UNIVERSITATEA LUCIAN BLAGA DIN SIBIU

Doctoral School of Social Sciences

PhD field: Law

THESIS

REASONING OF COURT DECISIONS, GUARANTEE OF THE RIGHT TO A FAIR TRIAL

SUMMARY

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SIBIU 2024

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National courts must represent the main guarantors of the right to a fair trial. One of the main forms of manifestation of the right to a fair trial is the very reasoning of the decisions handed down by the domestic courts.

Statistical data published at the end of 2022 by the European Court of Human Rights still places Romania among the states with the most cases pending before the court in Strasbourg, by reference to the country's population. Also, Romania ranks fifth among the countries with the most convictions at the European Court of Human Rights in the period 1959-2022.

Given that in 2020 the court in Strasbourg awarded, in the cases pronounced against Romania, compensation of almost 35,000,000 euros, noting the violation of the rights protected by the European Convention on Human Rights, an amount close to the compensations awarded in the entire period 2011-2019 , a detailed analysis is required regarding the respect of human rights in our country, but also the identification of areas in which the assimilation of human rights protection standards is still deficient.

Taking into account the fact that the national executive has not carried out the necessary steps regarding the identification of the areas in which the adoption and implementation of the standards developed by the court in Strasbourg, in terms of the protection of human rights, are required, we consider the intervention of the specialized doctrine necessary to identify and bring to public knowledge of these fields.

In this paper, we will try to carry out an analysis in terms of the respect by the national courts of the right to a fair trial regarding the reasoning of court decisions.

Moreover, given the qualification of the European Convention on Human Rights as a "living instrument" for the protection of human rights, a qualification made even by the court in Strasbourg, we appreciate that a continuous training of legal professionals in this matter is required.

In the framework of this work, we will support the continuous training of magistrates in the aspect of assimilating human rights protection standards, continuously developed by the European Court of Human Rights, thus being able to ensure the respect of fundamental rights in the processes pending before the Romanian courts.

The title of the present paper - Reasoning of court decisions, guarantee of the right to a fair trial - aims to capture the essence of the reasoning of court decisions, namely the fact that

this is a guarantee of respect for the right to a fair trial. Also, a large part of the researched object can be seen from the content of the title.

Regarding the current state of knowledge in terms of the reasoning of court decisions as an integral part of the right to a fair trial, we appreciate that the topic proposed for research has not benefited from a comprehensive analysis and development in domestic law, most authors limiting themselves to emphasizing the principles developed by the European Court of Human Rights in its jurisprudence, without contributing to the development of this subject.

The doctrine[1] addresses the issue of the motivation of court decisions within the broader theme of the right to a fair trial, an indispensable element of scientific works that address the rights guaranteed by the European Convention on Human Rights.

From the previously mentioned studies, we can note that the reasoning of court decisions is a component of the right to a fair trial which, even if it does not expressly result from the Convention, is in accordance with its spirit, and art. 6 paragraph 1 of the Convention imposes on the courts the obligation to give reasons four court decisions.

The specialized doctrine states that the obligation to give reasons for decisions is expressly provided by the Convention for the decisions of the European Court, thus not being just an aspect of the spirit of the Convention[2].

The source of the obligation to give reasons for court decisions is identified in the right of any party, in the process, to present to the judge its observations and arguments, in conjunction with the right of the parties, recognized by the European Court of Human Rights, to have these observations and arguments effectively examined, emphasizing that the obligation to give reasons for decisions is the only means by which the observance of the aforementioned rights can be verified[3].

The present study aims to address the issue of the motivation of court decisions from the perspective of judicial practice, but also from the aspect of the assimilation in domestic law

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[1] C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole.* ediția a II a, Ed. C.H. Beck, București, 2010, pp. 512-515; D. Bogdan, M. Selegean, *Drepturi și libertăți fundamentale în jurisprudența Curții Europene a Drepturilor Omului*, Ed. All Beck, București, 2005, pp. 144-145; R. Chiriță, *Convenția europeană a drepturilor omului. Comentarii și explicații*, Ed. C.H. Beck, București, 2008, pp. 331-333; B. Selejan-Guțan, *Protecția europeană a drepturilor omului,* ediția a 5- a, Ed. C.H. Beck, București, 2018, p. 156; J.F. Renucci, *Tratat de drept european al drepturilor omului,* traducere în limba română. Ed. Hamangiu, București, 2009, pp. 477-480.

[2] B. Selejan-Guțan, *Protecția europeană a drepturilor omului*, București, Ed. C.H. Beck, 2011, p. 149.

[3] *Perez c. France* (2004), parag 80.

of the standard developed by the European Court of Human Rights in this matter, an aspect that has not been the subject of another internal study.

Moreover, the reference works in this field, as well as most of those in the field of human rights, were published before the entry into force of the current codes. In the meantime, the national legislation has undergone changes in the field proposed for research, considering the entry into force of the current codes, but also the changes that have occurred, especially in the field of reasoning of judicial decisions pronounced in criminal matters.

Also, the jurisprudence of the European Court of Human Rights is in constant evolution, the topic under debate also being the subject of more recent cases,[4] and the issue of the timing of the reasoning of court decisions has also come under the recent jurisprudence of the Constitutional Court of Romania [5].

Even if, in other scientific researches[6], the topic of the right to a fair trial was addressed, these works did not analyze the aspects proposed in this paper, respectively they did not present the role of the reasoning of court decisions as an integral part of the right to a fair trial.

There are published studies on the way in which the Court in Strasbourg influenced the jurisprudence of different states[7], an influence which, inevitably, is also transposed into the way of reasoning of court decisions, an aspect which has not yet been researched in domestic doctrine and which, we appreciate that, can be incorporated into this work.

The need to approach the topic is determined by the lack of specialized works, which deal, in particular, with this subject, as well as by the need to make known the specific obligations regarding the reasoning of court decisions, as they are developed by the European Court of Human Rights.

In this paper, we propose to answer the following main objectives:

a) if the reasoning of court decisions represents a guarantee of the right to a fair trial, provided by art. 6 of the European Convention on Human Rights and what is its place and role in the fair trial;

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[4] *Hansen c. Norway* (2014), parag. 75-84; *Lhermitte c. Belgium* (2016), parag. 67*; Moreira Ferreira c. Portugal nr. 2* (2017), parag. 85*; Gerom Real Estate S.A. c. Romania* (2021), parag. 35; *Zayidov c. Azerbaijan no. 2* (2022), parag. 91*; Paun Jovanović c. Serbia* (2023), parag. 108.

[5] Decision no. 233 of April 7, 2021 of the Constitutional Court of Romania, published in the Official Gazette of Romania of May 17, 2021.

[6] C.F. Costaș, *Dreptul la soluționarea cauzelor într-un termen rezonabil.* Ed. Universul Juridic, București, 2014;

[7] A. Stone; H. Keller, *Assessing the Impact of the ECHR on National Legal Systems,* Yale Law School, 2008.

b) what is the reasoning of court decisions, what are the factors that have an influence on the content of this reasoning and whether it is still necessary in relation to current realities;

c) what is the standard developed by the Strasbourg court in terms of the reasoning of court decisions and its evolution over time;

d) if the standard regarding the reasoning of court decisions, as a guarantee of the right to a fair trial, is known and respected in domestic law.

The first objective, that of establishing whether the reasoning of court decisions represents a guarantee of the right to a fair trial and what is its place within the fair trial, will be achieved in the second chapter where we will make a synthesis of the guarantees that make up art. 6 of the European Convention on Human Rights and the jurisprudence of the Strasbourg court, a summary that can provide an overview of the notion of a fair trial and which can be a starting point in deepening the right to a reasoned decision as a guarantee of a fair trial.

To achieve this objective, we will analyze the provisions of art. 6 of the European Convention on Human Rights, the jurisprudence of the Strasbourg court in the field of the right to a fair trial, but also national and international legal regulations in the field.

The deepening of this objective will also be achieved in the third chapter, where we will detail the conventional standard developed by the European Court of Human Rights in the field of reasoning of court decisions.

In the framework of the **second main objective** of the paper, we will try to answer the question of what constitutes the reasoning of court decisions and whether it is still necessary in relation to current realities, at the same time focusing on the factors that have an influence on the content of this reasoning.

To answer this question, we will start by defining the notion of reasoning of court decisions, we will identify its purpose and we will try to capture the arguments that support, but also those that deny the need for the reasoning of court decisions.

In achieving this objective, we aim to identify the sources of the obligation to give reasons for court decisions and whether the arguments supporting the existence of the obligation to give reasons for court decisions are stronger than those against this obligation.

At the same time, we will try to present how the type of legal reasoning adopted, the separate opinions and the disciplinary liability of the magistrates shape the court decision and contribute to respecting the parties' right to a fair trial.

The third main objective of the paper is the identification of the standard developed by the Strasbourg court in the field of reasoning of court decisions, analyzing the entire evolution of the jurisprudence of the European Court of Human Rights in the matter of the reasoning of court decisions.

Within this objective, we will also dwell on the way in which the jurisprudence of the Strasbourg court has shaped national legislation and jurisprudence, especially in the aspect of the reasoning of court decisions, also looking at a comparative view with other European states.

Last but not least, we aim to establish whether the conventional standard, in terms of the reasoning of court decisions, is known and respected in the national judicial system.

Within this objective, we will analyze the moment when the jurisprudence of the European Court of Human Rights makes its presence felt for the first time in the judgments issued by the High Court of Cassation and Justice.

At the same time, we will present the way in which this standard was assimilated, both within the legislation and in the jurisprudence of the national courts and the evolution of this assimilation.

In order to achieve this objective, we propose to subject to analysis the judicial decisions in which it was found, in the appeals, that the decision of the first instance was not reasoned, but also those in which the appeals were based on the lack of reasons, but the criticisms under this aspect were rejected.

Following this research, we will present the existing legislative and jurisprudential solutions, in the situation where the courts of judicial review find a violation of the obligation of the first court to reason its decision.

Within this objective, we will also dwell on the reasons that have influenced a slow assimilation of the jurisprudence of the Strasbourg court in terms of the reasoning of court decisions and we will try to offer solutions for the assimilation of this standard as completely as possible, both in national legislation, but especially within the judicial system.

The conclusions will try to highlight the measures that can be taken, both by the legislative and judicial power, for the complete assimilation of the standard regarding the reasoning of court decisions, as it was developed in the jurisprudence of the Strasbourg court, with the aim to avoid violation of this standard by national courts.

Knowing, assimilating and applying the jurisprudence of the European Court of Human Rights, in the conditions of the current reality in which the courts are, is not an easy thing. In recent years, the judicial system has been in many moments of "crisis", but the current situation is an alarming one. During the COVID-19 pandemic, no admission to the magistracy were organized, during which many positions of judges and prosecutors became vacant. At the same time, starting from 2022, there has been a tendency to increase, by up to 30%, in the number of newly registered cases at the first court level.

Considering this reality, we appreciate that a close collaboration is required between the academic environment, the judicial system, the other participants in the execution of the act of justice and the legislator, to ensure that human rights are respected and that there is no regression in this regard.

The research objectives propose an innovative way of approaching the proposed topic, starting from the guarantees offered by the European Convention on Human Rights, the Romanian Constitution and the internal legislation, in terms of the reasoning of court decisions and reporting on how they were assimilated, in judicial practice national, in concrete cases.

In carrying out the research activity, we propose the use of the two components of the research, respectively the descriptive and the empirical component, able to lead to the achievement of the mentioned objectives. For the purpose of explaining and rendering certain mechanisms, debating different concepts and, last but not least, proposing lege ferenda solutions, we will mainly use an explanatory approach.

The most relevant methods that we will use during the work are: document analysis, observation, the comparative and historical method as well as the case study. The diverse range of research methods aims to capture the research objectives from multiple perspectives.

Document analysis and observation will help us establish the main objectives of the paper, namely, whether the reasoning of court decisions is a guarantee of the right to a fair trial and whether this guarantee is protected and respected in national legislation and by the courts. We will use the historical research method, trying to identify and present how the right to a fair trial and the obligation to give reasons for court decisions have emerged and evolved in both international and national law.

Last but not least, the analysis of the judgments handed down by the domestic courts will help us to achieve another objective of this work, namely to establish how the national

courts have assimilated the conventional standard, in terms of the reasoning of the court decisions.

Regarding the theoretical and practical importance of this work, we appreciate that this work can contribute to a better knowledge, in the legal environment, of the standard developed by the European Court of Human Rights, in the researched field and why not, it can contribute to eliminate any legislative or jurisprudential deficiencies found.

Moreover, the present paper will stand out, in relation to previous research, given that it will not limit itself to presenting only the existing rules in the researched field, but will examine how the national courts have assimilated these rules.

We appreciate that the proposed theme is of real interest in the legal environment, the development of such a work will be welcome among legal professionals.

The introductory chapter includes the preliminary considerations, regarding the topic proposed for research, the treatment and justification of its approach, the objectives and the research methodology. In this chapter, we will also analyze the importance of approaching the theme, both from a theoretical and practical point of view.

Chapter one will include a presentation of the right to a fair trial as a whole, as well as the instruments developed, globally, to defend this right. We will also focus on the guarantees provided by art. 6 of the European Convention on Human Rights and how the European Court of Human Rights, through its jurisprudence, developed these guarantees. This chapter will also contain an analysis of how the right to a fair trial is regulated in national legislation.

The second chapter of the work represents an introduction to the main objective of this work, namely the reasoning of court decisions. In this chapter, we will define the notion of reasoning of court decisions and present the arguments for and against the reasoning of court decisions, as well as the elements that guarantee effective reasoning.

The third chapter of the work is devoted to the specific obligations regarding the reasoning of court decisions, as they result from the jurisprudence of the European Court of Human Rights.

First of all, we will start by presenting the scope of this guarantee, answering the question: "What are the court decisions that fall under the protection of art. 6 paragraph 1 of the Convention and whether the notion of a court, which has the obligation to give reasons for its

judicial decisions, refers only to the courts, defined by national legislation or is an autonomous notion", as shown by the European Court of Human Rights, on different occasions.

Another aspect on which we consider it useful to stop within this chapter is that of the reasoning of court decisions, by a judge who was not part of the panel. The European Court found the violation of art. 6 paragraph 1 of the Convention in such a situation, therefore we consider that it is necessary to examine the provisions of the relevant domestic law, so that it can be detected whether our legislator was concerned with preventing such situations.

We consider it necessary to also examine what are the limits within which the European Court of Human Rights can assess the reasoning of court decisions by national courts. For example, national courts have the function of interpreting domestic law, the Court being limited in this field, as well as in that of verifying factual errors in court decisions, in this context, being able to discuss, including the extent to which some alleged mistakes, in the application of the law or in the establishment of the factual situation, which could be noticed in the judgments, could be of a nature to reflect a possible violation of the obligation to give reasons.

Last but not least, we will analyze the extent of the obligation regarding the reasoning of the court decisions depending on the specifics of the judgment rendered, i.e. if it was rendered in the first instance or in an appeal.

The fourth chapter of the paper will be dedicated to the way in which the national judicial practice has assimilated the guarantees conferred by the European Convention on Human Rights and the standard of the European Court in terms of the reasoning of court decisions. In this chapter, we will also present the impact that the jurisprudence of the European Court of Human Rights had on the evolution of domestic law and national jurisprudence, of course, in terms of the reasoning of court decisions.

The last chapter will be dedicated to the conclusions and proposals of the law ferenda, in the conditions of the current reality.

In this chapter, we will propose, in particular, the amendment of the legislation regarding the resolution of cases, recommending that the pronouncement of the solution, also in civil matters, take place only when it is justified. In this way, numerous errors or omissions that the judge may discover during the reasoning of the decision can be avoided. In such a situation, in the current legislative stage, the judge no longer has any leverage to modify the solution, being forced to justify a solution that he knows is wrong.

Considering the lacunar regulation of the field of reasoning of court decisions in the national legislation, to which are added the multiple convictions at the European Court of Human Rights, but also the fact that, in this field, the courts of judicial review, in the absence of an internal regulation, are forced to refer only to the standards developed by the European Court of Human Rights, in terms of the reasoning of court decisions, we consider it necessary to amend the legislation, a completion that includes concrete elements, in terms of the content and extent of the reasoning of court decisions. The legislative intervention can start from the standard developed by the European Court of Human Rights in this field, Romania not being the first country to amend its legislation regarding the reasoning of court decisions following the decisions of the European Court, Belgium doing so many years ago, in what concerns the reasoning of the decisions handed down by the courts with juries.

We also support the taking, by the legislator, of some urgent measures in order to comply with the legal deadlines for justifying court decisions, especially by increasing the schemes of the courts, which face a heavy load. Reasoning of court decisions with very long delays, in some cases over a year, can lead to the deprivation of their legal effects, but also to the increase of the court's own load.

Key words: reasoning of court decisions, the right to a fair trial, positive obligations, human rights.