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"Separation of Powers and Independence of the Constitutional Court of Albania"

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I. Independence of the Constitutional Court as a state institution

1. Article 7 of the Constitution of the Republic of Albania, which has set forth that "the system of government in the Republic of Albania is based on the separation of powers and balancing of legislative, executive and judicial powers," does not affirm the superiority of a certain power or constitutional institution over any other state powers. Although listed one after the other, the three above-mentioned powers neither have hierarchical dependency in relation to each other, nor do they have dominations or subjections to reciprocal *extra-legal* influences. Constitutional democracy established by this Constitution is based on the rule of law, the principle of separation and balancing of powers, as well as on the respect for the fundamental human rights and freedoms *(see decision of the Constitutional Court no.12, dated 20.05.2008).*

2. The Albanian Constitutional Court was firstly established in 1992.[1] The first model of constitutional justice was inspired by ideas coming from the italian constitutional justice and, at some extent, from the german one. The competencies of the Constitutional Court at that time included some attributes that were and keep on being a natural domain of the ordinary judiciary.[2] The Constitution of 1998 brought about some changes in the constitutional justice. It, *inter alia*, hasn't recognized an active role to the Constitutional Court, not providing for the possibility to be put into motion on its own initiative (ex officio). Further more, it limits the jurisdiction of constitutional review in some directions.

3. The Constitution and the Law no.8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania" specify the procedures of establishment, the basis and the guarantees for exercising the authorities of the Constitutional Court, as well as the status of its members. The organ of constitutional justice, missioned to exercise the judicial constitutional review, has been *expressis verbis* named as *"court"* by the Constitution itself. Also, both the Constitution and the organic law of the Constitutional Court have been referred to its members as *"judges,"* while its activity has been considered as *"judgment."*

[1] Constitutional Law no.7561, dated 29.04.1992.
[2] Traja K., Constitutional Justice (Drejtësia Kushtetuese), Luarasi Publishing House, 2000, 247.

4. The main purpose of the Constitutional Court is to guarantee the respect for the Constitution, to make its final interpretation and to ensure its superiority in the entire legal order through the giving of constitutional justice. The functions exercised by the Constitutional Court, which have been laid down in articles 124, 131 and 132 of the Constitution, and in its organic law provisions, have no difference with the functions performed by a court. Thus, article 131 of the Constitution defines the basic competencies of the Constitutional Court regarding the exercise of abstract and concrete control of the legal norm. In cases when the Court decides on the incompatibility of a legal norm with the Constitution or international agreements, the norm is considered as erased from the legal order since the moment of this decision becoming effective. This regulation, provided for by article 132 of the Constitution, gives to the decisions of the Constitutional Court general and conclusive binding force.

5. The Constitution has positioned the Constitutional Court at a part clearly distinguishable from the ordinary judicial system, underlining in this way the special status it enjoys as compared to the other courts, its purpose and characteristics. As to the protection of individuals' constitutional right *"to due process of law,"* Constitution has positioned the Constitutional Court at the top of hierarchy of courts (controlling organs) in the Republic of Albania *(see decision no.11, dated 06.04.2010 of the Constitutional Court)*. The undisputable impact of Constitutional Court decisions is such that it imposes on all the state organs, including here even the courts, the general binding force of these decisions (*see decision no.14, dated 17.03.2009 of the Constitutional Court*).

6. The Constitution has not set forth in words the regulatory autonomy of the Constitutional Court. This element of the Court independence is recognized by its organic law, which was adopted by a qualifying majority voting, in conformity with article 81/2 of the Constitution. In pursuance of article 3 of this organic law, the Court enjoys full organizational, administrative and financial independence, in order to comply with the duties assigned to it by the Constitution and this Law. The fact that the organic law should be adopted by a qualifying majority voting constitutes a guarantee for the institutional independence and stability of the Constitutional Court. The Constitution orders that for the purpose of its pursuit and implementation the entire structuring, organization and operation of each constitutional organ should be done by a separate organic law, which should not be adopted by a simple majority, as it's actually the way of adoption of ordinary laws, but by a qualified majority of 3/5 of deputies, what asks for a more comprehensive political consensus. In this framework, the organic law has been given a special importance in the area of organization and operation of the different links of state organization, since it regulates the relationships in a certain field, what cannot be done by the lawmaker by means of an ordinary law. The will of the constitution-maker has been quite obvious on this issue *(see decision no.19/2007 of the Constitutional Court)*. However, this does not impede the bipartisan interferences of the Parliament, which might have certain implications on the Court independence. From this viewpoint, it can be put forward the question: which is the way how Parliament and Constitutional Court should collaborate with each in cases when the amendment of organic law has been considered as necessary? Further more, it should be made the distinction between those issues that need a legal regulation and those ones that can be regulated by an act issued by the Court itself.

7. Through its case law, the Constitutional Court has been expressed that the organizational and operational independence of constitutional institutions is very closely related to the type of activity they perform, which is directly regulated by and based on the respective constitutional provisions. In conformity with the duties assigned by the Constitution, each of these constitutional institutions has been provided with sufficient power that enables them to take decisions in an unconditioned and independent way. No organ or any other institution, belonging or not to any of the three branches of central power, should interfere with the way how certain issues are treated or resolved, which, as the case might be presented, would constitute the main object of activity of other constitutional organs or institutions *(see decision no.19/2007 of the Constitutional Court).*

8. According to the organic law, Constitutional Court administers its own budget, which is part of the state budget. The budget is drawn up by the Court and submitted to the Parliament of the Republic of Albania for approval. In order to explicate the meaning of this element of independence we should refer to the interpretation that the Constitutional Court has made to article 144 of the Constitution, where it has been said that: *"The courts have a separate budget, which they administer themselves."* In spite of the fact that the Constitution has left the approval of judicial budget to the executive and legislative powers, the way how this budget is administered has been leveled up to a constitutional standard, attributing it to the judiciary; financial independence should be understood as a type of financing of constitutional organs and institutions that should enable them to normally exercise their activity for the purpose of accomplishing the missions that the Constitution has assigned to them, without being influenced by the government, political forces or other external factors, what would seriously damage the exercise of their authorities; autonomy in relation to the budget administration would imply that the institution administering its own budget is free to draw or redraw up budgetary funds, always respecting the laws; the responsibility for the budget is also related to administrative competencies, which include not only the authority to appoint and remove the administrative staff, but also the authority to sign contracts, make different purchasing, and other authorities as well; the concept of financial independence and budgetary autonomy asks for the opinion of the organs of judicial power and the Constitutional Court, as constitutional organs standing next to the executive and legislative, in cases when for extraordinary reasons, might happen to occur fund reductions or blocking in that part constituting their budget; even in cases of such nature, respecting the constitutional standard of *self-administration of their budget,* the interference of legislative and executive powers with the intention to reduce the judicial budget, either as an effort to avoid the budgetary deficit, would be considered as unjustifiable, without having a previous consultation with the judiciary itself *(see de*cision *no.11/2010 of the Constitutional Court).*

9. The activity of the Constitutional Court is headed and organized by its President and, in his absentia, by one of the judges designated by him, unless the Law assigns this power to the Meeting of Judges (Article 11 of the Constitutional Court Law). The Meeting of Judges of the Constitutional Court has such authorities as to: a) Identify the main areas for budgetary expenditures; b) to receive reports on budgetary expenditures on 6 month basis; c) to decide on the organizational structure of the Constitutional Court; ç) to decide on the number of staff and their salaries; d) to adopt the Internal Regulation on the

activity of Constitutional Court administration (Article 13 of the Constitutional Court Law).

10. The special position of the Constitutional Court gives a specific character also to its decisions: they are final, conclusive and have general binding force. Article 81 of the Constitutional Court Law ensures the execution of this Court decisions. Although the law has stated that the execution of Constitutional Court decisions shall be ensured by the government through the respective organs of state administration, it has not been provided for any special procedures or mechanisms concerning the manners of this execution. In special cases, as the Constitutional Court might consider, it may itself designate another organ tasked with the execution of its decisions and may also determine the manner of their execution.
Referring to our case law, it can be said that the Constitutional Court decisions have generally been executed due to their binding character as final and conclusive decisions. The legal and constitutional compulsion of Constitutional Court decisions, as well as the factual possibility to execute them, do not always go in the same direction. To date, the practice of the Constitutional Court has not identified any kind of refusal to accept the execution of decisions repealing laws or other normative acts. They have entered into force on the date of their publication in the Official Gazette, unless otherwise decided by the Court. Nevertheless, in special cases, although few in number, quite the contrary stands have not been lacking, which have emerged mostly in two main directions: *firstly*, the Parliament leaves unfulfilled the legal gap created after the invalidation of normative acts by the Constitutional Court; *secondly*, the non-execution of Constitutional Court decisions. The execution of Constitutional Court decisions bears a special importance in the context of protection of fundamental human rights and freedoms, upholding the idea, already consolidated by the constitutional legal doctrine, that there is no other institution that can guarantee the human rights as effectively as the Constitutional Court. An issue that presents some points of interest, and not only for my country, is the execution of Constitutional Court decisions concerning the repeal of court decisions, challenged by individuals for violation of their constitutional rights to due process of law. In this regard, a number of problems may come up, which may have different solutions depending on the legal system, dominating viewpoints and established practices.

II. Constitutional independence of judges

11. According to Albanian Constitution, the selection process of individuals who shall perform the functions of judges at the Constitutional Court has been entrusted to the President of the Republic and the Assembly (Parliament), where the first has the authority to appoint the candidates, whereas the latter has the authority to give (or not) its consent for the Presidential proposals. If the Parliament does not give the consent for the decree of appointment, the appointed individual cannot become a judge. On the other hand, the Parliament does not have the right to initiate or change the candidatures. The Assembly has negative power when it does not give the consent and, at the same time, it cannot make the appointment of any candidates. Meanwhile, the President is not constitutionally bound to none of the Assembly proposals, but he is free to appoint any candidate that he considers as reasonable, according to the criteria elaborated by him in conformity with the Constitution requirements. This formula brings to mind the american model of

presidential appointments with the consent of Senate. So, all the main theoretical characteristics related to this modus of appointment of judges are acceptable even for the Constitutional Court. In the constitutional practice, this formula has provoked a difference of opinions between the President and the Parliament, what has become later on the object of review of the Constitutional Court (decision 2/2005). According to the Constitutional Court, the respective standard in this context aims at realizing such kind of procedure for the appointment of judges of the higher courts which, from the viewpoint of the constitutional organs involved in this process, could be considered as pluralist. The system of appointment recognized by the Albanian Constitution has in its essence the institutional cooperation between the President of the Republic and the Assembly of Albania. The involvement of the Assembly of Albania in this process has to do not only with the examination of legal regularity, but also with the merits of selections made by the President of the Republic. This system of appointment, adopted by the Constitution, put the subjects involved under the requirement to respect the principle of constitutional loyalty, what basically expresses the reciprocal respect of each of the subjects involved for the competences of the other, and also implies the establishment of a relation of cooperation between them. So, from one hand, the concept (or more precisely, the virtue) of "constitutional loyalty" (Verfassungstreue) implies that the President of the Republic should be very prudent in the selection of each judge (taking into account the skills and the merits of the candidate, as well as other circumstances of different nature, until the moment of appointment) and, on the other one, that the Assembly should examine the presidential decrees under the light of the same considerations, guided by the sole objective to ensure the most qualified and appropriate composition for all the courts, being cautious not to turn "its power to prevent" into an unjust and arbitrary obstacle.

12. The Constitution has set forth three conditions, which should be fulfilled by the candidates in order to be appointed as constitutional judges: they should be *lawyers*; with *high qualification;* and should have not less than *15 years of professional work experience*. Thus, there have not been provided either more specified criteria within the ranks of magistrates, or pre-established relations between the different corpuses of legal community. Taking into account the function of constitutional judges, these conditions could be considered as minimum level requirements. While the Constitution leaves discretionary power to the President in the selection process among candidates that meet the aforementioned requirements, at the same time, it assigns to him the responsibility to appoint as constitutional judges those lawyers that offer the highest professional and moral guarantees for safeguarding the independence of Constitutional Court.

13. The age and professional seniority should be considered as elements having an impact on the independence of judges. The ideal situation would be that in which the appointment at the Constitutional Courts coincides with the last function to be exercised by the judge before being retired. In this case, the judge would be more likely to fail to respect the obligation of being "grateful" to the authority appointing him, since he wouldn't have to worry about was going to happen with his career after the expiration of the term of office. In the Albanian situation, after a significant long period under the communist dictatorship, and with a magistracy undergoing a series of reforms, it is rather difficult for the selection process of judges to follow its "normal logic." The composition of the Constitutional Court is dominated by the "new" judges. This fact could be justified even by the new tradition of constitutional justice in our country.

14. Judges of the Constitutional Court are named for 9 years, without the right to be reelected (article 125 of the Constitution). This limitation is expected to increase the guarantees for the independence of judges. Under these circumstances, the judges would not feel the pressure of the possibility to be renamed and would be more relaxed in relations with the appointing authorities. On the other hand, it could be thought that the judges' possibility to be renamed would create a continuity and stability in the constitutional case law. It should be accepted that the number of lawyers who have good knowledge of constitutional justice and philosophy is not considerable. The mandate of a judge ends upon the expiration of his term of office and when he reaches 70 years of age.

15. The element "salary" constitutes one of the elements of the financial independence of judges. According to the Constitutional Court law, the salary and other benefits of the judge of the Constitutional Court cannot be either reduced or infringed (article 17/3 of the CCL). Respecting the principle of separation and balancing of state powers and the principle of the rule of law, constitutional case law has underlined that the judiciary independence should be understood as an essential independence (attribute of the courts in order to deliver impartial decisions, without being influenced by the interests of any other branches of state power) and as a structural independence as well, which asks for the constitutional provision of the institution that realizes the appointment and removal of the judges. Financial and organizational independence have been considered as constituent parts of the structural independence *(decision no.25/2008 of the Constitutional Court).* At the end of his term, unless removed from office, the constitutional judge shall be appointed to another equal or similar position and shall benefit a transitory payment and/or supplementary pension.

16. According to the Constitution, being a judge of the Constitutional Court is incompatible with any other state, political or private activity (article 130). These constitutional limitations with regard to the mandate of the constitutional judge aim at avoiding the conflict of interests and deterring judges from everything that could compromise their independence. The constitutional judge has the obligation to avoid being engaged in any kind of activity that would interfere with the appropriate exercise of his judicial duties, would put into question his ability to adjudicate impartially, and would weaken the confidence of the general public to the Constitutional Court. The only activity, which does not fall into the context of the aforementioned limitation, is teaching. Some constitutional judges have been mainly engaged in giving lectures at the School of Magistrates.

17. Besides the rights and benefits enjoyed due to his function, the constitutional judge is also responsible for failing to accomplish his duties and for violating the Constitution, like any other public official. However, the regulating procedures for charging the constitutional judge with responsibility bear a constitutional importance, since such regulation has a direct impact on the independence of judges and the Court. This is the reason why the Constitution has exhaustively provided for the cases of removal of constitutional judges, the organs that can put this process into motion, as well as the organs that can take the final decision. According to Article 128 of the Constitution, the constitutional judge can be removed by the Assembly, by two-thirds of its members, for violating the constitution, commission of a crime, mental and physical disabilities and for

acts that seriously discredit the position and reputation of the judge. The procedure has some similarities with the constitutional *impeachment*, which is initiated by the Assembly and ends with its decision. However, the decision of the Assembly is nothing but an act that puts the Constitutional Court into motion, so that it could say the last word on the case addressed to it. After all, this is a guaranteeing procedure, since the final decision is taken by the court and not by the Assembly. Although article 128 has mentioned only the dismissal of judge by the Assembly, the Parliament's decision does not dismiss the judge, without being taken the respective decision by the Constitutional Court. The case law of the Albanian Constitutional Court does not have any cases of charging the constitutional judge with responsibility in conformity with article 128 of the Constitution.

18. Judges of the Constitutional Court enjoy immunity during the exercise of their duty. They shall not be held legally accountable for their opinions or votes on a case under consideration. A judge can not be criminally persecuted without the consent of the Constitutional Court. He can be detained or arrested only if apprehended in the commission of a crime or immediately after its commission. The competent body shall immediately notify the Constitutional Court. When the Constitutional Court does not give its consent within 24 hours to send the arrested judge to court, the competent body is obliged to release him. (Article 16 of the CCL).

III. Operative courts' procedures

19. The role of Constitutional Court is, to a great extent, mutually dependent on the procedures how it can be put into motion. The established procedures might create a relatively easy or difficult access to the constitutional justice. The solution given to this issue should strike the appropriate balance between the interest to ensure the protection of constitutional rights and principles from one hand, and the interest to preserve the legitimacy and effectiveness of the constitutional judgments on the other one.

20. As it has been previously mentioned, the Albanian Constitutional Court cannot be put into motion on its own initiative (ex officio). According to the Constitution, the right to invest the Constitutional Court, in order to review the unconstitutionality of laws, is enjoyed only by a specified category of subjects. These subjects can be divided into three categories: a) high state organs; b) organizations and different legal entities; and c) ordinary courts. The Albanian Constitution has not recognized to the individuals the right to be directly addressed to the Constitutional Court for unconstitutionality of laws.
The subjects that fall into the first category are: the President of the Republic; the Prime Minster; not less than 1/5 of the deputies; the Head of the High State Audit. From this category of subjects, 1/5 of the deputies is the one that has oftener put the Constitutional Court into motion. In this context, we are referring to the applications submitted by the groups of deputies representing the opposition and is quite normal that these applications occupy a larger place. During the period 1992 – 2009, out of the total number of applications submitted by all the subjects that enjoy this constitutional right, the applications from deputies of the opposition occupy 15 %. From a brief interpretation of figures, it can not be observed any distinguishable interest of the opposition for putting the Constitutional Court into motion.

21. Several researchers have identified some of the political life factors that favour the increasing role of the constitutional justice. When political parties do not see themselves as permanently vested with power, they request certain guarantees. Thus, the support of judicial power derives even from the situation that brings about changes or alternations of governments (Ramseyer J.M. 1994). From another viewpoint, addressing to the constitutional justice is more likely to happen when the political programs of majority and opposition forces are very distant from each other and the alternation of powers does not happen very often (Stoun Sweet A. 2000). A strong relation government – majority, a quick legislative process, pushes the opposition to be addressed to the Constitutional Court (Stoun Sweet A. 2000). With regard to these viewpoints, there can be drawn conclusions about the Albanian context, as to the role and the interest of politics in favouring or not the constitutional justice. But, this is not the main purpose of my contribution. This is for sure the duty of researchers in the field of political sciences.

22. In the second category of subjects have been included: the People's Advocate; local government organs; organs of religious communities; as well as other organizations. Subjects that fall into this category have the right to be addressed to the Constitutional Court pretending for the unconstitutionality of laws only for issues related to their interests. The applications concerning the unconstitutionality of laws, submitted by the subjects of this category, for the period 1992 – October 2009, occupy 36% of the total number of applications. The majority of them has been submitted by NGO-s (27%).
By comparing the last years' figures, it can be observed a rising tendency in the applications submitted by NGO-s concerning the unconstitutionality of laws. I would like to interpret this fact as the civil society having more confidence in the activity of the Constitutional Court. Several researchers have analyzed the role of the groups of interest in this direction. According to one point of view, this can be explained by the democratization of the access to the constitutional justice, as well as by the establishment of helpful structures for the citizens, created by financially supported organizations and legal studios specialized in the field of protection of civil rights (Epp C. R. 1999). In cases when the elite and the general public as well see the legislative as being no longer productive, and when the legislative process is relatively closed (i.e. not comprehensive), they shall be addressed to the judiciary (Tate C.N. and Vallinder T. 1995).

23. The courts of ordinary jurisdiction have been placed in the third category of subjects. As it has been previously mentioned, the courts have the right to be referred to the Constitutional Court asking for its opinion about the constitutionality of a certain law to be applied in the concrete case (the incidental way – referral). During 1992 – 2009, the number of applications referred by the ordinary courts pretending for the unconstitutionality of laws represents the largest part, out of the total number of applications having the same subject case (35%), and it has a rising tendency. This speaks of a higher level of awareness of the constitutional justice among the ranks of judiciary.
The role of magistrates, who play an active role in this direction, may be another factor. Here, it should be made a distinction as to the role and applications of the Supreme Court for putting the Constitutional Court into motion. From time to time, there have been moments of tension in the relations between these two organs, with regard to having a clear cut distinction between the constitutional jurisdiction and that of ordinary judiciary.

24. The influence of the Court over the legislative power is primarily expressed through the intensity of the process of constitutional review of laws. The Constitution is not always clear on the matter. Therefore, it is important to put forward the Court's standings as to the interpretation of its jurisdiction. The Constitutional Court decides on the compatibility of laws with the Constitution or with the international agreements ratified by the Assembly, and the compatibility of normative acts of organs of central and local government with the Constitution and international agreements. The review of constitutionality of normative acts might be conducted *a priori* and *a posteriori*. In additions, the constitutional review may be abstract or concrete. The Albanian Constitution enshrines a concept which limits the preliminary review of a legal norm, disallowing in this way the preliminary review of a law. The Court exercises the preliminary review of international agreements prior to their ratification. Should an international agreement be considered as incompatible with the constitution, such agreement cannot be ratified by the Assembly without making the necessary amendments. In exercising this function, the Court does not play an active role. The review is not carried out upon the initiative of the Court, but upon the applications submitted by the subjects that have *locus standi* in the constitutional adjudication. The Court has the right to examine other provisions that it might consider as being incompatible with the Constitution. The Court's practice has shown that the Court has been self-restricted in this direction.
According to the constitutional doctrine, *a posteriori* constitutional review could be exercised over all the categories of normative acts such as laws, rules of parliamentary procedures, decrees, other acts having the force of law. The Constitution provides for a constitutional review of normative acts of the organs of central and local government. This is an abstract and objective review, initiated for a public interest.
The constitutional review of normative acts covers several formal, procedural, substantive, jurisdictional and proportional aspects. During such review, it is important to distinguish whether the act requested to be repealed has a normative character or is an individual administrative act, which, according to Article 131/c of the Constitution, falls outside the jurisdiction of the Constitutional Court.
Some constitutional law text books suggest even the possibility to submit a request in cases of legislative omissions. Generally speaking, this suggestion involves constitutions which aim at a prompt accomplishment of the so-called democratic transition, meaning full transition from a dictatorial to a liberal system of government. Our Constitution has not attributed such a competence to the Constitutional Court.

25. As stated by the Constitutional Court Law, examination of cases at plenary sessions is done verbally or on the basis of documents presented, according to the nature of the case. Further more, during the judicial examination of cases, this court takes into account the legal provisions governing other civil and criminal procedures. The conduct of judicial process in conformity with the constitutional principle of contradictory and its verbal nature as well, as the most typical elements of any judicial process, increase the transparency, credibility and, consequently, the Court independence.

26. The review of compatibility of a legal norm with the constitution does not function in the same way as in the abstract and concrete review: in the first instance (the abstract review), usually, it's enabled the final modification of the legal norm; while in the second instance (concrete review), the given decision represents a solution only for the underway

processes. When the procedure is subjective, the judge exercises a precise review over the law or an "occasional" review, meaning that such review is limited only to what is indispensable to settle the dispute under consideration. To the contrary, if the procedure is objective, the judge proceeds with a general control over the constitutionality of the law.
In conducting the abstract review, the Albanian Constitutional Court performs the function of a negative legislator. According to the Kelsen theory, the provision declared as unconstitutional is conclusively removed from the legal system. In this case, the court decision has *erga omnes* effects. This power is related not only to the outcome, but also to the reasoning part of the judgment (*rationes decidenti*).
The Constitutional Court has the power to repeal the act, what differs from the practice of other countries, such as the Netherlands, Sweden, Croatia, Japan, Hungary, where the repeal of an unconstitutional law is done by the organ that has approved it.
As a rule, the Court decisions, which repeal the legal provisions on unconstitutional grounds, have effect as of the date of their entry into force (*ex nunc*). Exceptionally, the Court decisions have retroactive effect in three instances: with regard to a criminal judgment, if it is directly related with the application of the repealed law or normative act; with regard to cases falling under the courts' adjudication until their judgments become final; and with regard to those consequences of the repealed law or normative act which have not yet occurred.

27. The techniques of intervention through a court decision in order to complete or precise the formulation of constitutional provisions, to interpret the reservations or reformulate the legal provisions, has been exempted. There do exist constitutional judicial practices, which permit a judge to correct the law: the partial annulment and the interpretation in conformity with the constitution. The partial annulment leads to the correction of the law to the point that it could be applicable as modified; some judges go even further by declaring that the law is not applicable to the extent that it affects a certain category of people: in such case, the correction is not related to the deletion of some words in the law, but with the inclusion of a correcting rule.
The Albanian Constitutional Court exercises the constitutional review of laws in the concrete review as well (incidental review): the common judge, during the adjudication of a certain case, when he or she deems that the law applicable to the case at issue is contrary to the constitution, *ex officio* or upon the request of the party to the proceedings, shall suspend the judgment and refer the case to the Constitutional Court. The Court decision in this case has general effects because the constitutional adjudication has an objective character.
The judgments of the Constitutional Court on due process of law and fair trial, or on the cases referred to it by the ordinary courts, are binding upon all courts. Hence, the Court's judgment serves as a precedent and represents a unifying factor and strong cohesion, but this is true only for cases concerning the due process of law.