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FAILURE TO STATE REASONS FOR THE JUDGMENT IN THE CRIMINAL CASE

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Abstract: *The purpose of the criminal proceedings is to establish the facts that constitute offenses so that any person who has committed an offense can be held accountable. To accomplish this purpose, the courts, based on the evidence adduced both in the prosecution phase and in the course of the trial, deliberate and issue a judgment. Thus, we can define the judgment as the final act of the trial, the synthesis of the trial, which is achieved by presenting the arguments that demonstrate the reasoning that led the judge to adopt the solution in the case and is an essential institution of any legal system. The hypothesis considered in the elaboration of this material mainly concerns the significance of a laborious reasoning of the judgments, the negative consequences of judgments that are not reasoned, and the sanctions applied by the courts of judicial review in case of such errors.*

Key words: *criminal proceedings, failure, reasons, state.*

1. The judgment - introductory aspects

In criminal law, a judgment is the final, disposition and procedural legal act by which the criminal case is resolved by the court, thus putting an end to the trial.

According to Article 401 of the Criminal Procedure Code, *the judgment by which the criminal court awards a solution on the merits of the case must consist of* three parts, namely an introductory part, a statement of facts, and the operative part.

The introductory part, also referred to as ”the practicaua”, shall be drawn up by the court clerk and shall contain the particulars scribed on the minutes the proceedings: the day, month, year and name of the court; whether or not the hearing was open to the public; the full names of the judges, the public prosecutor and the court clerk; the full names of the parties, the lawyers, the other persons taking part in the proceedings who were present at the hearing and those who were absent, together with an indication of their procedural capacities and a statement as to the conduct of the proceedings; the act for which the defendant has been indicted and the legal text of the act; the evidence which was the subject of the adversarial hearing; the submissions of all kinds of requests

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made by the public prosecutor, the aggrieved party, the parties and the other participants in the trial; the submissions of the public prosecutor, the aggrieved party and the parties; the measures taken in the course of the hearing.

It is not, however, compulsory for all this information to be included in the introductory part of the judgment, as it is drawn up if the judgment is delivered on the same day as the hearing, in which case a separate minute of proceedings is not drawn up.

The operative part of the judgment consists of the reproduction at the end of the judgment of the minutes of the deliberations, which contain the court's decision on the criminal offense, indicating the name of the offense and the legal text in which it is included, and in the case of acquittal or termination of the criminal proceedings, the case on which it is based under Article 16 of the Criminal Procedure Code and the decision on the civil action, i.e. the decision to admit or reject the case.

The statement of facts or the recitals is the second component of the judgment, or rather the body of the judgment, this part containing the reasons both in fact and in law.

Using the statement of facts, the trial judge sets out the reasons that led to the judgment, referring to the actual evidence and circumstances that convinced him beyond reasonable doubt that the defendant is guilty of the offense charged.

Thus, in addition to the data on the identity of the parties, the aggrieved party, a description of the act that is the subject of the indictment, indicating the time and place where it was committed and the legal classification given to it in the indictment, the judge must give reasons for the decision on the criminal and civil aspects, if applicable.

Thus, the provisions of Articles 401-404 of the Criminal Procedure Code regulate the institution of giving reasons for judgments, without distinguishing according to the nature of the judgment, and it is therefore necessary that the judgment contain the reasons in fact and law which formed the court/judge's conviction.

Depending on the importance of the stage of the proceedings at which the judgment is delivered and the possible effects on subsequent stages, the judgment may weigh significantly in the balance of the right to a fair trial as a whole, and any failure to ensure a double degree of jurisdiction may constitute a breach with irreparable effects on the possibility of ensuring fairness in the criminal proceedings at subsequent stages.

The case-law of the European Courts (Case of Hadjianastassiou v. Greece, 1996) has consistently emphasized the role that the statement of reasons for a judgment plays in ensuring compliance with Article 6(1) of the European Convention on Human Rights.

It has thus been held that, although the courts are not obliged to give a detailed response to every argument presented, the judgment must emphasize the essential aspects of the case in the sense that they have been examined and that a specific and explicit response has been given to the issues that are decisive in the proceedings as a whole.

The grounds of the judgment must show that the submissions of the parties have been specifically examined by the court, which is under an obligation to carry out an effective examination of the means, arguments, and evidence, or at least to assess their relevance.

Also, in the case-law of the European Courts (Case of Helle v. Finland, 1992), the idea

has been emphasized that the need to give reasons for judgments is thus an important component of the guarantees of a fair trial, a standard imposed by Art. 21 para. 3 of the Romanian Constitution and Art. 6 para. 1 of the European Convention on Human Rights.

In the same way, it has also been stated in the doctrine (Udroiu, 2017, p. 1611) that by stating the reasons for the judgment, the judge must provide a clear picture of the resolution of the case before the court, so that it is based on the evidentiary material of the case, to form the conviction that the reasons are true, complete and comprehensive.

To that end, stereotyped formulations that are not preceded by a detailed, correct, and complete statement of the solution adopted must be avoided, lest the result be an appearance of a statement of reasons.

In practice, when such incidents are found by the courts of judicial review, they lead to the judgment being quashed and the case being sent back to the court that handed down the unreasoned judgment for retrial.

We will further separately deal with the cases in which the courts of judicial review order either the dismissal of the judgment in the criminal case and its remand for retrial to the court of first instance that rendered a decision in the case or the dismissal of the decision of the pre-trial judge and its remand for retrial to the court of first instance that ordered the commencement of the trial.

2. Failure to state reasons for the judgment in the criminal case

The obligation for the courts to give reasons for their judgments has existed since the adoption of the Criminal Procedure Code in 1864 (Negru, 2022, pp. 464-468), Article 161 of which laid down this obligation, according to the nullity sanction.

The reasons why it is mandatory to give reasons for the judgment are that, on the one hand, it is a guarantee for the defendant, in the sense that he is aware of the grounds and the legal reasoning on which the judge has based his decision. On the other hand, complying with the requirements of Article 403 of the Criminal Procedure Code offers the possibility of judicial review.

At present, from a procedural point of view, the obligation of the courts to state the reasons for their judgments is laid down in Article 401 of the Criminal Procedure Code. In addition to the enumeration set out in Article 401 of the Criminal Procedure Code, the legislature has intended to deal separately with each component of the judgment.

Article 403 of the Criminal Procedure Code deals with the content of the statement of facts, and in practice, the legislature has sought to set out in a broad and detailed manner the requirements that must be met to give a reasoned judgment in the true sense of the word.

These aspects have even been pointed out in the doctrine (Micu, 1998, p.194), which considers that the court must use reasoning to resolve the question of law based on arguments based on the evidence adduced in the case before it. Only in this way will the judgment represent an act of transparency of justice as well as the result of a logical process of scientific analysis of the evidence analyzed in the case, to find the truth.

Thus, the purpose of giving reasons for a judgment is to protect citizens from arbitrary decisions by the judiciary.

The obligation to give reasons for judgments must also be seen in the light of European case-law on the subject, Article 6 (1) of the European Convention on Human Rights enshrines a guarantee for the fair trial of cases, also covering these errors relating to the failure to state reasons for judgments.

Under settled European case-law (Case of Moreira Ferreira v. Portugal, 2017, para. 84), which reflects a principle relating to the proper administration of justice, judgments must sufficiently state the grounds on which they are based.

Even in the context where the court is not obliged to rule on every argument raised by the litigants, it must be clear from the judgment whether the issues raised in the case have been addressed (Case of Boldea v. Romania, 2007, para. 30) and that a specific and explicit answer has been given to the arguments that are decisive for the outcome of the case (Case of S.C. IMH Suceava S.R.L. v. Romania, 2013, para. 40).

This issue of the failure to state reasons for judgments must also be seen with regard to the rights of the defense, in the sense that identifying such an error is a practical violation of the double degree of jurisdiction.

Thus, Article 10 of the Criminal Procedure Code regulates the right to a defense of any litigant, and the failure to state the reasons for the judgment infringes upon that right, given that the convicted person will not know the reasons in fact and in law on which the court concluded that he is guilty of the alleged offense. Taking the reasoning further, even the court of judicial review will be unable to identify in concrete terms the reasoning of the trial judge that led to the conviction.

In this context, in practice, such situations have been identified in which the reviewing court has ordered the dismissal of the judgment in the criminal case and the remand of the case for retrial, giving priority to how "*the case was tried*" and the reasons given/not given for the judgment.

Thus, we can observe that the jurisprudence of the Romanian courts of appeal is constant in sanctioning the failure to substantiate the judgments issued by the courts of first instance.

The Alba Iulia Court of Appeal (Judgment no. 9/2024) found in a case that the judgment delivered by the court of first instance lacks a real and objective statement of reasons, which would guide and support the decision, as it is not based on any evidence, thus violating the double degree of jurisdiction.

In so ruling, the Court found that the lower court unreasonably refused to verify whether the petitioner had paid the costs of the proceedings and the civil damages*, "the Court thus holding that the failure to adduce evidence leads to the omission of the first degree of jurisdiction and the judgment being unreasoned, the lack of legal arguments in support of the decision to reject the application for rehabilitation being a ground leading to the judgment being set aside and the case being remanded for retrial since the court of first instance merely pointed out that both the petitioner and the public defender had remained passive and had not taken the necessary steps to prove payment or the objective impossibility of making it; the court of first instance was more concerned with drawing the petitioner's attention to the length of the case and the fact that he was*

granted several time-limits, rather than to take steps to ensure that the case was dealt with swiftly and fairly" (Judgment no. 9/2024).

In the same way, the Alba Iulia Court of Appeal (Judgment no. 173/2023) penalized the lack of reasoning of the court of first instance with regard to the lack of legal arguments in the grounds of the decision to admit the civil actions and to order the payment of damages, finding that the court of first instance had limited itself to taking up the result of the tax inspection in the recitals of the judgment, the civil party and the amount of the damages indicated by the prosecutor in the indictment, without any analysis of the evidence adduced in the case and without an effective corroboration with the rest of the evidence, lacking any reasoning by the judge from which to assess the soundness of the solutions issued.

Thus, the Court held, inter alia, that "*By proceeding in this manner, the court of first instance omitted that, according to Art. 403 para. 1 let. c, the second thesis of the Criminal Procedure Code, the statement of reasons for the judgment must include 'the reasons for the decision on the civil side of the case, as well as the analysis of any factual elements on which the decision in the case is based (...) The reasons for the judgment justify the fairness of the criminal proceedings, on the one hand, by the right of the person subject to the proceedings to be convinced that justice has been done, namely that the judge has examined all the procedural means and, on the other hand, by the right of the latter to have the opportunity to file an appeal. In that regard, in the absence of a statement of reasons for the judgment, the court of judicial review cannot analyze the specific criticisms raised by the appellants and, implicitly, the legality and soundness of the judgment under appeal, in terms of the civil aspect*" (Judgment no. 173/2023).

Last but not least, the courts of judicial review most often decide to refer cases back to the court of first instance for retrial because they do not set out their reasons in fact and law for the conviction but simply take passages from the indictment in their entirety without setting out any argument of their own to establish the guilt of the defendants.

Thus, the Bacău Court of Appeal (Judgment no. 591/2024) held that "*How the court of first instance proceeded to take over the entire indictment in the circumstances in which the defense developed extensive defenses designed to prove innocence amounts to a failure to make a concrete decision, following the analysis of the evidence administered on the acts against the defendant. It should be noted that how the case was dealt with by the court of first instance also contradicts the provisions of Art. 103 para. 2 of the Criminal Procedure Code.*

In deciding on the existence of the offense and the guilt of the defendant, a court shall give a reasoned decision concerning all the evaluated evidence. Such a manner of reasoning would have been acceptable if the defendants had recognized the factual situation in the indictment. However, after being heard by the court of first instance, the defendants-appellants clarified their position of innocence by offering their versions and detailed explanations, respectively their version of the relevant circumstances that led to the indictment. (...) Taking over the indictment in its entirety and the absence of any argument of their own for the defendants' guilt amounts to a lack of judgment, maintaining the judgment or partially quashing it with the remand for trial would have the meaning of supplementation of the judgment of the court of first instance and not

only of completion of it, the consequence being the elimination of the double degree of jurisdiction, an aspect incompatible with the standards of a fair trial as guaranteed by Art. 6 para. 1 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms" (Judgment no. 591/2024).

Therefore, all these major shortcomings in the judgments handed down by the courts of first instance and which come before the courts of judicial review will entail the application of the provisions of Article 421, point 2, letter b), thesis II of the Criminal Procedure Code, which requires the annulment of the appealed judgments and the remand for retrial, to ensure the right a defense and, implicitly, the right to the double degree of jurisdiction.

3. Failure to state reasons for the pre-trial decision

Starting from the role of the pre-trial proceedings, which is that of a filter for questions of legality in criminal proceedings, exercised exclusively after the committal for trial and up to the time when the trial begins, it should be pointed out that the merits of the charge, the substance of the evidence or the amount of that evidence are not examined in the course of that procedure. In the pre-trial proceedings, following the findings of the pre-trial judge, the guilt or innocence of the defendant is not established, and the criminal or civil proceedings are not resolved, but, where appropriate, at the end of the proceedings, the case is transferred to the trial stage or, in certain cases, it is returned to the criminal prosecution stage.

The pre-trial proceedings cannot be separated from the trial phase in assessing whether these safeguards are ensured, given the direct influence of the pre-trial phase on the subsequent proceedings, including the legality of the evidence produced in the criminal prosecution phase, which will be taken into account by the court when deciding the merits of the case.

The national standard imposed for verifying the legality of the conduct of the criminal prosecution, the legality of the evidence produced in the course of the criminal prosecution, and the legality of the referral to the court also provides for two degrees of jurisdiction, including in the pre-trial phase, and we consider this standard to be a component of the right to a fair trial.

Thus, if the defendants have not raised any requests and objections invoking the unlawfulness of the gathering of evidence during the criminal prosecution phase, or if such requests have been made but rejected, the pre-trial judge finds that the referral to the court, the gathering of evidence and the conduct of the criminal prosecution are lawful and orders the trial to commence.

In that regard, the courts superior to those which delivered the pre-trial decisions have found various reasons why the case should be returned to the court of first instance, given that any criticisms made of the indictment were not thoroughly analyzed by the pre-trial judge, requiring the intervention of a higher court to find that the indictment is seriously deficient, which requires that it be returned to the criminal prosecution authorities to remedy the omissions found. The solution adopted in such a situation is to refer the case back to the pre-trial judge who ruled on the commencement of the trial, to avoid a situation in which the right to an appeal becomes

an illusory right, the defense being placed in the practical position of having to reiterate the substance of the claims and defenses raised without having any real opportunity to criticize how the pre-trial judge reached an unfounded decision, which was based on extremely general grounds.

The rejection of the request for referral back for a retrial by the pre-trial judge who failed to give adequate reasons for his decision would, in our view, lead to the perpetuation of the violation of the rights of the defense even if the criticisms raised were to be effectively analyzed in the appeal.

This is because the pre-trial judge hearing the appeal cannot, for the first time, consider criticisms that were omitted to be considered by the pre-trial judge who was notified by the indictment. To do so would lead to a situation where the arguments of the defense are heard for the first time in the appeal.

In this respect, in practice, it can be seen that the failure to state reasons for the pre-trial judge's decision will have the same legal consequences as failure to state reasons for the judgment in the criminal case, namely that the case will be returned to the pre-trial judge corresponding to the court of first instance which ruled on the order to commence the trial.

Thus, the Cluj Court of Appeal (Judgment c.c. no. 211/2024) found that the court of first instance failed to rule on a request made by the defendant regarding the regularity of the indictment and analyzed the other requests regarding the regularity of the indictment far too briefly, which amounts to a failure to rule on these issues, observing in essence that the description of the accusation regarding the formation of the organized criminal group is completely missing in the expository part of the indictment, and the reference to this accusation appears only in the section intended for the legal classification, which is why the Cluj Court of Appeal held that "*The impossibility of establishing the limits of the court's investiture makes it difficult to understand the proposals to confiscate the sums of money from the defendants. At the same time, we note that, most probably, they will be clarified following the possible clarification of the charges brought against the defendants. Of course, this analysis should have been carried out by the court of first instance, so as not to deprive the defendants of a degree of jurisdiction, which is why the appeals lodged will be admitted and the case will be sent for retrial to the same court*" (Judgment c.c. no. 211/2024).

The Bucharest Court of Appeal (Judgment c.c. no. 260/2024) ordered that the case be sent for retrial, because in drafting the grounds of the judgment, the pre-trial judge of the court of first instance had taken over, in an overwhelming proportion, the conclusions of the Public Prosecutor's Office submitted in the case file, without analyzing which are the arguments that require the solution he opted for based on a legal reasoning, by reproducing *mot a mot the* written submissions of the prosecutor.

Thus, the Court observed that the replies to the requests and objections put forward by the defendants were nothing more than a copy of the written submissions of the Public Prosecutor's Office, noting in essence that "*By failing to give effective and coherent reasons for the judgment and in the absence of a concrete analysis of the measures and objections put forward by the defendants, they have suffered serious harm which can only be remedied by redoing the procedural act. Such a method of disposal of*

the case by the pre-trial judge is incompatible with the requirements of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms since the harm to the rights of the parties is proven and cannot be removed other than by setting aside the judgment of the court of first instance and remitting the case for a retrial"(Judgment c.c. no. 260/2024).

An identical solution was also adopted by the Cluj Court of Appeal (Judgment c.c. no. 305/2024), which argued that "*A faithful reiteration of the arguments put forward by the prosecutor, in his written replies to the requests and objections raised by the defendants, cannot be considered to reflect the deliberation process followed by the judge and the aspects that formed his conviction in the sense of the ordered solution. Thus, even in the situation where the opinion of the pre-trial judge agrees with that expressed by one of the participants in the criminal proceedings, it is necessary to show in the reasoned judgment that the parties were heard, the solution ordered by the judge is the result of his deliberation process, which may be subject to judicial review (the judicial review is to be used to verify the reasoning of the judge of the court of first instance concerning the defenses and the documents in the case file*"(Judgment c.c. no. 305/2024).

The Ploiești Court of Appeal (Final decision, 2024) found that the pre-trial judge corresponding to the court of first instance, with the decision by which he dismissed the case, omitted to rule on the two defendants indicted in the indictment, this omission being remedied using a request for correction of a material error.

In this context, the Court essentially held that using that decision, the pre-trial judge did not rectify any error, being obvious that "*it is not an error but a lack of decision, judgment, deliberation of the judge regarding the commencement of the trial of the defendants or another solution. A material error could have been found in the present case if a defendant's name had been indicated differently from his real name, if his date of birth or domicile had been wrongly indicated, or in any other situation not involving an operation of evaluation, interpretation or judgment such as the order to commence the trial of the defendants*" (Final decision, 2024).

It was therefore held that the decision correcting the material error was unlawful, amounting to a failure to state reasons, and the case was therefore remitted for retrial.

The provisions of Article 425^1 para. (7) point 2 letter b) of the Criminal Procedure Code must not be interpreted *stricto sensu,* but with due regard for the spirit of the regulation, to comply with the principle of fairness of the criminal trial enshrined in Article 8 of the Criminal Procedure Code, thus making it possible to refer the case for retrial in order not to deprive the defendant of a degree of jurisdiction when the grounds invoked have not been analyzed.

Therefore, all these shortcomings on which the pre-trial judge corresponding to the court of first instance either failed to rule or ruled, without presenting the logical and legal arguments on which the decision was based, practically require the higher courts to adopt solutions to admit the appeals lodged by the defendants and to remand the case for retrial based on the provisions of Article 425^1 para. (7) point 2 of the Criminal Procedure Code.

4. Conclusions

From the above, we observe that the lack of reasoning of the (trial/pre-trial) judge as well as the lack of an effective investigation of the circumstances that led him to order a certain solution, determine the unlawfulness and, implicitly, the unreasonableness of the challenged judgment, and the sanction can only be the nullity of the jurisdictional act, a fact established in recent national case law.

As such, the provisions of the Criminal Procedure Code regulating the institution of giving reasons for judgments handed down in a criminal case, as well as the European provisions on the matter, offer sufficient guarantees to the litigants so that they can enjoy the right a defense and the right to a double degree of jurisdiction, and the sanctioning of these omissions by returning the case for retrial offers nothing other than a procedural remedy for the violation of the right a defense.

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