

*Mr. sc. Ramadan Gashi*²⁰⁵

BEING EQUAL BEFORE THE LAW AND GUARANTIES PROVIDED BY JUDICIARY

ABSTRACT

Equality of individuals before the law, and guarantee of the realization of the rights and freedoms guaranteed by the internal legal acts of the state and international standards, represents the highest democratic value of a country. Equal treatment and equal proceedings, not only are different in it, but reflect methods that express deep divergences which are closely related to the implementation of the law in practice by the relevant institutions. In this regard, the necessity of functioning of institutions, particularly the judiciary constitutes the main pillar of the rule of law that functions in a form and way by having as objective equal protection of human rights and freedoms, as well as determining the liability of all. In the context of this paper, I will attempt to somehow touch the most sensitive issues of the judicial system, by analysing the most problematic issues, in order to give to problem phenomenological characteristics.

Key words: Equality before the law, equal treatment, judiciary.

Introduction

This paper will review in the substantive way the issue of the respect of rule of law and equal treatment of the citizens before the law by state institutions. Initially, it will analyse the issue of rule of law and the law, and the legal security as an important element of the legal state. It is in the interest of society that the legal state, and the rule of law be guaranteed by implementing the laws in a fair and reasonable way for everyone in full equality, depending on which factual situation is individual.

Justice requires that every person has the right to a fair and objective judgment by a competent court, which is independent and impartial, which will exercise its functions pursuant to legal provisions in force, and based on the evidences. No court can be established that do not apply the established procedures regularly based on law, and aiming to take away the power of ordinary courts. Judges have an obligation to ensure in continuity, that the

²⁰⁵ Ramadan Gashi, is the permanent judicial trainer in Kosovo Judicial Institute

justice is that one to be served finally, taking into account all complex elements of all issues for which will decide the court. If act otherwise will risk the quality of justice that is the priority for society and the state, that would make the freedom and security of citizens more unsafe, and the state of law less functional.

1. The issue of the rule of law and the rights as well as legal security as important element of legal state

The issue of the rule of law has its roots in medieval England. In year 1066, William the Conqueror had set a central power. Although the king embodied the central governmental, legislative and judicial power, he himself did not stand above the law - it was the law that made him king. From this understanding, the common law courts, and the parliament together with the feudal, strengthened their influence in the domestic system, thus building the first parliamentary monarchy in Europe. Bases of development of the rule of law were Magna Charta Libertatum (1215), which was providing to feudal certain rights, and Habeas Corpus Act (1679), which gave people in custody the undeniable right to be informed about the reasons for restricting of their freedom. In the European continent, the rule of law gained importance during the XVII and XVIII century. The legal security means no-violation of acquired rights and legitimate expectations that ensure legal acts in force in a state, including the constitution and international standards. The main formal standards are considered accuracy, clarity, and sustainability of all legal order of a particular state. Not only specific norms, but the whole legal order is required to be understandable, predictable, easily implemented and not contradictory.

In this way, it is estimated that there is created the trust of citizens in the sustainability of this order, as well as their belief for the need to respect and its application in everyday life. At the same time, based on this, "the citizens determine the space of freedom or their behaviour in state and society".²⁰⁶ Standards requested to be respected by all the state mechanisms and institutions, particularly from the central bodies of three main branches of state government. The legal security involves in itself reliability of citizens to

²⁰⁶Bross S., Reflections on the importance and the position of a Constitutional Court in a modern democratic state

under the rule of law—Taking in to account the position of the Federal Constitutional Court of the Federal Republic of Germany, Center on Constitutional Justice, Council of Europe.

state, and immutability of law for regulated relations, and their equal implementation without exception regardless of the differences.

The reliability has to do with the fact that citizens do not have to worry constantly about the diversity and negative effects of normative acts that harm and aggravate a condition set by previous acts. In view of the interests of individuals, as well as his reliability in the legal system, it is considered as particularly important also the order for prohibiting the retroactivity power of legal norms. Obviously, this case has to do with legal norms that prescribe penalties, put obligations or new rules for individual behaviour. Norms with the facilitating or favourable character for individual, in accordance with the principle of legal security, case by case can extend their effect also to an earlier period.

As an element of legal security, can be considered also obligation to execute final court decisions, the reasoning of court decisions, and others. However, even otherwise, it is understandable that in general terms it finds the appropriate space to be recognized and respected in practice, and within the principle of the rule of law.

Its special standards are reflected in many other provisions of the Constitution and in Codes or adopted legislations, and in its implementation. For example, the Constitution of the Republic of Kosovo states that "No one shall be charged or punished for any act which did not constitute a penal offense under law at the time it was committed, except acts that at the time they were committed constituted genocide, war crimes or crimes against humanity according to international law".²⁰⁷

In order to consider that we really have legal security, the law in general or its specific provisions in their content should be clear, defined and understandable, and easily applicable in practice. It is for sure that they cannot predict each case that can derive by recognizing and applying them in practice. Therefore, primarily duty of the courts for certain shortages of the law is to fill them naturally through interpretation and its practical implementation that will be in accordance with international law (international instruments). But in order to achieve such a thing, first of all the law should be understood exactly and correctly. As in other areas of law, also in criminal law, the general principle is the prohibition of retroactivity power of the law. Such a thing is seen, first of all, because of the necessity of

²⁰⁷ Article 33 of Constitution of Republic of Kosovo, 2008

guaranteeing the stability and security of legal relations which are established between different subjects of law.

In the case of penal law, which as a rule restricts individual freedom, it is very necessary that every citizen know the limits of his freedom and the sanctions that may come due to overcoming of these limits. He should not feel for any moment the risk that a new criminal law that can predict an act as the punishable, or certain omission, or that may aggravate his position as defendant, would have retroactive effect in the future. The exemption from the general rule, by giving retroactive power only to criminal law that favours the position of the defendant, aims to respond faster, but should keep in mind that the more lenient law should be applied by the courts as in terms of defining the criminal act, as well as the sanctions provided by it.

Based on above mentioned arguments it can be concluded that the retroactive power of favorable penal law should be respected immediately by all courts of ordinary jurisdiction, it is enough that the fortune of the case is not yet finally decided by them. Legal security presupposes, among others, the reliability of citizens to the state, and the immutability of the law for regulated relations. Reliability has to do with the conviction of an individual that should not be disturbed or live constantly with the fear for the diversity and the negative effects of legal acts, which could violate private or professional life, and to aggravate a condition set by previous acts.

The legal regulations dealing with the rights of citizens should be enough sustainable in order to ensure their continuity. As a rule there cannot be denied legitimate interests and expectations of citizens from the legislative changes and state should aim to change a previously regulated situation only if the change brings positive consequences. The assessment and reasoning of the courts regarding judicial decision presented as evidence by the applicant has importance in the context of respecting the principle of legal security, as one of the fundamental aspects of the rule of law. Legal security among other things means, guarantying the reliability of the individual to the state, its institutions and acts they issue based on their competencies.

Today, the principle of the rule of law is the basic principle of local, regional and international institutions worldwide. The rule of law is avoiding arbitrariness of any power (legislative, executive or judicial). In order to achieve respect and guarantee of human dignity, justice and legal security for all people regardless of differences that may have on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, relation with any community, property, economic and social condition,

sexual orientation, birth, disability or other personal status. Security of the rule is not relying on a precise drafting of laws, or only in the fact that there are written laws but, in the security on how much will be applicable in practice and how much will last. As part of this, "a legal order is legal because it allows people to direct to legal norms, in order to plan the way of their life and to find a warning that where the green and red lights are".²⁰⁸

The law is "act by which the state formulates a norm of objective law." Therefore, the rule of law, primarily means the existence of laws known to citizens. These laws contain non-discriminatory laws and in accordance with the highest legal and political acts (the constitution).

Sustainable laws below to constitution and have their bases in it, and are easy applicable in practice by the respective institutions. We are aware that our life is now legally regulated. The law now reaches everyone's life, touching issues of different nature, only for citizen to benefit citizen's legal guarantees to realize the guaranteed rights.

The law is exactly the strength that makes possible the freedom and progress in contemporary democracy. It is precisely the law that gives people the legal security. The law, in fact, "regulates a certain social relations".²⁰⁹ Given this, the laws are not the same in all societies, although they regulate same social relations, because conditions of life are different, and social relations in some places are more developed, while in some others less developed. Positive laws that have ruled the society should be respected. These are intended to ensure the welfare of citizens and to enrich sublime human values which will apply to all equally.

Rightfully Cicero said that "the purpose of the laws is to provide citizens the integrity of the state and to make citizens life happy and peaceful." Their existence only, does not mean anything if those laws are not strictly and equally applied for all people by respecting defined legal procedures. There will be no rule of law where someone is placed above the law, all should obey to laws and other legal acts, and no one has the right to welch them, even lesser to act on their behalf for other purposes.

The history provides plenty of examples when the laws have only been legal decor. It is true that "there are little undemocratic laws, but there are quite

²⁰⁸ Giovanni Sartori, *Once more for the Theory of Democracy*, Tirana, 1993, pg.341

²⁰⁹ Akademic Esat Stavileci, *Introduction to Administrative Sciences*, Pristina, 1997, pg.50

undemocratic practices".²¹⁰ Therefore, a country (state) should establish institutions that supervise the legal system, including courts, prosecutors, police and other relevant institutions, which as their target have the precise functioning and its consequences. The rule of law is essential for maintaining public order and security of civil freedom and human rights. Respect of the rule of law does not only oblige individuals of a state, but also obliges state authorities and persons practicing public functions in these bodies. Although the rule of law is the cornerstone of a democratic society, there is not any full consensus on that, that which its constituent elements are.

However, more than controversial is the fact, that people are protected from arbitrary actions of public authorities only if their rights are foreseen by law. It is evident, that the practice of state power must be based on laws that are issued in accordance with the constitution, and that have the objective the provision of freedom, justice and legal security of citizens.

Citizens should be able to have data that are appropriate for the circumstances, the legal norms applicable in a given issue. These legal norms cannot be considered as laws if only are legally binding, but it is very important that these laws be implemented and interpreted strictly for everyone. The law should indicate the granting of any competence to relevant authorities, as well as the way of its practice with sufficient clarity, so that citizens can be provided with appropriate legal guarantees. "Citizens should be treated equally and legislation should have constitutional restrictions".²¹¹ The rule of law is safe, only if its roots are in social norms. Judicial decisions are acting fully and for a long time, if only rely on political tradition. People reach their goals, to that extent that "decisions and actions are directed by rules that have emerged from a revolutionary process, thus rely on the experience of generations".²¹² Laws are not and cannot be drafted to take into account the person, therefore, cannot take into account the differences between people.

Therefore, as perfect are the laws more secure will be human welfare and happiness. Laws must be simple, clear and accessible. These are drafted in accordance with the conditions and the current state of society, but, at the moment when these reports are changing, these laws will cause legal harmful consequences. The state has a duty to establish the necessary mechanisms to protect the individual against arbitrary behaviour of the authorities practicing

²¹⁰ Ismet Salihu, *The Penal Law (general part)*, Pristina, 2008, pg.139.

²¹¹ Raino Malnes /Knut Midgaard, *Political Philosophy*, Oslo, 2003, pg. 273.

²¹² Friedrich A. Von Hayek, *Law, Legislation and Liberty*, London: Routledge – KeganPaul, 1982, pg.18.

the entrusted state functions, and to punish all those involved in the possible abuse of power. *All people are equal before the law, and enjoy in the same way the right to be protected from it.*

World Conference on Human Rights in Vienna, 1993, has reaffirmed the inseparable relation between the principle of the rule of law, and the protection and promotion of human rights. During the conference was recognized that the absence of the rule of law is one of the biggest obstacles to the implementation of human rights. The rule of law ensures the basis for fair management of relations between peoples, and in this way supports diversity, opens paths of a general affirmation and legal security of citizens.

As Roger Warren stated, the retired president of the National Centre for State Courts "the rule of law is a double-edged sword", because it not that only ensures protection of the rights, but also implements responsibilities. The rule of law holds officials under responsibility to the citizens in order to prevent the misuse or negligence during the practice of entrusted public functions.

They have a moral, ethical and legal duty to support and advance the principles of rule of law and legal state in the sphere of action or their impact whatever it is. They should fulfil this obligation and competence each time and for every issue to be decided by them, either individually or in groups. Their responsibility as a citizen and as officer, which carry one of the three functions of power is to exercise the tasks for the benefit of society and the legal prosperity. At these should firm sense of awareness of the work, and the willingness to act towards all persons to protect their civil, public and private interests. No doubt that they should play an active role in the development and implementation of an efficient and coherent system of rule of law.

The rule of law is a dynamic concept closely related with many factors, be they social, economic, legal and political. With it is made legal restriction of the arbitrariness of power through legal guarantees, security and human freedom. According to this principle, public bodies are subject to the law, and can be rightfully concluded that the law is the one who is above all and for all. Consistent, impartial and firm application of the rule of law is intended to protect people from the violations of human rights, to the extent that they are recognized and respected by the rule of law that applies in a particular place. Each democratic society which target to foster and promote human rights as a fundamental principle, should recognize the supremacy of the law towards its citizens and to state itself, that has the fundamental purpose has the guaranteeing of the inviolability of human rights and freedom, and of

citizens on one hand, the legal limit of arbitrariness of power through legal guarantees, in other hand.

Prevalence of the law is not just a tool, with the help of which the state may use or misuse its power. With it is aimed, "to define the principles, which limit the ability of state and oblige to act in accordance with a prescribed set of rules and generally recognized".²¹³ Legal security can exist only when citizens are fully aware of what the state can do, and what is requested from it, what is not allowed to do and how to act for the strict adherence of the law or other legal norms, in a word for what they are self-responsible.

The rule of law is the domination and supremacy of state and law in respect of values, which have to do with democracy and legality, as well as the functionality of state mechanisms in all segments of life. This is a necessary condition for the existence of a free society and a strong basis for the existence of legal state, and a pillar of the democratic process. Here takes part the fundamental principle of state of law, according to which no one can be treated without legal basis. With this generally can be understood the strict compliance by the government of a series of legal character requests, which in their totality create legal security to citizen. Citizens for the realization of their rights have the right to request judicial protection, and use legal remedies against decisions, if they think that their rights are denied or restricted, or their interests damaged. The rule of law provides the legal responsibility and control over civil servants, and also affects various policy areas including political, constitutional, legal, as well as human rights issues, because human welfare and happiness depends on perfect laws, and their firm and fair application.

Legal security and independence of the courts constitute the basic elements, which have a strong influence on the functioning of the legal state. It is based on the general principle according to which all state activity is measurable, calculable and responsible for the failures that can occur either intentionally or unintentionally. From an institutional perspective, beside the legislative and executive bodies, also the judiciary has a special place and role in ensuring the legal security of citizens. Respecting legal procedures and deadlines, providing of full decisions based on the law, the implementation of timely and correct decisions given by the courts, etc., strongly influence the creation of legal security of citizens in the state and society.

²¹³ Neil J. Kritz, *The Rule of Law in the Postconflict Phase: Building a Stable Peace*, in *Manging Global Chaos Sources of and Responses to International Conflic*, 1996, pg. 587-588.

Based on this, the state should provide to judicial power strict application of court decisions, but on the other hand, it is the duty of the judicial authorities to pursue the regular application and development of the proceedings. Although, from one place to another, there are changes, the possibility to direct to the justice, and with equality, is essential to respect the principle of the rule of law that focuses not only on what is done, but how it is done.

Consequently, during the practice of judicial power by the courts, it is necessary to give an appropriate legal assistance to all those who are having in danger their life, freedom, property or reputation, and are unable to afford services of a lawyer. The state has an obligation to comply with such legal rules as a whole, which has issued itself.

Actually, the majority of countries have provided criminal proceeding better than civil proceedings. The state and society have obligation to help the legal professions in fulfilling this task.

We live in an era of great democratic progress, and our commitment should be undertaking of number of initiatives to increase as much as possible the awareness and responsibility of all, to respect and progress of the rule of law, which will be opened all paths of progress of human rights and freedom by respecting in advance respecting human dignity.

State institutions should take all appropriate measures, whether they are general or particular, in order to ensure that fulfilment of the objectives for an effective rule of law and rights, according to which all state bodies are subject to the constitution, law and international acts adopted in one country. At the same time, it is important the fact that conviction to the law is a clear indication and inspiration that are respected highest social values, is a guide that the practice of powers is functioning based on law, which clearly shows that all the freedoms and civil rights are being respected in the highest possible degree.

Rule of law is a crucial issue for democracy and the main pillar of society, is an area that that needs huge commitment for all institutions and individuals who are part of those institutions. The rule of law is presenting the cornerstone of each society that seeks democracy, regardless of political status that enjoys. The rule of law does not mean only the order, peace and regulation, but also freedom. We are of the opinion that the rule of law is central to the foundations of democracy, which requires the strengthening of interactive mechanisms in the advancement and respect of the highest human values, which are guaranteed by the state. These values will be undermined

and damaged when main status in this vital policy area is in question, or is ignored regularly.

The prevalence of the rule of law in a country does not mean only formal legitimacy, which ensures the regulation and consequences in the achievement and application of democratic order, but at the same time is an element of justice, which is based on the recognition and full acceptance of the sublime values of the human personality, which is guaranteed by law and enforce the relevant institutions, which ensure framework of consequent application of norms and genuine values.

The condition of the existence of modern democratic state, is precisely the protection of human rights. This is confirmed by international standards, while the existence of rights without their protection mechanisms, and would be a worthless matter. The rule of law would be absolutely failed, if in a country does not function independent courts (Article 10 of the Universal Declaration and Article 6 of the European Convention). Arbitrary and irresponsible power of judges, prosecutors, government officials, police .etc, cannot exist in a legal state, therefore, we can say that these are "the consciousness of the legality and constitutionality".²¹⁴

The rule of law has an important role in strengthening of social cohesion, guaranteeing a sufficient level of effective functioning of justice, affecting strongly the lives of citizens to live everything according to legal rules, by arguing that the law is the one who will dominate for all regardless of ethnicity, gender, political views, language, culture, social position, etc. The state has an obligation to promote, and encourage the strengthening of universal human rights and freedoms, and to be a promoter in the protection and the elimination of all obstacles that may arise in everyday life.

2. Being equal before the law and judicial power

With it we mostly understand legal equality of citizens, and their exclusion of any discrimination before the law and in their consumption of rights and freedoms guaranteed by the highest legal act. This right should be ensured to all citizens. In the constitutions of many countries of the world, this right is guaranteed by constitutional norms, such as "All are equal before the law. Everyone enjoys the right to equal legal protection without

²¹⁴ Ralf Crawshaw, Barrz Devlin, Tom Williamson, Human Rights and Policing Klouwer Law International, 1998, pg.44.

discrimination”.²¹⁵ A Or, "All enjoy equal protection before the law”.²¹⁶ More concretely, all people are equal before the law and enjoy the same right to be protected by it. Therefore, "the law is an act of a general character”.²¹⁷

The issue of equality before the law is also regulated by international acts such as the Universal Declaration of Human Rights, according to which “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.²¹⁸ Equal treatment and equal outcomes, not only are different in them, but also reflect the methods that express deep divergences.

In conspiracy with it, the goals and visions are the same in the prevention and combating of discrimination on the one hand, and in raising the level of effective equality and the realization of equal treatment before the law, on the other hand. Equality of citizens before the law and guarantee of the realization of the rights would not be effective if the citizens would not know enough about the laws in force. So, the publication of the law is an essential element that will make a direct connection between the state and citizens.

A country that does not publish the laws cannot be called the country of the rights. The transparency of the legislation puts the citizens in an equal position before the law. Therefore, only through the transparency of norms will be built and strengthened a sustainable legal system, which is one of the foundations of democracy. This transparency allows them to be exposed and in this way will be subject to the judgment of the citizens, and the possibility of efficient use of the guaranteed rights with these laws. There are two reasons that justify the existence of a law and they are:

- First of all, the citizen should have the data that are suitable for the conditions, applicable legal norms in a given issue;
- Secondly, a norm cannot be considered as a law, beside when it is formulated precisely that gives the opportunity to citizen to regulate their behaviour. Therefore, in order for one action or measure to be considered as legal, in accordance with law, should be accessible and predictable in the same time;

²¹⁵ Article 24 of Constitution of Republic of Kosovo, 2008.

²¹⁶ Luan Omari, *The Legal State*, Tirana, 2004, pg. 124.

²¹⁷ Kurtesh Saliu, *The Constitutional Law*, Book I, Pristina, 1998, pg.151.

²¹⁸ Article 7 of Universal Declaration of Human Rights, 1948.

The right to equality before the law means that the law should not be discriminatory, and that all those who practice public functions under the responsibility, they should not act in a discriminatory way during its implementation. No privilege can be given to an individual, family, ethnic group or class during the application and implementation of the law. In all procedures the state bodies, the judiciary and administrative authorities shall act in accordance with the principle of equality before the law. Equality gives steadily to all people many small joys. And rightfully Rees says that “equality or being equal means that each will be treated rigorously in the same way and in every aspect”.²¹⁹ Therefore, we have individual responsibility for all our actions and inactions. All our decisions, actions and inactions draw consequences afterward. We should treat others as we wish to be treated by them. We are obliged to respect the freedom, life, dignity, individuality and distinctiveness of everyone, so that everyone can be treated humanely, without exception and without prejudice.

The right to equality before the law, or as it is often called, uniform protection by the law, is the cornerstone of a fair and democratic society. The essence of daily administration of the judiciary is consisting of promise for equal justice before the law, and the constitutional guarantees of protection for regular legal process. Equality or being equal is a symbol and an incentive for people to be treated equally, without crystallized privileges. Latini Breneto, being supported by other authors rightfully said that, “As justice is something equal, the same injustice is something unequal. So that one, who wants to establish justice, tries to reconcile things that are not equal”. Equality and being equal with others is a phenomenon that depends on, and can only come as a result of human action. Equality lies in the fact that the law is equal for all, regardless of whether protects or punishes.

The right to equal protection of the law “prohibits discrimination in law or in practice in any field that it regulated and protected by public authorities”.²²⁰ Therefore, considering that discrimination is not only diverse and present at state and public structures, but also in civil society, it is the most common form of unequal treatment, which can affect people of different racial, ethnic, national or social backgrounds. The same could also be directed against the people of different culture, language or religious origin, persons with disabilities, older people, people who are infected with any disease, and also denial of merits and disregard of professional

²¹⁹ John Rees, *Equality*, New York –Praeger, 1971, pg. 98.

²²⁰ Broeksv.the Netherlands, (172-1984) The Committee of Human Rights, 9 April 1987, Sel.Dec 196.

achievements including any other form of incorrect treatment during the assessment of any issue which will present sufficient base to discriminatory treatment.

However, this does not make discriminatory all differences of treatment, but only those that are not based on objective and reasonable criteria. Therefore, it is fair to conclude that, there cannot be issued any law or other act which intends to disrupt with the behind action a particular judicial decision or to change the composition of the court for influencing the decision.

Associated closely with equality before the law is the equal treatment before the court, which means that, regardless of ethnicity, gender, race or financial status of someone, each person who appears before a court has the right not be discriminated in the proceedings, and how the law is applied to the concerned person. The rights should be provided for each person equally, for persons that are suspected of minor criminal acts and also for those suspected for serious crimes, or for any civil, administrative, commercial issue, etc.

Therefore, in continuation of this, true judicial administration requires the protection of private rights through regular administration, which is in accordance with the foreseen forms, processes and rules. This is a regular process. The elements of regular process in criminal and civil law include notification, discovery, the right to liberty with condition, counselling, legal and regular process, hearings, questioning of witnesses, the right to call witnesses, the privilege against self-incrimination and, among others, public decision given at the right time and the right to appeal that decision to a higher degree. Everyone should enjoy the right to be treated equally in court and not feel discriminated, be it in a civil or criminal judgement, and to not have perceptions that issue will not be assessed right, because “without the power of judgment, the rule of law cannot be imagined.”²²¹

The judicial authorities are obliged to act without delay and efficiently based on foreseen legal procedures by respecting the dignity of each party in proceedings. The Court during the practice of its work, “will be shown professionally perfect, independent, impartial and responsible in respect of the law for fair and objective review and evaluation of proves in the possible fairest way”.²²²

²²¹ Basta – Posavec, L., *Pravna Deržava i konstitucionalna demokratija*, Anali Pravnog Fakulteta u Beogradu, 1993 No.1-2. pg. 26-31

²²² Ramadan Gashi, *The Right for the Public Judgement and Publicity of the Judgement*, Pristina, 2014 pg. 24.

The dignity of citizens is preserved and protected from the court. Nothing can be the basis for its violation. Equal treatment before the courts, provides guarantee during all phases of the judgement, in that way that each person suspected or accused have the right to not be discriminated by the way of investigations, proceedings or through law application against them. Primarily, equality before the courts will ensure that every human being should have equal access to the court, to request his/her rights. The special care should be given in order that everyone should have equal access to the court with the aim to request their rights, no matter is man, woman or child.

Rule of law, equal protection and a regular process have practically deep implications on society. These implications dictate that the aim of judicial administration is neither autonomy nor judicial independence, but freedom, social order, rule of law, equal protection and regular process of fair judgement. Central role in this regard has functioning of justice and respecting the law guarantees given to citizens, including equal access to justice, and promoting cooperation between the authorities that apply the law and order.

The court, prosecutor and attorney should play a key role in the regulation of these situations and ensuring that impunity of discriminatory acts are not tolerated, that such acts are properly investigated, punished, also the victims to have access to effective legal remedies to realize their rights and adequate protection.

In accordance with that what was said above, we can conclude that the equality aims to:

- Recognize the rights of each person guaranteed by law, and in other hand, each to have legal to oppose decisions that are issued based on law;
- All citizens to have same social and public importance, and to be able to oppose discrimination;
- Give the equal possibility to each for increase and promote of merits;

3. The right judgement and civil security

The civil security cannot be achieved without the rule of law and fair judgement. Since the Virginia Bill of Rights of 1776 are provided guarantees for a fair judgement in which, inter alia, noted that “That in all capital or criminal prosecutions a man has a right to demand the cause and nature of

his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers”.²²³

The principle of the rule of law contributes to one's personal safety. As it guarantees that nobody will be persecuted and arrested arbitrarily, everyone is entitled to a fair hearing and independent and impartial judgement. While these rights are recognized and respected, the judicial power can play a significant role in retaining them, whenever there are made strong efforts to curtail them in an arbitrary or ad hoc way. The right to a fair judgement is a basic human right. This right is one of applicable principles universally which is recognized in the Universal Declaration of Human Rights, adopted by world governments, in which inter alia is stated that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.²²⁴

Anyone who has access to court is subject of proceedings before the court, therefore it is required that everyone should be treated with the greatest respect, to preserve human dignity, privacy and personality of everyone. The same is guaranteed also in the Republic of Kosovo where the Law on Courts guarantees that “Everyone has equal access to the courts and no one is denied the right to a fair judgement in accordance with the regular legal procedure or the right to equal protection with the law. Any natural or legal person has a right to a fair judgement and within a reasonable timeframe”.²²⁵ More concretely, “all people should be equal before the courts and the panels”.²²⁶ This general principle of the rule of law means that everyone should have the same equal opportunity for the court, as well as equal treatment by that court.

Court proceedings and application of law on the facts in individual cases should be sustainable and predictable or better saying, to act with justice and on the basis of rules and procedures to each individual, to exist the permanent care that take and give what belongs to them or what he/she has the right to take. The judicial system is a whole of formal norms which define the way in

²²³ Article 8 of Virginia Bill of Rights of 12 June 1776

²²⁴ Universal Declaration for Human Rights, 1948.

²²⁵ Article 7.1 Law on Courts (Law No. 03/L-199) 2010.

²²⁶ Article 14 parag. 1 of the Convention for Elimination of all Forms of Discrimination of Woman, 1979.

which the judicial system needs to produce its own decisions, and to organize interactions between numerous actors such as judge, parties, lawyers representing them, witnesses, experts and other personnel that according to the relevant law should take part in the proceedings. So it is so about the rules that aim to determine, not so content, but the model of action, to outline a framework of obligations and opportunities, give competences for initiatives and procedural development.

The main characteristic of a judicial process is that during the process will prevail a spirit of a duel of evidences from stakeholders participating in the procedure, in order to convince the court through these evidences, which will evaluate the court. The court remains to have the role of the administration of the process and arbitrary. It is not enough to have only the judicial process, but it is important that the process takes place effectively, and provide useful and clear reflection that the process will adhere to the regulations provided by law. In other words, "every person has the right to have his case heard fairly, publicly and within a reasonable time by a independent and impartial court, established legally, which will decide for the disputes over the rights and obligations of civil nature, and for validity of each accusation of a criminal nature against him".²²⁷

To clarify this issue, it is useful to consider the fact that a certain procedure leads to a decision that is not strictly defined and does not follow a similar trend. The progress of the process often foresees alternatives and is open to options of subjective decisions and strategies of actors who participate in it. However, in the targets of obligations set by the norms, "the road which is followed concretely also depends from solutions concluded by procedural actors and of course from the power that hold these actors to control the development of the process".²²⁸

Primarily should be considered decision body that gives the initiative to the process, so the rules that determine which stakeholders can participate in a specific case. In most of cases, to all judicial systems is recognized so-called "legitimacy to act" for individual subjects that have a direct and personal interest. There is talked about "the filter that is expected to close entry paths to justice to groups and that articulates requests with which aim to encourage or protect the collective interests".²²⁹ The judicial process is a key issue and

²²⁷ Article 6(1) of the European Convention on Human Rights, 1950.

²²⁸ Damaska M.R, Structure of Authority and Comperative Criminal Procedure, in The Yale Law Jurnal, LXXXIV, Bolgona, 1975, fq.480-545.

²²⁹ Komesar N.K, Imperfect Alternatives. Choosing Institutions in Law,Economics and Public Policy, The University of Chicago Press, Chicago–London,1994, pg. 24.

an expression of the balance that should exist between the parties in the process. Inferiority of any party should not exist but, at the same time, will not allow the domination of any party, except the force of the evidences on which decides the court. The judicial process should be public, except for those issues for which the law guarantees that the judgement will be closed to the public.

In most of democratic countries the judicial process is divided into two phases. The preliminary phase has the function of preparing the case, specifying the requests of parties, and collection of proofs, in order to open the way to the next phase. During the judiciary process the parties have the right to present evidence and to oppose those between them. What is important is whether there is opposition of statements or there happens the opposite, supporting statements with documentary evidence.

Especially in systems where the judgment on appeal or second instance are frequent, obligation of the parties to respect the decision, often is foreseen only after a final decision, which means when there are exhausted all means of appeal. In special systems, the distribution of competences which allow the control and development of the issue is different. In most of criminal issues, an official investigation is carried out and supervised by an executor of a public function (prosecutor or investigating judge), to whom with legal provisions is ensured and legitimated an active role.

An important factor is the different distribution of competences between the judge and parties.

a) Realisation of the individual right in civil judicial process

Usually, in civil judicial process are participating two opposing parties because of the dispute that have between each other. One party (plaintiff) claims that were violated a subjective right by the other party, while the other (the defendant) denies the existence of the claiming right for one or another reason. This is called a judgement with opposing parties - *juridictiocontentiosa*. The indictment can be raised jointly by many plaintiffs or against many defendants (litispence). The judicial-civil process arises between two or more persons who are confronted with each other in front of a particular subject in charge in resolving of a civil case (*court*). The court as a state body in this process has a special position, and it is the only body that reviews a civil issue and makes the final decision. The judges are appointed regardless of the will of parties. The court is in close relation with the time of submission of indictment to the defendant by it, and which is called

litispence. This is because, that at the moment of the submission of the indictment, to the defendant is created dispute dependence, and at the time of submission of the indictment in the court is created *litispence*. Besides the above subjects without which will not be the judiciary process, there could participate also other subjects (*third parties*) that may come alone, or be called in the process in order to protect their interests or parties interests with whom will join, or state or social interests.

All these participants, in the broadest sense conduct procedural actions. These actions constitute the contents of civil process. *These participants are aiming to resolve the issue and to realise their rights, which are pretended to be violated*. Parties and other subjects that participate to protect their interests conduct procedural actions in order for the court to resolve disputes between them. By the performance or non-performance of these actions are derived the certain procedural consequences such as: *birth, change or termination of procedural relationships, eg rejection of the indictment, dismissal of the judgement, bringing of evidence etc.*

Subjects cannot perform procedural actions as desired, but are dictated by the law, ie. in their procedural relations in civil judgement process they will perform only those actions that are stipulated and allowed by the law of contested procedure, or ordered by the Court, to resolve the issue. It has the task of the final solution of the raise issues and carries out certain procedural actions to resolve the issue, which are obligatory for the participants in the judicial process.

b) The criminal justice process and guarantees that provides the court for all those who face the law

In criminal cases the issue is different because here we have to do with social-state interest, even though the parties to the proceedings are equal, in these proceedings prevails collective interest (because the element of crime act presents social dangerousness). Therefore, the issue can be obligatory, to be a state issue, so to get a character that aims to establish and re-establish a legal order which was violated by anyone. All these issues were entrusted to a person, judge or panel. In support of this, the values that guide state action significantly present that the key factor in the judicial process is the judge.

Therefore, it would be more than logical that, in this respect the judge to have the main task to administer a well oriented judicial process which in essence has the resolving of conflicts that occur in society. If we take as

example an criminal proceeding in the USA and England, countries characterized by Anglo-Saxon system, the process as such approaches to opposing morphology, while as regards civil proceedings, occasionally gives the judge the right for significant interventions in preparatory phase. However, there are cases when a criminal case of the light nature can be solved without judiciary process, but with mediation as a very successful form of dispute solution.

When an individual goes to criminal judgement, he faces with all state mechanisms. The way as individual is treated when is accused for a crime, reflects a concrete indication to what extent the state respects individual human rights. The question is: when there is a risk of violation of human rights? The answer is that the risk exists from the moment when the competent authorities raise suspicion against a person from the moment of arrest, detention during the phases of security and of the presence of the defendant during the judgement, complain to the execution phase of punishment, as well as during the entire phase of the execution until the full integration into society.

We can say rightfully that it's not enough just to have judgement processes, but it is important that the process is being passed by respecting worthily the procedures and "without unreasonable delay", to respect the deadline of completion and published judgement, with which will be clearly demonstrated that the court acted with high efficiency and right altering, in useful and desired way.

The right to a fair and impartial is reproduced and developed in a coherent way in any society which is aimed at respecting the established international standards. This right is not only specified and codified in international treaties as well as regional and intergovernmental organizations, but it should ensure the fundamental issues with internal legal acts such as the constitution and laws of a country. These standards of human rights are designed to implement all legal systems in the world and to considering diverse variability of legal procedures that define the minimum guarantees to be provided by all systems. Our rights are the best guarantee of freedom and our security. Through their respect, even when it is very difficult to do such a thing, we ourselves become the greatest defenders of freedom and servants of our highest ideals of justice.²³⁰

²³⁰ David J. Boden hamer, *Our Rights, The Right to a fair trial*, Oxford University Press, 2006, pg. 106.

The requests of equal treatment in the courts in issues that are under consideration include within it two important aspects. On one side is the basic principle that the protection and the indictment should be treated in such a way to ensure that the parties in procedure have equal opportunity to prepare and present their case during the proceedings, and the other aspect is that, each person accused should be treated equally with other citizens put under similar charge, without discrimination and without degradation of personality.

We are aware that the degree of freedom of power of the court action is the absolute level which means that is not subject to any other power, and such a power should be practiced within the limits of the law and be subject to independent judicial review of evidences. This leads to the conclusion that in the field of criminal justice, the rule of law requires that no one is punished, besides the criminal cases that are defined by law, the rights should not be violated by past legislation and access to justice should not be too slow or too expensive.²³¹

The judicial process should take place outside of any external and unjustified intervention, and any attempt to intervene should not affect the process. According to Article 14 (1) ICCPR "all persons are equal before the court". At the same time, with Article 2 (1) of the agreement, interpreted in relation with Article 14 (1), are guarantee the rights of every individual for a fair judgement, without any difference whatsoever, without taking into account the race, color, language, religion, political opinion or any other opinion, national or social origin, means, position or other circumstances. Such a guarantee provides also the European Convention of Human Rights of 4 November 1950, which ensures the minimum guarantees which the member states of the Convention are obliged to ensure to their citizens.

According to the Convention, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial court established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the judgement in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".²³²

²³¹ William Wade/ Christopher Forsyth: Administrative Law, Oxford, 2004, pg. 24.

²³² Article 6 of the Convention for Human Rights, 1950.

In a detailed view, respect of these guarantees which constitutes Article 6 ECHR ensures these rights for all people, when it comes to criminal cases as well as civil cases, which means that each person has the right to make any claim in respect of his civil rights and obligations before a court. In view of this the obligations of a court of a state is to respect the dignity of these rights for all persons in full equality.

The rights of the defendants in criminal issue and their realization in the court:

- The court will respect at any stage of the proceedings the right to equality before the law and equal treatment of the parties;
- The court will continually respect with dedication the right to be treated humanely, without exception, all parties, regardless of their ethnic, cultural, racial, religious origin, and other status that he enjoys in society;
- The court will continuously respect the right of each person who is suspected or charged with a criminal act to be presumed innocent until proven guilty by a final judgment of a court;²³³
- No one can be prosecuted and punished for a criminal act if released or for which has been punished with a final decision, if criminal proceedings against him was terminated by a final decision of the court or the indictment was dismissed by final decision of the court (Ne Bis in Idem);
- The Court will respect continuously the principle of equality of arms to all parties, which means the obligation to offer each party the opportunity to present its case under conditions that do not put at a disadvantage the other party;
- In order to respect the rights of parties the Court shall pay attention that the parties be informed within a shortest time, in a language they understand in detail, for the nature and cause of the accusation issued to him;
- To defend himself or to be assisted by a defence lawyer of his own choosing or, if he has not sufficient means to pay for the lawyer, to be given free legal assistance when this are in the interest of law. The realization of the right to protection can be done only through such a procedure. At the same time, we cannot have a fair and impartial judgement if the right to defence is not respected;
- The courts have the obligation to respect the right to be present in the judgement for each individual without any differences;²³⁴

²³³ Article 3.1 Code No. 04/L-123 of Criminal Proceeding, 2013.

- No one can be pronounced with a criminal sanction or measure of obligatory treatment for an action, if before its action is not defined by law as a criminal act and is not foreseen as a criminal sanction or measure of obligated mandatory treatment for that action;²³⁵
- To respect the right to public judgement,²³⁶ , with the aim of guaranteeing the right to a fair judgement (except for cases for which are foreseen by Code that the judgement should be closed);²³⁷
- To respect the right to silence,²³⁸ the right of the defendant to remain silent during the judgement cannot be considered that the defendant is accepting the charges against him. Rather, this right should not be trampled by the court. According to the European Court of Human Rights, a court can draw negative conclusions from the fact that the defendant does not explain his presence at the location of the crime during interrogation in court, without violating the presumption of innocence or the right or the corresponding right to not to be compelled to testify at the hearing. Therefore, as a consequence, the judge has the discretion to issue conclusions or not, which have to rely on his common sense.
- The court will guarantee that each person with the criminal procedure issue, to enjoy the rights for privileged communications with lawyer;
- During the course of a criminal proceeding, the court shall pay attention to the right of the defendant, that the defendant can make questions, or request to be examined witnesses, and ask examination of witnesses in their favour, with the same conditions with the witnesses of accusing;
- Each regular legal process implies the respect of a reasonable time and the right to an open hearing and the publication of the decision in the criminal process;
- To provide the free interpreter, if the defendant does not understand or speak the language used in court;
- The right to contribute in self-incrimination;
- The right to be considered innocent;
- The right to a judgement in a reasonable time;
- The right to a hearing with an opposing party;

²³⁴ Eur. Court HR, Brozicek Cae , Italy, judgment of 19 December 1989 Series A, No 167, pg. 19 parag..57.

²³⁵ Article 2.2 Criminal Code of the Republic of Kosovo (Code No. 04/L-082), 2013.

²³⁶ Eur. Court HR, Weber v. Switzerland case, judgment of 22 May 1990, Series A, No 177, fq. 20 paragr.30.

²³⁷ Eur. Court HR, Prettoand OTHERS V. Italy Case, judgment of 8 December 1983, Series A, No 71, paragr.27.

²³⁸ Eur. Court HR, Case Marry v. United Kingdom, 8 February 1996 paragr. 45.

- The judge has the responsibility to verify if sees that the defendant is abused while in detention;
- The judge has the responsibility to define the admissibility of evidences;

These standards are aiming that each court should respect, and at any time to not exceed these guarantees. These guarantees aim and determine if are respected by a court of a state, then it can be estimated that we are dealing with a fair judgement, and if one of these guarantees are undermined then state within which functions the court is responsible for violations of standards for fair judgement.

Article 6 covers also the procedures after the hearing, such as the execution of a decision therefore covers proceedings taken as a whole. It is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law.²³⁹ Each judge, in the beginning of a hearing, should consider the responsibility to ensure the above guarantees and the end of each hearing to check if he-she did its task accordingly.

Judgements should be made publicly open, with limited exceptions, such as cases that affect young people whose privacy should be protected, those that are related with marital discord and children protection cases. The judgment is public when it is pronounced orally in a hearing which is open to the public, or when the decision is published in writing.

The right to a public trial is violated when judgments are made only for a certain group of people, or when only for few people who have specific interests, is allowed to inspect the judgement. To the public hearing issue has dedicated special attention also the American Convention which requestes that “criminal proceedings to be public, except to the extent that is necessary to safeguard the interests of justice”.²⁴⁰

The main purpose of a public judgement is to ensure that the administration of justice is public and open to public supervision. Therefore, the public judgement is imperative and can be requested by anyone, including people who are not party to the proceedings. Exclusively, the court has opportunity, in some reasonable cases, to hold judgment in closed session, at the same time to exclude the public from the hearing and impose sanctions to those who do not respect the order in the courtroom.

²³⁹ Eur. Court HR Case Garcia Ruiz , Spain , Nb. 30544/96.

²⁴⁰ Article 8.5 of American Convention for Human Rights 1969.

c) The right of the injured party that was the victim of crime

Penal Code primarily protects fundamental freedoms and human rights. Whoever violates or harm or risks these values, the Criminal Code envisages criminal sanctions. Injured party or victim of the criminal action is any natural or legal person to whom any good or right was violated or destroyed by criminal proceeding.²⁴¹ Victim of crime in criminal proceedings is further the object. Hence victimization is the process of suffering of the victim. It is the intentional and unintentional as well as conscious and unconscious. Victimization often is individual phenomenon, but it can take also dimensions of collective victimization.²⁴²

According to the UN Declaration, victims means persons who individually or collectively have had suffered, including physical or mental injury, emotional sufferings, economic loss or substantial deterioration of their fundamental rights, by conducting or not conducting of actions that are presenting violation of criminal laws including laws that affect the misuse of power.²⁴³ According to the Criminal Procedure Code of Kosovo, the injured party or the victim is the person to whom any personal or property right has been violated or endangered by a criminal act.²⁴⁴

The rights of the injured parties that courts are obliged to recognize are:

- The right to be the active member in hearing which means that has the capacity of the party in criminal proceeding²⁴⁵ since the injured party has presented declaration of damage²⁴⁶ before the court;
- The right to be invited (notified) to take part in the hearing,²⁴⁷ and to have translation if does not understand the language of the proceeding;
- The injured party, can request formally or informally from the state prosecutor to request the continuation of detention for the defendant²⁴⁸;

²⁴¹ Zvonimir Šeparović, *Victimology – the study on victims*, Informator, Zagreb, 1998, pg.71.

²⁴² Ramljak A. Alija, Halilović Haris, *Victimology*, The Faculty of Criminal Sciences in Sarajevo, 2004. pg.22.

²⁴³ United Nations Declaration on Fundamental Rights of Victims of Crime and Abuse of Power, 1985.

²⁴⁴ Article 19 parag. 1.7 Code No. 04/L-123.

²⁴⁵ Article 62 parag.1. 1.3 Code No. 04/L-123.

²⁴⁶ Article 218 Code No. 04/L-123.

²⁴⁷ Article 287 parag.1 Code No. 04/L-123.

²⁴⁸ Article 191 parag.1 Code No. 04/L-123.

- The injured party, in capacity of witness, has the right to be treated in equal way as the other parties, as requires the legal provisions for his position as the victim, regardless his national, religious or sexual origin;
- Enjoys the right to refuse to answer specific questions when it is likely that this puts himself or any person close to him, to serious disgrace, significant material damage or criminal prosecution, and the court is obliged for this right to notify the injured party as a witness;
- The right to be treated with respect by the court during the whole criminal procedure;
- Injured party has the right to present the request for the protection measures or anonymity;²⁴⁹
- The right for questioning directly, indirectly or to re-question the witness;²⁵⁰
- Enjoys the right to oppose qualifications or prejudices of the expert;
- After the state prosecutor, the injured party has the equal right for the introduction speech in judicial proceeding;
- The injured party has the right for the respect of his dignity, in order not to feel like the re-victimized during the judgement;
- The injured party may propose a review of new facts, collection of new evidence and to repeat the proposals which the single judge of the panel, president of the panel or panel has rejected earlier;²⁵¹
- The injured party can question the defendant (in order to confirm or deny any fact, to review the reliability of witness or prejudice related with his testimony);
- In his or her closing statement, the injured party or his or her authorized representative may explain his or her declaration of injury or property claim and call attention to evidence of the criminal liability of the accused. 252
- The injured party is entitled to compensation. The injured party may be represented in criminal proceedings by a member of the Bar. Besides the member of the Bar, the injured party may be represented by the lawyer of the victims and by the self- injured party;
- The injured party may present a simple statement of the damage caused by the criminal action. The victims lawyer can help the injured party in filing the statement of damage;

²⁴⁹ Article 221 parag.1 Code No. 04/L-123.

²⁵⁰ Article 331 parag.1 Code No. 04/L-123.

²⁵¹ Article 329 parag.3 Code No. 04/L-123 .

²⁵² Article 354 Code No. 04/L-123.

Such a more active role in the procedure significantly strengthens the rights of victims and is requirement that derives from framework decisions of the EU. The role of the lawyer of victims is expanded. However, if the victim does not have its own lawyer to represent him, a victim defender can represent the interests of the victim in court. This, in fact, is not a new role of defenders of the victims, as they have done so for many years in the cases of victims of trafficking and victims of domestic violence.

ç) The realization of citizens' rights in court in cases when the court proceeding is opened when the administrative bodies have decided on their rights

Through this court proceeding, it is aimed the creation of conditions for an effective review by putting in place the rights violated by actions or administrative acts issued by public authorities, which have implemented the respective procedures. Judicial review of administrative decisions in this court proceeding is a procedural action of democratic court accepted and present in the main European practices to ensure order, especially to protect individual rights versus decisions issued by the administrative bodies.

Moreover, the administrative decisions play a decisive role for the economic development of a country. Almost all investment decisions or infrastructure projects must go through a licensing process, which may become a subject of legal scrutiny by the court within the respective department. The efficient functioning of this department also increases the transparency of administrative decisions and can play an important role in the fight against corruption. Nowadays, a state with the rule of law is inconceivable without access of all citizens to an independent and impartial court, established under the law and able to fulfil the requirements of having a fair trial.

During the court proceeding it will be decided on the legality of administrative acts with which it is decided on the rights and obligations of persons based on the law, for which an administrative body took a decision. Usually, these processes begin with an administrative dispute²⁵³ to court, which in many countries are appointed as administrative courts whereas in Kosovo it functions the Department for Administrative Affairs within the Basic Court in Pristina.

These warranties are put in place to protect the physical and legal persons, because they enable them that the rights, freedoms and interests being violated both by the administrative procedures or administrative decisions, to

²⁵³ Article 13 Law No. 03/I-202 on Administrative Conflicts, 2010.

request from the competent public administration body for the revocation or nullification of the decision or related administrative act, to decide upon the cancellation of the opposed administrative act, in order to protect their rights and interests.

d) The right to appeal against the court verdict

Constitution of Kosovo guarantees the right to legal remedies, specifically anticipating that "every person has the right to pursue legal remedies against judicial and administrative decisions which affect his/her rights or interests in the manner prescribed by law".²⁵⁴ These warranties are put in place to protect the physical and legal persons, because they enable them that the rights, freedoms and interests being violated both by the administrative procedures or with administrative decisions to request from the competent public administration body revocation or nullification of the decision or related administrative act, to decide upon the cancellation of the opposed administrative act, in order to protect their rights and interests.²⁵⁵ Therefore, the appeal is the institutional form of protection of fundamental rights and freedoms prescribed by the constitutional and legal provisions not only in judicial proceedings but also in administrative proceedings.

Against any judgment or decision, unsatisfied parties have a right to appeal within the legal deadline. The main purpose of the appeal is for the parties to request a review of the case by a higher court which must examine not only whether or not a fair trial has been respected throughout all court sessions, but they should consider the reasons for appeal. Right of appeal in penal cases is guaranteed to every person convicted of a criminal offense by a court and has the right to submit for review before a higher court plea of conviction or the sentence. There may be exceptions for petty offenses, as prescribed by law, or when the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against his acquittal.²⁵⁶

The right to appeal is guaranteed by the Constitution of the Republic of Kosovo, as a procedural right that serves to protect a substantive right. This right is based on the principle that "there can be no right without the right of appeal" or, "there is no right of appeal without having a right". The right of

²⁵⁴ Article 32 of the Constitution of Republic of Kosovo, 2008.

²⁵⁵ Article 126 Lawi No. 2/L-28, on Administrative Procedure.

²⁵⁶ Protocol No. 7 of the Convention for Protection of Human Rights and Fundamental Freedom, Amended on with Protocol No.11, Strasburg, 22. XI. 1984.

appeal is one of the basic human rights and it is also foreseen in the European Convention on Human Rights and its additional Protocols. The same legal security the law provides for the courts, which states that every person has the right to use legal remedies against a judicial or administrative decision that violates his rights or interests in the manner prescribed by law.²⁵⁷

This marks a higher standard in the protection of fundamental human rights and freedoms than the one of "effective appeal" as stipulated in Article 13 of the Convention, which accepts the respect of Convention standards allowing the effective appeal in a higher instance without necessarily conditioning this appeal with the appeal to other court instances. The right of appeal should be understood as an opportunity for every individual to have certain procedural means to contest to a higher court decision issued against him by a lower court. In other words, the violation of this right presents a violation of fair and impartial trial.

4. Conclusion

We are aware that there are differences among people as to appearance, race, ethnicity, marital status, professional development, or in other skills so we need to understand a fact that every person is unique and unrepeatable. This is an important fact, because exactly that uniqueness or distinctiveness is the essence of human society and its existence. Equality does not mean that we are identically the same, but the treatment should be equal versus the state institutions at any level (legislative, executive, judicial).

The rule of law is aimed at removing the arbitrariness of the entrusted power with the aim to achieve respect and guarantee of human dignity, justice and legal security for all persons without distinction. Legal security includes clarity, understanding and sustainability of the normative system.

It is an undeniable fact that the judiciary contributes to the promotion and realization of the rights of citizens, provided that it has acted independently and impartially. In exercising their judicial responsibilities, judges should avoid any bias or discrimination with related to some insignificant matters and should treat all parties with respect, courtesy and in an equal manner.

Judges must exercise all responsibilities impartially and should ensure that this non-bias be observed in all their actions. The judge must act impartially

²⁵⁷ Article 7.3 Law No. 03/I-199.

and independently in all cases free from any outside interference, and carry out judicial duties based on the facts and the law applicable in each case, without any restriction, improper influence, inducements, pressure, threats for interference, be it direct or indirect, from any circles. Judges have an obligation to ensure continuously that justice is to be served finally taking into account all the complex elements of all the issues upon which the court will decide. If they do otherwise, they would jeopardize the credibility of the justice that is of so high priority for society and the state that would make the freedom and security of citizens more uncertain and the rule of law state less functional.

In exercising his/her judicial function, the judge is obliged to ensure that law and international standards are being strictly enforced and that the issue in court will be treated with complete justice avoiding any form of discrimination against parties, that is, that the treatment will be the same regardless of gender, religion, race, age, political orientation, language, nation, property status, educational level, or any other status.

Judge activity consists in the fact that he/she is the only and main actor who will prove the factual condition, which serves as a basis for judgment, therefore this duty is a more complex, more difficult and more responsible task.

The evidence and the law will be the only impetus that will drive the judge in the case of settling a certain case being obliged to respect the human dignity, individuality and privacy at the same time maintain the dignity of the court as well as be a just performer of the legal norms, in order to materialize it with the right judicial verdict. No judge can take orders or instructions for the manner of court proceedings and in particular for the decision that he should give in a particular case.

The judiciary in a country is one of the main pillars of the rule of law state and the main guarantor of respect of human rights and freedoms. Human rights present the claim for justice as an ideal. They are indispensable in daily life even for those who do not respect them or ignore the equality between people and deny the freedom of others. Human rights are universal. They belong to all individuals and should be enjoyed equally by all.

These state institutions, independent of other institutions, are characterized in that the process and actions to impose expansion, strengthening and guaranteeing of human rights, which are increasingly being expanded day by day such as freedom of speech, freedom of religion, protection from

discrimination, the right to privacy, the right to a fair process, equal treatment, etc.

Equal treatment in the trial does not also mean the identical treatment. This means that when the objective facts are similar, the judicial system is similar too. Regular court procedures bring justice and faith of citizens within a certain jurisdiction.

The courts will guarantee the equality of citizens before the law and non-discrimination, the right to life, freedom of expression, the right to freedom and protection from arbitrary detention, freedom from punishment, humiliating and degrading treatment, the right to a fair trial process, and guaranteeing of a fair public trial within a reasonable time period.

Courts should be aware of their responsibility under the Constitution, but also judges, primarily as citizens and then in the current function they exercise, should consider the consequences their decisions could have. Of course, it is the obligation of judges to avoid any subjectivity, so that decisions they give in line with genuine legal criteria and on the basis of facts proved by the free and just conviction. The atmosphere that surrounds the courts and the events that occur in them are formal and unusual because the courts are unique. They resolve disputes by applying the law to the facts of particular cases, independently and impartially. During their activities, courts are entirely independent and only high courts have a competency to affect the work of the lower courts, in cases where the parties are dissatisfied with the decisions of the first instance. Therefore, their activities are very important and indeed indispensable in combating the crime. Court is the only body authorized by law to decide on the application of violence against all citizens, and especially if it is about life, freedoms, the violation of the human personality, the state order, property, etc.

Court is the only public institution, which will evaluate and weigh things, deciding on the merits of the case with a deeply reasoned court decision for all those issues that fall within its competencies.

Therefore, judicial function means degree of creativity, which embodies the law and puts matters on the normal and stable track, locking all the doors for self-judgment.

As a result of this, beside the fact that the court must be independent, professional, efficient, credible and with integrity, the court must also be reliable for citizens. Therefore, the courts must be oriented towards the exercising of their activity with full transparency towards the public, in order

to serve as a model for the exercise of authority and contributing to strengthening of the rule of law for which there is so much need in our society.

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