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The Institute of Criminal Decision Review in The Legislation of The Republic of Albania And the Procedural Position of The Applicant Tried in Absentia in Absentia in The Review Trial: A Comparative Analysis in Light of Recent Jurisprudential Developments

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Abstract
The institute of reviewing a criminal decision constitutes an extraordinary procedural tool, through which the reopening of a criminal process concluded with a final decision is allowed, in cases expressly provided for by the criminal procedural legislation. The practical application of this institute has sparked important debates regarding the procedural position of the applicant in the review trial in cases of trial in their absence, "in absentia" according to Article 352 of the Criminal Procedure Code of the Republic of Albania. For a long period, despite the legal amendments to the Code of Criminal Procedure undertaken in this field by law no. 35/2017, the applicant continued to be treated as a convicted person, without fully benefiting from the procedural rights and guarantees that the criminal procedural legislation grants to the parties during the retrial.
This paper aims to analyze the institution of reviewing criminal decisions in the Republic of Albania, with a special focus on the procedural position of the applicant, the evolution of the legal framework, and the latest developments in judicial practice. In this regard, special importance is given to the unifying stance of jurisprudence, which has accepted that, after the acceptance of the request for review in cases provided for in Article 450, paragraph 1, letters "d", "dh", "e" of the Code of Criminal Procedure, the applicant must be treated with the procedural status of accused, enjoying all the procedural rights and guarantees recognized by the criminal procedural legislation for this status.
Although the unification of judicial practice represents an important development in guaranteeing the procedural rights of the applicant, it remains necessary that this standard be explicitly reflected in the criminal procedural legislation as well. For this reason, at the conclusion of the work, concrete conclusions and recommendations are presented, aimed at improving and updating the provisions regulating the institute of review of criminal decisions, aiming to increase legal certainty and ensure their uniform application in judicial practice.

Field of study: *Criminal Procedural Law (Criminal Procedure)*

Keywords: *review of the criminal decision; extraordinary means of appeal; final decision; procedural position of the applicant; status of the defendant; trial in absentia; retrial; error of fact; error of law; procedural guarantees; due process; jurisprudence; Republic of Albania.*

1. Introduction

Before addressing the institute of review of the criminal decision and analyzing the procedural position of the applicant in the review trial, when in the previous process he was tried in *absentia in absentia*, it is necessary to present the basic concepts related to this institute, its legal nature, as well as the cases in which the criminal procedural legislation allows the exercise of this extraordinary procedural remedy. These elements constitute the theoretical and legal basis on which the analysis of jurisprudential developments and issues related to the procedural status of the applicant will be based.

The institute of decision review is provided for in Article 449 and following of the Criminal Procedure Code of the Republic of Albania (hereinafter CPC). This institution represents a very important procedural moment which materializes in cases provided by law when the criminal decision has become final, in the sense of "*res judicata*"[1]; its review is allowed at any time regardless of whether the sentence has been executed or extinguished. The essence of this trial, if accepted, concerns the reopening of the trial where a court session is scheduled, the parties are summoned, and an ordinary trial takes place within the limits and grounds set out in the request for review[2].
The subjects who may request the review of the judicial decision are the prosecutor at the court that issued the decision, as well as the convicted person, who may exercise this right personally or through a defense attorney specifically authorized by them. It is also interesting that the legislator has foreseen as subjects the

[1] *A final criminal court decision, which cannot be challenged through ordinary means of appeal (appeal and cassation). Under these conditions, when ordinary means of appeal have been exhausted, the decision is final and the case is considered closed based on the principle of "res judicata."*

[2] *Article 455 of the Criminal Procedure Code*

relatives or heirs of the convicted person in case they are deceased[3].

The provision of this right also for relatives or heirs is related to the need to guarantee the review of the court's decision even after the death of the convicted person. The rehabilitation of his figure, the restoration of honor and dignity, as well as the elimination of the legal and moral consequences of an unjust sentence, constitute legitimate interests that justify the continuation of the review procedure. In this way, the legislator aims not only to protect the individual rights of the convicted person but also to safeguard the interests of his family members and to strengthen public trust in criminal justice.

In analyzing the provisions that foresee the institute of review, specifically Article 450 of the CPC, we note that the materialization of this provision in practice occurs in seven different cases, of which the last three cases are new cases added by Law no. 35/2017. This provision, through the first four cases provided for in letters "a", "b", "c" and "ç", allows the convicted person to contest the guilt or legal qualification of the criminal offense on certain specific grounds such as criminal, civil, or administrative judicial acts or decisions on which the sentencing decision was based, which later turned out to be in conflict with each other, new evidence, or when the decision is based on falsified trial documents or on another fact provided by law as a criminal offense. These cases represent the most common situations of the criminal decision review institute.

All four cases mentioned above share several common characteristics. Criminal decisions in these cases have been based on false, incomplete, or incomplete data, or the law has not been correctly applied by the courts in cases where another judicial decision of a civil or administrative nature, which has subsequently been revoked, is examined as evidence in the criminal process. The first four review cases foresee situations and errors made by the court during the issuance of the criminal decision. These errors, on which the court's decision was based, are divided into factual errors, *error of fact*, or errors of law, *error juris*, which have entirely influenced the issuance of an unjust criminal decision that must be reviewed.

In these cases, the convicted person who was personally aware of the trial and was present in the criminal process as the defendant, at the moment of submitting the request for review, aims to be fully exempted from criminal responsibility or mitigated in light of new circumstances. The sentencing decision in this case is based on false/inaccurate documents, falsified or on incomplete, incomplete data and facts, which have led the court to issue an incorrect criminal decision.

The first four cases differ entirely from the three new cases added to the review institute in the CPC by law no. 35/2017. The situations related to the three new cases of review of the criminal decision provided for in letters (d), (dh), and (e) of article 450 point 1 of the CPC mainly refer to the trial in *absentia* conducted against the subject in the first trial. According to the content of these points, this institution applies when: *d) the reason for reviewing the final decision results from a ruling of the European Court of Human Rights that makes a retrial of the case necessary; dh) when the extradition of a convicted person tried in absentia is granted with the explicit condition of a retrial of the case; e) when the person has been tried in absentia under Article 352 of this Code and requests a retrial of the case.*

As it appears from the content of letters (d), (dh), and (e), which have been added as new cases for the review of the criminal decision by law no. 35/2017, the convicted person does not necessarily seek the correction and completion of procedural actions in the trial, nor the correction of the conclusion drawn by the court in the decision given against him. In these new review cases, the defendant seeks the exercise of his rights in the criminal process, such as the right to be informed of the criminal offense and the grounds of the charges brought against him, the right to choose a defense attorney, the right to have sufficient time and ease to prepare his defense, the right to be heard, the right to present evidence that serves his defense, the right to question witnesses, experts, and other defendants during the trial, etc.

Also, the review is mandatory when the convicted person has been tried in absentia without their knowledge.
Within the framework of the review trial, several legal issues arise, which can be summarized as follows:

- *What is the procedural status of the person against whom the request for review of a final criminal decision is accepted? Is he still considered a convicted person or, by accepting the request for review, should he regain the procedural status of defendant?*
- *If it is accepted that the procedural status changes, what procedural rights and guarantees should be recognized to this subject during the conduct of the review trial? What has been the position of the legislator and judicial practice over the years regarding the procedural rights and guarantees recognized to the subject requesting the review?*
- *Is the current regulation of the review institute, regarding the status of the person requesting the review of the decision, in accordance with European standards for the protection of human rights? In particular, does it respect the principle of restitutio in integrum and the standards developed in the case law of the European Court of Human Rights concerning the effective reinstatement of the individual to the legal position they would have had in the absence of the violation?*

This paper is based on a theoretical-analytical approach, focusing on the interpretation of the provisions of the Code of Criminal Procedure that regulate the institute of review of criminal decisions, as well as on the analysis of legal literature and relevant jurisprudence. In particular, this institute has been analyzed both in the period before and after the constitutional amendments, with the aim of highlighting their impact on procedural guarantees and on the legal position of the requesting party.

The doctrinal method is used to address the legal nature of the review, and the jurisprudential method to examine domestic judicial practice and the standards of the European Court of Human Rights. The paper also aims to critically assess the practical application of this institution, especially regarding the procedural status of the applicant and the compatibility of the

[3] *Article 450 of the Criminal Procedure Code*

current regulation with the principles of fair trial and restitutio in integrum.

2. The evolution of the institution of decision review in the legislator's approach.

The institution of reviewing judicial decisions, provided for in Articles 449 and following of the Code of Criminal Procedure, is one of the extraordinary means of appeal that has undergone significant legal changes over the years. To analyze the evolution of Article 450 of the Code of Criminal Procedure up to its current formulation, it is necessary first to focus on its content at the time of the adoption of the Code of Criminal Procedure of the Republic of Albania.

By Law no. 7905, dated 21.03.1995 "The Criminal Procedure Code of the Republic of Albania," from its adoption it provided in its article 450 that, "*1. Review may be requested: a) when the facts underlying the decision do not agree with those of another final decision; b) when the decision is based on a civil court ruling that has subsequently been revoked; c) when, after the decision, new evidence has emerged or been discovered, which alone or together with what has already been evaluated shows that the decision is incorrect; ç) when it is proven that the decision was made as a result of falsification of court documents or another fact provided by law as a criminal offense*."

From this provision, it follows that the legislator had foreseen a relatively limited review regime, linking this extraordinary remedy mainly to the discovery of new evidence, the existence of irreconcilable decisions, or the finding of criminal irregularities that had influenced the issuance of the decision. As we discussed above, the decision in these cases was issued based on false, incomplete, or incomplete circumstances.

A fundamental change to the review institute was made with the adoption of Law no. 35/2017, which significantly expanded the cases in which the review of a final criminal decision could be requested. Alongside the addition of letter "b", including decisions of administrative courts, the legislator added the cases provided for in letters "d", "dh", and "e" of Article 450 of the Code of Criminal Procedure. Specifically, the *existence of a decision by the European Court of Human Rights was recognized as grounds for review, which makes a retrial of the case necessary, the case when the extradition of a person convicted in absentia is conditioned on his retrial, as well as the case when the person was tried in absentia under Article 352 of the Code of Criminal Procedure and requests a retrial of the case.*

These changes mark an important turning point in the legislator's approach to the review institution. Whereas previously this institute was mainly focused on correcting factual errors and errors in the application of the law, after 2017 it expanded its function to guarantee the right to a fair trial. In particular, the inclusion of the possibility of review for persons tried in absentia represents a significant expansion of procedural protection, aiming to ensure the effective exercise of the right to be heard, in accordance with the standards developed by the jurisprudence of the European Court of Human Rights.

Another fundamental change introduced by the reform in criminal procedural legislation concerns the competent court to examine the request for review of the criminal decision. In the initial version of Law no. 7905, dated 21.03.1995, **"Criminal Procedure Code of the Republic of Albania**," the competent courts to examine review requests were the first-instance courts that had initially examined the criminal case on the merits, for which a review of the criminal decision was subsequently requested. Subsequently, with Law no. 8813 dated 13. 06.2002, Article 453 of the Code of Criminal Procedure was amended by appointing the Supreme Court as the sole body to review requests for the review of a criminal decision. Specifically, Article 453 of the Code of Criminal Procedure provided that: *"The request for review is examined by the Criminal College of the Supreme Court in the deliberation chamber, without the presence of the parties."*

In the same spirit, Article 452 of this Code stipulated that: *"1. The request for review is made personally or through a representative. It must contain the evidence justifying it and must be submitted, together with any possible documents, to the registry of the Supreme Court."* At this procedural stage, the Supreme Court verified the legal conditions regarding the admissibility or inadmissibility of the request for review and then decided on the acceptance or rejection of the request, while in case of acceptance, it annulled the decision subject to review and sent the case for retrial to the competent court.

With the constitutional amendments of 2016 and their materialization in the Criminal Procedure Code through law no. 35/2017, dated 30.03.2017 "On some additions and amendments to law no. 7905, dated 21.3.1995 'The Criminal Procedure Code of the Republic of Albania', as amended", the competence to examine the review request was also changed. Within the framework of the new conception of the Supreme Court as a court of law (cassation court), it was stripped of the legal competence for the initial verification of review requests, which was transferred to the first instance court that issued the decision.

This change is reflected in Article 453 of the Code of Criminal Procedure, which now provides that: *"The review request is examined by the first instance court that issued the decision in the deliberation chamber, without the presence of the parties."* Consequently, after the entry into force of law no. 35/2017, the competence to review requests for the review of criminal decisions passed from the Supreme Court to the first instance court, marking a fundamental change regarding the court where the request for review of the criminal decision must be submitted.

3. The institute of reviewing the decision of persons tried "in absentia" according to Article 352 of the Criminal Procedure Code in light of developments in the practice of the Supreme Court and the ECHR

The institute of reviewing the criminal decision for persons tried in *absentia "in absentia*," as provided in Article 352 of the Code of Criminal Procedure, constitutes a special legal mechanism aimed at reopening the judicial process when it is found that the previous judicial process was violated in its essential elements, especially the right to effective participation in trial and defense, as a result of lack of knowledge about the process and the court's decision-making.

In this context, Article 455 of the Criminal Procedure Code regulates the review trial, providing that the court designated for the retrial schedules the hearing and orders the summoning of the parties, while the trial is conducted according to the rules of

the first instance trial, within the limits of the grounds presented in the review request. This provision guarantees that the case is not treated as a formal review, but as a new judicial process of a substantial nature aimed at guaranteeing the rights and guarantees enjoyed by a person in a criminal proceeding. The court assigned to the retrial examines the criminal case within the limits of the grounds stated in the review request.

The legal grounds for requesting the review of a criminal judicial decision are included in all cases provided for in Article 450 of the Criminal Procedure Code. If the grounds for review relate to the first four cases that led the court to issue an incorrect judicial decision, then the court in the retrial examines the criminal case by limiting itself only to the debate that will take place on the contested circumstances, which, if they truly exist as such, must be corrected.

If the legal grounds for which the review is requested refer to the case of trial in *absentia in absentia,* then the court in the retrial examines the criminal case from the beginning. In this case, this action is understandable due to the guarantee of the defendant's rights during a criminal judicial process. The right to be informed of the criminal offense brought to trial as well as the grounds on which the accusation is based, the right to freely present one's defense and the right to be heard, the right to choose a defense attorney in court, the right to be acquainted with the case materials, the right to present evidence serving his defense, the right to question witnesses, experts, or other defendants, cannot be practically exercised against a defendant previously tried in *absentia except* by retrying the criminal case from the beginning in the presence of the defendant.

On the other hand, Article 456 of the Criminal Procedure Code defines the effects of the review decision. When the request is accepted, the court annuls the previous decision and may issue a new decision which must be based on the legal provisions that define the cases for issuing a criminal decision by the first instance court. The court cannot issue a decision solely by reassessing the evidence obtained in the previous trial. When the request is rejected, the previous decision remains in force and the execution of the sentence or the security measure, if it had been suspended, is reinstated.
As mentioned above, the trial of the defendant in *absentia in absentia* is one of the legal cases that obliges the court to review once again the judicial decision previously issued by it.

The consolidated jurisprudence of the European Court of Human Rights (ECHR) and the Constitutional Court of the Republic of Albania has established that the possibility of being present in the judicial process constitutes an essential guarantee of the right to due legal process and effective protection (Decisions no. 30, dated 17.06.2010; no. 20, dated 01.06.2011; no. 45, dated 10.10.2011 of the Constitutional Court of the Republic of Albania; as well as the cases *Ektabani v. Sweden* (1988), *Vaundelle v. France* (2003), *Spinatto v. HMP Brixton and Italy* (2001), *Mariani v. France* (2005), *Sejdovic v. Italy* (2000), *Shkalla v. Albania* (10.05.2011), *Piersack v. Belgium* (26.10.1984), etc., of the ECHR). According to this practice, a defendant tried in absentia, when the process was conducted in violation of conventional and constitutional rights, must be reinstated to the extent and in the manner that he would have enjoyed if he had been properly tried, in his presence and knowledge.

In this sense, also referring to the ECtHR jurisprudence, the reopening of proceedings represents the application of the classical principle of *"restitutio in integrum*," which aims to restore the situation to the state it was in before the violation. However, the regulation of how this principle is realized is left within the scope of the state's assessment. The implementation of ECtHR decisions is supervised by the Committee of Ministers of the Council of Europe, according to Article 46(2) of the Convention. Furthermore, the development of the Court's own jurisprudence has shown an increasingly active approach in determining effective remedies for violations, where reopening proceedings is often considered an important instrument for genuinely guaranteeing the right to a fair trial.

4. Change in the status of the review petitioner: the interpretative approach of the Supreme Court.

In the institution of reviewing a criminal decision, **the status of the person submitting the request** is of particular importance because it is directly related to the procedural rights they enjoy during the process. Certainly, the changes to Law no. 35/2017 in the Code of Criminal Procedure have also affected the change of status of the person submitting the request for review. With the same law, Article 453 of the CPC has also undergone changes, among other things, by adding paragraph 4 to it, according to which "*4. Until the decision is issued by the review court, according to Article 456 of this Code, the convicted person retains the same procedural position*." Even in the currently effective Criminal Procedure Code, this provision remains unchanged.

Meanwhile, Article 456 of the CPC has remained unchanged by the legislator since the initial approval of this Code in 1995, which states as follows: ".... *4. At the request of the interested party, the acquittal decision is posted in a shortened form in the district where the decision was made and at the last place of residence* ***of the convicted*** *person. The presiding judge may order that this decision be published in a specific newspaper*." Thus, we note that the legislator preserves the "status of the convicted person" for the person submitting the request for the review of the criminal decision until the moment the review court issues a decision.

Such an approach refers to the first four cases provided for in Article 450, first paragraph, letters "a", "b", "c", "ç" and some special cases that may be included in letter "d" of the same legal provision. All these cases refer to similar situations where the sentencing decision was based on illegal, false, inaccurate, falsified documents, acts, or actions, or on incomplete, incomplete data and facts that led the court to issue an incorrect criminal decision. All cases of review provided for in Article 450, paragraph one, letters "a", "b", "c", "ç" include situations of errors in law or facts on which the court relied when issuing the first judicial decision subject to review. In all review cases where the legal grounds are based on factual errors or errors of law, the convicted person retains the same procedural position until the issuance of the final decision by the review court. The decision of the review court, when the legal circumstances foreseen in the first four cases of Article 450 of the CPC are met, corrects the factual or legal errors made in the previous trial.
In all four cases mentioned above, the convicted person was present throughout the entire judicial process. He was guaranteed all constitutional and procedural rights, for which the convicted person has no disputes.

This position has also been upheld by the unifying decision of the United Colleges of the Supreme Court no. 3, dated 08.07.2013, which among other things interprets that: "*In the event that the convicted person's request is accepted and the Criminal College of the Supreme Court, based on the review competence it has under Article 453 of the Criminal Procedure Code, paves the way for the judicial review process,* ***the accused will continue to have the procedural status of the convicted person.*** *Acceptance of the request for review does not in itself result in the revocation of the sentence or the release of the convicted person, but only the reopening of the judicial process for the purpose of clarifying new circumstances so that the judicial decision corresponds to the truth. Acceptance of the request for review does not change the procedural position from that of the convicted person to that of the defendant. If the Criminal College of the Supreme Court paves the way for the review and in the review trial at the first instance court the defendant is declared not guilty, the procedural position of the subject is no longer that of the convicted person, but that of the defendant. This situation (the status of the defendant) will continue until the new acquittal decision given after the review becomes final."*

This approach treats the applicant in the review process with the status of a convicted person even after the acceptance of the request to undergo review, with the aim of correcting any factual or legal error that may have occurred during the first trial of the criminal case. In these cases, the review and the change of the applicant's status do not occur immediately upon the opening of the review, but only at a later stage, when the case is retried and the court issues a new decision different from the previous one, and in cases where the convicted person is declared innocent by the court during the review of the decision, they retain the status of defendant until the decision becomes final.

This position is supported by the fact that accepting the request for review does not automatically annul the final criminal decision, nor does it automatically lead to release or suspension of the execution of the sentence, except when the court decides otherwise. In this way, the principle *of res judicata* is preserved as a guarantee for legal certainty and the stability of judicial decisions.

Essentially, the review of the criminal decision with the aim of correcting it remains an extraordinary and exceptional remedy, which does not initiate a new trial from the beginning, but only aims to correct special cases when errors made during the trial are found that relate to the established facts or errors related to the application of the law by the court. Precisely for this reason, the applicant is treated as a "convicted person seeking a review of the decision," and not as a defendant in a new criminal proceeding.

The correction of errors identified during a criminal trial through the request for review of a final decision differs from other cases of criminal decision review added to Article 450 of the CPC by Law no. 37/2017 with letters "d", "dh", "e". The new cases added by Law no. 37/2017 mainly refer to situations where the applicant for review of the criminal decision was tried in *absentia.* In these cases, if the court reviewing the request for review finds that the applicant was tried in *absentia* (without having any knowledge of the criminal proceedings initiated against him), it must reopen the criminal judicial process from the beginning so that the applicant can be personally informed of and exercise all his legal rights recognized by the Code of Criminal Procedure as well as the Constitution of the Republic to the defendant in a criminal proceeding opened against him. To further clarify the new legal situations for the review of a criminal judicial decision added by law no. 35/2017 in article 450 of the Criminal Procedure Code, we are assisted by the unifying decision of the Criminal College of the Supreme Court no. 00-2026-680 Decision (9) dated 22. 01. 2026.

According to this decision, the position of the defendant is taken with the acceptance of the request for review, and according to this provision, which refers to Article 456/1 of the CPC, as a decision of the review court in the case of trial in *absentia* according to letters d", "dh" and "e" of the CPC, the decision to accept the request for review of the decision should be understood. Until the moment the request for review is accepted, the convicted person retains the same procedural position as before the acceptance of the request for review. Only after the acceptance of the request for review does the position change to "defendant".

The unifying decision of the Criminal College of the Supreme Court has brought an important development in judicial practice, further complementing and clarifying judicial practice in various situations related to cases of review of criminal decisions. The ECtHR jurisprudence has consistently emphasized that when a person is convicted in *absentia in absentia* without a clear waiver of the right to defense or without proving that they have deliberately evaded justice, the refusal to reopen or an effective retrial conflicts with the requirements of Article 6 of the ECHR.

In the aforementioned circumstances referring to new cases of review, when the applicant was previously tried in *absentia in absentia*, the Supreme Court was obliged to clarify the scope and applicability of this unifying decision in relation to the three new legal grounds for review, assessing that a new legal situation has been created, which cannot automatically accept the effects of the unifying decision no. 3/2013 on the procedural status of the accused in the criminal decision review procedure.

The latest approach taken by the Supreme Court, also taking into account the expansion of the grounds for review provided in Article 450, points "d", "dh" and "e" of the Code of Criminal Procedure, leans more towards a substantial than a formalistic interpretation. This is because, in the assessment, not only the procedural function of the review remains, but also the new nature of the grounds legitimizing the opening of the process, which are directly related to the prior violation of fundamental defense rights and the need for a real reassessment of the charge in the presence of the defendant.

From this perspective, treating the applicant simply as a "convicted" subject when before the request for review he was previously tried in *absentia in absentia* would strip the institute of review of the reopening of the criminal judicial process of its material content, as it would preserve the effects of a decision that itself is being questioned due to the lack of standards of a fair legal process. For this reason, the unifying conclusion of the Criminal College of the Supreme Court that in the cases provided for by these additional provisions in Article 450 of the CPC by law no. 35/2017 the applicant should be treated as a "defendant" is consistent with the new review cases as an

extraordinary remedy aimed at effectively restoring the process to the standards of a fair trial.

The handling of the request for review of the criminal decision, which preserves the status of the convicted person in *absentia* for the person previously tried in absentia, is incoherent treatment and creates procedural obstacles. The right to be heard, to participate in the trial, to present evidence, to question witnesses or other defendants, to effective defense, and to equality of arms is not effectively exercised by a passive procedural subject. If the court accepts that the process must be reopened from the beginning because the applicant was not aware of the criminal trial previously conducted against him, then the subject cannot yet be treated as the bearer of previous procedural consequences that have worsened his position in a vulnerable criminal judicial process. This situation would create a logical and legal paradox: on one hand, it is accepted that the previous process was not fair; on the other hand, it is required that the individual enter the new process with a series of procedural limitations of that unfair process.

5. The procedural rights and guarantees of the person requesting the review of a decision tried in *absentia in absentia*.

The enjoyment of the status of "convicted person," even after the acceptance of the request for review of the criminal decision submitted by the applicant who claims in his review request that he was tried in *absentia in absentia*, placed the applicant in a procedurally disadvantageous and mostly passive position.

For these reasons, the unifying decision of the Supreme Court addressed and resolved this issue regarding the trial in absentia of the applicant, emphasizing the principle of *"restitutio in integrum."* The trial *in absentia* and the decision rendered against the defendant as a result of the trial in absentia turn the judicial process into an unfair one, since the judicial process itself contradicts Article 6 of the ECHR as well as Articles 31, 33, and 42 of the Constitution. The principle of *"restitutio in integrium"* provided in Article 450, first paragraph in letters "d", "dh", "e" of the CPC allows the reopening of the judicial process for a person tried in *absentia in absentia* in order to regulate all consequences created by an unfair judicial process conducted in the previous trial against him. In cases of trial in absentia under letters "d", "dh", "e" of Article 450/1 of the CPC, the request for review of the decision submitted by the applicant cannot be rejected by the court. In this regard, the issue was also raised whether, if the applicant previously tried in *absentia in absentia* were to be considered a defendant after the acceptance of the request for review, he should enjoy only the minimum guarantees of defense or the entirety of procedural rights that would have belonged to him if he had been properly tried from the outset.

The College assessed that the applicant should be reinstated in all his procedural rights, including the right to request a shortened trial. Otherwise, applying the *principle of "restitutio in integrium" would make no sense.*

In this logic, the injustice of the criminal process that justified the review and actually impaired the accused's ability to participate, defend themselves, and procedural choices must be accompanied by the full restoration of rights not previously exercised by the accused. The new judicial process is not limited only to conducting a new trial but also requires the restoration of all procedural rights that the accused lost as a result of his trial in absentia. This implies placing the subject, as much as possible, in the same procedural position they would have held if they had been regularly tried from the outset. This approach aligns with the practice **of the ECtHR** and with **the Council of Europe's** documents on the review of criminal decisions.

In the cases provided for in Article 450, point 1, letters "d", "dh" and "e" of the Criminal Procedure Code, the re-acceptance of the status of defendant by the applicant/defendant after the acceptance of the request for review of the first sentence also guides the peculiarity of the legal treatment of the continuation of their imprisonment. After the acceptance of the review request, upon acquiring the status of "defendant," the defendant cannot simultaneously be considered convicted for the purpose of justifying the continuation of the execution of the prison sentence, which has now been judicially established to have been imposed in violation of the principle of a fair trial. Consequently, the imprisonment of the defendant does not have a legal reason to justify *a priori the* continuation of the execution, given that legally there is no longer a conviction decision for the defendant, but it has been restored to the state of the initial assessment on the merits of the charge. However, for the same reason, *"acquiring procedural status as a defendant"* does not prevent the prosecuting body, the prosecution, from requesting from the court the imposition of coercive or prohibitive security measures provided for by the criminal procedural law, as well as the court from deciding on their imposition.

6. Conclusions

The purpose of the review institute in general is not to more gently administer the consequences of a final decision, but to create an effective legal remedy for reopening the judicial process when there are serious doubts that the sentencing decision is the result of an irregular procedure. In the new review cases added to Article 450 of the CPC by law no. 35/2017, which foresee situations of trial *in absentia* of the accused, the transition to the status of defendant after acceptance of the review request and the full restoration of procedural rights represent two aspects of the same legal solution.

The unifying decision of the Criminal College of the Supreme Court sets a clear standard, according to which review cannot remain a mere formal mechanism but must function as a comprehensive instrument of effective defense. In this way, judicial practice is oriented towards a more substantial model of criminal justice, where the need to correct an irregular judicial process due to a trial in *absentia* of the accused prevails over the simple stability of the executed decision.

In this sense, the unifying decision of the Criminal College does not constitute merely a solution for the specific case, but serves as a general interpretative standard for the application of the review institute in the Albanian legal system, aligning it with the standards and jurisprudence of the European Court of Human Rights.

7. Recommendations

The current legal treatment and provision, which does not clarify the status of the applicant even after the court's acceptance of the review request in cases where they have previously been tried in *absentia*, appears contradictory and creates significant procedural obstacles. The right to be heard,

to participate in the trial, the right to be defended by a defender of their choice, the right to present evidence, to request the questioning of witnesses, experts, and other defendants during the trial, which reflect aspects of legal guarantees for effective defense and equality of arms in the criminal process, cannot be exercised effectively when the subject is held in a passive and limited procedural figure.

If the court accepts that the process must be reopened due to the trial and decision previously made in the absence of the defendant in the criminal process, then the subject cannot continue to bear the legal consequences of that process already considered irregular by the decision to accept the request for review. Otherwise, a legal paradox is created: on one hand, it is accepted that the previous trial was flawed and unfair, while on the other hand, the individual is obliged to enter the new trial with procedural restrictions that arise precisely from that irregular process.
For this reason, we recommend legal changes that explicitly foresee:

- **the full restoration of the defendant's status** after the acceptance of the review request, with all procedural consequences arising from it when the review request is accepted by the court because the trial and the previous criminal decision were issued in *absentia* against the defendant;
- **guaranteeing all active procedural rights**, including the right to a shortened trial under Article 403 of the CPC and any other procedural defense instrument for the absent *defendant*;
- **strengthening procedural guarantees during the review**, so that the new process is conducted as a full and effective trial, and not as a formal continuation of the previous process for the absent *trial in absentia*.

In this way, the institute of review will be transformed into a real tool of restorative justice, avoiding procedural formalism and effectively guaranteeing the right to a fair legal process for those tried in absentia.

Literature

1. Constitution of the Republic of Albania, Law no. 8417, dated 21.10.1998, amended by laws no. 9675, dated 13.1.2007; no. 9904, dated 21.4.2008; no. 88/2012, dated 18.9.2012; no. 137/2015, dated 17.12.2015; no. 76/2016, dated 22.7.2016; no. 115/2020, dated 30.7.2020; no. 16/2022, dated 10.2.2022.
2. The Criminal Procedure Code of the Republic of Albania, Law no. 7905, dated 21.3.1995.
3. Law no. 35/2017 "On some additions and amendments to law no. 7905, dated 21.3.1995 'Criminal Procedure Code of the Republic of Albania', as amended."
4. Law no. 8813, dated 13.6.2002 "On some additions and amendments to law no. 7905, dated 21.3.1995 'Code of Criminal Procedure of the Republic of Albania'".
5. Unifying Decision of the Criminal College of the Supreme Court no. 00-2026-680 (9), dated 22.01.2026.

Decisions of the Constitutional Court of the Republic of Albania:

- no. 30, dated 17.06.2010
- no. 20, dated 01.06.2011
- no. 45, dated 10.10.2011

Jurisprudence of the European Court of Human Rights (ECHR):

- *Ectabani v. Sweden* (1988)
- *Vaundelle v. France* (2003)
- *Spinatto versus HMP Brixton and Italy* (2001)
- *Mariani vs. France* (2005)
- *Sejdović v. Italy* (2000)
- *Case against Albania* (10.05.2011)
- *Piersack v. Belgium* (26.10.1984)

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