



The Reasoning of Judicial Decisions as Principle for a Due Process of Law

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Received: 2 August 2024 / Accepted: 10 November 2024 / Published: 3 December 2024
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Doi: 10.56345/ijrdv11n325

Abstract

One of the main principles of the civil procedural law is to reason the court decisions. This principle comes as an obligation of the court and as a right to be familiar with a reasoned decision. The good reasoning of decisions secures transparency and accountability. It addresses to the parties and aims to show them why someone won and why the other part lost, supporting the standard of a due process of law. The reasoning of the court decisions limits the arbitrariness and ensures correctness in making it. A reasoned court decision clearly presents the legal issue relevant to the resolution of the dispute. The judge summarizes the most important facts of the case and explains the legal principles that are applied to the specific case. He makes a detailed analysis of the application of legal principles in relation to the facts of the case, where the type of decision-making clearly emerges. But what does a reasoned decision mean? Is the provision of the first paragraph of the Article 142 of the Constitution in the Republic of Albania absolute?

Keywords: Court, judicial decision, reasoning, analysis, ECHR

1. Introduction

The court resolves the conflict in accordance with the legal provisions and other norms, which are mandatory to be implemented by it. It makes a precise definition of the facts and actions related to the dispute, without being bound by the definition that the parties¹ may propose.

Based on the Constitution of the Republic of Albania, the court decisions must be reasoned². Currently, there is no mandatory rule for judges regarding the structure of the content of the court decision, except the provisions of Article 310 of the Civil Procedure Code in Albania, where the court decision must contain the introduction³, the descriptive-explanatory⁴ part and the ordering part⁵ or the Article 383⁶ of the Criminal Procedure Code.

¹ Refer to the article 16 of the Civil Procedural Law

² Refer to the Article 142(1) of the Constitution of the Republic of Albania

³ In the entry of the decision, the court that tried the case, the panel and the secretary must be mentioned; the time and place of rendering the decision, the parties, noting their identity and quality as plaintiff, defendant, intervener, as well as their representatives; the name of the prosecutor, if he participated; the object of the lawsuit; the final requests of the parties; the prosecutor's opinion if he participated

⁴ In the descriptive-reasoning part, the circumstances of the case must be mentioned, as established during the trial and the conclusions drawn by the court; the evidence and reasons on which the decision is based; the legal provisions on which the decision is based.

The Constitutional Court has emphasized⁷ that the judicial decision, in any case, must be logical, in a regular form and clear in content. In its entirety, it should be considered as a unity, in which the component parts are closely related to each other. The arguments of the reasoning part must be grounded and logically connected, respecting the rules of fair thinking. They must form a coherent content within the decision, which excludes any open or hidden contradictions. These arguments must also be sufficient to support and accept the imperative part. The conclusions of the reasoned part must be based not only on legal acts, but also on the principles and rules that characterize sound and logical thinking⁸. The obligation to comply with this standard depends on the circumstances of the specific case and the nature of the decision, and so the extent of the reasoning depends on the nature of the decision in question⁹.

Based on the provisions of the procedural norms that determine the elements that a judicial decision must contain, as well as based on the features of the trial in the Supreme Court and in its practice, the Court has estimated that in order to carry out the public observation of the administration of justice as and the coherence of the court decision, so that the conclusion of the court evaluation process is supported, the content of the decision constitutes the premise for fulfilling the standard of reasoning of the decision, which in this regard must meet and contain the defined criteria from the relevant legal provisions and those developed by consolidated constitutional jurisprudence.¹⁰

In the concrete case, the Court notes that the contested decision of the Civil College of the Supreme Court, which decided not to accept the appeal, contains in its introductory part the litigants, the object of the lawsuit, the dispositions of the lower courts as well as the reasons based on to which the petitioners claimed the annulment of the decision of the Vloara Court of Appeal, related to procedural violations, as well as to the way of implementing the substantive law, more specifically to the one on the return and compensation of properties to former owners and the legal framework for the privatization of housing. Although these causes are included in the provisions of Article 472 of the CPC and belong to the jurisdiction of that court, the Civil College of the Supreme Court (deliberation chamber) decided not to accept it, giving no argument for the conclusion expressed in the mandatory part of the decision. However, the Court has emphasized that when there are claims related to the violation of the basic principles of the judicial process, as well as when these claims are reflected in the materials of the case, then the decision of the College, not to accept the recourse, calls into question the right to a regular legal process (see decisions no. 19, dated 19.07.2005; no. 22, dated 06.06.2011, of the Constitutional Court in Albania).

2. Criminal Court Decisions According to the Jurisprudence of the Supreme Court

The Criminal College of the Supreme Court in its jurisprudence has emphasized that "The criminal court decision, both in the case of guilt or innocence of the defendant, must be justified". This obligation derives not only from Article 142/1 of the Constitution of the Republic of Albania, which states that "Court decisions must be reasoned" but also from the provisions of the Code of Criminal Procedure.¹¹

The Criminal College of the Supreme Court has argued that the reasoning of the Decision, as a necessary condition for the validity of the criminal decision, is not fulfilled when the court mechanically reproduces the entire content of the evidence as referred to by the prosecution in the request in the trial or as determined during the trial and when he does not mention at all the evidence he takes as a basis for giving the verdict, including the argument why he does not accept the contrary evidence. The panel notes that artificially increasing the physical volume of a criminal court decision by reproducing in its entirety every act or evidence contained in the judgment fascicle does not make the decision better

⁵ In the mandatory part, among other things, it should be mentioned what the court decided; if the court imposes obligations on the parties, their concrete content and that the decision is unenforceable by the bailiff, who is charged with court costs as well as the right to file an appeal and the deadline for filing it

⁶ The decision contains: the court that gave it; the generalities of the defendant or other personal data that are valid to identify him, as well as the generalities of other private parties; the accusation; the summary presentation of the factual circumstances and the evidence on which the decision is based, as well as the reasons for which the court calls the contrary evidence inadmissible; the enacting clause, indicating the implemented articles of the law; the date and the signature of the members of the judging panel. The decision is invalid when the provision or the signature of the members of the judging panel is missing, as well as when there is an obvious contradiction between the reasoning and its provision.

⁷ Decision no. 3 dated 23.01.2014 of the Constitutional Court of the Republic of Albania

⁸ See decisions no. 20, dated 13.04.2012; no. 38, dated 30.12.2010; no. 36, dated 25.07.2013, of the Constitutional Court in Albania

⁹ See decision no. 25, dated 10.06.2011, of the Constitutional Court in Albania

¹⁰ See decisions no. 3, dated 19.02.2013; no. 36, dated 25.07.2013, of the Constitutional Court in Albania

¹¹ See the article 383 of the Civil Procedural Code of the Republic of Albania

or more reasoned, on the contrary, it may produce the opposite effect that it does the most difficult court decision to understand. This is important since the court's decision is not addressed only to legal professionals, but to parties from whom the defendant is often a person who does not have sufficient legal training.

The court decision must be clear and comprehensible and, as provided for in Article 383/1ç of the Criminal Code, contain "(...the summary presentation of the factual circumstances and the evidence on which the decision is based, as well as the reasons for which the court it calls contrary evidence inadmissible.)" It is not for nothing that the criminal procedural law uses the term "summarized" as it requires the court that within the reasoning of the decision this can filter the facts, circumstances and evidence administered during the trial, and directly evidence for the case and to influence according to the reasoning of the court in reaching the conclusion on the basis of the case (guilt or innocence of the defendant).¹²

3. Reasoning of Judicial Decisions of the Constitutional Court according to the practice of the European Court of Human Rights

The ECtHR, in its decision dated July 16, 2024, approved the appeal regarding the failure of the Constitutional Court in Albania to provide the appropriate reasons for dismissing the constitutional appeals¹³. The appellants complained that the rejection of their constitutional complaints due to the Constitutional Court's failure to reach the required majority denied them access to that court, in violation of Article 6/1 of the European Convention on Human Rights. According to the same article, they also complained about the lack of reasoning in the decisions of the Constitutional Court.

The case had to do with the dismissal of the constitutional appeals of the appellants for not reaching the required majority in special proceedings by the Constitutional Court, for the failure of that court to make reasoned decisions, due to the dismissal of the constitutional appeals due to the fact that it had not been able to reach the statutory five. The majority of judges and the lack of adequate reasoning of the decisions of the lower courts. The applicant's case also concerns the equality of the parties and the duration of the proceedings before the Constitutional Court.

In reasoning the Decision, the ECtHR notes that the relevant decisions of the Constitutional Court were limited to noting the results including a brief indication in a note of how the individual judges had voted. They did not give any reasons on the merits of the case and did not give the views of the effective majority meaning the judges who voted to dismiss the appeals or those of the effective minority who voted in favor of sustaining the appeals. As a result, the appellants were assured of the final dismissal of their constitutional appeals, but not for the reasons on which the Constitutional Court had reached these conclusions.

ECtHR regarding the role of practice and the consistency of decision-making of the Constitutional Court when it states that:

"The compliance of the Constitutional Court with the obligation to give adequately reasoned decisions should be evaluated mainly on the basis of the practice of that court itself and not on the basis of any specific provision in the existing legal framework. In the decisions 49 and 52 of October 16 and 18, 2023, the Constitutional Court did not reach the required majority of 5 judges either for the issues of admissibility or regarding the merits of some of the appeals raised by the appellants and rejected them."Based on Article 73/4 of the Law on the Constitutional Court, these decisions were final. In both cases the court's reasoning contained a summary of the main positions on the merits expressed in the deliberations and an indication of the individual justices' votes in support of each position.

Against this background, the ECtHR stated that it cannot fail to notice the latest evolution in the practice of the national Constitutional Court, namely in providing at least a summary reasoning of the effective positions of the majority and the minority in cases with results similar to those of the current applicants. Although the appellants in both cases received a final decision on their appeals, the lack of adequate reasoning failed to satisfy the appeals of a fair trial.

The ECtHR assessed that the complaints regarding the appellants' right of access to the Constitutional Court and the latter's alleged failure to provide adequate reasoning for its decisions in the appellants' cases are neither manifestly unfounded nor inadmissible for any other reason listed in Article 35 of the Convention. Consequently, the ECtHR concluded that there was a violation of Article 6/1 of the Convention.

Regarding the abuse of the right to apply, the ECtHR states that: "Regarding the Government's claim that the complaining company had abused its right to apply, the relevant principles have been defined¹⁴. In particular, the Court

¹² Refer to Decision no. 4 dated 11.01.2024 of the Criminal College of the Supreme Court in Albania

¹³ *Meli and Swinkles Family Brewers N.V. v. Albania*

¹⁴ Refer to *Gross v. Switzerland* ([GC], no. 67810/10, § 28, ECHR 2014)

emphasizes that a request may be rejected as abusive only in exceptional circumstances, such as, for example, if it is knowingly based on false facts.¹⁵ The applicant's intention to deceive the Court must always be proven with certainty of enough."¹⁶

4. The Duration of the Judicial Process at the Constitutional Court

In the application no. 41373/21, the complainant complained about the extension of the procedure at the Constitutional Court.¹⁷

Based on the Constitution of the Republic of Albania, the Constitutional Court decides...(f) "complaints by individuals against any act of public authorities or judicial decisions that infringe the fundamental rights and freedoms guaranteed by the Constitution, after all effective legal remedies for the protection of these rights have been exhausted, unless otherwise provided with the Constitution." as well as "...2. The Constitutional Court makes its decisions with the majority of all its members, except for cases where the law provides otherwise."¹⁸

The latest practice of the Constitutional Court regarding the reasoning of the decisions given when the required majority is not reached is reflected in decisions no. 49 and no. 52 of October 16 and 18, 2023, respectively, this court did not reach the required majority of five judges either on the issues of admissibility or on the merits of some of the appeals raised by the appellants and dismissed those appeals. Based on Article 73(4) of the Law on the Constitutional Court, these decisions were final. In both cases the court's reasoning contained a summary of the main "positions" on the merits expressed in the deliberations and an indication of the individual justices' votes in support of each position.¹⁹

Regarding request no. 41373/21, the Government invited the Court to dismiss the complainant's complaint about the excessive prolongation of the proceedings on the grounds that he had not exhausted the internal legal remedy presented by Article 71/ç of the Constitutional Court Act on the excessive prolongation of the constitutional procedures, which which would have enabled him to speed them up and/or claim compensation for the excessive prolongation of these procedures. The appellant argued that remedy was not effective. As of March 23, 2018, the Constitutional Court lacked a quorum to decide on any case, so the submission of the complaint regarding the excessive prolongation of the proceedings had no prospect of success and could not address his complaint.

The Court considers that the claim for filing a complaint for the duration of the procedure in the Constitutional Court was not an effective tool because the Constitutional Court was not functional at that time cannot be accepted in those circumstances. The lack of a quorum was a temporary situation and, therefore, any complaints filed with the court during that period would have been considered once the Constitutional Court regained the necessary quorum. While the applicant could reasonably have considered that the proceedings could not have been expedited during the period when the Constitutional Court remained non-functional due to the lack of a quorum, it was nevertheless open to the applicant to pursue the compensatory remedy once the court had regained its quorum.

The court assesses that the applicant was asked to give it the opportunity to decide on his appeal regarding the duration of the proceedings under Article 71/ç of the Law on the Constitutional Court. His failure to do that, means that his complaint regarding the length of the proceedings is inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35/1 and 4 of the Convention.

5. Conclusions

The reasoning of the decision is closely related to the respect of the standard of the regular legal process. The principle of equality of arms and adversariality requires that each party in the trial is not placed at a disadvantage against the opponent. Each party must have the opportunity to comment on all the evidence or submissions presented, in order to influence the decision-making of the court (see decision no. 4, dated 23.02.2011 of the Constitutional Court).

Based on these principles, the court has a number of tasks, among which the creation of equal opportunities for the participation of the parties or their representatives in the process, as well as the possibility of their statement about the facts, evidence and legal evaluations, is of particular importance. are closely related to the case being examined in

¹⁵ See *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions 1996-IV*, no. 31365/96, ECHR 2000-X, no. § 49, January 18, 2005".

¹⁶ *Gross v. Switzerland*" ([GC], no. 67810/10, § 28, ECHR 2014)

¹⁷ *Meli and Swinkles Family Brewers N.V. v. Albania*

¹⁸ Refer to Article 133 of the Constitution of the Republic of Albania

¹⁹ See Decisions no. 49 and no. 52 of October 16 and 18, 2023

court (see decision no. 34, date 29.05.2015 of the Constitutional Court).

The principle of equality of arms²⁰ means that everyone who is a part of the process should have an equal opportunity to present his case and that a fair balance should be established between the parties. The right to participate in the trial should not be considered a formal right, where the parties are simply guaranteed physical presence during the civil process, but, on the contrary, the procedural legislation should first, and then the judge during the trial, give equal opportunities to the parties to present arguments and evidence in defense of their interests. If there were no equality of arms in the civil trial, then the arguments of one side would prevail over the arguments of the aggrieved party, and, therefore, the right to participate in the trial would be stripped of its constitutional function, to guarantee a regular legal process (see decisions no. 19, dated 12.06.2003; no. 23, dated 08.06.2007; no. 34, dated 25.07.2011 of the Constitutional Court). Based on these principles, the court has a number of duties, among which the creation of equal opportunities for the participation of the parties or their representatives in the process, as well as the possibility of their statement about the facts, evidence and legal evaluations, is of special importance. closely related to the case being examined in court (see decision no. 18, dated 23.04.2013, of the Constitutional Court).

In the jurisprudence of the Court, the failure to properly form litigation has been defined as a violation of the standards for a regular legal process and has been analyzed in terms of the violation of the principle of adversary in the trial as well as of the equality of arms, which require that in civil cases each party to the trial to be given a reasonable opportunity to present their claims. Each party must have the opportunity to comment on all the evidence or submissions presented, in order to influence the court's decision-making (see decisions no. 34, dated 25.07.2011; no. 16, dated 19.04.2013 of the Constitutional Court).

According to the principle of interpretation,²¹ any application of a written text to certain circumstances involves interpretation. "Those who apply a rule in certain matters need to explain and interpret this norm²². The control of compliance with the constitutional standards for a regular legal process is also a function of ordinary courts, moreover of the Supreme Court. This relationship between the constitutional jurisdiction and the jurisdiction of ordinary courts, when it is the case of consideration by the Constitutional Court of individual requests, based on Article 131/f of the Constitution, is guided by the principle of subsidiarity (complementarity) (see decisions no. 4, dated 28.02.2012; dated 24.12.2013; dated 02.12.2013.²³

Pursuant to Article 131/f and 134/g of the Constitution of the Republic of Albania, the individual may address claims related to the violation of the right to a due process of law, only after having exhausted all legal remedies for the protection of these rights. Constitutional jurisdiction for the violation of fundamental rights for a regular legal process becomes possible when the legal means of appeal in ordinary courts are exhausted (see decisions no. 1, dated 25.01.2010; no. 36 dated 10.11.2010, of the Constitutional Court). The exhaustion of legal remedies is a precondition that must be fulfilled by the individual, before turning to the Constitutional Court. This rule implies not only that the individual has addressed all the usual instances, but also that all the claims he raises in this Court have been previously presented in these instances at least in substance, respecting the formal requirements and deadlines provided for in the procedural law (see decisions no. 32, dated 28.12.2009; no. 6, dated 03.04.2010; no. 15, dated 19.04.2013, of the Constitutional Court).²⁴

The rights of the parties²⁵ to be present and to defend themselves in the judicial process are important aspects of due process in the constitutional sense. The court has assessed the right of defense as an essential element of a regular process. For the right of defense to be real and effective and not only theoretical, its exercise should not be hindered, but, on the contrary, the courts of ordinary jurisdiction should take all legal measures to give them due process the possibility for the individual to make real defense, respecting the principle of equality of arms (see decisions no. 6, dated 26.02.2013; no. 37, dated 19.09.2011; no. 25, dated 10.06.2011 of the Constitutional Court).

For the above, the provision of the first paragraph of Article 142 of the Constitution in the Republic of Albania is not absolute. ECtHR regarding the role of practice and the consistency of the decision-making of the Constitutional Court when it is stated that: "The compliance of the Constitutional Court with the obligation to give adequately reasoned decisions should be assessed mainly on the basis of the practice of that court itself and not on the basis of any specific provisions in the existing legal framework.

²⁰ See the Decision no. 3 dated 23.01.2014 of the Constitutional Court in Albania

²¹ US Supreme Court Chief Justice John Marshall, in *Marbury v. Madison* [1803]

²² US Supreme Court Chief Justice John Marshall, in *Marbury v. Madison* [1803].

²³ Decision no. 3 dated 23.01.2014 of the Constitutional Court in Albania

²⁴ Decision no. 3 dated 23.01.2014 of the Constitutional Court in Albania

²⁵ See decision no. Decision no. 73 dated 14.12.2015 of the Constitutional Court in the Republic of Albania

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- Meli and Swinkles Family Brewers N.V. v. Albania
- US Supreme Court Chief Justice John Marshall, in *Marbury v. Madison* [1803]).