DOI https://doi.org/10.30525/978-9934-26-538-9-3

THEORIES OF ARGUMENTATION AND REASONABLENESS OF A COURT DECISION IN CRIMINAL PROCEEDINGS

Bzova L. G.

INTRODUCTION

The requirement to give reasons for judgements is part of the rule of law in modern societies. The purpose of this requirement addresses both legal and political issues, whether it is an element of control over the rationality of the administration of justice or the democratic legitimacy of the judge. There are many perspectives from which to approach the issue of reasoning and motivation for judgments, and the broad and complex issues that arise in this regard. What does it mean to give reasons for a judgement? What requirements must a court decision meet to be considered fair? What is the purpose of motivation? What does the law require from judges in terms of motivation? Some of the questions that can be raised take a dogmatic, reconstructive perspective of the procedural rules of a legal system or sector of it. Others have a clearly normative profile: their answers are intended to assist judges in justifying their decisions.

The requirement to provide reasons for court decisions is intended to be a guarantee for a party to the proceedings, which is generally based on the guarantee of the right to a fair trial.

1. Theories of legal argumentation and their impact on the formation of the doctrine of judicial argumentation

Theories of legal argument, developed mainly since the 1950s, express a concern with practice, especially with regard to the judicial or administrative application of the law, and with the rational correction of arguments used in discourses of justification of legal decisions. Its main goal is to give rationality to the judicial function. A well-known proposal for a theory of legal argumentation in the modern context is that formulated by Robert Alexy. According to Robert Alexy, the way legal principles are applied involves balancing. Based on the factual and legal aspects, a judge in a particular situation determines which of the conflicting interests in a case should prevail.

Theories of argumentation, while focusing on the need for the lawyer to appeal to reasons or arguments that support their claims or premises, that are part of their discourse and proposed solution or answer to the problem they are working on, they also provide lists of arguments available for this purpose. The thirteen arguments proposed by Chaïm Perelman ar a good example of

this, but it should be emphasised that old methods become arguments, and thus linguistic, genetic or systematic ones appear among them; but in any case with a completely different meaning and scope. Indeed, arguments are no longer tied to the will of the legislator, but are available in the law and for use by lawyers, so it is advisable not to "invent" them but to "discover them". Furthermore, the function they serve is to rationally support the discourse they postulate, and their use is not limited to legal norms, as they are also used in relation to behaviour, institutions, contracts, etc. Some of the arguments are legitimate in themselves (e.g., authoritative or normative, which consist of the addition of an article of law), but others are legitimate because they are used by lawyers and provide legal answers. The latter means to arguments involves demanding correctness and a rational and reasonable answer, a centralised rejection of what is contrary to logic or what is seriously absurd in axiological terms.And their use is not limited to legal norms, as they are also sly about behaviour, institutions, contracts, etc. Some arguments are legitimate in themselves (e.g., the authoritative or normative argument, which consists of adding an article of law), but others are legitimate because they are used by lawyers and provide legal answers.

Argumentation is a special part of legal reasoning, the answers that a researcher offers to a legal question are neither true nor false, they can only be considered better, more correct or more appropriate to solve the problem. The process of argumentation can be controversial for other reasons, which are known as counterarguments. The proposal of meaning must be supported by credible arguments that make the interpretation reliable. The more arguments there are, the more power is given to the interpretation.

Legal reasoning, both in terms of doctrinal interpretation and judicial decision, is carried out in stages: first, known as the context of discovery, the answer is identified; then the situation is explained; and finally, the conclusion drawn or proposal made is supported by arguments.

Arguments are the reasons given to justify the interpretation of a legal text (doctrinal or normative), also known as legal reasoning. In a state governed by the rule of law, these reasons are primarily sources of law, which may include, for the purposes of research, doctrine in addition to positive law. In general, legal interpretation is based on the law as a source, on the guidelines of legal reasoning, and on the values and assessments of the legal system and the interpreter. It is worth noting that the interpretation of a doctrine differs from the interpretation of statutory texts, while dogmatic argumentation is characterised by the binding nature of the law in force.

Argument is a rational process that takes place in a reasoning dialogue. Legal discourse is a dialogue or discursive procedure between the interpreter and the addressee (or audience), and since crucial choices are often value-

based, rational argumentation is considered the best possible justification that can be offered. However, legal discourse is not only about matters of practical reason, but also about legal science. The claim to correct the discourse refers to the fact that it can be rationally justified in the context of the current legal system. The legal justification must be based on the grounds that are made public, and its strength must be based on its indictment.

There are many theories of legal argumentation that contain different elements, only the most relevant ones are briefly mentioned below:

The topic reappears with Theodor Viehweg, who published in 1953 "Theme and Jurisprudence", a work that puts forward the requirements of this topic in legal theory and practice[1]. The idea is to reinforce the platitude (or topos) to serve as a starting point for legal reasoning, since the role of deductive logical arguments in the legal context is often considered limited.

With the new rhetoric, Chaïm Perelman, along with Lucie Olbrechts-Tyteca with his "Treatise on Argumentation" published in 1958, break with the concept of reason and reasoning emanating from Descartes, as they believe that the study of the testing procedures used to achieve commitment has been neglected. However, this is not to deny that deliberation and reasoning are a hallmark of reasonableness. For the new rhetoric, it is important to expand the field of reason beyond the deductive sciences, so they favour the structure and logic of argumentation. Chaïm Perelman distinguishes three elements in argumentation: speech, speaker, and audience; the latter plays a predominant role, defined as "the totality of all those whom the speaker wants to influence with his argumentation"[2].

For N. McCormick, practical reasoning in relation to practical reason in general and legal reasoning in particular performs the function of justification. To justify a legal decision, according to him, means to provide arguments that show that the relevant decisions ensure justice in accordance with the law. This author proposes an integrative theory of argumentation to the extent that it is possible to resolve disputes in both their logical and formal aspects[3].

Stephen Toulmin's theory is based on the idea of using operational logic, the use of operational language that we use every day and other argumentative language that is used for argumentation and supported by facts or tests. S. Toulmin proposes a model that allows us to present an argument in a composite scheme (in its simplest form) of four elements. This is because he questions the traditional composition of arguments, consisting of "main premise, secondary premise, conclusion", and proposes the following

[1] Viehweg, Theodor, Tópica y filosofía del derecho, Barcelona, Gedisa, 1991.

[2] Perelman, Ch., La lógica jurídica y la nueva retórica, trad. de Luis Diez-Picazo, Madrid, Civitas, 1988.

[3] MacCormick, Neil, Legal Reasoning and Legal Theory, Oxford, Clarendon Press, 1978.

elements in his model 'claim' as the starting and ending point; "grounds", consisting of the specific facts of the case; "warranty", such as general statements that justify the transition from grounds to claim; and "support", understood as the general field of information that supports the warranty.

According to Jerzy Wróblewski, the interpretation made by a court can be seen as a procedure by which certain information is transmitted and processed. Any interpretation can be outlined given a certain starting point at which some information enters the process or is provided to the developing body – the central mechanism of the development or procedure of information and the product resulting from this procedure, which looks like a decision that the interpretive body formulates. A fundamental aspect of his theory is the justification of legal decisions, which consists of two parts: an internal part, which is derived from references according to the accepted rules of inference. A prerequisite is the existence of a rule to verify the internal rationality of the decision. External justification, on the other hand, is related to the rationality of a legal decision, which is justified when its premises can be classified as good according to the standards used by those who make the qualification.

Aulis Aarnio also considers the justification of legal decisions to be a key element of argumentation. He argues that in modern society, people demand not only authoritative decisions, but also justifications. He argues that the basis for the exercise of power is the acceptability of the authority's decisions, not the formal power it may have. The provision of justification is a means of ensuring legal certainty in society, and therefore, public control of the decision is maximised. For Aarnio, it is important that the reasoning of a legal decision is justified, as it confirms the validity of the statements that make up the decision.

While legal argumentation has emphasised the legal decision; that is, the sentence, the structure of justification proposed to clearly state the reasons that support a decision of the authorities, which, in addition to being jurisdictional, may be administrative, it is also useful for justifying a legal interpretation of a scientific nature.

Friedrich Carl von Savigny, in his Legal Methodology, set the parameters by arguing that the canons of interpretation necessary for the work of a lawyer are grammatical, logical, historical and systematic, and it should be noted that in his last years he even adopted the teleological canon in a limited way[4].Savigny argues that interpretation is a reconstruction of the meaning of the law. Since the statutory provision is not clear, it believes that these

[4] González Martín, Nuria (coord.), Estudios jurídicos en homenaje a Marta Morineau, México, UNAM, Instituto de Investigaciones Jurídicas, 2006, t. II, pp. 439-457.

methods allow to fulfil the mission of interpretation, which is "to reconstruct the idea expressed in the law as it is known from the law"[5].

Argumentation theory divides the types of argumentation into two different groups: logical and rhetorical. In the logical type, an argument is presented as a form of valid reasoning that is structured by two statements and a conclusion. Reasoning in the logical sense is a formal process that can be correct or incorrect and refers to operations of inference, such as abduction, deduction or induction. Aristotle recognised that alongside logical arguments, one can also make so-called "dialectical" or probabilistic arguments, which are reasoning based on commonly held opinions.

In a rhetorical argument, the most important aspect is not the validity of the premises that make up the argument, but its persuasive power, which is achieved through persuasion. Therefore, the audience should be taken into account; that is, the people to whom the argument is addressed. However, persuasion is a demonstrably weaker form of persuasion. In argumentation, it is necessary to distinguish between the context of discovery (establishing a premise or conclusion) and the context of justification (premises or conclusions), especially since the traditional theory of legal argumentation is located in the context of justification.

To analyse the processes of interpretation and argumentation in constitutional matters, it is convenient to adopt the semantic concept of a norm. A normative statement is thus understood as a linguistic expression of a norm; a norm is, therefore, the meaning of a normative statement, and its function is to prescribe behaviour. Thus, in order to know a norm, it is necessary to interpret it, since the intellectual operation by which the meaning of normative statements is determined is interpretation[6], and if an interpretation is to have legal consequences, it must be justified by means of reasoning. This concept allows us to explain jurisprudence[7], osince interpretation, as a consequence, not only determines the content of a legal provision, but also limits the possibilities of its application, and may also lead to a modification of the legal order when the competent authorities develop or change a prescription through interpretation.

The evaluative role of S. Toulmin's theoretical model of argumentation is ambiguous. E. Fetteris notes that this model has limited application to legal reasoning, given that it allows analysing only simple cases, and is not suitable

[5] Larenz, Karl, Metodología de la ciencia del derecho, Barcelona, Ariel, 1994, p. 32.

[6] Guastini, Riccardo, L'interpretazione dei documenti normativi, Milán, Giuffrè, 2004, p. 99.

[7] Véase Huerta, Carla, "Aciertos y desconcierto de la jurisprudencia en México", La Constitución Política de España. Estudios en homenaje a Manuel Aragón Reyes, Rubio Llorente, Francisco et al. (eds.), Madrid, Centro de Estudios Políticos y Constitucionales, 2016, pp. 143-160.

for complex cases, since it does not take into account the need to interpret the rule and qualify the facts in complex cases[8].

The central idea of R. Alexy's concept is to consider legal discourse, legal argumentation as a special case of general practical discourse. R. Alexy did not just develop a normative theory of legal argumentation (which allows distinguishing good from bad arguments), but also analytical (which penetrates the structure of arguments) and descriptive (which contains elements of the empirical type) theories. It is based on the theories of analytical ethics (especially those of Toulmin and Bayer), Habermas's theory of discourse, Erlang's theory of practical discussion, and Perelman's theory of argumentation. But of these, J. Habermas is undoubtedly the main influence. R. Alexy's theory means, on the one hand, systematisation and reinterpretation of J. Habermas's discourse theory, and on the other hand, extension of this thesis to a specific area of law. J. Habermas theory is based on universal pragmatism, which attempts to reconstruct rational assumptions[9].

The reasoning in a judgement requires a system that allows the case to be decided in accordance with the precedents of the case and its development. Based on the deductive logic of judges and their motivation for decision-making, an assessment must be made to determine whether the argument meets the technical characteristics required to establish a judgement. In the legal field, establishing logic can be disconcerting, as it calls into question the truth or falsity of legal institutions, which are simply the result of human interaction, not logic itself.

According to P. Pimenta, validity can be observed according to two theoretical models: "First, validity is seen as synonymous with the existence of a rule. To say that a rule is valid means to confirm that it belongs to a certain legal system. A valid standard is one that has been developed by a competent authority in accordance with the procedure prescribed by law. Thus, in this position, validity is the essence of the rule, without taking into account the content of the legal rule when analysing it. Another way to look at the problem is to understand validity as a predicate, as an attribute of a legal norm. Thus, we are talking about the compliance of the rule with the legal system, which is why in this model the plane of reality and existence are separated within the legal world. Thus, validity is seen as a quality, as something added to an object – a legal norm – and not as its own essence"[10].

---

[8] Eveline Feteris, Foundamentals of Legal Argumentation: A Survey of Theories on Justification of Judicial Decisions (Dordrecht: Springer, 1999), 47.

[9] Бзова Л. Особливості юридичної аргументації конституційних судів при обґрунтуванні рішень. Visegrad journal on human rights – № 4, 2020. p. 164 P. 12-17

[10] Pimenta, Paulo Roberto Lyrio. Normas de competência e o controle de validade da norma impositiva tributária. *Segurança jurídica na tributação e Estado de Direito*, p. 840.

Yan Bernazyuk emphasises that "justification of a court decision is a complex mental activity that consists in qualitative logical structuring of one's own legal position by processing the related array of information (provisions of legislation, court practice, including foreign courts, doctrinal approaches, etc.) in order to find answers to the main questions to confirm one's position and to convince other interested parties of it. Such a process allows a person to objectify (demonstrate to himself or herself and others) his or her own subjective vision of a particular legal approach, fact, process, etc"[11].

When reviewing a court decision, it is imperative to keep in mind the constitutional obligation of the judge to justify it under penalty of liability for invalidity of the decision. As for the arguments, Tatjana Heckert Braatz[12] emphasises that court decisions do not always require extensive justification by judges, since, according to the author, there are so-called easy cases in which a simple application of the law resolves the dispute, and there are also complex cases in which, according to M. Atienza, the theory of arguments demonstrates its necessity and importance, as there is usually a conflict of application of legal principles and norms, and the decision must be very well justified to avoid applying the principle to the detriment of the standard and vice versa.

2. International standards of motivation and reasonableness of a court decision

In Europe, the obligation to give reasons for court decisions is part of the right to a fair trial within the meaning of Article 6§1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 47 of the European Union Charter for the Protection of Fundamental Rights and Freedoms.

CIt should be recognised that "the scope of the obligation to provide reasons may vary depending on the nature of the judgment in question and must be analysed in the light of the case as a whole and in the light of all the relevant circumstances, taking into account the procedural safeguards associated with the judgment"[13].

[11] Берназюк Я. Поняття та критерії мотивованості судового рішення як однієї з гарантій дотримання судами принципу верховенства права. Судебно-юридическая газета. URL: http://kdkako.com.ua/ponyattya-ta-kriteriyi-motivovanosti-sudovogo-rishennya-yak-odniieyi-z-garantiy-dotrimannya/

[12] Braatz, Tatiani Heckert. É preciso argumentar? Reflexões sobre a argumentação jurídica e a teoria de Manuel Atienza. Revista Jurídica FURB. Blumenau, 200, p. 137. URL: proxy.furb.br/ojs/index.php/juridica/article/download/445/404

[13] Judgment of the Court (First Chamber), 6 September 2012. Trade Agency Ltd v Seramico Investments Ltd. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0619

However, even though the ways in which this is done may vary, the reasons given in the decisions should demonstrate to the parties that they have been heard[14].

As it is related to the right to a fair trial, the obligation to give reasons for court decisions is part of the proper administration of justice.

This explains :

– that the obligation to give reasons for judgements is one of the principles that should govern the operation of European judicial systems[15];

– that the Consultative Council of European Judges, the Council of Europe's advisory body on matters relating to the status of judges in Europe, has made this a fundamental rule of transparency in justice The Magna Carta of Judges, № 16;

– that the same CJEU has specifically considered the issue of giving reasons for judgments as a component of the quality of justice (Opinion № 11 [2008], paras. 34-50, which, in particular, states: "The giving of reasons not only allows for a better understanding and adoption of the decision, but also guarantees that it will be adopted but, above all, is a safeguard against arbitrariness. On the one hand, it obliges the judge to respond to the objections of the parties and to indicate the elements that justify his decision and make it lawful, and on the other hand, it binds the judge to the law, and secondly, it enables the public to understand how justice functions" (Opinion № 11, para. 35).

The obligation to give reasons for court decisions, conceived as an essential guarantee of due process, is no less important outside the European judicial area. In civil cases, for example, it is provided for in the Code of Civil Procedure of Quebec (Article 321: "the decision that resolves the dispute or makes a ruling in the case [must be in writing and contain the reasons on which it is based"), Lebanon (Article 455: "Judgments must contain the reasons on which they are based'), Madagascar (Article 180: "[Judgments] shall state the reasons for their decision") and Senegal (Article 73: "Judgments shall contain [...] a statement of reasons and a statement of judgement").

The reference in European documents to impartiality indicates that the obligation to give reasons for judgements is not completely unrelated to the ethical duties of a judge. The obligation to give reasons for judgements is not completely unrelated to the ethical duties of a judge.

Without pretending to be exhaustive, the main trends on this issue in France and in the European judicial space can be summarised as follows:

[14] Hôpital local Saint-Pierre d'Oléron and Others v. France – 18096/12, 53601/12, 23542/13 et al. URL: https://laweuro.com/?p=4613

[15] Recommandation CM/Rec(2010)12 du Comité des Ministres aux Etats membres sur les juges : indépendance, efficacité et responsabilités URL: https://search.coe.int/cm?i=09000016805cde9f

At a meeting on 7 April 2021, the Constitutional Court, in the framework of its control over laws after their promulgation, issued the following decisions:

a) By a majority vote, the Court found the exception to be unconstitutional and found that the provisions of Article 20(1) of Government Regulation № 111/2010 on State of Emergency regarding parental leave and monthly parental allowance are unconstitutional, with reference to the parental allowance provided for in paragraph 2(2)(1) of that regulation.

The provisions declared unconstitutional are worded as follows:

The rights provided for in this emergency decree may be exercised only for the purpose of recovering, in accordance with the law, amounts improperly collected under this title.

b) By a majority vote, it recognised the unconstitutionality exception and found that the provisions of Article 400(1), Article 405(3) and Article 406(1) and (2) of the Criminal Procedure Code were unconstitutional.

By a unanimous vote, the Court rejected the exception of unconstitutionality as unfounded and found that the provisions of Article 405(2) of the Criminal Procedure Code were constitutional in relation to the criticisms made.

The provisions declared unconstitutional are worded as follows:

– Article 400(1) "The result of the deliberations shall be recorded in the minutes, which shall have the content provided for in the operative part of the decision";

– Article 405(3) "The chairman of the panel shall announce the minutes of the decision";

– Article 406(1) and (2): "(1) The decision shall be drawn up within 30 days from the date of its announcement.

(2) The decision shall be drawn up by one of the judges who participated in the case within 30 days from the date of the decision and signed by all members of the panel and the court secretary".

The Court found that the provisions of Article 400(1), Article 405(3) and Article 406(1) and (2) of the Criminal Procedure Code violated both provisions of Article 1(3), Article 21(1)-(3) and Article 124(1) of the Constitution, as well as Article 5(1) and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the Court found that the provisions of Article 400(1) and Article 405(3) of the Criminal Procedure Code did not prejudice the provisions of Article 23(11) of the Basic Law.

The Court ruled that the drafting of a criminal court decision (motivation in fact and law) after the announcement of the protocol (decision) appointed in the case deprives the convicted person of guarantees of execution of the act of justice, harms the right of access to court and the right to a fair trial. At the same time, the Court found that the execution of a final criminal court decision before its factual and legal substantiation contradicts the constitutional and

conventional provisions on individual liberty and security of person, as well as those that enshrine human dignity and justice as the highest values of the rule of law.

Thus, the Court found that it is necessary that the court decision be drawn up, reasoned in fact and law, on the date of its delivery.

As for the effect of the Constitutional Court's decisions, according to Article 147(1)(147) of the Constitution, "Provisions of existing laws and regulations, as well as provisions of legal acts declared unconstitutional, shall cease to have legal effect 45 days after the publication of the Constitutional Court's decision, unless within this period the Parliament or the Government, as the case may be, harmonise the unconstitutional provisions with the provisions of the Constitution. During this period, the provisions declared unconstitutional shall be suspended as a matter of law.'[16].

Clear reasoning and analysis are basic requirements for court decisions and an important aspect of the right to a fair trial. The obligation of judges to give reasons for their decisions does not mean that they have to respond to every argument of the defence in support of every ground of defence. The scope of this obligation may vary depending on the nature of the decision. In order to comply with the principle of a fair trial, the reasons for the decision should demonstrate that the judge has truly investigated all the main issues before him or her. The quality of a court decision depends mainly on the quality of its reasoning. Adequate reasoning is an imperative that cannot be neglected in the interest of speed. Proper reasoning requires that judges have sufficient time to prepare their decisions.

The reasoning must demonstrate that the judge complied with the principles enunciated by the European Court of Human Rights (namely, respect for the rights of the defence and the right to a fair trial). When interim decisions affect individual freedoms (e.g., an arrest warrant) or may affect the rights or property of individuals (e.g., temporary custody of a child or preliminary seizure of real property or bank accounts), the grounds for such a decision must be properly stated[17].

For example, in the 2002 decision[18], the English Court of Appeal has identified four grounds for requiring reasons to be given: (i) transparency of justice; (ii) the fact that a statement of reasons facilitates decision-making by both the parties and the public; (iii) the fact that reasons impose a limit on

[16] Comunicat de presă Curții Constituționale a României de 7 aprilie 2021. URL: https://www.ccr.ro/wp-content/uploads/2021/03/Comunicat-de-presa-7-aprilie-2021...pdf

[17] Opinion № 11 (2008) of the Consultative Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on the quality of judgments URL: https://court.gov.ua/userfiles/visn_11_2008.pdf

[18] English v Emery Reimboid et Strick Ltd [2002] EWCA Civ. 605. L'existence d'un véritable devoir de motiver une décision fut élaborée explicitement dans l'arrêt Flannery v Halifax Estate Agencies Ltd [2000] 1 WLR 377. Voir H.L. Ho « The Judicial Duty to Give Reasons » Legal Studies 2000, 42.

judicial power; and (iv) the fact that reasons are necessary in view of the function of judges to set common law precedents. Thus, it can be noted that the statement of reasons is related to the very function of the court. Indeed, according to the English lawyer, a judge needs to justify his decision in order to justify himself, to legitimise his decision, because the source of his decision is not an article of the code, but the case law itself.

3. Analysis of court practice regarding reasoned judgements in criminal proceedings

Reasoning and motivation of court decisions is a logical, intellectual and practical activity of the court carried out within and consists in providing in the reasoning part of the court decision references to legal norms, a set of evidence and arguments underlying it, proper and sufficient motives and grounds for its adoption, answers to important arguments of the parties to the criminal proceedings, which together confirm the correctness of the decision and ensure its convincing nature. The substantiation and reasoning of court decisions is a component of the court's use of evidence as an element of criminal procedural evidence in court[19].

The elements that judges need to reach a decision depend on their personal consideration, so systematising these elements and properly applying and synthesising them during the process of reaching a decision and its reasoning becomes relevant within the framework of a judicial decision by means of logical methods and legal reasoning that judges apply in each case. From this first approach, the following objectives are introduced, which consist of: systematically identifying the elements that judges use to construct a judicial argument; pointing out the forms of legal reasoning in judicial decisions; explaining the praxeological application of rules by judges.

The reasoning in a judgement requires a system that allows the case to be decided in accordance with the precedents of the case and its development. The systematisation that the judge must establish to reach a decision is important for a fair judgement. The role of the judge in the case is of primary importance, as it is the judge who develops the final decision under the influence of the evidence and arguments presented by the representatives. The decision-making system used by judges from the presentation of the facts to the drafting of the decision also contributes to the achievement of fairness.

The investigating judge[20] takes into account that the concept of "reasonable suspicion' is not defined in national legislation and, based on the provisions of part 5 of Art. 9 of the CPC of Ukraine, takes into account the

[19] Крушинський С., Данькова С. Обгрунтування і мотивування судових рішень у структурі кримінального процесуального доказування в суді першої інстанції. Слово Національної школи суддів України № 3(48)/2024 URL: https://slovo.nsj.gov.ua /images/pdf/2024_3_48/12%20Krushinskiy.pdf

[20] Judgement of the hust District Court of Zakarpattia Region of 02 January 2025. Case No. 309/5257/24 URL: https://reyestr.court.gov.ua/Review/124204417

position of the European Court of Human Rights, reflected in paragraph 175 of the judgment of 21 April 2011 in the case of Nechyporuk and Yonkalo v. Ukraine, according to which "the term "reasonable suspicion" means that there are facts or information that could convince an objective observer that the person in question may have committed an offence (judgment in the case of Fox, Campbell and Hartley v. the United Kingdom, 30 August 1990, para. 32, Series A, № 182), that the requirement of reasonable suspicion implies the existence of evidence objectively linking the suspect to a particular offence and it need not be sufficient to secure a conviction, but must be sufficient to justify further investigation or prosecution (Murray v. the United Kingdom, 28 October 1994, and Fox, Campbell and Hartley v. the United Kingdom, 30 August 1990).

Under such conditions, the investigating judge, having examined the materials of the petition and the documents attached to it, according to his inner conviction, which is based on a comprehensive, complete and impartial study of all the circumstances of the proceedings, guided by the law, evaluating the totality of the collected evidence, only in relation to the suspicion presented, – with from the point of view of sufficiency and interrelation, believes that the evidence provided for in paragraphs 3-5 of Chapter 4 of the Criminal Procedure Code of Ukraine is available in the proceedings, and namely: the protocol of the OMP road accident dated 22.11.2024; inspection report dated 11/24/2024; protocol of the interrogation of the witness PERSON_8, dated 11/25/2024; expert opinion № 138/x dated 12/25/2024; expert opinion № 183/x dated 29.11.2024; expert opinion № 184/x dated 12/17/2024; expert opinion № CE-19/107-24/12958-IT dated 12/20/2024; expert's opinion № CE-19/107-24/12960-IT dated 20.12.2024 – testify to the validity of the suspect's suspicion, since the provided evidence objectively connects him with him, that is, confirms the existence of facts and information that can convince about objective observer that the suspect could have committed this offense.

X. Silva, considering the parties' arguments as a tool to facilitate the judge's task of issuing an adequate judgement, notes that 'from a pragmatic point of view, once the arguments have been exchanged, analysed and examined, the judge must establish the standard by which he will decide the case. In fact, this standard should be set from the very beginning of the process so that the parties know what will determine whether their argument is admissible or not. In setting the standard, it is necessary to specify what criteria will be taken into account to resolve the case in accordance with the opposing rights and the context in which the dispute is taking place[21].

[21] Higa Silva César. (2016). "Los Esquemas Argumentativos como Herramientas de Evaluación para el Juez". En: Argumentación Jurídica y Motivación de las Resoluciones Judiciales . Lima: Editorial Palestra. Pág. 49.

Judicial argumentation encompasses two formally distinct contexts that are interrelated and interact with each other: on the one hand, the context of decision, and on the other, the context of justification. The former consists of a causal logical and psychological procedure or rational choice that led the judge to a particular decision hypothesis, while the latter is a motivational campaign that seeks to provide a legally and rationally sound justification for that decision, i.e. it is a discourse based on intersubjectively acceptable and logically structured arguments[22].

The decision of the Criminal Court of Cassation of 17 October 2024[23] states that, in accordance with Article 22 of the CPC, criminal proceedings are conducted on the basis of adversarial proceedings, which provides for the independent defence of their legal positions, rights, freedoms and legitimate interests by the prosecution and defence by the means provided for by this Code. Parties to criminal proceedings have equal rights to collect and submit to the court things, documents, other evidence, motions, complaints, as well as to exercise other procedural rights provided for by this Code.

Article 94 of the CPC provides that the court, in its internal conviction based on a comprehensive, full and impartial examination of all the circumstances of the criminal proceedings, guided by the law, shall evaluate each evidence in terms of relevance, admissibility, reliability, and the totality of the evidence collected in terms of sufficiency and interconnection for making a relevant procedural decision. No evidence has a pre-established force.

In accordance with the requirements of Article 370 of the CPC, a court decision must be lawful, substantiated and reasoned. A court decision is a decision made by a competent court in accordance with the substantive law and in compliance with the requirements for criminal proceedings provided for by this Code. A substantiated decision is a decision made by the court on the basis of objectively clarified circumstances, which are confirmed by evidence examined during the trial and evaluated by the court in accordance with Article 94 of this Code. A reasoned decision is a decision that contains proper and sufficient motives and grounds for its adoption.

Reasoning its decision in this part, the court of first instance noted that

– the defence in its motion indicated the initial data and assessment of the actions of the driver of the Toyota PERSON_11 , who is not a defendant in this criminal proceeding;

[22] Conte, Francesco. Sobre a motivação da sentença no processo civil: Estado constitucional democrático de direito, discurso justificativo e legitimação do exercício da jurisdição. Gramma, 2016, p. 514.

[23] Resolution of the Criminal Court of Cassation of the Supreme Court of 17 October 2024. Case No. 372/341/21 URL: https://reyestr.court.gov.ua/Review/122543836

– the objections regarding the inconsistency of the calculations, in particular, the speed of the cars, the time of stopping, the moment of detection of the danger, are based on assumptions and are not substantiated;

– the said experts were interrogated in court and confirmed the sufficiency of the initial data to provide the relevant conclusions and confirmed them;

– the defence has not substantiated its objection to paragraph 13 of the conclusion, namely the existence of a causal link between the accused's violation of paragraph 13.1 of the SDA and the accident, since even PERSON_6 himself confirms the fact of non-compliance with a safe distance, which led to the accident, and this is also confirmed by other video and written evidence and witness testimony.

When reviewing the verdict of the court of first instance on appeal, the court of appeal noted that the arguments of the defence counsel's appeal did not refute the conclusions that formed the basis of the local court's guilty verdict against PERSON_6.

The Supreme Court also agrees with the above conclusions of the courts of previous instances, as they are generally well-founded and reasoned.

Therefore, taking into account the above conclusions of the courts of first instance and appeal, the arguments of the defence counsel's cassation appeal (which are similar to the arguments of his appeal) are unfounded in this part.

In substantiating its conclusions that there were no grounds for recognising the evidence as improper and inadmissible, the local court referred to the conclusions set out in the decision of the Criminal Court of Cassation of the Supreme Court of 20 September 2022 in case № 711/2189/21, including the following that the examination of a person to determine the state of intoxication is carried out by a doctor of a healthcare facility, and not by a device, while the device only records indicators of the degree of intoxication, and the doctor, during the examination of the person, detects and records signs of intoxication, and therefore the indicators of the device should not be equated with the concept of medical examination.

In the Lviv Court of Appeal's verdict of 2 December, the court noted that the court of first instance, citing the same circumstances, had justified both the imposition of a sentence and the release from serving it on probation. At the same time, the court did not specify in the verdict what data served as grounds for the conclusion that the correction of the defendants and the prevention of their crimes is possible without serving a sentence. At the same time, the court ignored and did not provide an appropriate assessment of the data on the severity of the crime, the identity of the perpetrator and other circumstances of the case[24]. As a circumstance taken into account by the court when sentencing the accused and releasing them from serving their sentence, the verdict stated that the victim had no claims. At the same time, the position

[24] Judgement of the Lviv Court of Appeal of 02 December 2021. Case No. 466/10380/19. Proceedings No. 11-kp/811/683/21. URL: https://reyestr.court.gov.ua/Review/101576493

of the victim regarding the type and amount of punishment and the possibility of release from serving it is not a procedural requirement, but the opinion of the victim, which may be taken into account in conjunction with other circumstances, but does not limit the court in exercising its discretionary powers. Therefore, the opinion of the victim may be taken into account by the court in sentencing, but is not decisive[25].The court took into account the sincere remorse as a circumstance mitigating the punishment of the accused.

CONCLUSIONS

To sum up, it is obvious that the argumentation of facts in the criminal sphere should be consciously understood, eliminating potential irrationality in the justification of a court decision. The compliance of a court decision with the aspirations of society and the general goals of law is made possible by the interpretation and reasonable application of rules and legal principles, as well as general ideas about law and morality. Motivation or reasoning of a court decision, therefore, is a means by which the exercise of law by a judge is legitimised and can be considered as that part of the decision in which the judge, by pointing out the factors that contributed to the formation of his or her belief, reveals the reasons for his or her decision. The principle of reasonableness of court decisions is not limited to determining which legal provision ‘‘corresponds’’ to the fact that occurred.

SUMMARY

The analysis of the reasonableness of court decisions in criminal proceedings is of great importance for making a fair and reasonable decision. Decision-making situations requiring more technically elaborate legal arguments are increasingly common in legal realities, marked by the presence of constitutions with these characteristics, and, therefore, the indispensability of an argumentative approach to the analysis of a particular legal phenomenon is emphasised. The problem of the study corresponds to the weight given by judges to the arguments related to with evidence in the criminal sphere. Thus, the article offers a reflection on the judge's activity and the obligation to give reasons for judgments in the criminal sphere, where the evidentiary aspect is affected by the presumption of innocence. In this sense, the article provides considerations regarding the arguments of fact in the context of the criminal offence and subsequently in the context of the application of the sentence.

References

1. Берназюк Я. Поняття та критерії мотивованості судового рішення як однієї з гарантій дотримання судами принципу верховенства

[25] Resolution of the Criminal Court of Cassation within the Supreme Court of 02.10.2018 in case No. 752/8309/16-к. URL: https://protocol.ua/ua/postanova_kks_vp_vid_02_10_2018_roku_u_spravi_752_8309_16_k/

права. Судебно-юридическая газета. URL: http://kdkako.com.ua/ponyattya-ta-kriteriyi-motivovanosti-sudovogo-rishennya-yak-odniieyi-z-garantiy-dotrimannya/

2. Бзова Л. Особливості юридичної аргументації конституційних судів при обґрунтуванні рішень. Visegrad journal on human rights – № 4, 2020. p.164 P.12-17

3. Крушинський С., Данькова С. Обґрунтування і мотивування судових рішень у структурі кримінального процесуального доказування в суді першої інстанції. Слово Національної школи суддів України № 3(48)/2024 URL: https://slovo.nsj.gov.ua/images/pdf/2024_3_48/12%20Krushinskiy.pdf

4. Braatz, Tatiani Heckert. É preciso argumentar? Reflexões sobre a argumentação jurídica e a teoria de Manuel Atienza. Revista Jurídica FURB. Blumenau, 200, p. 137. URL: proxy.furb.br/ojs/index.php/juridica/article/download/445/404

5. Comunicat de presă Curții Constituționale a României de 7 aprilie 2021. URL: https://www.ccr.ro/wp-content/uploads/2021/03/Comunicat-de-presa-7-aprilie-2021...pdf

6. Conte, Francesco. Sobre a motivação da sentença no processo civil: Estado constitucional democrático de direito, discurso justificativo e legitimação do exercício da jurisdição. Gramma, 2016, p. 514

7. English v Emery Reimboid et Strick Ltd [2002] EWCA Civ. 605. L'existence d'un véritable devoir de motiver une décision fut élaborée explicitement dans l'arrêt Flannery v Halifax Estate Agencies Ltd [2000] 1 WLR 377. Voir H.L. Ho « The Judicial Duty to Give Reasons » Legal Studies 2000, 42.

8. Eveline Feteris, Foundamentals of Legal Argumentation: A Survey of Theories on Justification of Judicial Decisions (Dordrecht: Springer, 1999), 47

9. González Martín, Nuria (coord.), Estudios jurídicos en homenaje a Marta Morineau, México, UNAM, Instituto de Investigaciones Jurídicas, 2006, t. II, pp. 439-457.

10. Guastini, Riccardo, L'interpretazione dei documenti normativi, Milán, Giuffrè, 2004, p. 99.

11. Higa Silva César. (2016). "Los Esquemas Argumentativos como Herramientas de Evaluación para el Juez". En: Argumentación Jurídica y Motivación de las Resoluciones Judiciales . Lima: Editorial Palestra. Pág. 49.

12. Hôpital local Saint-Pierre d'Oléron and Others v. France – 18096/12, 53601/12, 23542/13 et al. URL: https://laweuro.com/?p=4613

13. Judgement of the hust District Court of Zakarpattia Region of 02 January 2025. Case No. 309/5257/24 URL: https://reyestr.court.gov.ua/Review/124204417

14. Judgement of the Lviv Court of Appeal of 02 December 2021. Case No. 466/10380/19. Proceedings No. 11-kp/811/683/21. URL: https://reyestr.court.gov.ua/Review/101576493

15. Judgment of the Court (First Chamber), 6 September 2012. Trade Agency Ltd v Seramico Investments Ltd. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0619

16. Larenz Karl, Metodología de la ciencia del derecho, Barcelona, Ariel, 1994, p. 32.

17. MacCormick Neil, Legal Reasoning and Legal Theory, Oxford, Clarendon Press, 1978.

18. Opinion № 11 (2008) of the Consultative Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on the quality of judgments URL: https://court.gov.ua/ userfiles/visn_11_2008.pdf

19. Perelman, Ch., La lógica jurídica y la nueva retórica, trad. de Luis Diez-Picazo, Madrid, Civitas, 1988.

20. Pimenta, Paulo Roberto Lyrio. Normas de competência e o controle de validade da norma impositiva tributária. Segurança jurídica na tributação e Estado de Direito, p. 840

21. Recommandation CM/Rec(2010)12 du Comité des Ministres aux Etats membres sur les juges : indépendance, efficacité et responsabilités URL: https://search.coe.int/cm?i=09000016805cde9f

22. Resolution of the Criminal Court of Cassation of the Supreme Court of 17 October 2024. Case No. 372/341/21 URL: https://reyestr.court.gov.ua/ Review/122543836

23. Resolution of the Criminal Court of Cassation within the Supreme Court of 02.10.2018 in case No. 752/8309/16-к. URL: https://protocol.ua/ua/ postanova_kks_vp_vid_02_10_2018_roku_u_spravi_752_8309_16_k/

24. Véase Huerta, Carla, "Aciertos y desconcierto de la jurisprudencia en México", La Constitución Política de España. Estudios en homenaje a Manuel Aragón Reyes, Rubio Llorente, Francisco et al. (eds.), Madrid, Centro de Estudios Políticos y Constitucionales, 2016, pp.143-160.

25. Viehweg Theodor, Tópica y filosofía del derecho, Barcelona, Gedisa, 1991.

Information about the author:
Bzova Laura Gheorghiivna,
PhD, Assistant Professor of the Department of Procedural Law Faculty of Law, Yuriy Fedkovych Chernivtsi National University
2, Kotsiubynskoho str., Chernivtsi, 58012, Ukraine