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The Standard of Evidentiary Sufficiency at The Preliminary Hearing and The Abbreviated Trial: Overlapping Functions and Tension Between Judicial Standards of Evidence

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Abstract

The introduction of the Preliminary Hearing Judge (PHJ) into Albanian criminal procedure has raised issues concerning the scope and exercise of the judge's powers. This study examines the evolution of the PHJ's powers in relation to the abbreviated trial, focusing on the current procedural framework, under which the PHJ may consider an application for an abbreviated trial and proceed to hear the case and render a final decision.

It analyses the relationship between the standard of evidentiary sufficiency applicable at the preliminary hearing stage and the standard of proof beyond reasonable doubt required for a final determination of guilt. The transition from the preliminary review of the evidentiary basis to the final assessment of criminal liability raises questions about how to preserve the functional distinction between these two standards, particularly when both stages are conducted by the same judge.

Through an analysis of the legal framework and judicial practice, the paper aims to identify the issues that may arise from the overlap of functions and to assess whether the procedural regulation guarantees an independent and impartial assessment of the case file in the abbreviated trial.

Keywords*: Preliminary Hearing Judge; Abbreviated Trial; Evidentiary Sufficiency; Beyond Reasonable Doubt; Judicial Impartiality; Albanian Criminal Procedure.*

1. Introduction

Standards of proof constitute an essential element of criminal proceedings, as they determine the level of evidentiary support required for judicial decision-making at various stages of the process. Depending on the nature and purpose of the decision-making, criminal procedural law provides for different criteria, ranging from reasonable suspicion based on evidence to the sufficiency of evidence to bring the case to trial and, ultimately, proof of guilt beyond reasonable doubt. The distinction between these standards is not merely theoretical; it also defines the limits of the powers exercised by the prosecution authorities and the courts, helping to ensure that decisions at each procedural stage are based on the level of evidentiary support appropriate to the function being performed.

The relationship between the standard of sufficiency of evidence at the preliminary hearing and the standard of proof beyond reasonable doubt in the context of the abbreviated trial is of particular importance. The 2017 amendments to the Criminal Procedure Code and the subsequent amendment of 2021 have created a procedural configuration in which the Preliminary Hearing Judge, where an abbreviated trial has been requested, may proceed from reviewing the state of the case file to adjudicating the merits as the trial court.

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This interplay raises issues regarding the boundaries between the preliminary review of the evidence and the final assessment of guilt, as well as the need to ensure impartiality in decision-making. In this context, the analysis aims to examine the content and function of the two standards, the powers of the judge in the abbreviated trial, and the tension that may arise from the concentration of these functions in the same judge**.**

2. The notion of the standard of proof under Albanian procedural law

The concept of a standard of proof is not expressly regulated in Albanian criminal procedural legislation. The provisions of the CPC contain no specific definition of what is meant by the standard of proof. Nevertheless, by interpreting the procedural provisions, it is possible to identify the term *"standard*", which takes on different characteristics at different procedural stages, depending on the purpose of the decision-making. The consolidated case law of the High Court regarding the standard of proof has also played an important role in interpreting these provisions.

Firstly, with regard to personal security measures, the legislator, in Article 228, has provided that one of the criteria for imposing a pre-trial detention measure is the existence of a "*reasonable suspicion based on evidence".*[1] This standard is widely applied during the preliminary investigation phase to a range of procedural actions, including, among others, decisions authorising the interception of communications.

Secondly, with the introduction of the preliminary hearing as an intermediate procedural stage, the "standard of sufficiency of evidence" also emerges.[2] At this stage, the PHJ, when examining the prosecutor's request to send the case to trial, must assess whether the evidence gathered during the preliminary

1. [1]Law No. 7905, dated 21.03.1995, as amended, Article 228(1): "No one may be subjected to personal security measures unless there is a reasonable suspicion against him/her, based on evidence."
2. [2]This is discussed in detail in Section "1.1 The standard of sufficiency of evidence at the preliminary hearing".

investigation constitutes a sufficient basis to support the indictment.[3] This assessment includes a review of the evidence base presented by the prosecution and, where necessary, the identification of shortcomings that require further investigation.[4] However, the scrutiny exercised at this stage is not intended to determine definitively the guilt or innocence of the defendant, but to verify whether the case has the necessary evidentiary support to be examined on the merits.

Thirdly, the standard of proof beyond reasonable doubt constitutes the criterion that must be met for a conviction to be handed down. This standard is expressly reflected in Article 4 of the Criminal Procedure Code, which establishes the principle of the presumption of innocence and stipulates that the court shall render a conviction when the defendant is found guilty of the criminal offence charged beyond reasonable doubt.[5] In this sense, the standard constitutes a procedural guarantee for the defendant, as it requires that the conclusion on guilt be based on sufficient and convincing evidence, assessed as a whole.

It follows that Albanian criminal procedural legislation provides for different evidentiary criteria, which relate to the nature and purpose of decision-making at different stages of the proceedings. The distinction between them becomes particularly important when analysing the relationship between the preliminary assessment of the evidentiary basis and the final assessment of guilt. For this reason, it is necessary to focus separately on two standards that play a crucial role in this analysis: the standard of sufficiency of evidence at the preliminary hearing, which relates to assessing whether the case has a sufficient basis to proceed to trial, and the standard of proof beyond reasonable doubt, which guides the final decision on the defendant's guilt. The analysis of the content and function of each of these standards will serve as a starting point for a further examination of the relationship between them within the framework of the abbreviated trial, especially in cases where both functions are exercised by the same judge.

2.1. The standard of sufficiency of evidence at the preliminary hearing

The introduction of the PHJ resulted from the decentralisation of the prosecution service, which created the need for a judge to oversee the prosecutor's actions during the preliminary investigation phase and to strengthen the trial process. The PHJ was envisaged as the court that oversees the prosecutor's actions and decision-making regarding the outcome of the case. In addition to examining the appeal against the prosecutor's decision to dismiss the case, for criminal misdemeanours, the PHJ is responsible for checking whether the prosecutor's request to bring the case to trial is based on evidence and the law, both in terms of the sufficiency of the evidence and in terms of its admissibility and the validity of the procedural acts.[6]

The preliminary hearing, as a screening mechanism and an intermediate stage, is regulated by specific time limits to avoid delays in the judicial process. The hearing must be scheduled within five days of the prosecutor's filing of the application and held within ten days of that filing. The court must then issue its decision within the applicable maximum period of thirty days.[7] However, the importance of these time limits lies not only in their temporal dimension but also in the fact that the preliminary hearing is conceived as a stage with a defined objective: to scrutinise the legal and evidentiary basis of the charge, without taking the place of the trial on the merits. Consequently, the analysis of the standard of sufficiency of evidence seeks to determine not only the level of evidentiary support that justifies bringing the case to trial, but also the boundary between preliminary review and the final assessment of guilt.

Article 332/ç of the CPC provides that the PHJ examines the request to send the case to trial where it considers that there is sufficient evidence to support the charge. Sufficiency of evidence is the determination that the evidence, taken together and as a whole, allows a true conclusion to be drawn as to the existence of the fact for which it was collected.[8] It should be noted that the most recent and consistent case law of the High Court has emphasised that the competence of the PHJ must not be confused with that of the trial court. According to this case law, the PHJ should not engage in weighing the evidence, as this falls within the exclusive competence of the court adjudicating the merits of the case.[9]

In this sense, the standard of sufficiency of evidence requires the PHJ to examine the materials in the preliminary investigation file in several interrelated respects: firstly, to determine whether there is a concrete evidentiary basis in support of the indictment; secondly, to verify the connection of the evidence to the criminal offence and to the person to whom its commission is attributed; and, thirdly, to check the validity of the procedural acts and the admissibility of the evidence. This review does not require the judge to reach a definitive view as to the defendant's guilt, but rather to determine whether the charge is supported by sufficient evidence to justify bringing the case to trial. The standard of evidentiary sufficiency therefore serves as a screening criterion, preserving the distinction between the preliminary review of the charge and the standard of proof beyond reasonable doubt governing the final determination of guilt.

2.2. The standard of proof beyond reasonable doubt

Legal scholarship has long recognised that defining the standard of proof beyond reasonable doubt is a difficult task. The term is generally understood to mean that the facts are considered proven to such an extent that there is no room for *"reasonable doubt"* in a person's reasoning. A doubt may exist, but it is so slight that it does not justify reaching a different conclusion. Studies suggest that the standard of proof beyond reasonable doubt is associated with a degree of certainty exceeding 90%.[10]

3. [3]Criminal Procedure Code, Article 332/dh(1)(a).
4. [4]Ibid., Article 332/ç(1).
5. [5]This is discussed in detail in Section "1.2 The standard of proof beyond reasonable doubt".
6. [6]Committee on Legal Affairs, Public Administration and Human Rights "REPORT ON THE DRAFT LAW "ON CERTAIN ADDITIONS AND AMENDMENTS TO LAW NO. 7905, DATED 21.3.1995, "CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA", AS AMENDED" (2017), available at https://droni.al/wp-content/uploads/2018/05/dokument-7.pdf
7. [7]Criminal Procedure Code.
8. [8]Decision No. 226, dated 02.02.2021, of the Court of First Instance, General Jurisdiction of Tirana.
9. [9]Decision No. 00-2022-1151 (183), dated 24.06.2022; Decision No. 00-2025-1867 (293), dated 04.12.2025, of the Criminal Chamber of the High Court.
10. [10]Arta Bilali Zendeli, Associate Professor at the Faculty of Law, University of Tetova, Tetovo "Conceptual definition of the burden of proof and other related terms", https://journals.ukim.mk/index.php/iplr/article/view/3624/3201, accessed on 13.10.2026.

However, such a numerical determination does not constitute a universally accepted threshold in criminal law.

This standard constitutes one of the most important procedural safeguards for the defendant, as it requires a high level of evidentiary certainty before a defendant may be convicted in criminal proceedings. The court must be satisfied, on the basis of the evidence adduced, of the existence of the criminal offence and of the defendant's guilt beyond reasonable doubt. The standard is closely linked to fundamental principles of criminal procedure, in particular the presumption of innocence, according to which every person is considered innocent until proven guilty in accordance with the law. For this reason, the totality of the evidence must support the conclusion of guilt to such an extent that there remains no reasonable doubt as to whether the criminal offence was committed and whether the defendant committed it. Where the evidence does not meet this standard and a reasonable doubt as to the guilt of the defendant remains, such doubt must be resolved in the defendant's favour, in accordance with Article 4 of the Criminal Procedure Code.[11]

In accordance with this principle, the courts must not begin the trial with a preconceived belief that the defendant committed the offence charged. The burden of proof lies with the prosecution, and any doubt must be resolved in favour of the defendant. The courts must base their decision on direct and circumstantial evidence adduced by the prosecution. They are obliged to establish the facts of the case relevant to the assessment of the defendant's legal liability as clearly and accurately as possible, and may not present them as mere insinuations or suspicions.[12]

The standard of proof beyond reasonable doubt is widely recognised as a fundamental safeguard in criminal proceedings. Such a requirement is understandable, given that the fundamental rights affected by criminal proceedings are of particular importance and the procedural safeguards provided for their protection must therefore offer a high degree of certainty. In the case of in re Winship, the US Supreme Court held that "*The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt*."[13] In this way, the standard serves as a safeguard against the risk of a person being convicted without their criminal liability being proven to the required standard.

A similar approach to the content of this standard can be found in Italian case law. The Italian Court of Cassation has held that this standard requires the judge to use "a dialectical method of testing the prosecution's hypothesis against the possibility of doubt, with the consequence that the judge must carry out the verification in question in such a way as to rule out the existence of doubts internal to the hypothesis (i.e. its self-contradiction or lack of explanatory capacity) or external to it (i.e. the existence of an alternative hypothesis endowed with rationality and practical credibility)". [14] This position underlines that the assessment of evidence cannot be confined to seeking material that supports the charge, but must also include a critical examination of alternative explanations that may arise from the circumstances of the case.

It follows that the standard of proof beyond reasonable doubt does not require the elimination of every abstract possibility of doubt, but requires that the conclusion of guilt be based on evidence assessed comprehensively and rationally. The judicial assessment must take into account not only the evidence supporting the prosecution's hypothesis but also the counter-arguments and alternative hypotheses that may arise from the evidentiary material. In this way, the standard serves to distinguish a belief grounded in the evidence from a conclusion based on conjecture or a one-sided assessment of the facts.

In Albanian criminal procedure, this standard should be read in conjunction with Article 4 of the Criminal Procedure Code, which establishes the presumption of innocence and the principle that any doubt as to the charge is to be resolved in favour of the defendant. Consequently, a conviction must be based on a body of evidence that justifies the conclusion of criminal liability, while any reasonable doubts that remain after the evidence has been assessed cannot be resolved to the detriment of the defendant.[15]

Determining the standard of proof beyond reasonable doubt takes on particular importance in analysing how the court exercises its powers at different stages of criminal proceedings. Since this standard determines the level of proof required for a finding of guilt, its application should be considered in relation to the nature and function of the proceedings in which the court makes its decision. In this context, the abbreviated trial presents specific features, as the court decides on the merits of the charge based on the documents in the case file, without conducting an ordinary trial. For this reason, it is necessary to analyse the legal framework of the abbreviated trial and the powers that the law grants to the court when applying this procedure.

3. The abbreviated trial and the powers of the court

The abbreviated trial, as a special form of criminal trial, is characterised by the examination of the case on the basis of the materials collected during the preliminary investigation phase, avoiding, in principle, the taking of new evidence at the hearing and adversarial argument on that evidence under the rules governing the ordinary trial. The abbreviated trial, as a procedural mechanism designed to promote judicial economy, is an institution of criminal procedure that aims to simplify and shorten the judicial process, increasing its speed and effectiveness. For this reason, the legislator has laid down special conditions for its application. In this context, Article 405 of the Criminal Procedure Code regulates the procedure for examining the application for an abbreviated trial and provides for limitations in cases where claims are raised regarding the invalidity of procedural acts or the inadmissibility of evidence, or where these are found ex officio by the court. Essentially, the abbreviated trial presupposes the resolution of the case on the basis of the case-file materials collected during the preliminary investigation, without conducting an ordinary trial with the taking of new evidence.

With the 2017 amendments to the Criminal Procedure Code, the request for an abbreviated trial was placed within the procedural

11. [11]Criminal Procedure Code, as amended, Article 4.
12. [12]Decision No. 38, dated 12.07.2023, of the Constitutional Court.
13. [13]In re Winship, 397 U.S. 358, 363–364 (1970).
14. [14]Italian Court of Cassation, Section I, 24 October 2011, No. 41110.
15. [15]Criminal Procedure Code, as amended, Article 4.

framework of the preliminary hearing. However, in the initial wording of the provisions governing this stage, the competence of the PHJ to proceed with the abbreviated trial was not provided for in the manner set out by subsequent legislation. This changed with the 2021 amendment, which expressly empowered the Preliminary Hearing Judge to proceed with the abbreviated trial where the statutory conditions are met. As a result, the PHJ may adjudicate the merits of the case at this procedural stage under the rules governing the abbreviated trial.

Article 332/dh of the Criminal Procedure Code provides that, where the defendant has applied for an abbreviated trial, the Preliminary Hearing Judge invites the parties to present their closing submissions after verifying the state of the case file in accordance with Article 332/c. This provision also entitles the parties to request time to prepare, which may not exceed 15 days.

This amendment represents a significant change in the definition of the PHJ's powers, as it confers on the PHJ not only the function of reviewing the acts and assessing the procedural conditions for the continuation of the case, but also the power to proceed with the abbreviated trial. In such cases, therefore, the PHJ exercises a judicial function that goes beyond the preliminary review of the case and includes decision-making under the special abbreviated trial procedure, up to and including the final decision. Read together, Articles 332/dh and 15 of the Criminal Procedure Code may be interpreted as establishing a statutory exception to the general rule on incompatibility between the functions of the Preliminary Hearing Judge and those of the judge adjudicating the merits.

Although the 2021 amendment aimed to clarify and expand the powers of the PHJ, the legislative solution adopted raises important issues regarding the boundaries between the preliminary review function and that of adjudicating the case. Where the application for an abbreviated trial is accepted, the PHJ proceeds to examine the case and hears the parties' closing submissions, exercising functions that, in the ordinary procedure, belong to the court adjudicating the merits. This feature creates a functional overlap, which needs to be analysed not only in relation to the division of procedural stages, but also in relation to the different standards governing the preliminary review of the case file and the final determination of criminal liability. It is precisely this interplay of functions and standards that forms the subject of the following analysis.

4. The overlap of assessment standards and the concentration of functions in the same judge

The analysis in Sections 1.1 and 1.2 has identified the characteristics of the two evidentiary standards that apply at different stages of criminal proceedings: the standard of evidentiary sufficiency at the preliminary hearing and the standard of proof beyond reasonable doubt at the trial on the merits.

The legislator and judicial practice have defined the function of the standard of sufficiency of evidence, linking it to the limits on the exercise of the PHJ's powers. At this stage, the judge's assessment should be limited to verifying whether the case is ready for trial, whether the investigations are complete and whether the indictment has been properly filed.[16] On this view, the PHJ cannot carry out an in-depth assessment of the evidence, equivalent to that incumbent on the trial court, nor can it prejudge its probative value for the purpose of establishing guilt. This assessment pertains to a subsequent stage of the proceedings, in which the evidence gathered by the prosecution during the preliminary investigation in support of the indictment is subjected to judicial scrutiny, together with the evidence presented by the defence, through adversarial argument between the parties. Consequently, if the Preliminary Hearing Judge exceeds the limits of this review and proceeds to make a final assessment of the evidence in order to determine the merits of the charge, the judge risks exercising a function that procedural law reserves for the court adjudicating the merits.

On the other hand, the standard of proof beyond reasonable doubt constitutes a fundamental guarantee for the protection of the rights and freedoms of the individual in criminal proceedings. This standard applies to the trial on the merits and, given the nature of the abbreviated trial, to this special form of trial as well. At this stage, it is not enough for the court to find that there is a sufficient evidentiary basis for the proceedings to continue. The court must determine whether the admissible evidence, assessed as a whole, establishes the defendant's guilt beyond reasonable doubt.

Thus, at the preliminary hearing, the PHJ examines whether the investigations are complete and whether the evidentiary basis is sufficient for the case to proceed, without making a final determination of guilt. If the PHJ accepts an application for an abbreviated trial and proceeds to hear the case, the same judge must assess the evidence to determine the defendant's criminal liability under the standard of proof beyond reasonable doubt. In this way, the same judge, at different procedural stages, moves from a preliminary assessment, which aims to determine whether the case can proceed to trial, to a final assessment, which aims to determine whether the charge has been proven at the level required by law.

Under ordinary trial conditions, these two standards are applied at different stages by judges exercising distinct procedural functions. In an abbreviated trial, however, the concentration of these functions in the same judge creates a procedural tension related to the need to maintain the distinction between the preliminary assessment of the sufficiency of the evidence and the final assessment of guilt. The challenge lies in ensuring a smooth transition from the first to the second stage without allowing the preliminary assessment to turn into a premature view of the merits of the charge. The central issue is therefore not simply that the same judge applies two different standards, but how to ensure that the preliminary exercise of one function does not prejudice the impartial exercise of the other.

This tension arises in the abbreviated trial, where the same judge who has previously examined the state of the case file is called upon to proceed with the closing submissions and decide on the merits of the indictment. Consequently, the judge must move from checking the completeness and legality of the investigative material to assessing its probative value, in order to determine whether guilt has been proven beyond reasonable doubt. This transition is problematic not only because both functions are exercised by the same judge, but also because the preliminary assessment of the sufficiency of evidence may create a preliminary view of the merits of the charge, which must not

16. [16]Decision No. 00-2023-2010 (330), dated 05.12.2023, of the Criminal Chamber of the High Court.

affect the way in which criminal liability is subsequently assessed.

This issue becomes more apparent when one considers that the procedural validity of an act does not necessarily imply its probative force. Evidence may have been obtained in accordance with procedural requirements and yet, by reason of its content or in relation to other evidence, be incapable of substantiating the charge. For this reason, the preliminary review cannot be reduced to a formal finding that the acts are valid, nor can it be transformed into a final assessment of whether guilt has been proven. This is precisely where the difficulty of distinguishing between the two functions lies: the PHJ must verify whether the case can be examined under the required procedure, without prejudging the outcome of its assessment on the merits.

A historical overview of the regulation of abbreviated trials before the 2017 amendments helps to explain this issue. At that time, Article 403, paragraph 2, of the Criminal Procedure Code provided that the written request for an abbreviated trial had to be filed at least three days before the date set for the hearing. Article 404, paragraph 1, in turn empowered the court to grant the application where it considered that the case could be decided on the basis of the case-file materials in their existing state.[17] This provision linked the examination of the application to the possibility of resolving the case on the basis of the evidence presented, allowing the court to assess whether the state of the case file allowed for a final decision to be made without holding an ordinary trial.

This assessment was not confined to the formal organisation of the file or the verification of the validity of the acts; by its very nature, it also required an examination of the content and probative value of the material collected. Otherwise, the court would not be able to determine whether the case could be resolved on the basis of the case file as it stood. This does not mean that the assessment carried out at that stage was equivalent to the final decision on guilt, but that the decision to accept the abbreviated trial presupposed a preliminary examination of the suitability of the material for resolving the case.

By contrast, the current rules provide that the PHJ, after verifying the state of the case file under Article 332/c of the Criminal Procedure Code, invites the parties to present their closing submissions where the defendant has requested an abbreviated trial.[18] Thus, the preliminary examination of the file and the decision on the merits of the charge are combined in the same procedural sequence. This creates a functional tension that cannot be resolved simply by asking the judge to apply the limits of assessment that characterise the preliminary hearing, because at the end of the abbreviated trial the judge must assess the evidence in order to determine guilt.

The abbreviated trial has retained its essential characteristics since the 2017 reform, particularly the omission of the ordinary evidentiary hearing and the resolution of the case on the basis of the materials collected during the preliminary investigation. However, these features do not imply the exclusion of judicial review of the legality of acts and the admissibility of evidence. On the contrary, the acceptance of the request for an abbreviated trial presupposes that the court assesses whether, on the basis of the case file as it stands, the case can be resolved without prejudice to the administration of justice and the legitimate interests of the defendant.

In this regard, Unifying Decision No. 2, dated 29.01.2003, of the Joint Chambers of the High Court, states that the court has a duty to examine the acts in detail before deciding to admit the application. If it finds at the outset an invalidity that prevents it from rendering a properly reasoned decision, it must reject the application for an abbreviated trial. Similarly, where the parties allege the invalidity of acts and seek a finding or declaration of invalidity, the unifying decision provides for the continuation of the proceedings under the rules of the ordinary trial.[19] Such an outcome defeats the purpose of the abbreviated trial, namely judicial economy and the efficiency of justice.

In light of the above, the problem lies in the way the transition from the preliminary review function to the adjudicative function is organised, so that the earlier review of the completeness and sufficiency of the investigative material does not turn into a premature conclusion as to guilt. This requires that the boundaries between these two functions be carefully defined and respected, while ensuring the effectiveness of the abbreviated trial, without compromising the impartiality of decision-making and the requirements of the proper administration of justice.

4.1. Examination of Claims Concerning the Invalidity of Procedural Acts and the Inadmissibility of Evidence in Connection with the Acceptance of an Abbreviated Trial

The concentration of functions in the same judge is not the only difficulty that arises in the abbreviated trial. Another issue concerns how the parties' claims regarding the invalidity of procedural acts or the inadmissibility of evidence are examined. Article 405(7) of the Criminal Procedure Code expressly provides that an application for an abbreviated trial may not be granted where claims are raised concerning the invalidity of procedural acts or the inadmissibility of evidence.[20] This position is also reflected in the case law of the Constitutional Court, which states that "*In this sense, while raising such claims could constitute grounds for revoking the interim decision to proceed with an abbreviated trial, conversely, their submission during the continuation of the proceedings after the court's rejection of the request for an abbreviated trial cannot serve as*

17. [17]Article 403, paragraph 2, and Article 404, paragraph 1, of the Criminal Procedure Code, in the version prior to the amendments made by Law No. 35/2017.
18. [18]Article 332/dh, paragraph 1, letter "c", of the Criminal Procedure Code.
19. [19] Unifying Decision No. 2, dated 29.01.2003, of the Joint Chambers of the High Court.
20. [20] Criminal Procedure Code Article 405 "*7. The request for abbreviated trial shall not be admitted if the defendant or his defence lawyer raises claims on the validity of the acts or usability of the evidence collected during the preliminary investigation or when new evidence is required to be taken in trial. The request for abbreviated trial shall not be admitted if the Court ex officio finds an absolute invalidity or non-usability of evidence, as a result of which it deems that the case may not be resolved under the existing state of the acts. In this case, in its decision refusing the request, the court shall also identify the acts which are absolutely invalid or the pieces of evidence which are non-usable in trial. This rule shall not apply if evidence concerning the character of the defendant, or his personal, family or economic conditions is requested."*

a justifying argument for that interim decision of the court that had already been taken."[21]

In judicial practice, it is common for defendants and their defence counsel to submit alternative applications, for example an application alleging the invalidity of procedural acts and the inadmissibility of evidence and, should the court reject it, an application for an abbreviated trial. The PHJ's examination of such a two-pronged application by the defence, in addition to prolonging the preliminary hearing, deepens the adversarial role described above, as the PHJ first issues an interim decision on these requests and then a final decision on whether to accept the abbreviated trial. Proceeding in this way is contrary to Article 405(7) of the CPC itself, which provides that an abbreviated trial cannot be granted where claims of invalidity of acts or inadmissibility of evidence have been raised.

In addition to the issues related to the assessment standards and the examination of the parties' procedural claims, the abbreviated trial also raises a specific issue concerning the division of competences, especially in cases where the final decision rests with a trial panel rather than a single judge.

4.2 Competence to Accept an Application for an Abbreviated Trial Where the Case Is to Be Heard by a Panel of Judges

Under the CPC, certain criminal offences are tried at first instance by a panel of three judges.[22] Pursuant to the procedural provisions, the request for an abbreviated trial is submitted at the preliminary hearing, and the PHJ must rule on it. Since procedural law empowers the PHJ to proceed to adjudicate the merits of the case upon accepting the request for an abbreviated trial, the following question arises in cases tried by a panel: *Should the PHJ alone accept the request for an abbreviated trial, or should the judicial panel decide on this request and then invite the parties to make their closing submissions?*

The Code makes no specific provision for this situation. In practice, once the PHJ has decided to admit the application for an abbreviated trial, the hearing is adjourned to allow the other members of the judicial panel to be convened. Procedurally, the PHJ's decision closes this stage and the case proceeds under the rules governing the trial on the merits.

The issue is important because accepting the abbreviated trial is not merely a decision on how the proceedings will be conducted; it also determines the form in which the case will be heard and resolved on the merits. If the decision to accept this form of trial is taken by the PHJ, while the final decision rests with a trial panel, it becomes necessary to clarify whether and to what extent this trial panel may review the conditions under which the abbreviated trial was accepted.

In our view, the PHJ should accept the application for an abbreviated trial. However, the judicial panel subsequently constituted should be empowered to set aside that decision if the other two judges disagree with it. To avoid divergent approaches in practice, we consider that an express legislative provision should be introduced into the Criminal Procedure Code.

5. Conclusions and Recommendations

The abbreviated trial, as regulated within the Albanian criminal procedural system, raises questions about the conduct of proceedings where the same judge performs different functions at two procedural stages. The abbreviated trial does not exclude judicial review of the validity of acts and the admissibility of evidence. Resolving the case on the basis of the case file as it stands presupposes that the court verifies whether the procedural conditions for continuing this special form of trial exist and whether the available material can serve as a basis for a lawful decision. In this regard, Unifying Decision No. 2, dated 29.01.2003, of the Joint Chambers of the High Court, underlines the importance of carefully examining the acts before admitting the request for an abbreviated trial. This approach highlights the distinction between the procedural legality of evidence and its probative value: an act may be procedurally valid but insufficient, either alone or in conjunction with other evidence, to support a finding of guilt. Following the 2021 amendment, the same judge is entrusted with two functions that differ in terms of purpose and standard of assessment: the preliminary review of the evidence base and the final determination of criminal liability.

This creates an overlap of functions in which the PHJ, at a later stage of the proceedings and after accepting the request for an abbreviated trial, becomes the trial judge and determines the defendant's guilt and criminal liability.

Special forms of trial designed to improve the efficiency and speed of criminal proceedings must remain consistent with the guarantees of a fair trial.

Consequently, we make the following recommendations:

The powers of the PHJ in the context of the abbreviated trial should be clarified by clearly distinguishing the two procedural stages in which the judge acts: the preliminary hearing and the trial on the merits.

The decision to grant the application for an abbreviated trial must set out clear reasons regarding the fulfilment of the legal conditions for conducting this procedure, addressing the claims of invalidity of the acts and inadmissibility of the evidence, as well as the obstacles that may affect the possibility of resolving the case on the basis of the case file as it stands. Similarly, where the proceedings continue to a hearing on the merits, the reasoning supporting the final decision must reflect a thorough assessment of the probative value of the admissible evidence and the fulfilment of the standard of proof beyond reasonable doubt.

This requirement is particularly important where, according to the case law identified during this study, the admission of the application for an abbreviated trial and the decision on the merits of the charge are reflected in the same decision. For this reason, the reasoning must distinguish the nature and purpose of the preliminary review from the assessment supporting the conclusion on guilt, so that it is clear that the final decision is not based solely on the preliminary acceptance of the existence of a sufficient evidentiary basis.

21. [21]Decision No. 26, dated 29.04.2025, of the Constitutional Court, §71
22. [22]Criminal Procedure Code, Article 13(3): "*The district courts try criminal offences for which a fine or imprisonment for a maximum term of no more than 10 years is provided, with a single judge. Other criminal offences are tried by a panel of three judges*."

It is recommended that the High Court, in exercising its guiding and unifying function, continue to clarify the limits of the PHJ's review, the standard of sufficiency of evidence, and the criteria for accepting or rejecting the abbreviated trial. Particular attention should be paid to the relationship between these standards and the rules governing incompatibility of judicial functions, especially in cases where the same judge moves from the preliminary review of acts to the final decision. More consistent case law would help to increase the predictability of decisions and ensure the uniform application of criminal procedural law.

An amendment to the CPC is required to resolve the legal uncertainty as to how the acceptance of an abbreviated trial is to be decided where the case is tried on the merits by a panel of judges. Pending such an amendment, and in the absence of a specific legal provision, we consider that practice should recognise the right of the judicial panel, once constituted, to revoke the decision accepting the abbreviated trial.

References

1. Law No. 7905 of 21 March 1995, Criminal Procedure Code of the Republic of Albania, as amended.
2. The Criminal Procedure Code, in the version prior to the amendments made by Law No. 35/2017.
3. Committee on Legal Affairs, Public Administration and Human Rights "REPORT ON THE DRAFT LAW "ON CERTAIN ADDITIONS AND AMENDMENTS TO LAW NO. 7905, DATED 21.3.1995, "CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA", AS AMENDED" 2017 https://droni.al/wp-content/uploads/2018/05/dokument-7.pdf
4. Arta Bilali Zendeli, Associate Professor at the Faculty of Law, University of Tetova, Tetovo "Conceptual definition of the burden of proof and other related terms", https://journals.ukim.mk/index.php/iplr/article
5. Decision No. 26, dated 29.04.2025, of the Constitutional Court, §71.
6. Decision No. 38, dated 12.07.2023, of the Constitutional Court.
7. Unifying Decision No. 2, dated 29.01.2003, of the Joint Chambers of the High Court.
8. Decisions of the Criminal Chamber of the High Court
9. Decision No. 00-2022-1151 (183), dated 24.06.2022;
10. Decision No. 00-2025-1867 (293), dated 04.12.2025;
11. Decision No. 00-2023-2010 (330), dated 05.12.2023.
12. Decision No. 226, dated 02.02.2021, of the Court of First Instance, General Jurisdiction of Tirana.
13. In re Winship, 397 U.S. 358 (1970), Supreme Court of the United States.
14. Italian Court of Cassation, Section I, 24 October 2011, No. 41110.