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Repeat of The Judicial Review in The Court of Appeals Comparative Aspects Between Albanian, Italian Legislation and The Jurisprudence of The European Court of Human Rights

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Abstract
The retrial is a procedural mechanism in criminal proceedings that pertains to the examination of a criminal case before the Court of Appeal. The application of this procedural mechanism in practice has generated considerable debate, particularly in cases where a judgment of acquittal is reversed on the basis of declaratory evidence. In order to address this debate, as well as to assess the need for any amendment to Article 427 of the Code of Criminal Procedure, this paper first examines the concept of retrial, followed by an analysis of the evolution of the relevant legal provision, the interpretation given to retrial by the Supreme Court, and certain comparative aspects of Albanian and Italian legislation, as well as the jurisprudence of the Italian Court of Cassation and the European Court of Human Rights (ECHR). The paper concludes by summarizing its main findings and presenting recommendations concerning the possible amendment of the provision governing retrial.

Field: *Criminal procedure law*

Keywords*: retrial on appeal under Albanian legislation, retrial under Italian legislation, retrial under the lens of the ECHR jurisprudence, due process.*

1. Concept of retrial

The reopening of the judicial examination is regulated by Article 427 of the Code of Criminal Procedure of the Republic of Albania (hereinafter "CPC"). It constitutes a procedural mechanism in criminal proceedings that arises during the examination of a criminal case before the Court of Appeal. The purpose of this procedural mechanism is to reopen the judicial examination in order to obtain or re-examine the evidence necessary for the adjudication of the case at the appellate level. As a general rule, the taking and examination of evidence take place before the court of first instance, which serves as the primary fact-finding court in criminal proceedings.

The parties to the criminal proceedings who participated in the trial at first instance, such as the prosecutor, the defendant, the civil claimant and the civil defendant, may request the reopening of the judicial examination in their appeal. The reopening of the judicial examination at the appellate level may also be ordered by the court on its own motion when it considers such a measure necessary.

Based on an analysis of Article 427 of the CPC, taking into account both its structure and content, it may be concluded that the reopening of the judicial examination may arise in practice in several circumstances:

The first case concerns situations in which a party requests the re-examination of evidence admitted during the first-instance proceedings or the admission of new evidence. In such cases, the parties seek the reopening of the judicial examination by submitting a request to the court. A request for the re-examination of evidence admitted at first instance relates to evidence that was previously admitted and examined by the court of first instance through adversarial proceedings. The party seeking the reopening of the judicial examination at the appellate level may challenge the manner in which that evidence was assessed, its probative value, or the conclusions drawn from it by the first-instance court. Such objections are set out in the appeal, together with the request that the Court of Appeal re-examine the evidence in question.

The second situation falling within the first category concerns a request made by the appellant in the appeal for the reopening of the judicial examination in order to admit new evidence. New evidence refers to evidence that was not examined during the first-instance trial and was not previously requested by the parties to the proceedings. Such evidence may have been known to the parties before the commencement of the judicial examination or during the proceedings before the court of first instance, but was not submitted or requested to be admitted as evidence by the parties at that stage of the proceedings.

The second case of repeating the judicial review in the court of appeal is related to the request of the parties to obtain evidence for the first time in the court review, when this evidence is discovered after the trial of the first instance, or emerges on the spot during the trial on appeal of the criminal case. New evidence is discovered as such by the parties to the process, after the trial of the first instance has been completed, and the parties may even become aware of their existence after the moment of filing the act of appeal against the decision given by the court of first instance. In both circumstances mentioned in this case, the parties to the process have the right to file a request to obtain new evidence before the court of appeal. The request for obtaining new evidence may be submitted in writing in the appeal act if they have been discovered by the parties after the decision was rendered in the first instance court, but in any

case before the parties use the appeal deadline to appeal the decision rendered by the first instance court, or the request for their receipt may be submitted before the Court of Appealwhen the new evidence is discovered on the spot during the trial of the criminal case at the appellate level before the court.

The third case of the reopening of the judicial examination on appeal concerns situations in which the Court of Appeal, generally of its own motion and without a request from the parties to the proceedings, decides to reopen the judicial examination for the purpose of re-examining evidence already admitted at first instance or admitting new evidence. In such cases, the Court of Appeal has full discretion to order the reopening of the judicial examination where it considers that the re-examination of evidence admitted at first instance, or the taking of new evidence, is necessary for the proper determination of the criminal case. On the basis of the foregoing considerations, where the court finds that it cannot decide on the basis of the existing case file, it may order the reopening of the judicial examination.

The fourth case is closely related to, and is largely conditioned by, the determination on the merits of the criminal case, in particular the acquittal of the defendant who is being tried before the Court of Appeal. Where the defendant has been acquitted at first instance, the Court of Appeal may not convict him solely on the basis of a different assessment of the evidence adduced before the first-instance court. In such circumstances, the Court of Appeal is required to reopen the judicial examination. This provision conditions the exercise of the appellate court's powers and, at the same time, obliges it to reopen the judicial examination where it finds that there are clear circumstances capable of affecting the reversal of an acquittal rendered by the court of first instance. This rule was introduced by the legislature in order to ensure due process of law, in accordance with the principle of non-*reformatio in peius*, the principle of adversarial proceedings, and the defendant's right to be heard.

As regards the timely conduct of the retrial, the legislator has considered providing for its immediate conduct and, in the event of its immediate conduct not being possible, a postponement of a maximum of 10 days is applied. This provision is consistent with the rapid conduct of the trial.

The above elements are what constitute the reopening of the judicial examination before the court of appeal. From their analysis, it is concluded that the reopening of the judicial examination is a criminal procedural mechanism, which is set in motion by the parties to the process and/or, as the case may be, by the court itself, which aims to conduct the trial in accordance with the practical needs of the justice delivery process. The practical application of this procedural moment whenever the need dictates, such as the emergence of new evidence or its re-examination, or even the failure to resolve the situation in the state of the acts, serves not only the parties, but also the criminal process itself, which continues without wasting time as a continuation of the first-instance trial, without losing its importance until the trial at the appeal level and without the costs that could arise if the trial were sent back to the first instance by the court of appeal, as has actually happened in many cases before 2021.

2. Retrial after legal changes in the court of appeal

The reopening of the judicial examination in the Court of Appeal, as provided for by Article 427 of the Code of Criminal Procedure (CPC), is a generally stable procedural provision. Since 1995, the year in which the CPC of the Republic of Albania was first adopted, this provision has been amended twice, once in 2017 and once in 2021. In light of the temporal distance between the adoption of the CPC and these amendments, it may be concluded that the changes are relatively recent.

In order to conduct an in-depth analysis of the evolution of Article 427 of the CPC, it is necessary to first present the original version of the provision governing the reopening of the judicial examination, which stated as follows:

1. *When a party requests the re-examination of evidence admitted at first-instance trial or the taking of new evidence, the court, if it deems such action necessary, shall decide to reopen the trial in whole or in part.*
2. *For evidence discovered after the first-instance trial or emerging on the spot, the court shall decide, as appropriate, whether to admit it.*
3. *The reopening of the judicial examination may also be ordered ex officio when the court deems it necessary.*
4. *The court shall order a retrial where it is established that the defendant did not participate in the first-instance proceedings because he was not informed or was unable to appear for legal reasons.*
5. *The retrial, ordered under the above paragraphs, shall be conducted immediately and, where this is not possible, the hearing shall be adjourned for a period not exceeding ten days."*[1]

As noted above, this provision has been amended twice. The 2017 amendments introduced changes to point 1 and completely revised point 4. More specifically, in point 1, after the words "*When a party*", the phrase "*in the appeal or its supplement*" was added; the term *"admitted*" replaced "*administered*"; and the wording "*if it deems such action necessary, shall decide to reopen the trial in whole or in part*" was replaced with "*if it cannot decide on the basis of the state of the case file, it shall reopen the trial*".

The amendments to point 1 improved the clarity of the provision. In particular, they specified the procedural stage at which a request for reopening may be submitted, thereby eliminating ambiguity and potential misuse. Furthermore, the amendments clarified that the request for reopening concerns evidence already examined at first instance, rather than evidence admitted in its entirety.

First, this change comes within the framework of the correct use of the concept - the procedural moment of taking evidence, since in the criminal process we do not have administration of evidence, but we have three typical moments in relation to the principle of their disposal: admitted (admission), examined (debate) and Evaluation of evidence. The concept of "administration of evidence" was used before the changes, referring to the procedural moment after the taking of evidence, where it becomes part of the trial file.

1. [1]Article 427 of the Criminal Procedure Code before the 2017 amendments.

Secondly, this change also reflects the logical relationship of the procedural moment of admitting evidence, with the reopening of the judicial review. So, taking into account the fact that we will have a reopening of the judicial review, it would not make sense to take evidence that has already been formed in the trial but only those that have only been accepted to be subjected to judicial debate. This is because, after the reopening of the judicial review, the evidence will be subject to their assessment, which means determining their veracity and probative force. This is the moment that the evidence will be evaluated once again one by one, analytically, as well as in relation to each other.

Meanwhile, the latest amendment to point 1 also specified the moment when the repetition of the judicial reopening should materialize in practice, moving from the subjective term "*that such a thing is necessary*" to more objective term "*it cannot be decided in the state of the acts*". This amendment is essential and in the function of properly shaping the criminal procedural remedy of the reopening of the judicial review.

The 2017 reform also substantially revised point 4 of Article 427 of the CPC. The original provision, which required the court to order a retrial where the defendant had not participated in the first-instance proceedings due to lack of notification or justified inability to appear, was replaced with a provision regulating the reopening of proceedings in cases where the Court of Appeal considers overturning an acquittal rendered at first instance. The legislator provided in a taxing manner that if the court of appeal considers that there are circumstances that influence the direction of changing the decision of innocence given by the court of first instance, it cannot do so automatically, only on the basis of a different assessment of the evidence obtained in the first instance trial. This change is essential, removing several cases where the court could decide to repeat the trial and at the same time adding a very interesting case for which the court must mandatorily apply the repeat trial. This provision once again emphasizes the due process of law in order to guarantee the rights of defense for the defendant and not to aggravate his position during the appeal trial by the effects of a surprise decision that changes the decision of innocence given by the court of first instance to a decision of guilt that the court of appeal may give.

The latest in time was the amendment of 2021, through which the phrase "*or its completion*" was abolished. A change resulting from the abolition of the completion of the appeal, provided for by point 2 of article 415 of the CPC, which before the amendments of 2021 provided that:
"2. *The person who has filed an appeal has the right, up to five days before the hearing, to submit to the secretariat of the court that will examine the case, other reasons related to the appeal."*
Before the changes, the appellant could supplement the appeal with other reasons after filing it with the court, while after the 2021 changes that are currently in force, this amended legal provision provides that:
"2. *The person who has filed an appeal has the right, up to five days before the hearing, to submit to the secretariat of the court that will examine the case, written submissions regarding the reasons raised in the appeal*."

The 2021 legal amendments do not allow the appellant to supplement the appeal with reasons other than those he previously presented in his appeal, but these legal amendments allow the appellant to submit to the appellate court's secretariat written submissions that must be related to the reasons raised in his previously filed appeal.

This apparent difference is based on the change in the calculation of the appeal deadline, which before the 2021 amendments began on the day after the announcement or notification of the decision, and after the 2021 amendments, the appeal begins to be calculated from the moment of notification of the decision. The alternative way of starting the appeal deadline according to the legislation before 2021 created uncertainty by allowing the wrong practice that individuals focused on catching the appeal deadline would file the appeal without seeing the reasoning of the court's decision and after receiving the reasoning, would make its exhaustive supplement. Now, this wrong practice that did not really help the parties in the process in their right to properly file an appeal against the decision of the court of first instance has been avoided with the latest legal amendments, as the appeal deadline begins to be calculated from the moment of notification of the decision.

Essentially, the amendments made it possible to expand the obligation of Court of Appell to reopen the judicial investigation itself, thus becoming the main guarantor of the principle of adversarial proceedings in the second instance, and forcing the appeal to make the "*court of fact*" before changing the fate of a defendant. Through these legal amendments, the Court of Appeal, as a second-level court in our judicial system, clearly confirms the fact that in cases clearly defined by law it is obliged to repeat the judicial review. The Court of Appealnow has the legal obligation to repair the deficiencies it found in the trial of the case in the court of first instance, through the mechanism of repeating the judicial review by recovering or obtaining other evidence necessary in order to issue a fair and exhaustive decision.

This conclusion is a result of the identification of several essential circumstances that are present in the legal changes that Article 427 of the CPC underwent in 2017 and 2021.

First, the Court of Appeal, with the changes to Article 427 of the CPC, has now clarified its position as a court of fact in second instance, transforming its transition from "optional discretion" in the case of reopening the judicial review into a "binding decision", of retaking or taking other evidence in the cases provided for in the latest legal amendments. Before the 2017 amendments, reopening the judicial review on appeal was mainly seen as an optional, as the Court of Appeall had wide discretion whether or not to accept new evidence or whether to retake that of the first instance. After the reformulation of Article 427 of the CPC in 2017, strict legal provisions were established, which obliged the Court of Appeal that when it finds that the evidence obtained in the first instance is incomplete or when new evidence is required that affects innocence or guilt, it is obliged to order a retrial.

Second, the decision of acquittal given by the court of first instance cannot be easily changed by the Court of Appeal without repeating even the main trial by trying the criminal case once again as a court of fact at the second level. This new standard is mostly dictated by the jurisprudence of the Supreme Court and the ECHR. If before the 2017 amendments, the Court of Appeal could overturn a decision of acquittal of the first instance and declare the defendant guilty on the basis of documents, without hearing the witnesses themselves, after the legal changes that Article 427 of the CPC underwent in 2017,

the court of appeal can change a decision of acquittal to guilt only if it repeats the trial. Thus, it must call and hear the witnesses or experts themselves. Without this repetition, the decision of guilt on appeal violates the due process of law.

Thus, if from 1995 until 2017 the mechanism of repeating the judicial review in the appellate trial was seen as a kind of space where the Court of Appeal used it only in cases when it deemed it necessary according to its assessment, after the changes of 2017 the reopening of the judicial review has become the main engine of the ordinary activity of the Court of Appeal and the main guarantor of the principle of adversarial proceedings in the second instance.

3. Reopening the judicial review according the jurisprudence of Albanian Supreme Court

Due to the obligation of lower courts to implement the decision-making of the Supreme Court, the latter often seems to assume functions similar to those of sanctioning or supplementing the legislation in force, thus determining the spirit in which the law should be interpreted and applied. This function of its has also materialized in terms of the framework for the reopening of the judicial review in the court of appeal. Specifically related to the applicability of this procedural moment, the Supreme Court has focused on the interpretation and analysis of some very important elements of the reopening of the judicial review, which directly determine the approach of this institution and the courts below in the hierarchy to the correct application of the reopening of the judicial review.

Thus, due to the almost unlimited practices of the Courts of Appeal which returned the case for retrial, the Supreme Court first considered specifying the **active and dynamic role that the Court of Appeal should have through the application of the reopening of the judicial review**, while simultaneously determining **the scope** of the reopening of the judicial review and exhaustive cases of returning the case for retrial.

Specifically, the Supreme Court has assessed that the return of the case for retrial at first instance is permitted only in exhaustive cases provided for by law. Whereas whenever the Court of Appeal establishes the need to administer new evidence, it must use its competence to repeat the judicial review, thus materializing its active and dynamic role during the development of the trial at this level of trial [2].

Meanwhile, the Court of Appeal must act similarly when it finds that the court of first instance has incorrectly applied the Abbreviated trial, an error which does not constitute a reason for absolute invalidity of the decision, and consequently does not legitimize the return of the case for retrial by the Court of Appeal. Even in this case, the Court of Appeal must proceed on its own with the reopening of the judicial review. This position also finds support in the unifying jurisprudence of the Supreme Court, according to which the revocation of the decision on summary trial must be followed by the continuation of the trial by the court itself that ascertains this irregularity [3].

This decision also reiterates the exhaustive nature of cases when the Court of Appeal must return the case for retrial and the active and dynamic character that the Court of Appeal must take by repeating the judicial review whenever necessary for the proper conduct of the trial process.

Another important element of the retrial is related to **the procedural guarantees of the defendant in cases of changing the decision of acquittal**. For this element, the Criminal Chamber of the Supreme Court has analyzed the principle of non-aggravation of the defendant's position (reformatio in peius), underlining the importance of its application in the case of a retrial, especially when the appeal is filed only by the defendant. In these cases, the court requires that the retrial be real and not formal, which implies the receipt and direct debate of decisive evidence, especially declaratory evidence, all in accordance with Article 6 of the ECHR [4].

Further in the analysis, in another of its decisions, the Panel emphasizes that the reopening of the judicial review in the Court of Appeal, in order to recover the declaratory evidence, on the basis of which the defendant's innocence was established at the end of the Abbreviated trial in the first instance, is absolutely necessary, since the doubt about their reliability, both in the ordinary trial and in the abbreviated trial, can be overcome only through the direct taking of the evidence in the presence of the adversarial nature of the parties before an impartial court. [5]This obligation is fulfilled by the direct taking of the declaratory evidence in the Court of Appeal.

This approach is also consolidated by the unifying decision of 2024, which concludes that Article 427/4 of the CPC does not impose an automatic repetition of the trial whenever an acquittal decision is appealed, but the repetition of the trial is mandatory when the Court of Appeal intends to change the decision based on the reassessment of evidence, especially declaratory evidence. At the same time, the unifying decision recognizes that even in cases tried under the abbreviated trial the Court of Appeal may receive new evidence, without prejudice to the defendant's right to benefit from a reduced sentence[6].

Further in the analysis, in the practice after the unification, the Supreme Court has shown itself to be clearer and more specific. On the one hand, it has confirmed that reopening the judicial review is not required when the change of the decision is based on legal issues or on regularly formed documentary evidence [7]and on the other hand, it has sanctioned that the refusal to receive new evidence, when it is necessary for the verification of the facts or the guarantee of equality of arms, violates the due process of law [8]. Thus, the application of the reopening of the judicial review has become both mandatory and to be assessed on a case-by-case basis.

2. [2]Decision No. 00-2021-945 (99), dated 18.11.2021 of the Criminal Chamber of the Supreme Court.
3. [3] Decision No. 00-2022-641, dated 12.05.2022 of the Supreme Court of Kosovo.
4. [4]Decision No. 00-2022-657 (175), dated 21.06.2022 of the Supreme Court of Kosovo.
5. [5]Decision No. 00-2023-1735 (285), dated 31.10.2023 of the Supreme Court of Kosovo.
6. [6]nified Decision No. 00-2025-2162 (275), dated 06.11.2024 of the Supreme Court of Kosovo
7. [7]Decision No. 00-2025-935 (155), dated 12.06.2025 of the Supreme Court of Kosovo.
8. [8]Decision No. 00-2025-1760 (274), dated 20.11.2025 of the Criminal College.

Meanwhile, in cases where the appellant is only the defendant, the Supreme Court has linked the reopening of the examination to the limits of the appeal and the prohibition of "*reformatio in peius*", excluding the use of the appeal for more serious re-examinations or unjustified returns for retrial [9]. This approach is also in line with the jurisprudence of the Constitutional Court, which has concluded that when the Court of Appeal is moved only upon the individual's appeal, it cannot exercise discretion to change the legal qualification of the offense, thereby aggravating the individual's position.

Finally, the jurisprudence of the Supreme Court has further deepened the standards, underlining that the review role of the appeal is not fulfilled only through the reference of principles, but requires a concrete and complete analysis of the evidence and indications, as well as the treatment of all the claims of the appeal. In this context, the lack of a real reasoning and the failure to implement the tasks left to the retrial lead to the invalidity of the decision, while the decision-making on the reopening of the judicial review, including its revocation, must be justified and linked to the need for a complete verification of the evidence. [10].

In analysis of the above, the entirety of the above practices of the Criminal Chamber of the Supreme Court marks the transition from a restrictive approach to returns for retrial towards a full doctrine on the review function of the appeal, balancing its activation with the limits of the complaint, the standards of reasoning and the fundamental procedural guarantees.

4. Retrial under the jurisprudence of the Court of Cassation of Italy

The provision governing the reopening of the judicial review on appeal is Article 603 of the Italian Code of Criminal Procedure [11]. This provision sets out the rules on when and how the Court of Appeal may reopen the evidence-taking phase, since similarly to our judicial system, the appellate trial is generally a review of the acts of the first instance and not an automatic full re-examination of the evidence.

Like Article 427 of the CPC of the Republic of Albania, Article 603 of the Italian Code of Criminal Procedure also provides for several specific cases of repetition of the judicial trial, which for the purposes of the doctrine can be categorized depending on whether it is a repetition of the judicial trial at the request of the parties or primarily by the court.

In addition to the provisions of Italian criminal procedural law governing retrial on appeal, the jurisprudence of the Italian Court of Cassation has further elaborated the standard to be applied by the courts in this regard. The Court has primarily developed its case-law in situations where the Court of Appeal reverses a first-instance acquittal, thereby underscoring the particular importance of this procedural mechanism.

Specifically, the Italian Court of Cassation has stated that, "*The statements of the expert and the technical consultant, when given orally at trial, constitute declaratory evidence. If they are decisive for the innocence at first instance, the Court of Appeal cannot change the decision of innocence on the basis of a different assessment of them without first proceeding with the repetition of the judicial examination. This obligation does not apply when the expert evidence has been obtained only in written form, without the expert being questioned in the hearing." [12].*

Further, *"The appellate court, when reversing a decision of acquittal on the basis of a reassessment of the decisive declaratory evidence, is obliged to directly re-administer this evidence and provide a convincing reasoning, specifically and fully rebutting the essential reasons for the first instance decision. In the absence of these conditions, the standard of trial beyond a reasonable doubt is violated."[13]*

Finally, in a 2023 decision, the Court of Cassation stated that: "*In overturning an acquittal on appeal, the court has the obligation to provide a reinforced reasoning and to directly re-administer only the decisive declaratory evidence, when a re-evaluation of its credibility is required. This obligation also extends to the defendant's statements and, in the event of a conflict between declaratory sources, requires the re-administration of all relevant evidence."[14]*

As can be seen, the debate on the reopening of the judicial review in Italy, as well as in Albania, is based on the case of changing a decision of acquittal given by the first instance, which is intended to be changed on appeal. In a comparative perspective between the two legislations, a unity of legal provisions is found, which is then also reflected in the jurisprudence of the Supreme Court and, respectively, the Court of Cassation of Italy. The unity between the two legislations and the decision-making of the courts clearly emerges from the obligation of reopening the judicial review in cases of changing a decision of acquittal, a decision-making based on declaratory evidence, which includes evidence with witnesses and the questioning of the defendant/co-defendant during the course of the trial on appeal.

Meanwhile, as far as the declarative evidence itself is concerned, referred to in practice as the testimony of a witness, expert, or the statements of the defendant/co-defendant, Italian jurisprudence generally states that when their statements or testimonies are given orally at trial, they constitute declarative evidence, and therefore a reopening of the judicial review on appeal is required. A reopening of the judicial review on appeal occurs when the testimony or statements made at first instance reveal information that obliges the Court of Appeal to repeat the judicial review, since any of these declarative evidence calls into question the innocence obtained by the defendant at first

9. [9]Decision No. 00-2025-591 (18), dated 23.01.2025 of the Supreme Court of Kosovo.
10. [10]Decision No. 00-2025-68 (8), dated 16.01.2025 of the Supreme Court of Kosovo.
11. [11] Last accessed on 08.06.2026 at the link: https://www.brocardi.it/codice-di-procedura-penale/libro-nono/titolo-ii/art603.html.
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instance. In the latter case, the Court of Appeal cannot declare guilty the defendant declared innocent at first instance, only with a different assessment of the declarative evidence, which is the testimony of the expert, witness, or the statement of the defendant/co-defendant given at first instance.

5. Retrial in light of ECHR jurisprudence

In the vast body of ECHR jurisprudence, the reopening of a judicial review at the appeal level is also treated, assessed in each case as an action that has a direct connection with Article 6 of the European Convention on Human Rights. Thus, in several of its decisions, the ECHR has stated that:

"*The conviction on appeal after an acquittal in the first instance, based on a reassessment of the factual evidence (especially the credibility of the testimony), without holding a public hearing and without personally hearing the defendant, violates the right to a fair trial.. .*" [15],

"*The reversal on appeal of a decision of acquittal, based on a reassessment of the credibility of witnesses, without their direct re-examination, violates the right to a fair trial...*" [16],

"*When the Court of Appeal overturns a decision of acquittal and declares the defendant guilty on the basis of a reassessment of the credibility of the crucial evidence, it must, because of the requirements of due process, hear those witnesses directly; such a conviction, given without a re-administration of the declaratory evidence, violates Article 6 § 1 of the Convention.*" [17].

"The Court of Appeal which reverses a decision of acquittal or declares guilt for the first time, by reassessing decisive factual elements (including the subjective element), is obliged to ensure the direct hearing of the defendant and, where necessary, the re-hearing of witnesses; otherwise, Article 6 § 1 of the ECHR is violated." [18].

As can be seen, the ECHR has, over the years, consolidated the standard for a repeat trial when a decision of acquittal is reversed in the Court of Appeal and when the basis for this reversal is declaratory evidence. The ECHR further enhances the respect for Article 6 of the ECHR by providing for its respect also through the direct hearing of the defendant, including the subjective element.

6. Conclusions and Recommendations

In conclusion as per above, **we conclude** and respectively **recommend** that:

The reopening of the judicial review is a criminal procedural tool in the hands of the parties of the proceedings and/or, as the case may be, the court itself, which aims to conduct the trial in accordance with the practical needs of the justice delivery process.

Article 427 of the CPC has generally been a stable provision. It has been subject to amendments twice, which have essentially made it possible to expand the obligation of the Court of Appeal to reopen the judicial investigation in the first instance, thus becoming the main guarantor of the adversarial principle in the second instance.

The entire jurisprudence of the Criminal Chamber of the Supreme Court has filled the interpretative gaps of the provision on the reopening of the judicial review. The decisions of the Criminal Chamber mark the transition from a restrictive approach to returns for retrial towards a full doctrine on the review function of the appeal, balancing its activation with the limits of the appeal, the standards of reasoning and the fundamental procedural guarantees.

In a comparative perspective between Albanian and Italian legislation, generally the provision and approach to the applicability of the reopening of the judicial review is the same.

Meanwhile, the jurisprudence of the ECHR has played a very important role in shaping the repetition of the review on appeal in relation to Article 6 of the ECHR, especially in cases where a decision of acquittal is reversed and the basis for this reversal is declaratory evidence. The ECHR has confirmed that a conviction on appeal after an acquittal at first instance, on the basis of a reassessment of the factual evidence, without holding a public hearing and without personally hearing the defendant, violates the right to a fair trial and at the same time enhances respect for Article 6 of the ECHR by providing for its respect also through the direct hearing of the defendant, including the subjective element.

As above, in order to avoid optional interpretations of declaratory evidence that should be taken when assessing the change of a decision of acquittal through the repetition of the main trial in the Court of Appeal and the obligation to take them, it is necessary that the current provision on the repetition of the main trial be updated in order to clarify what should be considered declaratory evidence. In our assessment, in accordance with Article 6 of the ECHR and the jurisprudence of the ECHR and the Supreme Court, declaratory evidence should include the testimony and questioning of the defendants.

Meanwhile, in accordance with the decisions of the ECHR, the legislator should foresee the possibility that, in addition to evidence from witnesses, the defendant may also be questioned in the event that the Court of Appeal decides to reassess the decisive factual elements of the case, including the subjective element of the defendant.

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