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ORIGINAL PAPER

The obligation to motivate a judgement

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Abstract:
The paper aims to present the importance to motivate a judgment in order to assure the respect of the right to a fair trial as stated in the European Convention of Human Rights. The subject has been broadly addressed in the legal writings and is often reflected in the judgements of both national and international Courts, but the paper offers a refreshing and perhaps philosophical perspective, trying to point out that, in this particular legislative inflation, the judge tends to forget that the judgment is not an instrument to be delivered to the legal professionals, but the individuals that came in front of the Court to find a solution for their particular problem.

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The importance of the reasoning of the Court decision

It is common knowledge that in order to assure the respect of fundamental rights in a society we must introduce guaranties (Constant 1872 :150), and the main guardian of these guaranties is the judge. The judgment, as the final act of a lawsuit is a technical solution to a given problem, but its force and meaning can be easily considered a form of art. Law has been considered to be both a science and an art (Picard 1989:15) and the reasoning of the decision is one fine expression of art.

The quality of justice is a strong concern both at national and international level, as attested by the law, the international conventions, the resolutions and the recommendations on how to facilitate the access to justice trough the improvement and simplification of the procedures, reducing the workload of the Courts and directing the work of judges towards a purely jurisdictional activity (Jean, 2007).

The current times have made quite challenging for the judge to develop a reasoning, facing a legislative inflation (Deleanu, 2013:62) that makes it harder finding the relevant legal provision for the situation brought in front of the Court and applying it, producing a strong legal argument in order to present it to the parties reflecting the solution.

Legal provisions:

According to article 425 para. (1) of the Romanian Civil Procedure Code, „The judgement will contain: a) the introductive part, including the notes stated in article 233 para. 1 and 2(...); b) the reasoning, including the object of the request and the arguments of the parties in brief, the facts of the case as held by the Court based on the evidence, the factual and legal reasons that determined the ruling in the case, but also the ones that determined the rejection of some arguments; c) the operative part of the judgment (…)".

The obligation to motivate the ruling is considered to be part of the right to a fair trial granted by the European Convention on Human Rights and by the European Charter of Fundamental Rights. The European Court of Human Rights has had a constant case law (Application no. 57.808/00, Case Albina vs. Romania 28.04.2005), stating that the right to fair trial includes also the parties right to be effectively listen and this implies an obligation for the Court to offer an effective examination of the factual situation, the arguments and the evidences produced with the main purpose to correctly establishing the facts.

In this regard, with the purpose of assuring an effective protection of the right to a fair trial, the state is under the obligation to assure independent and impartial Courts and to create effective procedures. The reflection of the fulfilling of these obligations is the fundamental role that plays the judge in the correct administration of justice for the individuals.

The ruling is the final instrument of the lawsuit by which the Court issues its decision regarding the requests that parties brought in the case (Boroi & Stancu, 2017:616). A qualitative ruling is considered to be the one that leads to a good result, when this accomplishment is feasible for the judge, in a complete, clear and equitable manner.

The Consultative Council of the European Judges has previously stressed that the independence of the judicial system should be conceived as a right of the individual,

not as a privilege given to the judges, but as a guaranty for the protection of a certain right or interest.

The reasoning of the Court is the most important and the most extensive part of the judgement, being the heart of the trial itself. The reasoning is not exclusively a matter of stating legal provisions, but to apply them to the particular situation reflected by the facts of the case. In this matter, the reasoning should be the reflection of a symbiosis between the decision of the Court and the reality (Boroi & Stancu, 2017:616, apud. Ciobanu V. M., 1997:255).

Factors that can influence the quality of the reasoning

Being a human act, the quality of the reasoning of the Court can be influenced by a number of things because, a strong knowledge of the legal provisions is crucial, but it is not necessarily the key to a qualitative act of justice.

We should state that there some factors have been considered to influence the quality of the reasoning (United Nations, Office on Drugs and Crime, Commentary on the Bangalore principles of judicial conduct). Firstly, of course, the workload of each judge could interfere with his capacity to fulfill the duties, but also the quality of the auxiliary services and the material conditions. In order for a judge to complete the obligation to elaborate a qualitative ruling, extensive human and material resources are needed. The judge is required to profoundly study the case, along with produced evidence and the legal provisions appliable in the case.

Also, the legislation could be considered a factor in the quality of the reasoning. This can be explained from a double perspective: the quality of a law could determine more lawsuits and its provisions influence the solution given by the judge. A measure of prevention could be building a series of clear, accessible laws, easily understood by the individuals.

A more stringent problem of the Romanian legal system is the work volume of the judge. Statistics show that the number of lawsuits is arising year by year while the human resource has not grown, but on the contrary, has diminished (Report on the activity of the High Court of Justice, 2021). This is certainly o structural problem too complex to be discussed in this paper, but we could not stress enough that it is one of the big challenges faced by the judicial system, with strong effects on the obligation to assure the respect of the principle of the judicial procedure celerity. The state has the obligation to assure the respect of the right to a fair trial and this implies to assure the finalization of the lawsuit in an optimum and foreseeable time. In this term is included also the elaboration of the reasoning of the Court, as the final act of the judgement.

Even the European Court of Human Rights has stressed the importance of dealing with the case in an optimum and reasonable time, this being an aspect that could impair on its efficacity and credibility (European Court of Human Rights, Case of Vernillo vs. France, Judgement of 20 February 1991, para. 38; European Court of Human Rights, Judgement of 27 October 1994, Case of Katte Klitsche de la Grange vs Italia, para. 61).

Even the High Court of Justice has ruled that the state, as an administrator of the judicial system has the obligation to adopt the necessary measures to assure that the (criminal in that case, but also appliable for the civil matters) procedures take place in a proper manner in order to assure the right to a fair trial, referring to its duration (High Court of Cassation and Justice, Romania, Civil Chamber, Decision no. 1010 of 12 May 2021).

Key features of a reasoning of the Court

a. Clarity

One of the main characteristics of the rule of law is the one stating the clarity of the laws.

This implies that the law should be written in a clear, simple language aiming to be understood by all the subjects to which it applies. If a legislation contains unclarities, this could lead to different interpretation reflected in the process of decision making with different finalities. This most certainly creates a discrepancy on how a certain right or a certain legal situation is represented for each and every individual.

One could wonder how this can be fixed. Apparently, even if we have laws that state how to write laws, the system is still far from perfect. In this regard, in order to present some potential and viable solutions, at the European Union level, it has been adopted the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making, 2016). Even if this is not a compulsory act, it offers an insight stressing that as a matter of principle before adopting a law, the legislator has to evaluate its impact, to previously consult the subjects of the law with the purpose to offer a qualitative legislation.

These principles also apply in the case of the reasoning of the Court, one of the main characteristics of the reasoning being its intelligibility, meaning that it should be written in a simple, clear manner, accessible to every person reading it. This is not reflected exclusively in its wording, but also in its structure. Even if the judge is entitled to elaborate in a personal manner this final act of the judgement, the law stipulates compulsory elements as: the facts of the case, the evidence that determined to adopt the solution, the reasons why and why not the Court has validated an advocacy of the parties, both the complainant and the respondent. This is also an important point to discuss because, event if the lawsuit is brought in front of the Court by the applicant and this is the first one presenting his arguments, also the respondent builds the case both when he defends himself and he counterclaims the debated right.

b. Explaining why

No exception made, the ruling has to be motivated and the judge has to wisely use its time to study the case-file and relevant legislation in order to offer a qualitative act.

The wording of the reasoning must be clear and unequivocal, containing no contradictions and completely reflecting the logic and judicial mechanism developed by the judge to deliver the solution.

The complete reasoning of the Court is important not only for the individual receiving the judgement, but also serves as a guaranty against the arbitrary. This implies that an independent and impartial judge, after counterbalancing all the arguments has decided, in a just and objective manner.

The ruling is not an abstract act, serving to a purely scientific purpose, but an act addressed to the parties involved in the litigation, that are not legal professional, but mainly individuals in search of a resolution for a private dispute. Considering this aspect, we can say that the clarity and the precision of the ruling are a reflection of the

quality of the act of judgement for the individuals. In this respect, we cannot stress enough that the ruling has to completely respond to the requests made by the applicant and the defensive arguments made by the respondent.

Another important aspect is that the reasoning should be a reflection of the general principles of law of those principles deriving from the right to a fair trial as stated in the European Charter of Fundamental Rights and in the European Convention on Human Rights.

The reasoning must be specific, in the sense that it does not have to contain aspects that are not relevant for the case, on the contrary, the focus has to be held on those facts and arguments that were relevant for the legal and just solution given in the case. There are cases when the parties often include in their arguments aspects that are not relevant for the case or even legal provision that are unapplicable. In this situation, the judge has the duty to respond only to the relevant arguments that influence the solution given. The reasoning is not a law lesson, so, in our opinion, the judge should refrain from delivering long, extensive judgements reflecting purely legal information, not connecting it to the particularities of the case, but preserving its relevance in relation with the facts of the case.

Moreover, the judge has to find the just balance between the need to have a short and concise ruling and the imperative to assure a good understanding of the reasoning that led to the solution given in the case.

Keeping this in mind, we consider that the reasoning is not a matter of quantity, but a matter of quality. The judge is under the obligation to highlight the important aspects of the case, being under no obligation to offer a specific response to every argument brought by the parties (European Court of Human Rights, Boldea vs Romania, Judgement of 15 February 2007, para. 29; European Court of Human Rights, Helle vs Finland, Judgement of 19 February 1997, para. 60), unless this in especially relevant to underline the reasoning of the Court. This should not lead us to the conclusion that the Court order should be excessively short, lapidary, lacking enough arguments or unfit to prove that the judge has particularly considered the facts of the case and the relevant arguments. These aspects here stated are truly important in order to demonstrate that the solution given to the lawsuit is the result of logical-legal process of analysis held by the judge.

It is clear from the constant and well-settled case-law of the European Court of Justice that the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments stated by the parties to the case. But, considering these facts, we must underline that the Court may not simply omit to address, expressly or implicitly, the arguments given by the parties to sustain their position, which are not plainly irrelevant, or distort the substance of those arguments. This kind of omission is to be considered a failure to state reasons, infringing the duty to state reasons and a breach of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union (European Court of Justice, Opinion of Advocate General Kokott in Bayer CropScience and Bayer v Commission C 499/18 P, EU:C:2020:735, point 89). It is well known that the reasoning can be implicit respecting the one condition that the person concerned is to know the arguments and it provides the higher Court with the arguments and sufficient material to excursive its power of review (European Court of Justice, Judgments of 26 May 2016, Rose Vision v Commission C 224/15 P, EU:C:2016:358, paragraph 25 and the case-law cited), and of 11 May 2017, Dyson v Commission (C 44/16 P,

EU:C:2017:357, paragraph 38 and the case-law cited). It has been also established that the Court is not obliged to define its position on matters which are plainly irrelevant or to anticipate the potential objection that the parties could claim (European Court of Justice, Judgment of 6 November 2012, Éditions Odile Jacob v Commission C 551/10 P, EU:C:2012:681, paragraph 48 and the case-law cited).

When talking about a case handled by more than one judge, especially when ruling on remedies, there is a possibility that the decision is not taken unanimously. Article 426 of the Civil Procedure Code offers the solution for this situation stating that the outnumbered judge is under the obligation to elaborate its one reasoning on the case, along with the proposed solution. This is also the case when, even if all the judges agree on the solution, one of them has ruled in that way based of different reasons. This last is under the obligation to draft its own reasoning, explaining what was the basis of its decision.

We consider this is an important reflection of the obligation to motivate the ruling, because the parties are entitled to observe the complete reasoning that led the Court to give the sentence. Also, drafting the separate opinion could help the losing party to conceive the appeal basing its own arguments on the reasoning that previously impeached a judge to rule against him.

The Romanian Constitutional Court (Constitutional Court, Romania, Decision no. 33/2018 on the constitutionality of the modifying law of the Law no. 304/2004 on the judiciary organization) has previously considered that the reasoning of the Court is an inherent act of judges' function and constitutes its mere independence so it cannot be transferred to a person who did not take part in the process. In this regard, the Constitutional Court considered not only the premise for a good understanding of the decision but also a guaranty of its acceptance by the parties. The Court also stressed that the reasoning is an essential guaranty of the judge's independence and impartiality, but also a reflection of the quality of the act of justice.

The Civil Procedure Code has offered legal instruments for the situation when a ruling lacks motivation, regulating a case of appeal trough article 488 para. 2 point 6. Basically, the hypothesis of this reason to appeal are many: the ruling of the Court does not encompass the compulsory the necessary elements of the ruling, the ruling contains conflicting, unclear and alien from the nature of the litigation. Also, the reason regulated by article 488 para. 2 point 6 Civil Procedure Code can be used as a general reason the appeal the decision, not only in that particular case.

The Court ruling in the appeal has also the obligation to effectively examine the arguments made by the parties in their appeal, in order to deliver a legal and solid argument. In this procedural stage, the judge is obliged to analyze the arguments brought by the parties in relation with the reasoning of the Court in order to demonstrate that the reasoning of the first Court is legal and thorough.

We must also mention that the reasoning of the Court can easily lead to the voluntary execution of judgements. When the reasoning is clear, coherent and complete, this can have a convincing effect for the parties and this involves lower chances to appeal it in front of the higher court, a low rate of the judicial expenses and a more relaxed judicial system that is not overwhelmed with cases.

Is the judge challenged to deliver more complex decisions?

The role of the judge is becoming more and more challenging every day. The legal system, from the legislative acts perspective, is larger and larger as a consequence

of the will to encompass solutions for the new and growing dynamic of the social relationships of the individuals.

With no doubt, the two main aspects that led to the growth of the number of registered litigations in the last years are the legislative inflation and the new dynamic of the social relationships of the individuals.

The new dynamic of the social relationships of the individuals requires the judge to apply and to interpret multiple legal provisions in order to present them as base for the solution given in the mater. This is a particular challenging activity because the judge has to find a balance between the scientific part of the reasoning and the necessity to maintain it clear and easy to understand for the parties, in order to offer an effective protection to the right to a fair trial.

Another question that arises is to determine if the complexity of the reasoning could have an impact on how it is perceived by the parties, considering that usually they are not law professionals. We admit that this could be a problem and it is mainly left to the judge to mediate between the need to offer the scientific content and context and the need to offer to the parties convincing and relevant arguments to which they can relate.

The reasoning of the Court does not have to lose the scientifical background, but also keeping one of its purposes: serving the individual, justice being made through and for the individual.

One could wonder what are the next steps that the judicial system should follow in order to help the judge fulfill his duty to give reason for the decisions taken. We consider that one of the major problems of the judicial system in the increasing number of cases, compared to the number professionals in the system, so the actions should be focused in two ways. The one that is difficult to control: trying to decrease the number of cases, or the one that is an easy, but more expensive fix, improving the human resource by completing the staff.

The motivation of the decision is fundamental to demonstrate the efficacity and efficiency of the judiciary system. In this regard, the reasoning of the Court has many facets: it is an obligation for the Court, and a right for the parties (Dinu, 2014).

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