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**CONSTITUTIONAL JUSTICE:
FUNCTIONS AND RELATIONSHIP WITH
THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of the Republic of Albania*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

Article 125 of the Constitution of the Republic of Albania, as well as article 7 of the Law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," has provided that members of the Constitutional Court are appointed by the President of the Republic with the consent of the Assembly.

According to article 128 of the Constitution of the Republic of Albania, as well as article 10 of the Law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," after being appointed, the judge of the Constitutional Court can be removed by the Assembly by two-thirds of all its members for violation of the Constitution, commission of a crime, mental or physical incapacity, or acts and behavior that seriously discredit judicial integrity and reputation. The decision of the Assembly is reviewed by the Constitutional Court, which, when it determines the existence of one of these grounds, declares the removal from office of the member of the Constitutional Court. The examination procedure of the Assembly for the removal from office of the member of the Constitutional Court, for one of the aforementioned grounds, is initiated on the basis of a reasoned petition presented by not less than half of all members of the Assembly.

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

Articles 3 and 6 of the Law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania" have provided that the Constitutional Court enjoys complete financial autonomy. It draws up and administers its own budget, which, as part of the state budget, is presented to the Assembly of the Republic of Albania for approval.

- 3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

Law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania" has been approved after consultations with the Constitutional Court's representatives. Usually, the Parliament carries out consultations with the interested subjects before the approval of a certain law.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

In many of its decisions, the Constitutional Court of the Republic of Albania has expressed that the Regulation of Parliament is an act that disciplines the procedure for conducting the Assembly proceedings, regulates the internal organization, relations between the Assembly as a whole and its internal organisms, its relations with the other constitutional organs etc. Several of this Regulation's provisions have same content as the constitutional provisions, whereas others are executive norms of constitutional norms, which define the rules for implementation of the constitutional norms. Thus, the Regulation can be object of constitutional review only in cases when its provisions of constitutional level come against the Constitution (see decision no. 29/2009).

Even in its decision no.33/2010, the Constitutional Court has emphasized that the Regulation of Parliament can be object of constitutional review only in cases when there have been affected provisions of constitutional level by it embraced. For other issues, the Regulation of Parliament cannot be object of such constitutional review.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

There are two known forms of constitutional review: preliminary or *a priori*, and repressive or *a posteriori*. Their nature characterizes them as *abstract* and *concrete* reviews. The preliminary review is exercised before the acts becoming effective. This is distinguishable from the preliminary review of applications submitted to the Constitutional Court. Constitutional Court exercises *a priori* review when it decides on the compatibility of international agreements with the Constitution prior to their ratification by the Assembly, as well as on the constitutionality of issues put forward for referendum.

Repressive review is exercised over those acts that have already become effective and produced effects. The object of this kind of review includes all the categories of norms of internal legal order: laws, rules of parliamentary procedure, decrees, other acts with the force of law, and normative acts of central and local government organs. This review could be *abstract* and *concrete*. The first one covers the laws, normative acts of central and local organs, as well as other acts having the force of law. The effects of Constitutional Court decisions on these cases are *erga omnes*. The *concrete* review is initiated by the courts of ordinary system when, during the examination of a certain case, the judge has doubts about the constitutionality of the norms to be applied. In this case, the judge suspends the proceeding and sends the question of constitutionality of norm to the Constitutional Court. This type of review is

considered as being concrete since it is directly related with the concrete case that is under examination by the ordinary court.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Albanian legislation has not provided for any established term in order to amend a certain law or act declared as being unconstitutional by virtue of a Constitutional Court decision. Article 87 of the Regulation of Parliament has laid down that the Constitutional Court decisions are taken under examination by the Council on Legislation immediately after their publication in the Official Gazette. According to the established rules, the Council analyzes and discusses about the effects of the Constitutional Court decision on the legislation. If the Council decides that it is necessary to undertake the legislative initiative for the purpose of amending the legislation or filling the legislative gaps, then it presents to the Council of Ministers the necessary recommendations or undertakes its own legislative initiative. The opinion of this Council could be sent to the Constitutional Court, Council of Ministers and the President of the Republic.

- 6. b) Parliament can invalidate the constitutional court's decision: specify conditions.**

On the basis of article 132 of the Constitution, Constitutional Court decisions have generally binding force and are final. The Constitutional Court decisions cannot be challenged. So, they are final. Following the vote, the Constitutional Court decision shall be considered as taken and cannot be changed (article 75 of the CCL). The non-reviewability and the impossibility to challenge them is related with the their final and compulsory character.

- 7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

No, there are not.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?

Legal disputes of constitutional nature may arise between:

- a) Organs of state power (in horizontal or vertical level) – conflict of competences;
- b) Organs belonging to different judicial jurisdictions – conflicts of jurisdiction;
- c) Organs belonging to the same power, for example between two ministries – conflict of competences.

2. Specify whether the Constitutional Court is competent to resolve such litigation.

Only two types of conflict of competences fall under the constitutional jurisdiction:

- a) conflicts that arise in the ambit of the separation of powers in horizontal level (lawmaker, executive and judiciary), which is dictated by the principle of separation and balancing of powers;
- b) conflicts of competences in vertical level (central power – local power).

The indispensable condition is that the conflict be directly related with the exercise of activity of these powers. A conflict of competences falls under the constitutional jurisdiction when it arises between the organs belonging to different state powers and each of them needs, independently from the other, to reveal its power through the issuance of acts.

3. Which public authorities may be involved in such disputes?

The Albanian constitutional case law has accepted that the conflict of competences may arise between:

- a) all the constitutional organs;
- b) organs or subjects that clearly belong to a certain power, as for example, *public prosecution office* from one hand, and *the parliament* on the other;
- c) constitutional organ from one hand and a part of this constitutional organ on the other, as for example *not less than 1/4 of the deputies and the parliament* (see decision no.20/2007 of the Constitutional Court of the Republic of Albania).

- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

The Constitutional Court takes these conflicts under examination when the respective subjects have considered themselves as being competent to decide on a concrete issue and, as the case might be presented, have issued acts for its regulation, or when the respective subjects have considered themselves as being competent to decide on specific cases. Any kind of act having legal or sub-legal character, the action or lack of action from the organs of central and local power, which have given rise to a conflict of competences between them, constitute the basis for the initiation of the examination procedure for such cases.

When the resolve of the conflict of competences is related with legal or sub-legal acts issued by the organs being parties in the conflict of competences, the Constitutional Court reviews even the constitutionality or lawfulness of the act in order to resolve such conflict.

In its decision no.20, dated 04.05.2007, Constitutional Court, considering the right of parliamentary minority (1/4 of the deputies) to establish an investigative commission as a "constitutional authority," has ascertained that the decision of the parliament on the refusal to establish such commission had given rise to a conflict of competences. Consequently, it decided to resolve the conflict of competences arisen between the 1/4 of the deputies from one hand, and the parliament on the other, repealing on unconstitutional grounds the reason that brought about such conflict – *decision of the parliament*.

In its decision no.22, dated 05.05.2010, Constitutional Court has ascertained that the way how it has been formulated the object of parliamentary investigation in the decision of the Assembly on the establishment of investigative commission, the investigation carried out by the investigative commission, as well as the establishment of the unlawfulness of KRRT'S decisions by this commission, have given rise to a conflict of competences, bringing about in this way a blocking in the exercise of competences of the appellant, Tirana Municipality. So, the Court decided to resolve the conflict of competences between the Tirana Municipality and the Assembly of the Republic of Albania repealing the decisions of the Assembly of the Republic of Albania "On the establishment of Investigative Commission" and "On the approval of conclusive report of the investigative commission."

5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?

The Constitutional Court Law has determined that the request before the Constitutional Court for proceedings of such character is submitted by the subjects being part in the conflict or subjects directly affected by the conflict. The constitutional jurisprudence has recognized that each local authority is entitled to submit a request when it pretends that it is before a conflict of competences, which could have been arisen because of a law or a factual activity. It is decisive that the realm of competences of organs or subjects being part in the conflict be defined by the constitutional norm.

6. What procedure is applicable for the adjudication of such dispute?

The request for examination of these disputes is submitted within 6 months from the moment when the conflict has occurred. The request before the Constitutional Court is submitted by the subjects being part in the conflict or subjects directly affected by the conflict. Each legal and sub-legal act, action or lack of action by the central or local government organs, which have given rise to a conflict of competences among them, constitutes the basis for initiating the examination procedures for such cases.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

The Constitutional Court determines the government organ that has the authority to decide on the concrete case, which brought about the dispute. In cases when the resolution of the conflict of competences is related to legal or sub-legal acts issued by the organs being parties in the conflict, in order to ensure the resolution of such conflict, Constitutional Court shall also review the constitutionality or lawfulness of the act. Thus, the Constitutional Court judgment focuses on resolving the conflict of competences with regard to the constitutional level functions, as well as on finding and eliminating the determinant cause that gave rise to the conflict - the unconstitutional rule.

Besides the above-mentioned examples, the Constitutional Court, in its decision no.29, dated 21.12.2006, stated that there was a conflict of competences between the central government and local government because the law had defined a sort of dualism between them regarding their competences in the field of urban planning and control over the territory. Thus, from the examination of such legal situation that brought about a factual conflicting situation, it resulted that the basis and the main cause giving rise to a conflict of competences between central and local government were the legal norms embodied in the relevant implementing rules. The Constitutional Court's task was to resolve the conflict between them, stating and eliminating the main cause which gave rise to the conflict (the repeal of the law as unconstitutional), and to determine the relevant state authority competent to resolve respective issues.

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

According to article 72/7 of the law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," the decisions of the Constitutional Court have general binding force and are final.

Article 81 of the law no. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," has provided for the means of execution of Constitutional Court decisions, according to which, the Constitutional Court decisions are mandatory for being executed. Execution of the Constitutional Court decisions is ensured by the Council of Ministers through the relevant public administration bodies. Persons who fail to execute the Constitutional Court decisions or hamper their execution, where the action does not constitute a criminal offence, shall be liable to a fine up to 100 thousand leks imposed by the President of the Constitutional Court, whose decision is final and constitutes an executive title.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

Court decisions are final; they are not subject to any appeal. They may have binding effect *erga omnes* or *inter partes litigantes*.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

The legal text declared as being unconstitutional is repealed as from the publication of the Constitutional Court decision in the Official Journal.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

According to article 77 of the law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," the decisions of the courts at all levels, which are invalidated by the Constitutional Court, shall not have juridical effect as of the moment when they have been taken. The case shall be submitted for review to the court, whose decision has been overruled.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

According to article 78 of the law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," where the law or the act is invalidated and the new relationships call for juridical regulation, the decision of the Constitutional Court is notified to the relevant bodies, so that they undertake the measures laid down in its decision. No time limit is provided.

5. **What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**
6. **Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**
7. **Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

Article 81 of the law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," regarding the execution of decisions of the Constitutional Court has defined that the Constitutional Court decisions are mandatory for being executed. Execution of the Constitutional Court decisions is ensured by the Council of Ministers through the relevant public administration bodies. The Constitutional Court may itself designate another body tasked with the execution of its decision, and where appropriate, the manner of its execution. Persons who fail to execute the Constitutional Court decisions or hamper their execution, where the action does not constitute a criminal offence are liable to a fine up to 100 thousand leks imposed by the President of the Constitutional Court, whose decision is final and constitutes an executive title.

This article (article 81), aims to establish clear-cut rules regarding the execution of Constitutional Court decisions, going so far as the President of the Constitutional Court is entitled to fine those who hamper the execution of the Constitutional Court decisions, whose decision is final and constitutes an executive title.