

THE JUDICIAL DECISION IN CRIMINAL PROCEEDINGS – COMPLEX PROCEDURAL AND PROCESSUAL ACT AND GUARANTEE OF A FAIR TRIAL

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Abstract

The judgement is the most complex substantive and procedural act in Romanian criminal proceedings; it is regulated by the Criminal Procedure Code and also by the secondary legislation. Moreover, the judgement is an act of legal culture that illustrates, on the one hand, how the criminal proceedings have been carried out during the criminal investigation, the preliminary chamber, in the first instance and the appeal. On the other hand, the arguments presented, the ability of the drafters to review and summarise, the legal language, and the references to national and European case law are able to highlight, both to the parties and to society, the interpretation and the application of the law, specifically of those relevant provisions, by reference to the evidence presented, thus enabling awareness of violations, the rehabilitation of perpetrators, and ensuring the protection of society.

Keywords: judgement, substantive act, procedural act, types of judgements, act of legal culture

1. Introduction

Romanian criminal proceedings in the trial stage, both in the first instance and in the ordinary and extraordinary appeals are a set of judicial activities that is completed by an act with a fundamental legal value – the judicial decision, which represents a processual and procedural act, reflecting, in a unitary manner, the judgement as a whole.

At the same time, the judicial decision is a guarantee of a fair trial, the criteria defining it by reference to the legal content in the domestic law are also codified by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right to a fair trial and the case law of the European Court of Human Rights.

Types of judicial decisions in the framework of criminal proceedings are regulated by the Criminal Procedure Code,

and reflect, depending on their specificity, the deliberation and the delivery thereof.

The Conventionality Block and Opinion No. 11 of the Consultative Council of the European Judges specifically highlight peculiarities that complement the domestic legal framework, in a standard, concerning verification of the reasoning of the decisions delivered by the domestic courts, and formal aspects thereof, as guarantees of a fair trial.

Moreover, the judgement is an act of legal culture that highlights the ability of the drafting judge or of all members of the formation to review and to summarise the evidence, to reply in a critical manner to the defences presented and to the applications put forward, with the arguments being drafted in proper legal language, which leads to a full understanding of how the law is interpreted and applied in the case brought before the court.

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It is also important to emphasize that the judgement, besides playing an important role in the resolution of the criminal law relationship and raising awareness among the parties of breaches of the law, also plays an important role in the protection of the society. This is because it is intended to draw attention to when the criminal offences that are committed are serious, and to the response by judicial authorities, which, in compliance with all procedural safeguards provided for by law, have resolved the criminal law dispute by means of a solution that instils confidence that justice is independent, impartial, professional, and respects the general interest of the community or of society.

Depending on its nature, the subject-matter of the case and the level of jurisdiction, but also when it has to ensure an unitary case-law, the criminal law judgement represents the highest form of manifestation of the principle of legality, being the expression of certain constants of legal institutions, on the one hand, while on the other, providing the legislative authority with interpretation arguments, in order to amend the regulatory acts by reference to the reality of the situations.

It must be also emphasized that the criminal law judgements are intended to contribute to a judicial dialogue, through the component of European and international judicial cooperation when they provide the arguments for specifically regulated applications, such as, inter alia, European arrest warrants, extradition requests, the

recognition of judgements, the transfer of convicted individuals, reflecting how the principle of mutual trust and European case law have been regulated and accepted.

The role and the importance of the consequences of the judgement, as substantive and procedural act of Romanian criminal proceedings, clearly follows from the paragraphs above.

In this study, we aim to examine the judicial decision in Romanian criminal proceedings, as a processual and procedural act, which plays a fundamental role in ensuring the observance of the rights and the obligations of the parties, with significant assumption of the judge's responsibility effectively giving content to the phrase 'Nulla Justitia Sine Lege'.

2. The notion of 'judicial decision'

In the legal doctrine, the judicial decision has been examined both as a processual act and a procedural act.¹

Regardless of the composition of judicial panels (judge of rights and freedoms, preliminary chamber judge, judge of first instance or judge in extraordinary appeals), at the end of the trial stage, the factual and legal issues are settled by a reasoned act from a lawfulness perspective and/or from a lawfulness and a well-foundedness perspective.

In a broad sense, the judicial decision is a processual act, by which the court will decide on both the criminal case,² and on all

¹ Ion Neagu, Mircea Damaschin, *Criminal Procedure Treatise, Special Part*, 3rd edition, revised and supplemented (*Tratat de procedură penală. Partea specială*, ediția a 3-a, revăzută și adăugită), Universul Juridic Publishing House, Bucharest, 2021, p. 215-216; Nicolae Volonciu (coord.), *The Criminal Procedure Code commented*, 3rd anniversary edition, revised and supplemented (Codul de procedură penală comentat, ediția a 3-a aniversară), Hamangiu Publishing House, 2017, p. 1071-1073.

² Ion Neagu, Mircea Damaschin, the Treatise quotes Vintilă Dongoroz (coord.) et alii, *Theoretical explanations of the Romanian Criminal Procedure Code. Special Part (Explicații teoretice ale Codului de procedură penală român. Partea specială)*, Romanian Academy Publishing House, Bucharest, 1976, p. 150; I.

the other matters arisen during the trial stage and in other stages of the criminal proceedings.

In a narrow sense, the judicial decision represents the final act of the court, by which it ends the trial stage.³

The legislator has regulated the types of rulings in Article 370 of the Romanian Criminal Procedure Code.⁴

Thus, the legal framework concerning the type of judicial decisions represents a national standard, foreseeable and predictable, an essential requirement for a fair trial. This is because there is a legal provision regulating the decisions delivered by the courts of the Romanian judicial

systems and, consequently, they may be checked by reference to the conventionality block by the European contentious court.

Moreover, as a processual act, the judicial decision reflects the deliberation process of the judicial panel. Therefore the provisions of Article 370 of the Criminal Procedure Code have to be examined in relation to the provisions of Article 391-407 of the same Code⁵.

The complex legal framework that the legislator wanted to regulate in respect of the judicial decision reveals not only its purpose of having ample and detailed legal provisions regarding several stages, namely at deliberation, at pronouncement and the

Neagu, *Romanian Criminal Procedural Law*, vol. II (*Drept procesual penal român*, vol. II), University of Bucharest Publishing House, 1979, p. 104.

³ The cited work quotes Vintilă Dongoroz, *Criminal Procedure Course (Curs de procedură penală)*, 1942, p. 298; Traian Pop, *Criminal Procedural Law (Drept procesual penal)*, vol. IV, National Publishing House, Cluj, 1948, p. 247; Nicolae Volonciu, *Criminal Procedural Law (Drept procesual penal)*, Didactic and Pedagogical Publishing House, Bucharest, 1972, p. 331; Ilie Stoenescu, Savelly Zilberstein, *Civil Procedure Law, General Theory (Drept procesual civil. Teoria generală)*, Didactic and Pedagogical Publishing House, Bucharest, 1977; Mircea N. Costin, Ioan Leș, Mircea Șt. Minea, Dumitru Radu, *Civil Procedural Law Dictionary (Dicționar de drept procesual civil)*, Scientific and Encyclopaedic Publishing House, Bucharest, 1983, p. 242-243.

⁴ Article 370 of the Romanian Criminal Procedure Code in force (the Law No. 255/2013 implementing the Law No. 135/2010 on the Criminal Procedure Code and amending and supplementing certain regulatory acts containing criminal procedure provisions in the Official Gazette of Romania, No. 515/14 August 2023, with the subsequent amendments and supplements) (1) The ruling wherein the case is settled by the court of first instance or wherein the court of first instance dismisses the case without solving it shall be called a sentence. The court shall issue a sentence in other situations as well, as provided by the law. (2) The ruling wherein the court makes a decision regarding the appeal, the appeal for review and the appeal in the interest of the law shall be called decision. The court shall rule in a decision in other cases as well, as provided by the law. (3) All the other rulings reached by courts throughout the proceedings shall be called court resolutions. (4) The development of the trial in the court room shall be recorded in a court resolution that shall comprise: a) the day, the month, the year and the name of the court; b) the mention whether the court session was public or not; c) the surnames and first names of the judges, prosecutor and clerk; d) the surnames and first names of the parties, the counsels and the other persons who take part in the proceedings and who were present in the trial, as well as the missing persons, emphasizing their legal standing in trial and the mention concerning fulfilment of the procedure; e) the offense for which the defendant was sent to trial and the legal texts that regulate it; f) the evidence that had been the object of adversarial debates; g) the motions of any other nature, developed by the prosecutor, the victim, the parties and the other participants in the court proceedings; h) the prosecutor's, the victim's and the parties' conclusions; i) the measures taken during the session. (5) The court resolution shall be developed by the clerk no later than 72 hours since the completion of the court hearing and shall be signed by the judicial panel president and the clerk. (6) When the ruling is issued on the day when the court hearing took place, no court resolution thereof shall be developed.

⁵ Section 2 Court deliberation and judgment: Article 391 Adjudication of the case, Article 392 Deliberation; Article 393 Object of the deliberation; Article 394 Reaching the decision; Article 395 Resuming the court investigation or the debates; Article 396 Settling the criminal proceedings; Article 397 Settling the civil action; Article 398 Judicial expenses; Article 399 Provisions concerning the preventive measures; Article 400 Minutes; Article 401 Content of the court ruling; Article 402 Contents of the introductory part, Article 403 Content of the narrative description; Article 404 Contents of the operational part; Article 405 Pronouncing the ruling, Article 406 Writing and signing the ruling; Article 407 Notifying the ruling.

content of the judicial decision in the first instance, thus conferring to the final act its due consideration as a procedural act as well, with a significant implications for the parties to the proceedings, but also for society.

In other words, the judicial decision delivered at the end of the trial in the first instance, is its corollary, reflecting its reasoning or considerations, in clear and concise legal language, but understandable to those to whom it is addressed, the resolution of the case. This includes reference to the evidence examined, so that the arguments presented show how the facts or the factual bases and the legal framework in which it fits is evident. Specifically this involves analysing the conditions of objective and subjective typicality of the offences committed in the forms of participation provided by law. When the judge is convinced, beyond any reasonable doubt, he will justify the conviction decision and operation to individualise penalties, referring to the specific situation of the main, complementary, and accessory penalties, the manner of executing the punishment, then addressing the civil action in the event of an offence resulting in damage, other measures, and judicial expenses.

By its structure, the judicial decision must also highlight the stages of the proceedings and how the measures concerning the hearing of the parties, of the injured party, of the witnesses as well as technical evidence. It should also address the resolution of other requests made during the trial, such as: the request for a reference to the Constitutional Court concerning the unconstitutionality of a criminal or of a criminal procedure rule or to the Court of Justice of the European Union concerning the interpretation of national provisions by reference to Community decisions or to the

High Court of Cassation and Justice for a preliminary ruling to resolve legal issues.

In the cases where either the Court of Justice of the European Union or the High Court of Cassation and Justice have been consulted, the decisions rendered by these courts, which have clarified issues related to the interpretation of Community norms or of legal terms or provisions, whether general or specific, related to the substance of the matter, shall be applicable throughout the examination of the substance of those cases. Consequently, the final judgement will reflect a judicial dialogue among multiple courts, whether exclusively national, or European and national, thereby imparting a complex character nature to the rendered judicial ruling.

According to the jurisprudence of the European Court of Human Rights concerning the reasoning of judicial decisions, the latter must to reflect adherence to the principle of proper administration of justice, in the sense that they must sufficiently indicate the reasons on which they are based. For instance, in the case of *Papon versus France*, the Court emphasised the necessity of judgements to provide adequate reasoning to uphold the fairness of proceedings.

In Opinion No. 11 (2008), issued by the Consultative Council of the European Judges within the Council of Europe⁶ regarding the quality of judicial decisions, several quality factors, among which the internal ones concern the professionalism of the judge, the procedure, the case management, the hearings, and elements related to the decision itself.

Paragraph 21 of the aforementioned opinion states that a judge's professionalism is the primary guarantee of a high quality judicial decision. This encompasses advanced legal training in line with the

⁶ <https://rm.coe.int/1680747bb2>

principles outlined by the CCJE in its Opinions No. 4 (2003) and No. 9 (2006), as well as the development of a culture of independence, ethics, and deontology, as detailed in Opinions No. 1 (2001) and No. 3 (2002).

In Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE), paragraphs 25 and 26 highlight that the mere existence of procedural laws meeting necessary requirements is insufficient. The CCJE asserts that judges should have the ability to organise and direct proceedings actively and promptly. Delivering a judgment within a reasonable time frame,⁷ as stipulated in Article 6 of the European Convention on Human Rights, is considered a significant aspect of quality. However, there can be a tension between the speed of proceedings and other quality factors, such as the right to a fair trial, also guaranteed by Article 6. Ensuring social harmony and legal certainty inherently involves, but is not limited to, the element of time

Furthermore, in the same Opinion No. 11, the Consultative Council of the European Judges recommends criteria for states concerning the elements inherent to the decision, the clarity and the reasoning. Below we highlight the most relevant examples.

Thus, point 31 specifies that, in order to be of high quality, 'a judicial decision must be perceived by the parties and by society in general as being the result of a correct application of legal rules, of a fair proceeding and a proper factual evaluation, as well as being effectively enforceable. Only then will the parties be convinced that their case has been properly considered and dealt with and will society perceive the decision as a factor for restoring social

harmony'; point 32. 'All judicial decisions must be intelligible, drafted in clear and simple language - a prerequisite to their being understood by the parties and the general public. This requires them to be coherently organised with reasoning in a clear style accessible to everyone. point 33 Each judge may opt for a personal style and structure or make use of standardised models if they exist. The CCJE recommends that judicial authorities compile a compendium of good practices in order to facilitate the drafting of decisions'.

Regarding the reasoning of judicial decisions, the Consultative Council of European Judges has highlighted in point 34 of the Opinion No. 11 that 'Judicial decisions must in principle be reasoned. The quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be neglected in the interests of speed...'; point 36 'The reasons must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain of reasoning which led the judge to the decision'; point 40 'The statement of reasons should not necessarily be long, as a proper balance must be found between the conciseness and the proper understanding of the decision'. point 41 'The obligation on courts to give reasons for their decisions does not mean replying to every argument raised by the defence in support of every ground of defence. The scope of this duty can vary according to the nature of the decision. In accordance with the case-law of the European Court of Human Rights, the extent of the reasons to be expected depends on the various arguments open to each party, as well as on the different legal provisions, customs and doctrinal principles as well as the different

⁷ Guide on Article 6 of the European Convention of Human Rights, right to a fair trial (criminal branch), <http://ier.gov.ro> 2018/11

practices regarding presentation and drafting of judgments and decisions in different states ...' point 42 'In terms of content, the judicial decision includes an examination of the factual and legal issues lying at the heart of the dispute'.

In national jurisprudence -, judicial decisions, depending on their type, must show in a clear, concise and legal way, how the judge has taken into account the nature of the case, resulting in varying levels of reasoning.

For example, regarding the prosecutor's request for the preventive detention of the defendant, a reasoned court resolution is pronounced in respect of this request, based on the criminal investigation file, but also on the reasoned proposal in terms of grounds for the preventive detention, the necessity, the proportionality thereof.

As a rule, the reasoning in such a ruling, issued by the judge for rights and freedoms is relatively brief, if the proposal for the preventive detention concerns only a defendant, but if the latter concerns several defendants, investigated for the commission of several criminal offences, the examination of the grounds for preventive detention is more complex, whereas it also involves the examination of the evidence taken in relation to the reasonable suspicion concerning the commission of the alleged criminal offences and the personal circumstances, and the necessity and the proportionality of the measure, therefore the reasoning is lengthy.

When a request is made for a home or computer search, or for a special surveillance method, such as the interception of communications or of any type of remote communication, the resolution of the judge of rights and freedoms shall be reasoned by reference to the request, the legal requirements for such measures, the evidence taken but also the necessity and the

purpose thereof for the smooth running of the criminal proceedings during the criminal investigation stage. This includes referencing relevant jurisprudence from either the Constitutional Court of Romania or the European Court of Human Rights concerning the degree of intrusion into the private life of the defendants in respect of which those measures are requested, shall be indicated. Moreover, the length of the reasoning of such resolutions is different, whereas it requires a factual and probative analysis, individualised in the context of the case, by reference to the nature of the criminal offences, the procedural steps taken and the purpose thereof.

Additionally, the decisions rendered in the ordinary appeal process as well as in extraordinary appeals such as an annulment or revision contain, besides their constant component parts, the introductory part ('practica'), the narrative description (the reasoning) and the operative part of the decision, but also specific aspects, depending on the special legal provisions provided for, such as issues related to the court investigation in appeal and the new evidence taken, which shall be examined as a whole with the decision appealed, by reference to the grounds for appeal raised, or by reference to the criteria for admissibility in principle, in the case of extraordinary appeals. The length of decisions also varies depending on the legal requirements examined and the actual grounds raised, the language being clear, coherent, concise and legal, in order to be accessible to all parties.

Therefore, the judgements rendered by the courts of the Romanian judicial system comply with both the domestic and the European standard, from the standpoint of the conditions and criteria presented, which facilitates the verification and the finding of their lawfulness and well-foundedness, either the compliance with the European conventionality block, or the procedural

irregularities which are sanctioned according to the law.

The judicial decision also represents an act of culture (legal and general), as it encompasses a factual, legal and jurisprudential analysis. This analysis includes elements of comparative law, whether legal or jurisprudential, and may also reference other fields. For example, in the case of copyright offences, references are made to the intellectual property right or to the cultural heritage, to archaeology or treasure notions, according to UNESCO.

Furthermore, judicial decisions play a crucial role in ensuring consistent judicial practice, as regulated in the Criminal Procedure Code, in relation to the appeal in the interest of the law (Article 474 of the Criminal Procedure Code concerning the content of the ruling and the effects thereof) and to the reference made to the High Court of Cassation and Justice in order to give a preliminary ruling on the settlement of legal issues (Article 477 of the same Code, concerning the content and the effects thereof), represents a live instrument, which provides a general interpretation for the courts of the Romanian judicial system, thus ensuring uniformity in legal interpretation and eliminating divergent practices to guarantee consistency in the interpretation and the implementation of the law.

Additionally, the judicial decisions delivered in the framework of the international cooperation in criminal matters, in the cases concerning, for example, the European arrest or extradition warrant according to the Law No. 302/2004 on the international cooperation in criminal matters, with the subsequent amendments and supplements, play an important role,

whereas, by the length of the reasoning, the use of the legal language within the limits of the requirements imposed in such proceedings, they ensure the unified application of international instruments, facilitating the cooperation between the Member States of the European Union or on the basis of bilateral international instruments for legal cooperation. They also guarantee the security and the recognition of such rulings, whether in the European legal space or internationally, based on applicable international instruments.

3. Conclusions

This study on judicial decisions in criminal proceedings has shown aspects concerning their legal nature, as well as national and European conditions and criteria, aiming to highlight national regulator and enforcement standards are harmonised with the European framework.

A judicial decision in criminal matters represents a structured synthesis either rulings on the measures taken during criminal investigation stages, the ruling at first instance or in extraordinary appeals, presenting the legal grounds, by reference to the measures or the substance of the cases, representing an analysis in a clear, concise and coherent language, which confers quality to the proceedings completed.

In Romanian criminal proceedings, a judicial decision is a complex procedural and processual act that also serves as a guarantee of a fair trial, ensuring the interpretation and application of criminal law in a manner that contributes to the development of a legal culture

References

- Costin Mircea N., Leș Ioan, Minea Mircea Șt., Radu Dumitru, *Civil Procedural Law Dictionary (Dicționar de drept procesual civil)*, Scientific and Encyclopaedic Publishing House, Bucharest, 1983.

- Dongoroz Vintilă, *Criminal Procedure Course (Curs de procedură penală)*, 1942.
- Dongoroz Vintilă (coord.) et alii, *Theoretical explanations of the Romanian Criminal Procedure Code. Special Part (Explicații teoretice ale Codului de procedură penală român. Partea specială)*, Romanian Academy Publishing House, Bucharest, 1976.
- Neagu Ion, *Romanian Criminal Procedural Law*, vol. II (*Drept procesual penal român*, vol. II), University of Bucharest Publishing House, 1979.
- Neagu Ion, Damaschin Mircea, *Criminal Procedure Treatise, Special Part*, 3rd edition, revised and supplemented (*Tratat de procedură penală. Partea specială*, ediția a 3-a, revăzută și adăugită), Universul Juridic Publishing House, Bucharest, 2021
- Pop Traian, *Criminal Procedural Law (Drept procesual penal)*, vol. IV, National Publishing House, Cluj, 1948
- Stoenescu Ilie, Zilberstein Savelly, *Civil Procedure Law, General Theory (Drept procesual civil. Teoria generală)*, Didactic and Pedagogical Publishing House, Bucharest, 1977.
- Volonciu Nicolae, *Criminal Procedural Law (Drept procesual penal)*, Didactic and Pedagogical Publishing House, Bucharest, 1972.
- Volonciu Nicolae (coord.), *The Criminal Procedure Code commented*, 3rd anniversary edition, revised and supplemented (*Codul de procedură penală comentat*, ediția a 3-a aniversară), Hamangiu Publishing House, 2017.
- Guide on Article 6 of the European Convention of Human Rights, right to a fair trial (criminal branch), <http://ier.gov.ro> 2018/11
- Opinion No. 11 (2008) of the Consultative Council of European Judges - <https://rm.coe.int/1680747bb2>