

# Lawyer of defendant and his role in the criminal process from the viewpoint of the European Convention on Human Rights and the Albanian criminal procedural legislation

Klodjan Skenderaj, PhD Candidate  
Faculty of Law, University of Tirana, Albania

Sokol Mëngjesi, PhD  
Faculty of Law, University of Tirana, Albania

## Abstract

A guarantee for real ensuring of defendant's rights is the qualified legal assistance by the side of the lawyer, chosen or assigned by the proceeding body. Providing legal protection to defendants was an important achievement in the long and difficult efforts to democratize the criminal proceedings. It was initially achieved in developed countries which promulgated the fundamental rights and freedoms and on this basis the major laws of activity of justice's bodies were enforced. The role of lawyer in the criminal proceeding gradually increased and became an important factor in the fight against violations of law and injustice. The lawyer became a respected procedural figure, standing in front of prosecution, as the opposing party able to develop a cross-examination and to influence in a fair solution of case. However in practice, it is not rare the violation of rights of defendants by proceeding organs. So, it is right to make this question: What will be done with their rights and how will they be protected? In practice there were different opinions in terms of guaranteeing the rights of these defendants and how far the rights of lawyers of the defendants are extended. This is the reason why this paper will bring in attention the position, procedural guarantees of lawyers, the actions that can take and the exercise of their main rights in defending the interest of defendant, taking into account the main phases of criminal proceedings. Special attention will be devoted to case law of European Court of Human Rights (ECHR) in terms of guaranteeing the rights of defendants, the orientations of the Albanian Constitutional Court and that of Supreme Court. At the end, this paper will reach in some conclusions through which proposals and amendments will be made to the code of criminal procedure, starting from the principle that the rights and procedural guarantees of defendants should be guaranteed at the maximum, because it's the only way to achieve the highest degree of democratization of the criminal proceedings.

**Keywords:** code of criminal procedure; the Constitution; the defendant; the defendant's lawyer; the defendant tried in absentia; the European Convention on Human Rights; preliminary investigations; the appeal of the defendant; in the first trial; trial in Appeal Court; trial in Supreme Court; human rights.

## Introduction

The origin of institute of advocating is the first legal act “Law for barristers”, that came into force on 30.12.1922 and it continued with a modern legislation made during the period of Monarchy, when on 15<sup>th</sup> of June 1931, a new legal act “Law of Barristers” became effective. Like all the legislation of that time, a modern one considering the period when adopted and for the economical-social stage of development that Albania represented, “Law of Barristers” brought a new vision of advocating system in Albania. But, after 29<sup>th</sup> of November 1944, the political system would also impose the physiomy of advocating institute. So, by Decree no. 217, date 20.11.1946 “For Barristers”, the dependence of advocating institute from popular power would be sanctioned, through which barristers had to assist the organs of state power in performing their tasks (article 2 of Decree). Changes in the advocating institute would continue, and they had to be conform to the communist policy and ideology of that time, like all the judicial system, respecting the principles of a socialist state. They were so drastic that sent this institute to its final end and replaced it with the so called “the office of judicial assistance”<sup>1</sup>. Changes post years '90, in the context of transforming the law system, also asked to revive this very important procedure subject, as a legitimize right that belongs to every individual who may be object of a criminal process. However, the institute of advocating with a barrister found the real solution in the Constitution of year 1998 where in its article 31, the right of advocating was defined as a constitutional<sup>2</sup> fundamental right of individual. The right of advocating is also sanctioned in current criminal procedure code which in its article 6 states that *“the defendant has the right to be self-defended or by the assistance of a barrister. When the defendant has no sufficient financial means to be defended then advocating with a barrister is freely provided. The barrister assists the defendant to have all the procedural rights guaranteed and to have his legal interested protected.*

## Advocacy of defendant and the actions of barrister at the phase of preliminary investigations

The preliminary investigation is the first very important phase of criminal procedure and it serves as premises for its further proceeding. At this stage are solved a series of issues of criminal process like for example, settlement of security measurements, notification of charge, taking proofs etc. The main subject at this stage is the prosecution organ represented by the prosecutor and judicial police. Although our code of criminal procedure has reserved to the defendant (at this stage) many rights so that the position of defendant is guaranteed at maximum. Actually, the defender of defendant has the right to see the defendant without presence of third persons as their participation could influence to advocacy. Questioning of defendant must be

---

<sup>1</sup> Decree no. 4277 date 20.6.1967 “For opening the offices of judicial assistance”, Article 2

made in the presence of his defender.<sup>2</sup> A verbal report is kept during questioning him about what is said, but during this procedure the person can choose not to respond. In cases when the defendant is a minor, he is interrogated by a defender chosen by him or chosen primarily but always in the presence of a psychologist. The defender has the right to communicate freely and only with the detained, the arrested or the condemned one with imprisonment. For the cases of arrestment in flagrante or detention, the interview should be made immediately after arrestment or detention. The arrested has also the right to talk to his defender since at the moment of execution of security measure<sup>3</sup>. The defender is not allowed to give answers with his questions, the ones he wishes to hear from the witness or defendant otherwise such questions are considered suggestive ones.<sup>4</sup> Another right of defendant's defender is to be acquainted with all procedural file<sup>5</sup> in order to provide the best effective defending. The goal of being familiar with these materials is to ensure the defendant for his right of defense giving him or his defender the possibility to complete any shortcomings and gaps in its investigation. What's more, the defendant's defense can appeal to the court for any action of prosecutor that violates or limits his rights. He has the right to participate to the expertise process<sup>5</sup>, to assign new experts, to take part to experiment process, to controls, to participate to inspection of objects, of documents, to make questions to witnesses, to ask for the exclusion of judge etc.

### **Actions of defender during first grade trial and appeal**

In all criminal procedural norms, the judicial examination at first grade constitutes the principal part. At judgment of concrete criminal issues find the solution problems like those of verifying proofs, qualification of criminal offence with all its integrative elements, level of cooperation and role of each defendant in it, motives, goals, social risk of defendant which at the end are all considered in giving the final decision, in assessing the defendant culpable or not, the mass and sort of condemnation.

The defender of defendant has to fight for the legal rights and interests of defendant, to defend him/her from unjust charges or to ask that the defendant responds for a criminal act of a slight character or to ask for a softer sentence.<sup>6</sup> In fulfilling these tasks the defender performs defense of defendant before court with means and manners allowed by the law without violating state and society interests.

At the beginning of the session, the defender as a participant, if the case needs it, introduces his pretences propounding if it is necessary to question the witnesses. In

---

<sup>2</sup> Article 50 of criminal procedure code

<sup>3</sup> Islami H, Hoxha A, Panda I.- Criminal Procedure Commentary republished, Tirana 2008, page 155

<sup>4</sup> Such questions can be considered those ones which hold a response in a certain sense.

<sup>5</sup> For more see the criminal procedure code in the fourth title "Facts"

<sup>6</sup> Islami H.- Democratization of criminal procedural legislation, page 54, Tirana 2000

article 49/6, the legislative has settled that the assigned defender can be replaced only for legitimated reasons and when how he ceases his functions when the defendant chooses another defender. When the defendant appoints his defender giving up from the defender primarily chosen, then according to article 48/2 he makes a declaration before the proceeding organ or by an act of attorney (power of attorney) through which the defender is vested with the rights and competences of representing the defendant.

This situation should not be confused with the situation provided from article 352 of criminal procedure code which consists in the absence and voluntary leave of defendant, as in this case the defendant with his leave, means that his defendant when there is one chosen, has to defend him/her by representation act, but when there is no one defender appointed then by leaving the defendant gives up defense.

In judgment in absentia the defender holds a hard position, this expressed even in judicial practice where they often keep an indifferent position asking to have this reflected even in the verbal report. In order to fulfill his duty, in defense of rights and freedoms of defendant, the defender must have the chance to be advised from and to advise the assisted one.<sup>7</sup>

If we assay the two phases we are dealing with (trial at first grade and in appeal), the investigation and judgment up to now, regarding the judgment in absentia, there are fundamental differences.<sup>8</sup> In the second chapter of criminal procedure code, 'Judicial examination' we always have the case of judgment in absentia where the defendant hides judging, so we see the defendant who not only has been communicated the charge but the prosecution organ has already made some other acts during the investigation phase. So, in article 352/4, judging in absentia is provided only in case when it is proved that defendant is hidden. This article provides four cases of judgment in absentia, in three of them the defendant leaves or is absent voluntarily and the fourth case is when he hides to judgment. In no other cases the court has the right to proceed with judgment in absentia. The reason of this provision stays in the fact that the main goal is realization of a real cross examination between prosecution organ and defense, something that influences positively and directly to reveal the truth so that the court gives justice objectively and impartially. Such constitutional and legal requirements are in function to a more effective defense of defendant, because state itself stays in front of him/her, represented in the criminal process by prosecutor, who presents and defends the charge against him/her. It belongs to the organs of justice to

---

<sup>7</sup> Gramozi M., Participation of defender during investigation of the case by procedural organs, rights and duties. Thesis of master course page 45

<sup>8</sup> Paskali F., "Judgment in absence of defendant", Magazine Judicial Tribune no. 4 of year 2006

take the necessary measures to guarantee the participation of the charged person or of legal defendant to a criminal process even of defendant assigned primarily.<sup>9</sup>

During judgment at appeal court the defendant's defender must verify if the investigation and judging organs have acted in conformity with law in taking decisions of starting a criminal case, taking a person as a defendant, dismissal decisions, (in case when it is dismissed for the other defendant while for his client the case is brought to trial), if the defendant is familiar with case materials etc.

Another key procedural moment is the investigating and judicial case-work, the analysis of facts administered in such way to have a more effective defense at judgment in appeal. At this process, the lawyer must pay attention to identification of data that prove not to be based on facts, but on wrong qualification of criminal offence and injustices on sort and measure of conviction. He also has to prove with facts the illegitimacy and right character of his conclusions.

The participation of free or arrested defendant into judgment (even at appeal), hearing and his defense (of defendant) is a constitutional and legal right.

The judicial practice of Supreme Court in many cases concludes that not respecting this legal obligation, which is to call or notify the arrested defendant or the free one for trial at appeal trial is a violation of constitutional right for a due process, according to the meaning of article 42 of Constitution.

After judicial examination the parties have the right to make comeback and in every case the defendant and his defense must say the last word. The comeback must be limited to contest of pretences raised in final discussion by the opposing party and not to repeat the things already said.

### **Role of defender at trial at Supreme Court**

The examination of cases at Supreme Court is of special sort. It does not repeat the trials made for the same case at first grade court or even at the appeal one, so it does not considers the case from factual viewpoint, but it is basically focused on legal issues, on way of material and procedural law application by the court. The Supreme Court controls if, the trials held at the first grade and at appeal have applied or not the law properly. In another way it is said that at Supreme Court we have to do with a trial of law.

The Supreme Court has a reviewing and initial judgment (article 141 of Constitution). The review is made because of law and because of fact. In constitutional sense of review first goes in the examination of recourses for pretences of violation of material and procedural law, which in fact is the central function of Supreme Court, and the

---

<sup>9</sup> See Decision of Constitutional Court no.19 of year 2003

review in classical meaning, which means examination of the case at Supreme Court even for errors of fact, that means for basing on proofs regarding the sentence of first grade court or of the appeal one.

The recourse must demonstrate and argue the reasons of illegitimacy of the sentence. This act must be compiled and undersigned by defender with the effect of objecting it. As a result, the presence of defender is obligatory.<sup>10</sup>

This comes out as a result of the fact that cases propounded for solution are of real legal character and discussing them, needs a high level of professionalism. When the case passes to the judicial session then the fundamental principles of a due legal process are in execution. In order to ensure a more effective defense, the specification of case examination itself at this stage in the Supreme Court imposes several particularities. Their defender can realize such a thing professionally, in the name of defendant or of the parties in trial. He has all the possibilities and skills to defend the interests of the subject he represents at Supreme Court really and efficaciously. These are the reasons, why there are cases that various countries offer solutions similar to our country and as a result the process at Supreme Court is also called "The lawyer's process". What's more, in the view of this specific issue of considering the case at Supreme Court, in many countries, only a limited number of lawyers have the right to defend the defendant or parties at this Court, who are selected according to criteria sanctioned by law, among which a special attention is paid to professional preparation.<sup>11</sup>

On the other side, defending with a lawyer is of interest and in conformity with law state requirements, as it serves better to judicial security and giving justice in general, for which our Constitution has given a prominent role to the Court of Supreme. The objective defense of fundamental rights and freedoms has a special priority and importance in the Supreme Court. Through this sort of defending, it is also made the unification and judicial practice, the right and same application of law, and the guaranteeing of individual rights and freedoms.

Representing with a lawyer at Supreme Court, goals to ensure a more effective and professional defense of fundamental rights and freedoms of individual. Our jurisprudence, respecting even the views kept by European Court of Human Rights, has concluded that examining only legal issues by the side of Supreme Court, not only justifies completely the representation by a lawyer but is furthermore indispensable for guaranteeing an effective and useful defense, always in favor of defendant. In the case of "Pakëll vs. Germany"<sup>12</sup>, European Court of Human Rights makes in evidence among others, starting from the sort of judgment at Supreme Court and its focus in law

---

<sup>10</sup> Decision of Supreme Court no. 25, date 30.7.2003

<sup>11</sup> See practice of judgment at Supreme Court of Italy, France, United Kingdom, USA etc.

<sup>12</sup> Case judged on 25.08.1983

cases, “without the assistance of a lawyer the process could not contribute usefully to examination of judicial issues that stay in the essence of disputes”.<sup>13</sup>

Constitutional Court of Albania, in many of its sentences underlines the fact that, in judicial sessions, representation with a lawyer aims to a more effective and professional defense of human rights and freedoms of individual. It aims the real defense of defendant and parties’ rights in a process, respecting of law and giving justice in general.<sup>14</sup>

It was mentioned above the fact that the recourse is not accepted if it is not undersigned by the defender. We have not encountered this provision at first or second grade of judgment but it is only in judging at Supreme Court. This happens because judgment at Supreme Court is of a special kind. In article 420 of criminal procedure code there are cases of rejecting the appeal and in paragraph 1, letter “c” it is said “*complaint is rejected when the provisions for the form, presentation, sending, notification and term of complaint have not been respected*” and article 435 is in accordance with article 420 as it determines the obligatory form who the complaint must be submitted at Supreme Court.

So, summarizing we can say that, the fact is that a complaint which does not have at least one of procedural requirements met, as they are expressively established in item 1 of article 420 of Criminal Procedural Code, is judicially unacceptable but in no ways it can be considered as negation of the person’s right to complain versus a judicial sentence.

This is the reason that provision of article 435/2 of Criminal Procedural code is part of those procedural adjustments that legislation has inspired the parties to complain. It is not aimless that legislation has entitled this provision as “Presentation of Recourse” and according to item 2, it provides that: “The recourse act and memos must be undersigned on the effect of rejection by the side of lawyer ...”. So, the will of legislation by this provision asks from the parties, (especially for the recourse), to be undersigned by the defendant’s lawyer, otherwise it becomes unacceptable. Nevertheless the content of article 420/1/c of c.p.c it is obvious that the recourse is rejected when the law provisions related with its presentation have not been applied, so it is not aimless the repetition of the this fact even in article 435 of c.p.c, which sanctions the way of submission for a recourse.

The judicial practice appraises that the goal of legislation, determining expressively the obligation that the recourse at Court of Supreme must be undersigned by the lawyer, has been the real jurisdiction of Constitution, which according to provision of article 141/1, has an initial and reviewing jurisdiction.<sup>15</sup>

<sup>13</sup> Decision of Constitutional Court of Republic of Albania, no. 25 date 30.7.2003, Summary of decisions 2003, page 134.

<sup>14</sup> Similar

<sup>15</sup> Decision of Supreme Court no. 5 date 15.09.2009



According to the same line of reasoning it is concluded that like every subjective right even the right of complaining does not exclude the option for legislation to set limitations in its exercising to defend a certain public or individual right. It is important that the limitation settled does not reduce the possibility of individual to such a mass or way that violates the real sense of the right to complain, so the limitation does not turn to a negation of the right. In the case of provision of article 435/2, the limitation made by legislation regarding the undersigning of recourse, not only turns to a negation of this right, what is shown even from the fact of holding this judgment but it is a limitation that does not violate any of rights provided by article 17 and article 43 of Constitution of Albania.<sup>16</sup>

Another case which has caused debates in the sense of violating defense is the one provided by article 437/5 of c.p.c according to which *“The judge assigned relates the case. After the word of prosecutor, the defender and representatives of private parties make the defense. The comeback is not allowed”*. This provision, which may seem that negates a fundamental individual right, provided by article 33/1 of Constitution (the right of defense), in fact during the trial at Court of Supreme does not permit the defendant to be listened to defend his interests. The legislation has given this right to defendant’s defender, like the right to undersign the recourse act. This characteristic of trial is confirmed even by provision of article 433/2 of c.p.c. according to which: *“Rejection of recourse is set by College of Supreme Court in a counseling room, without the participation of the parties”*. It is obvious, that being a law trial and before which it is not allowed to receive new facts, the Court of supreme gives solution to complaints of the parties even without their participation, but only through basing on the act of recourse, memos and on judicial files. This is another reasons that, different from what defense pretended, Unified Colleges appraise that rejecting recourse at Supreme Court without defender’s undersigning, in fact for the defendant mains a high standard in favor of guarantees not to lose the right of judgment because of submitting the recourse not in conformity with the criminal procedural requirements, a guarantee that is ensured by undersigning the recourse by defender. This conclusion comes out from the content of article 433/1 of c.p.c, according to which the recourse is rejected, if it is made because of reasons different from those provided by the law. These reasons are defined in article 432/1 of this Code and if the recourse is making by a non professional, what means not by the defender, then the possibility for recourse to be rejected grows.

In order to guarantee a due criminal process, is important that the accused takes part and is defended in trial but in cases of his absence, he can not be judged without assigning him a defender. Referring to international judicial practice, and especially to European Court of Human Rights, it is ascertained that it is generally allowed that

---

<sup>16</sup> Similar



the judicial sessions can not be held without the presence of lawyer. Regarding the presence of the lawyer, especially in trial at Court of Supreme, the Constitutional Court has appraised that judicial situations when recourse is presented by the accused is not the same with the case when the recourse is presented by the prosecutor (sentence of Constitutional Court no. 23, date 13.10.2005).<sup>17</sup> Personal presence of the defendant in the judicial session for the examination of complaint presented by his defender is indispensable, if the object of examination is dealings and judicial deductions reached by the lowest grade of court, which sentence is doubted in disfavor of defendant.<sup>18</sup> In these cases, the Supreme Court does not have any impediments to continue the examination of the case and in absence of the lawyer for the accused party, because he has deposited his legal arguments in written in the recourse submitted before it.

The situation is different, when as a result of recourse is presented by the prosecutor, who holds in his capacity the possibility to aggravate the position of defendant, the trial is held without the presence of the persons judged or of his lawyer. The participation of the judged, and especially of his lawyer is required to ensure not only the right to be defended, but even respecting the principle of equality of arms in a legal process. Considering the specification of case in examination, when the case is examined on basis of a recourse presented by the prosecutor, who has asked for the aggravation of defendant's position and of his fact, when nor the defendant or the lawyer were absent in trial, the Criminal College of Supreme Court must not have held the trial without been guaranteed for the reasons of their absence, and without giving to the accused party the chance to realize the legal defense. In the context of ensuring a due legal process, for the Criminal College of Supreme Court was indispensable to take measures so that not allow keeping the session without presence of representative of defendant's interests, because this was the only way that the defendant took part to possible cross examinations through the figure of lawyer.

### **The right of defense according to European Conventions of Human Rights and to practice of European Court of Human Rights.**

The right of defense is also provided by the European Convention of Human Rights. Actually, the European Convention of Human Rights, in its article 6/3 letter c underlines that "Any accused has the right to defend himself or to be assisted by a lawyer assigned by him and, if he does not have any means to reward the lawyer, he must be guaranteed with a legal assistance freely by a lawyer primarily assigned, mainly when this is required by the interests of justice".

As we mentioned above, the right of defense is transposed even to Albanian legislation where its fundamental law, the Constitution of Albania, in its article 31 cites

---

<sup>17</sup> Decision of Constitutional Court no. 23/2005

<sup>18</sup> Frowein/Peukert, Europäische Menschenrechtskonvention-Komentar (1996) faqe 227.

that *“During a criminal process everyone has the right to be self defended or by the assistance of a legal defend assigned by him, to communicate with him freely and in private and to be ensured a free defense when he does not have any enough financial means to do this”*. We note that the right of defense is one of fundamental principles of criminal process. Lately this right is provided even in our criminal procedural code which in its article 6 cites that *“The defendant has the right to be self defended or by the assistance of a lawyer. When he does not have enough financial means then a defense with lawyer is guaranteed to him”*.

So, it is noted that the right of defense is one of fundamental rights of defendant in the criminal process. Nowadays, the criminal process does not make sense without the presence of one of its important subjects like the legal defendant’s lawyer is.

The judicial practice of European Court of Human Rights in several cases sanctions as obligatory for the organs of justice of countries to guarantee a judicial qualified assistance in criminal processes. A special attention this Court has paid even to the cases of judgment in absence when the court underlines that the right of each accused to be represented effectively, although not absolutely is one of fundamental elements of a right judgment and the accused can not lose this right simply because of his absence in judicial sessions.

According to the European Court of Human Rights<sup>19</sup>, even though the legislation must be in grade to discourage the unjustified absences in judicial sessions, it can not penalize an accused in absence negating him the right for a legal assistance. An accused who choose not to be present in a judicial process even when it is obvious that he is hiding justice, must be represented by his lawyer. In another case<sup>20</sup>, the Court of Strasbourg has concluded that supervision by the side of an investigative judge of contacts of an arrested with his defending lawyer constitutes a severe interference to the rights of accused to be defended and in this case, strong arguments must be given to justify this. The limitations of contacts with defending lawyer of an arrested person were a further measure which asked for additional arguments. The Court of Strasbourg stresses that in this case we have transgressions of article 6/3/c of Convention, so of the right for proper time and possibility to prepare the defense and of the right to make self defense, or by the legal assistance freely chosen. The right of an individual

---

<sup>19</sup> Krombach vs France judged on 03.02.2001. In this case the German citizen Dieter Krombach was condemned in absentia in France, with 15 years of jail for the assassination not on purpose at his home in 1982, of his stepdaughter of French citizenship. The claimant claimed that his right had been negated for a legal representation in his judgment before the court of first grade, which condemned him in absentia on 9<sup>th</sup> march 1995 basing on article 630 of French Criminal Procedure Code. The claimant pretended that he had not been allowed to appeal his condemnation given in absentia.

<sup>20</sup> Lanz vs. Austria date 31.01.2004 (pepping of contacts of an arrested person with his lawyer has violated his rights to be defended) propounded Mr. Bernard Lanz, an Austrian citizen and on 21.06.1992 he was condemned by the district court of Graz for fraudulence in aggravating circumstances with four years and half of imprisonment. The claimant pretended that his right to be defended, guaranteed by article 6 of Convention, has been violated because of his contacts with his defender during the first two months of imprisonment held under the watchfulness of investigative judge.

to communicate in private with his lawyer has been considered by the court “like one of basic requirements for a due judgment”.

Also, the right for confidential appointments with a chosen lawyer does not depend from to a preliminary authorization by the side of a judge or prosecutor and otherwise we would have a violation of defense guaranteeing principle.

The guaranteeing court of fundamental rights and freedoms of individual in a case which impacts directly the processes held in Albania underlines<sup>21</sup> that based on the notion of a due judging, a person accused for a criminal offence, who does not want to make self defense, must be conferred the possibility to have a legal assistance by a lawyer chosen by him. If he does not have enough resources to face this assistance, the Convention recognizes him the right to have such assistance freely when the justice interests ask for it. (see *Campbell & Fell vs. United Kingdom*). Taking account the goal of Convention, to defend the rights which are practical and effective, the Court has ascertained continuously that, while states can not be responsible for every handicap of the lawyers assigned for legal assistance, in special circumstances of case, the competent authorities must take measures to ensure that the complaints enjoy the recognized right effectively. In this case, the Court must determine if the state is responsible for neglecting the lawyer chosen by the complaint, to complete his duty, in violation of rights of the accused, as by Convention. The Court also notes that in this case when the complaint does not want to be self defended and when the lawyer chosen by him did not fulfill the task, Albanian authorities had several chances in disposal. They could ensure that the lawyer selected by the remonstrant fulfills his task, or he could be replaced by another lawyer assigned primarily. Considering also the obligation of authorities according to article 6/1of Convention to end the process “within a reasonable term”, the circumstances of representation for the remonstrant during his judgment does not violate the right for ensuring legal assistance, like required by article 6/3 letter (c) of Convention.

---

<sup>21</sup> Case *Balliu vs. Albania* judged on 30/11/2005 concluded that during the criminal proceeding against the armed bands that operated during politic turmoil in Albania from march to September 1997, the prosecution of judicial district of Elbasan accused the claimant to be the organizer of the armed band, known as “Band of Kateshi”. The band trained like a military commando aimed to revenge for the assassination of band’s members in dispute with the other bands and it was financed taking money to various businessmen of that area. Mr.Taulant Balliu in year 1999 was charged at Court of Judicial District of Durres for five criminal offences, for assassinations, two assassinations in temptation, one for keeping military arms and one for foundation and participation to armed bands. The lawyer of claimant was present in the public sessions before court on 25<sup>th</sup> of June 1999, 13<sup>th</sup> of September 1999 and 10<sup>th</sup> of December 1999. Although during the period from 10<sup>th</sup> of December 1999 to 15<sup>th</sup> of February 2000, the lawyer did not ensured the legal assistance, and the claimants had not a lawyer assigned primarily. The claimant propounded that in the sessions of that period, the prosecution had called witnesses against him, had questioned the witnesses who were present and had presented other facts against him. The lawyer of claimant had brought two witnesses in favor of claimant, but they were not present in the trial.

## Conclusions

The right of defense is one of fundamental rights of defendant in a criminal process. As it was underlined in this survey, this right has its legal basis in European Convention of Human Rights and in Albanian legislation (Constitution and Code of Criminal Procedure). Notwithstanding a very important right for Albanian reality, in many cases this right is not perfectly guaranteed by the subjects of criminal process. In many cases or judicial processes, the right of defense is not ensured enough. That's why nowadays it is spoken a lot about the notion of ensuring "an effective defense", so that the defendant have a real access in his right of defense with a lawyer and the last one of course with the required professional standard of skills. However, there problems encountered during primarily assigning of legal defenders, without first giving the chance to defendants to give their approval. The reality considering also the low level of defense professionalism brings mainly as a consequence of, the evident violation of defendants' rights in a criminal process. But the question faced recently is even the absence of defendants' lawyers in judicial sessions, which has not been vindicated for reasonable motives. This leads to an unreasonable lasting of judicial processes in Albania. For all the reasons mentioned above, an immediate intervention needs to be made to the criminal procedural legislation, eventually to the criminal procedural code so that the defendants enjoy a more effective defense. The result would be the awareness of the great importance that legal defense has in criminal process and a maximal guarantee of defendant's rights.

## Bibliography

1. Decree no. 4277 date 20.6.1967 "About opening offices of judicial assistance"
2. Frowein/Peukert, Europäische Menschenrechtskonvention-Komentar (1996)
3. ECHR, Case Balliu vs. Albania of date 30/11/2005
4. ECHR, Case Krombach vs. France of date 03.02.2001.
5. ECHR, Case Lanz vs.Austria of date 31.01.2004
6. Supreme Court Vendim nr 5 date 15.09.2009
7. Supreme Court Vendim nr. Nr.25,datë 30.7.2003
8. Constitutional Court Decision no. 23/2005
9. Constitutional Court Decision no. 25 datë 30.7.2003,
10. Constitutional Court Decision no. 19 i vitit 2003
11. Gramozi M., Participation of defender during investigation of case by procedural organs, rights and duties, master thesis, Tirana 2008
12. Islami H.- Democratization of criminal procedural legislation Tirana 2000

13. Islami H;Hoxha A;Panda I.- Criminal Procedure Commentary republished, Tirana 2008
14. Code of Criminal Procedure of Albania
15. European Convention of Human Rights
16. Constitution of Albania
17. Law no.9109 date 17.07.2003 "For the profession of barrister in Republic of Albania"
18. Law no. 6069 date 25.12.1979 "Code of Criminal Procedure of Socialist Popular Republic of Albania
19. Paskali F, "Judgment in absence of defendant", Magazine Judicial Tribune no..4 i vitit 2006