



REPUBLIC OF ALBANIA

PEOPLE'S ADVOCATE

**Executive summary of the People's Advocate special report on the situation
created by the non-execution of final court decisions**

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-Non official translation-

People's Advocate Office

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The situation of the execution process of final court decisions by administrative bodies as provided by law, based on the People's Advocate statistics and the complaints handled by this institution, shows that the violation of the right of a fair process occurred very often as a result of the non-execution of final court decisions.

The issue of non-execution of final court decisions within a reasonable term, in accordance with article 42 of the constitution and article 6/1 of the European Convention of Human Rights, has always been and still remains one of the most difficult issues handled by the People's Advocate Institution.

While performing their work, private and state bailiff offices have more and more violated the principle of legitimacy, neutrality and respect of rights and freedoms as provided by the law. In some cases the state and private bailiff offices, third parties and debtors have not carried out the obligations provided by final court decisions. These cases often occur when final court decisions oblige administration bodies to indemnify creditors by paying certain amounts of money or by committing certain actions.

Considering the attitude of private and state bailiff offices during the process of "Liability for payment in cash by budgetary institutions", or "obligation to perform a certain action", the People's Advocate has concluded that these offices have given up their lawful obligations.

While processing the aforementioned cases, the People's Advocate Institution has made recommendations to state authorities and debtor institutions to fulfill their obligations, or has sent recommendations to bailiff offices on performing certain bailiff office procedures to fully implement all final court decisions such as sequestration of the debtor's bank accounts, fining of debtors or any other person, who during the execution process has unduly refused the provisions of court decisions.

Many public administration bodies, as mentioned in the 2012 People's Advocate annual report, haven't fulfilled the legal criteria established by court decisions, although many years have passed since the court verdicts have been finalized.

The reaction of public administration bodies to the People's Advocate recommendations on measures for the execution of obligations set by final court decisions, has been in the form of promises of its eventual execution in the future or by non answering, violating this way the obligation to respond to the People's Advocate recommendations in accordance with article 22 of law no. 8454, dated 04.02.1999 "On the People's Advocate", as amended.

In this context, it is necessary to increase the awareness level among public administration bodies with regard to duly fulfillment and execution of all final court decisions within a reasonable term. Contrary to the obligations set by the court, debtor institutions and financial authorities haven't carried out the immediate payment in cash. Representatives of the debtors in some cases declare that they have begun compensating the debtors in cash in small amounts such as 5,000 or 10,000 ALL per month. This "solution" doesn't meet the legal criteria or the interest of the creditor, because it causes further damages to the latter.

This situation has made possible the initiation by the People's Advocate Institution of the process of drafting a Council of Ministers' Decision as provided by article 589 of the Code of Civil Procedures, "On the mode of executing monetary obligations of public administration bodies".

Following the request of information on the issuance of a by-law as provided by article 589 of the Code of Civil Procedure, the Council of Ministers has issued order no. 2, dated 18.08.2011, “On the mode of executing monetary obligations of public administration bodies from the public treasury”, which contains some provisions that are in conflict with the Code of Civil Procedure and create the conditions of non- execution of final court decisions within e reasonable term.

To enable the improvement of this legal situation, the People’s Advocate recommended to the Ministry of Justice, Ministry of Finance, the amendment of order no. 2, dated 18.08.2011.

The above mentioned recommendation was not observed; therefore the People’s Advocate has filed a request that enables the abrogation of order no. 2, dated 18.08.2011 by the Constitutional Court.

It is worth mentioning that the state budget provided for the execution of final court decisions is very small, while the number of cases dealing with non-execution of obligations by public administration bodies has increased. This situation requires the establishment of working groups for the identification of non-executed final court decisions, where public administration bodies are involved and also measures on the immediate execution of these decisions, as has occurred with the issuance of order no. 98, dated 14.07.2003, of the Prime Minister.

The People’s Advocate annual report of 2012 mentions several cases of different public administration bodies which haven’t executed final court decisions such as: Return to work; obligation of issuing a normative act; restitution of immovable properties. The Court Bailiff Office hasn’t performed all proceedings with regard to implementation of sanctions, as provided by article 606 of Code of Civil Procedures, on debtors or third parties, who refuse final court decisions.

Although the Court Bailiff Office has reported several cases of non-execution of final court decisions to the prosecutor office, the General Directorate of the Court Bailiff Office hasn’t duly exercised its competences as provided by article 31 and 35/dh of law no. 8730, dated 18.01.2001, “On the organization and functioning of Court Bailiff Office” and didn’t report to the prosecution office the persons responsible for the execution of final court decisions.

Law no. 8510, dated 15.07.1999, “On extra-contractual responsibility of public administration bodies”, provides all cases of liability for damages caused by public administration bodies, but it doesn’t provide any responsibility for the individuals who have caused the damage. This law is one of the laws, which hasn’t been implemented.

Various state debtor institutions such as the Ministry of Finance do not respect the provisions of article 20 and 21 of law no. 8510, dated 15.07.1999, violating this way the principle of a fair trial.

The European Court of Human Rights in the decision on the case of “Qufaj” sh.p.k underlines that: *“Nothing, not even lack of funds by the state authorities, justifies the non-execution of a court decision”*. Similarly, the Constitutional Court by decision no. 1, dated 19.01.2009, held that: *“State authorities cannot cite lack of funds as an excuse for not respecting a financial obligation arising from a judicial decision”*.

The non-execution by debtor institutions of all rights gained by court decisions is against the provisions of article 142/3 of the Albanian Constitution, which stipulates that: “*State authorities are obliged to execute court decisions*”. This phenomenon causes the loss of citizens’ faith towards the state and seriously damages the state authority in cases dealt by the European Human Rights Court in Strasbourg. It is worth mentioning, that the Albanian government has considered this issue as a serious problem and it is fully committed to execute final court decisions. The European Parliament in its resolution concerning Albania dated 08.07.2010, has reminded the relevant Albanian authorities that one of the most important conditions for EU integration is the judiciary reform including the execution court decisions.

The European Court of Human Rights, during its practice has consistently emphasized that the state must always assume the obligation to guarantee the parties involved in a trial that final court decisions will be executed and that the right of access to court would be a mere illusion if the legal system would become an obstacle for the effective execution of final court decisions.