administrative structure of the courts;
- *financial independence*, which implies autonomy in drafting its own budget and approval by parliament, having adequate and sufficient funds to achieve its mission and its duties; and
- *personal independence*, what requires appointment based on objective criteria, immunity, economic guarantees, career guarantees, the transfer and disciplinary systems.

The Court has considered a number of cases pretending the violation of judiciary independence such as: the transfer of judges; exams of judges; salary of court clerks; salary of judges and prosecutors; organizational rules and authorities of Judicial Conference and High Judicial Council; judges' leaves; authorities of court's chancellors; administration of judicial power; criteria for the selection and appointment of the Supreme Court judge, etc.

In addition, the independence and impartiality of judges and prosecutors is an indispensable condition for the protection of fundamental human rights and freedom especially and in this context (the right to a fair trial) such independence is not a privilege, but a duty.

While **impartiality** refers to the judge's attitude in relation to the case and parties involved in the process, **independence**, implies not only a certain attitude towards the exercise of judicial function, but also a certain position or relationship with the others powers, especially the executive branch of power that does not allow for interference.

In this perspective, the court has elaborated the term "independent" considering the way the judges are appointed and their mandate's term. The guarantee of the term of office and unchangeability of the mandate, is paramount in protection of the judge from the influence of political forces.

The Justice Reform

Although such principles are engraved in our Constitution and elaborated by the Constitutional Court, in practice, in Albania, it was not possible to ensure the independence of judiciary due to several reasons:

- the constitutional formula for the election of judges, composition and organization of self-governing bodies of judicial power;
- the level of corruption in the country, as indicated by different measuring mechanisms.

Such situation required urgent and radical measures. In 2016, Albania adopted the justice reform package that aimed to guarantee the rule of law, independence of the justice system, as well as to restore the public faith in justice system institutions.

New constitutional formulas were approved both for the composition of self-governing bodies of judges and prosecutors, as well as on the procedure for the selection and appointment of judges, aiming to detaching this process as much as possible from political actors trying to ensure a transparent process, based only on the candidates' merits.

The new constitutional amendments provided also for **re-evaluation of all current judges and prosecutors**, including judges of the Constitutional Court, which comprised the evaluation of assets, personal integrity and proficiency.

It should be stressed that this process was not easy. It led to a substantial reduction of judges and prosecutors which caused delays in the court proceedings. The Constitutional Court itself was unable to render decisions due to the lack of necessary legal quorum for almost 3 years, which posed a danger to democracy. However, we have now a fully formed and renewed bench at the court and we believe the reform helped strengthening the rule of law in our country.

Rule of Law Index

Referring to the index of World Justice Project for 2023, rule of law in Albania is estimated at 0,48 points and Albania is ranked the 91st among the 140 world countries assessed, thus showing a two level decrease as compared to the previous index. The indicators of such an index are, *inter alia*, limitation of public power by the judiciary; *measures whether legislative bodies have the independence and the ability in practice to exercise effective checks on and oversight of the government.*¹

Although it is not up to me, as a representative of the Constitutional Court, to analyze the results of such index, either in terms of the causes that have led to the ranking decrease, or in terms of the necessary measures to be taken, I would like to emphasize that, even though they are not part of the constitutional measuring standards which our Court verifies and analyzes when assessing respect for the rule of law by public power bodies, such data is important in terms of the way in which the development of our country is perceived. The data provides an opportunity for all political actors, representatives of state authorities, individuals and any other actors of social, economic and political life to understand and consider the importance of strengthening the rule of law, as a compass that should guide the activity of the bodies of public power.

¹ <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2023.pdf>

In terms of guaranteeing the rule of law principle, Constitutional Court remains a key element, as long as constitutional control is one of those mechanisms which helps achieving this goal.

Ladies and gentlemen,

The rule of law is one of the fundamental principles on which democracy and respect for fundamental human rights is built and based upon. It is the cornerstone of justice, providing opportunities that support social peace, governance and respect for fundamental rights. Nevertheless, the rule of law will always be evolving as long as the public power, individuals and civil society, interact and promote the development of its dimensions.