Judicial Reasoning as a Guarantee of Fair Criminal Trial in the Case Law of the European Court of Human Rights

A fundamentação das decisões judiciais como garantia de um processo penal equitativo na jurisprudência do Tribunal Europeu dos Direitos Humanos

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Abstract: The obligation to state reasons for judicial decisions lies at the heart of contemporary debate on the rule of law and the legitimacy of adjudication. This article reconstructs and assesses the standard of judicial reasoning in criminal proceedings as it emerges from the case law of the European Court of Human Rights. Although the European Convention on Human Rights does not expressly guarantee a right to a reasoned decision, the ECtHR has derived it from the fair-trial guarantee under Article 6 § 1 through a dynamic interpretation grounded in the idea of the rule of law. The article seeks to determine the standard of judicial reasoning in criminal proceedings that can be derived from

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this guarantee. The question is of practical significance given the diversity of domestic approaches to the form and content of judicial reasons. Methodologically, the study is doctrinal and combines a qualitative analysis of the Court's leading case law with a theoretical reconstruction of the functions performed by judicial reasoning. The analysis proceeds in three stages. It first examines the multifunctional character of the duty to give reasons, identifying its communicative and legitimising, guarantee, self-regulatory, and supervisory functions. It then traces the development of the right to a reasoned judgment in the Strasbourg jurisprudence. Finally, it considers the requirements of completeness and coherence, together with the limits of the obligation and its application to jury verdicts, appellate and cassation rulings, and interlocutory decisions affecting liberty and privacy. The authors argue that the duty to give reasons performs several functions, and that its scope and form vary according to the procedural context in which those functions are to be fulfilled. A reasoned judgment thus operates both as a safeguard against arbitrariness and as an expression of a democratic culture of justification.

Keywords: Reasons for judgment; fair trial; European Convention on Human Rights; rule of law; culture of justification.

Resumo: *O dever de fundamentação das decisões judiciais ocupa posição central no debate contemporâneo sobre o Estado de Direito e a legitimidade da atividade jurisdicional. Este artigo reconstrói e examina o padrão de fundamentação das decisões judiciais no processo penal tal como delineado pela jurisprudência do Tribunal Europeu de Direitos Humanos. Embora a Convenção Europeia de Direitos Humanos não assegure expressamente um direito à decisão fundamentada, o TEDH o extraiu da garantia do processo equitativo prevista no artigo 6.º, § 1.º, por meio de uma interpretação evolutiva fundada na ideia de Estado de Direito. O artigo busca determinar qual padrão de fundamentação das decisões judiciais em matéria penal pode ser extraído dessa garantia. A questão possui relevante importância prática diante da diversidade das soluções adotadas pelos ordenamentos nacionais quanto à forma e ao conteúdo da fundamentação judicial. Do ponto de vista metodológico, o estudo é dogmático e combina uma análise qualitativa dos principais precedentes do Tribunal com uma reconstrução teórica das funções desempenhadas pela fundamentação das decisões judiciais. A análise desenvolve-se em três etapas. Inicialmente, examina o caráter multifuncional do dever de fundamentação, identificando suas*

funções comunicativa e legitimadora, de garantia, de autocontrole e de controle externo. Em seguida, reconstrói a evolução do direito a uma decisão fundamentada na jurisprudência de Estrasburgo. Por fim, analisa os requisitos de completude e coerência da fundamentação, bem como os limites desse dever e sua aplicação aos veredictos do júri, às decisões proferidas em sede recursal e de cassação e às decisões interlocutórias que afetam a liberdade e a privacidade. Sustenta-se que o dever de fundamentação desempenha múltiplas funções e que sua extensão e sua forma variam de acordo com o contexto processual no qual essas funções devem ser realizadas. A decisão fundamentada atua, assim, tanto como garantia contra a arbitrariedade quanto como expressão de uma cultura democrática de justificação.

Palavras-chave: *Fundamentação das decisões judiciais; processo equitativo; Convenção Europeia dos Direitos Humanos; Estado de Direito; cultura da justificação.*

1. Introduction

The obligation to provide reasons for judicial decisions occupies a central position in contemporary scholarship and jurisprudential discourse concerning the rule of law, judicial accountability, and the legitimacy of adjudication. In many legal systems, neither professional judges nor juries are subject to a general legal duty to state the reasons underlying their decisions. Notwithstanding the absence of such a universal obligation, numerous jurisdictions recognise specific circumstances in which a court is required, or is at least expected, to articulate the grounds of its determination, particularly where a party requests a reasoned decision or where the evidentiary record is exceptionally complex, contested, or difficult to evaluate. It is widely accepted that the duty to give reasons transcends the status of a mere procedural formality and constitutes a fundamental safeguard of the fairness of criminal proceedings. As such, it serves to reinforce the right of the accused to an effective defence, to protect against arbitrariness in the exercise of judicial authority, and to ensure the accountability of the judiciary to both the parties and the wider public. The statement of reasons thus functions as the principal vehicle through which the exercise of judicial power is rendered transparent,

comprehensible, and amenable to scrutiny, thereby securing its legal and democratic legitimacy.

Yet the significance of judicial reasoning in criminal cases extends well beyond its communicative dimension. As the analysis carried out in this article seeks to demonstrate, the obligation to state reasons fulfills a constellation of closely interrelated functions: it legitimizes the exercise of state coercion against the accused, it safeguards the right to an effective appeal, it disciplines the cognitive process of adjudication itself, guarding against bias and intuitive, unreasoned determinations, and it contributes to the coherence and predictability of the law. These functions are not merely theoretical constructs — they are anchored in the case law of the European Court of Human Rights (hereinafter referred to as ECtHR or Court), which has consistently derived the right to a reasoned judgment from the general guarantee of a fair trial under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as Convention)[3]. This Court, entrusted with the supervision of compliance with the Convention, constitutes the most recognizable body of the Council of Europe and plays a pivotal role in the European system of human rights protection. It was established on 21 January 1959 pursuant to Article 19 of the Convention, following the election of its first members by the Parliamentary Assembly of the Council of Europe. At present, the jurisdiction of the ECtHR has been accepted by all 46 member states of the Council of Europe.

Under the Convention's framework, final judgments of the ECtHR are binding upon the parties to the proceedings. Article 46(1) of the Convention provides that the Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties. Consequently, the binding force of such judgments is, in formal terms, limited to an *inter partes* effect. Nevertheless, a broader normative impact may be inferred from Article 1 of the Convention, which obliges the Contracting States to secure the rights and freedoms defined in the Convention. This entails a duty to take into account the interpretative

[3] The European Convention on Human Rights is the oldest international treaty in the field of regional human rights protection. It entered into force on 3 September 1953.

authority of the Court. In practice, states not directly involved in a given case often adjust their legislation or practices in response to judgments delivered against other states, thereby conferring upon such rulings a de facto *erga omnes* significance. This phenomenon further demonstrates the preventive function of the Court's case law, as it prompts systemic changes beyond individual cases[4].

The purpose of this article is to reconstruct and assess the standard of judicial reasoning in criminal proceedings, with particular reference to the jurisprudence of the European Court of Human Rights. The analysis proceeds in three stages. The first part examines the multifunctional nature of the duty to state reasons and identifies the principal values it serves. The second part traces the development of the right to a reasoned judgment in the Strasbourg case law, from its derivation under Article 6(1) of the Convention to its elaboration in cases such as *Taxquet v. Belgium* and *Tatishvili v. Russia*. The third part considers the requirements of completeness and coherence as conditions for the effective realization of those functions and addresses the limits of the obligation and the specific problems arising in jury proceedings.

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[4] RESS, Georg. The effects of decisions and judgments of the European Court of Human Rights in the domestic legal order. *Texas International Law Journal*, vol. 40, 2005, p. 374; POLAKIEWICZ, Jörg: The execution of judgments of the European Court of Human Rights. In BLACKBURN, Robert; POLAKIEWICZ, Jörg (eds). Fundamental rights in Europe: the European Convention on Human Rights and its member states, 1950-2000, Oxford, Oxford University Press, 2001, p. 73. See also generally ARNARDÓTTIR, Oddný Mjöll. *Res Interpretata*, *Erga Omnes* Effect and the Role of the Margin of Appreciation in Giving Domestic Effect to the Judgments of the European Court of Human Rights. *European Journal of International Law*, v. 28, n. 3, 2017, p. 830-834; GERARDS, Janneke: The European Court of Human Rights and the national courts: giving shape to the notion of 'shared responsibility. En. GERARDS, Janneke; FLEUREN, Josepf (eds.), Implementation of the European Convention on Human Rights and of the judgments of the ECtHR in national case law, Cambridge-Antwerp-Portland, Intersentia, 2014, p. 21-34; BODNAR, Adam: '*Res Interpretata*: The Legal Effect of the European Court of Human Rights' Judgments for Other States Than Those Which Were Party to the Proceedings. En HAECK, Yves; BREMS, Eva (eds.). Human Rights and Civil Liberties in the 21st Century, Springer Netherlands, 2014, p. 223.

2. The Multifunctional Nature of Judicial Reasoning in Criminal Cases

It is well established that a thorough and comprehensive statement of reasons for material procedural determinations constitutes a *sine qua non* condition of a fair trial. Irrespective of the substantive weight of the case, for a decision to qualify as a just exercise of the administration of justice, it must be accepted that the court is required to set out the grounds of its decision with sufficient clarity so as to demonstrate that the material issues in the case have indeed been genuinely and diligently examined and that they have been correctly subsumed under the applicable legal framework. As J. Laffranque rightly observes – "Good reasoning helps also for acceptance of the judgment by the parties and by the society as a whole"[5]. In essence, the statement of reasons for a judicial decision constitutes a message directed not only to the parties, but to a wide range of audiences. The statement of reasons is addressed to the parties (particularly the losing party), the appellate court, professionals (counsel, other judges, and academics), and the general public. A. Deeks adds to this catalogue also the legislature, "which can enact laws to override judicial decisions"[6]. Each of these audiences performs a supervisory function *vis-à-vis* the court. From this circumstance M. Cohen derives not only that "transparency in adjudication may be thought of as an individual right" but also that "judicial reasons are not only addressed to the litigants and the reviewing court but potentially aimed at the entire citizenry"[7]. In criminal cases, the broad audience of the recipients of the reasoning reinforces the preventive effect of criminal law and may contribute to enhancing the public's understanding of the limits of penalization and of the principles of criminal justice policy.

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[5] LAFFRANQUE, Julia. (Just) Give Me A Reason... *Juridica International*, Vol. 27, p. 12–35, 2018, p. 13. https://doi.org/10.12697/JI.2018.27.02.

[6] DEEKS, Ashley S. Secret Reason-Giving. *Yale Law Journal*, vol. 129, n. 3, p. 612–689, Jan. 2020, p. 622.

[7] COHEN, Mathilde. When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach. *Washington and Lee Law Review*, vol. 72, n. 2, p. 483–571, 2015, p. 510.

The parties occupy a central position among these audiences. Central to the just adjudication of any case is the opportunity afforded to the parties to participate in the proceedings by presenting evidence and reasoned arguments. The statement of reasons – as L.L. Fuller and K.I. Winston rightly observe – should reflect the outcome of that process and constitutes the court's response to the arguments presented, a response that lends meaning to such participation, distinguishing adjudication from an arbitrary determination by the court[8]. In criminal cases, the content of the statement of reasons thereby legitimizes the exercise of state coercion against the accused, rationalizing its application in the light of the course of the proceedings and of the right to a defense as realized through participation therein and the presentation of evidence.

That said, it appears that the obligation to prepare a statement of reasons in fact fulfills functions extending well beyond the communication of the grounds of a decision to even the broad audience referred to above, and beyond all the beneficial effects in terms of prevention and the transparency of public life that flow from such communication. It may be argued that the obligation to provide reasons for a judgment is intrinsically linked to the right to a public hearing. This obligation serves not only to persuade the parties of the correctness or at least the acceptability of the decision, but also to ensure public confidence that the proceedings were conducted fairly, with due diligence, and free from improper considerations.

A statement of reasons may, indeed, contribute to enhancing the authority of the court and of the very process of adjudication. This particular aspect was noted by C. Fried, who observed, in his analysis of the position of the US Supreme Court, that "the exercise of the Court's power is remarkably, uniquely open: Its decisions are accompanied by the reasons for those decisions. Indeed, without those reasons the decision in any particular case would be of quite limited significance. To a remarkable degree, to a degree unknown in any other branch of

[8] FULLER, Lon L.; WINSTON, Kenneth I. The Forms and Limits of Adjudication. *Harvard Law Review*, vol. 92, n. 2, p. 353–409, Dec. 1978, p. 367. https://doi.org/10.2307/1340368.

government, the Court's exercise of power is its reasons"[9]. Accordingly, a thorough statement of reasons for a judgment in criminal cases builds the authority of the court and legitimizes its power – a criminal judgment, which not infrequently interferes profoundly with individual liberty, rests on the force of argument and persuades through the cogency of its reasoning, rather than being the product of an obscure determination unsupported by any statement of reasons. M. Cohen goes so far as to note that, in the literature "a number of liberal-democratic theories depict judges as the heroes of reason-giving"[10]. In essence, the legitimacy of the judicial power is obtained and maintained by adhering to procedural rights: people believe authorities are more legitimate when they see their actions as consistent with fair procedures[11]. The obligation to state reasons for a decision compels the judge to ground it in objective arguments and in law, excluding personal preferences. Such legitimacy, while affording the opportunity to review the decision through an analysis of the argumentation underlying it, constitutes an emanation of a culture of justification, understood as "a culture in which every exercise of power is expected to be justified; in which leadership given by government rests on the cogency of the case offered in defense of its decisions, not the fear inspired by the force at its command"[12]. In the absence of a documented statement of reasons and knowledge of the motives underlying a judicial decision, no meaningful assessment or review of that decision is possible, irrespective of the body entrusted with such scrutiny, and the judgment itself degenerates into a purely arbitrary exercise of power.

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[9] FRIED, Charles. Scholars and Judges: Reason and Power. *Harvard Journal of Law & Public Policy*, vol. 23, n. 3, p. 807–832, Summer 2000, p. 809–810.

[10] COHEN, op. cit., p. 498.

[11] HENDRICKX, Victoria. The Judicial Duty to State Reasons in the Age of Automation? The Impact of Generative AI Systems on the Legitimacy of Judicial Decision-Making. *Erasmus Law Review*, n. 3, p. 1–13, 2024, p. 7. https://doi.org/10.5553/ELR.000275.

[12] DYZENHAUS, David. What is a 'Democratic Culture of Justification'? In: HUNT, Murray; HOOPER, Hayley J.; YOWELL, Paul (eds.). Parliaments and Human Rights: Redressing the Democratic Deficit. Oxford: Hart Publishing, 2015, p. 425. See also: MUREINIK, Etienne. A Bridge to Where? Introducing the Interim Bill of Rights. *South African Journal on Human Rights*, vol. 10, n. 1, p. 31–48, 1994, p. 32.

Quite apart from the above, even absent any mechanisms of external review or legitimation of authority, the very exercise of drafting a written statement of reasons may itself serve to engage the judge's internal discipline, prompting closer reflection upon the case and guarding against cognitive bias and against adjudication founded on extra-procedural or extra-legal considerations. This aspect has been highlighted by O. Katz and E. Zamir, who noted that the act of writing a statement of reasons carries a cognitive and disciplining significance in its own right, being a process that compels more systematic, reflective and deliberative thinking, thereby tempering the influence of heuristics, cognitive biases, intuitive assessments and conscious or unconscious prejudice. As they put it directly, "judges report that when they sit down to explicate the reasons for their decision, they sometimes change their initial conclusion because 'it just won't write'"[13].

One ultimately returns to the argument that a decision that is amenable in an appeal procedure must, as it were, be capable of standing on its own two feet. In this context, a statement of reasons constitutes, on the one hand, a precondition for effective appellate review and ought to reflect with precision the process by which the court arrived, on the basis of the applicable law and the body of evidence assembled, at a decision of a given content. Without a statement of reasons, it is impossible to ascertain whether the decision was in fact grounded in law[14]. The literature draws

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[13] KATZ, Ori; ZAMIR, Eyal. Law, Justice and Reason-Giving. *Journal of Empirical Legal Studies*, Vol. 22, n. 2, p. 243–266, June 2025, p. 247. https://doi.org/10.1111/jels.12412. The observation made by Katz and Zamir can also be related to the dual-process account of judgment developed by D. Kahneman. In this framework, automatic and intuitive processing (System 1 thinking) is distinguished from the controlled and reflective mode of thinking associated with what author calls System 2 - reasoning. The discipline involved in articulating reasons may therefore be understood as encouraging a shift from an initially intuitive assessment towards more deliberate scrutiny of the grounds on which the decision rests. See: KAHNEMAN, Daniel. *Thinking, fast and slow*. 1st ed. New York: Farrar, Straus and Giroux, 2011, p. 44–46, 102.

[14] As Martin Shapiro graphically puts it: "In the absence of any rationale at all, for example, horses may fall under the jurisdiction of the agency administering the chicken statute. In some way or another, after all, horses may impinge upon chickens in the barnyard". SHAPIRO, Martin. The Giving Reasons

attention in this regard to the risk of ex post rationalization of decisions through the construction of ostensible statements of reasons, where the judge first reaches a given conclusion — intuitively or under the influence of bias — and then undertakes not so much its genuine justification as a literary exercise designed to erect a façade of legal grounding for that determination[15]. The supervisory function of a statement of reasons enables the detection and correction of errors within appellate procedures. Moreover, it serves to preserve consistency in adjudication and to develop a standard of the level of legal protection that may legitimately be expected. This is of particular importance in the case of courts of last instance, which are under a duty to provide reasoned decisions precisely because their judgments are not subject to further hierarchical review.

Drawing the foregoing together, it may be observed that the statement of reasons for a decision in criminal matters fulfills four closely interrelated, yet analytically distinct, functions. First, a communicative and legitimising function (with an educative dimension) — directed at a broad, multi-layered audience comprising the parties, the appellate court, legal professionals, the legislature, and the general public — whereby the persuasiveness of the reasoning reinforces public confidence in the administration of justice, while eliminating the tolerance of statements of reasons that fall flagrantly short of the requisite standard risks undermining the authority of the judiciary. Second, a guarantee function vis-à-vis the parties, as a substantive realization of the right to a defense and to a fair trial, and as a safeguard against the arbitrariness of judicial power. Third, a self-regulatory function (in the auto-reflexive sense, disciplining the judge's reasoning), in that the obligation to commit the reasoning to writing compels the court to demonstrate the soundness of its determination, disciplining the judge's reasoning, and ensuring that the reasoning is set out in full. Fourth, a supervisory function — as a precondition for effective appellate review — in that a statement of reasons provides the foundation for external scrutiny of the decision by superior courts and

Requirement. *University of Chicago Legal Forum*, vol. 1992, n. 1, p. 179–220, 1992, p. 182.

[15] COHEN, op. cit., p. 521.

must constitute a complete and self-contained instrument, faithfully reconstructing the court's chain of reasoning.

These functions of a statement of reasons for a ruling can be fulfilled if the statement is characterized by completeness[16] and coherence[17]. Courts should strive to issue rulings based on thorough and comprehensive reasoning that takes into account and evaluates the arguments of the parties to the proceedings. Only then can it be considered that the participants' arguments have truly been taken into account, and that the adjudication process retains its integrity[18]. Completeness also makes it possible to ensure the accuracy of a decision. The requirement to provide a statement of reasons eliminates decisions based on bias, as judges must indicate the objective grounds of their rulings. As standards of completeness increase, so does the likelihood that a decision will also be rational in a material sense. This is particularly true when the reasoning is not limited to narrow arguments, but places the ruling within a broader set of general legal principles. Also, rationality is reinforced by the need to demonstrate which arguments are valid, what weight they carry, and how they lead to the decision[19]. An important feature of a statement of reasons is its internal, axiological coherence, as it promotes the certainty of law and predictability and prevents argumentative chaos. Judicial

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[16] For the purposes of this article, a statement of reasons will be regarded as complete where it contains all elements necessary to understand the basis on which the decision was reached. These include the relevant factual findings, the evidence accepted and rejected, the applicable legal grounds, and consideration of those arguments advanced by the parties whose acceptance could have affected the outcome of the case.

[17] For the purposes of this article, coherence refers, first, to the internal consistency of judicial reasoning, understood as the absence of contradiction and the existence of an intelligible relationship between the factual findings, the applicable legal rules, and the conclusion reached. Second, it encompasses an external dimension, requiring the reasoning to remain consistent with the general principles of law and, as a rule, with the relevant body of existing case law.

[18] According to some authors, it also has a disciplining character, see: COHEN, op. cit., p. 511.

[19] LUCY, William: Adjudication, in COLEMAN Jules L., HIMMA Kenneth Einar, SHAPIRO Scott (eds.): The Oxford Handbook of Jurisprudence and Philosophy of Law, Oxford, Oxford University Press 2004, p. 229.

reasoning, by promoting a specific vision of justice, has both an axiological and an ideological dimension. In short, completeness and coherence are important because they make procedural decisions much more convincing due to their rationality. The completeness and coherence of a statement of reasons also serve to strengthen the stability, certainty, and predictability of court decisions. It therefore not only performs procedural functions, but also builds the authority of the judiciary and shapes the outside world's perception of the fairness of the rulings.

3. Providing Reasons for Court Rulings as a Component of the Right to a Fair Trial in light of the Case Law of the ECtHR

3. 1. The Essence of the Right to Receive a Statement of Reasons for a Ruling

The obligation to provide a statement of reasons for judicial decisions – or, from the perspective of an individual's rights, the right to be provided with reasons for a judicial decision – is not explicitly stated in the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court derives the right to receive a statement of reasons for a ruling from the first sentence of Article 6(1) of the Convention, which provides: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". This provision serves as the basis both for the rights expressly set forth in its text and for those derived through interpretation by the ECtHR. In a landmark ruling regarding the interpretation of Article 6 of the Convention, namely, the *Golder v. United Kingdom* case, the Court held that "Article 6 para. 1 (art. 6-1) does not state a right of access to the courts or tribunals in express terms. It enunciates rights which are distinct but stem from the same basic idea and which, taken together, make up a single right not specifically defined in the narrower sense of the term"[20]. The interpretation of the Convention should be based on

[20] The ECtHR judgment of 21 February 1975 in case of *Golder v. the United Kingdom*, application no. 4451/70, § 28.

its object and purpose, to which the states parties refer in the preamble to the Convention, invoking their common heritage of political ideals and traditions, respect for freedom, and the rule of law. By invoking the concept of the rule of law, the ECtHR was able to adopt an interpretation of the text of the Convention under which it also guarantees rights that are not explicitly mentioned in the text of the provisions[21]. The Court also noted that "A restrictive interpretation of the right of access to a court guaranteed by Article 6 § 1 would not be consonant with the object and purpose of the provision" and with the Preamble to the Convention[22]. The view that the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective, has led the Court to adopt a dynamic interpretation of the concept of a fair trial, as only such an interpretation allows the Court's case law to take into account the changing spirit of the times. For this reason, Harris, O'Boyle, and Warbrick also describe the concept of fair trial as having an "open-ended, residual quality"[23].

Among the rights interpreted by the ECtHR under Article 6(1) of the Convention is the right to a reasoned judgment[24]. The duty to give reasons belongs to the common core of Article 6 (1), which has been developed by the Court without differentiating between civil and criminal proceedings[25]. The case law of the ECtHR emphasizes that for a trial to be

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21 LETSAS, George: A Theory of Interpretation of the European Convention on Human Rights, Oxford, Oxford University Press 2007, p. 61.

22 The ECtHR judgment of 26 October 1984 in case of *De Cubber v. Belgium*, application no. 9186/80, § 30; the ECtHR judgment of 22 March 2007 in case of *Staroszczyk v. Poland*, application no. 59519/00.

23 HARRIS, David; O'BOYLe, Michael; WARBRICK Colin: Law of the European Convention on Human Rights, London: Butterworths 1995, p. 202; TRECHSEL, Stefan; Human Rights in Criminal Proceedings, Oxford, Oxford University Press 2005, pp. 81-86.

24 CLAYTON, Richard; TOMLINSON, Hugh: Fair Trial Rights, Oxford, Oxford University Press 2006, p. 89.

25 The standard elaborated in civil cases therefore applies in criminal proceedings as a minimum, reinforced there by the additional guarantees of Article 6 (3) so that its transposition can only raise the level of protection afforded to the accused. See also Golder v. the United Kingdom, cited above: the rights enunciated in Article 6 § 1 are „distinct but stem from the same basic idea and which, taken together, make up a single right".

considered fair, a reasoned judgment is also necessary[26], since the role of the judiciary does not end with the issuance of a judgment, but continues thereafter, since only a reasoned ruling makes it possible to exercise public oversight over the administration of justice, and demonstrates that the parties were heard during the proceedings[27]. The Court recognizes that, while the extent to which there is an obligation to state the reasons for rulings may vary depending on their nature and the stage at which they are issued[28], the court is nevertheless required to justify its actions by stating the reasons for its decisions[29]. In one case, when examining the fairness of the criminal proceedings, the Court held, in particular, that by failing to address a specific, pertinent and important argument raised by the accused, the domestic courts had failed to fulfil their obligations under Article 6 § 1 of the Convention[30]. The Court does not assess the merits of the reasoning, nor does it gather evidence in order to properly resolve the case[31]. The subject of the review, however, is the method adopted by the court to resolve the case (as set forth in the reasoning) - specifically,

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[26] The ECtHR judgment of 19 April 1994 in the case of *Van de Hurk v. the Netherlands*, Series A no. 288, p. 20, § 61.

[27] The ECtHR judgment of 11 January 2007 in the case of *Kuznetsov and other v. Russia*, application no. 31856, § 83, https://hudoc.echr.coe.int/eng?i=001-140892; the ECtHR judgment of 22 February 2007 in the case of *Tatishvili v. Russia*, application no. 1509/02, § 58, https://hudoc.echr.coe.int/eng?i=001-79564.

[28] The ECtHR judgment of the 9 December 1994 in the case of *Ruiz Torija v Spain*, 18390/91, § 29, https://hudoc.echr.coe.int/eng?i=001-57909; The ECtHR judgment of the 22 February 2007 in the case of *Tatishvili v. Russia*, application no. 1509/02, § 58.

[29] The ECtHR judgment of 1 July 2003 in the case of *Suominen v. Finland*, application no. 37801/97, § 36, https://hudoc.echr.coe.int/eng?i=001-61178; the ECtHR judgment of the 22 February 2007 in the case of *Tatishvili v. Russia*, application no. 1509/02, § 58.

[30] The ECtHR judgment of 21 April 2011 in the case of *Nechiporuk and Yonkalo v. Ukraine*, application no. 42310/04, § 280, https://hudoc.echr.coe.int/eng?i=001-104613; the ECtHR judgment of 9 March 2023 in the case of *Cuoiał v. Poland*, application no. 67414/11, § 57, https://hudoc.echr.coe.int/eng?i=001-223374; The ECtHR judgment of 5 November 2024 in the case of *Zahariev v. North Macedonia*, application no. 26760/22, § 50, https://hudoc.echr.coe.int/eng?i=001-237797.

[31] The ECtHR judgment of 9 December 1994 in the case of *Hiro Balani v. Spain*, application no. 18064/91, § 27.

its compliance with the standards of the Convention[32]. Therefore, the content of the court's findings that formed the basis of the ruling is subject to review, and an analysis of those findings is possible only by reading the statement of reasons for the ruling. This means that the Court places greater emphasis on the procedural aspects of providing statements of reasons for rulings than on evaluating the merits of these statements.

The Court's case law justifies the proposition that a proper statement of reasons helps the parties to the proceedings understand and accept the ruling, but most importantly, it prevents arbitrary interpretation of the ruling. A court is not required to provide a meticulous and detailed justification for every argument raised by a party or to analyze every piece of evidence, as the scope of the reasoning depends on many factors, including the nature of the case, the diversity of arguments raised by the parties during the proceedings, the various methods of announcing judgments, and the different statutory provisions governing the drafting of reasoning in force in the states parties to the Convention[33]. In the case of *Taxquet v. Belgium*, the Court held that in proceedings conducted by professional judges, the defendant's understanding of the conviction stems primarily from the statement of reasons for the judgment. In such cases, national courts must state the grounds for their decisions with sufficient clarity. Judgments with statements of reasons are also intended to show the parties that they have been heard. In this way, they help foster a greater willingness to accept them. In addition, they require judges to base their rulings on objective arguments and to uphold the right to defense. However, the scope of the obligation to provide a statement of

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[32] The ECtHR judgment of 16 December 1992 r. in the case of *Hadjianastassiou v. Greece*, application no. 12945/87, § 33, https://hudoc.echr.coe.int/eng?i=001-57779.

[33] The ECtHR judgment of 9 December 1994 in the case of *Ruiz Torija v. Spain*, application no. 18390/91, § 30, https://hudoc.echr.coe.int/eng?i=001-57909; the ECtHR judgment of 9 December 1994 in the case of *Hiro Balani v. Spain*, application no. 18064/91, § 27; the ECtHR judgment of 21 May 2002 in the case of *Jokela v. Finland*, application no. 28856/95, § 72, https://hudoc.echr.coe.int/eng?i=001-60466; the ECtHR judgment of 21 June 2016 in the case of *Tchankotadze v. Georgia*, application no. 15256/05, § 103, https://hudoc.echr.coe.int/eng?i=001-163799; see also Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (updated on 28 February 2026), p. 57-58.

reasons varies depending on the nature of the decision in question and must be assessed in light of the circumstances of the specific case. Its form may be influenced by, among other factors, the scope of available arguments, statutory provisions and legal views, as well as the manner in which rulings are drafted and announced[34]. Case law also shows that the scope of a statement of reasons may vary depending on the type of arguments raised in the case, and even on certain practices established by the judiciary of a given state party to the Convention[35]. Although courts are not required to respond in detail to every argument raised, it must be clear from the judgment itself that all relevant issues have been addressed[36]. Consequently, a court should state the actual reasons underlying its decision in a specific case, rather than merely relying on general formulas or templates, thus, as the ECtHR put it in the *Moreira Ferreira* case, avoiding situations where "the reasons provided for decisions given by the domestic courts are automatic or stereotypical"[37]. It should be noted here that the Court did not specify the form of a statement of reasons. The Court's case law does not indicate either the specific form or the timeframe within which the court should provide the grounds

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[34] The ECtHR judgment of 9 December 1994 in the case of *Ruiz Torija v. Spain*, application no. 18390/91, § 29; The ECtHR judgment of 9 December 1994 in the case of *Hiro Balani v. Spain*, application no. 18064/91, § 27.

[35] The ECtHR judgment of 9 December 1994 in the case of *Ruiz Torija v. Spain*, application no. 18390/91, § 30; the ECtHR judgment of 19 April 1994 in the case of *Van de Hurk v. the Netherlands*, Series A no. 288, p. 20, § 56; the ECtHR judgment of 27 September 2001 in case of *Hirvisaari v. Finland*, application no. 49684/99, § 30, https://hudoc.echr.coe.int/eng?i=001-59682.

[36] The ECtHR judgment of 16 November 2010 in the case of *Taxquet v. Belgium*, application no. 926/05, § 91, https://hudoc.echr.coe.int/fre?i=001-101739; THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts?: The Spanish Experience and the Implications of the European Court of Human Rights Decision in *Taxquet v. Belgium*. *Chicago-Kent Law Review*, Vol. 86, Issue 2, 2011, p. 613-668. Although *Taxquet* concerned jury proceedings, the judgment is relevant here because it shows that the reasons given for a decision must be sufficient to make its basis understandable. However this judgment should not be read as laying down a fixed list of elements that every statement of reasons must contain.

[37] The ECtHR judgment of 11 July 2017 in the case of *Moreira Ferreira v. Portugal*, application no. 19867/12, § 84, https://hudoc.echr.coe.int/eng?i=001-175646.

for its decision. It is important that the length of the period following its announcement not deprive the party of the right to file an appeal.

In seeking the axiological basis for the right to a written statement of reasons for a ruling, the Court emphasized the importance of such a ruling for the defendant as well as for the general public. It concluded that the defendant and the public must understand the sentence issued, as this serves as a safeguard against arbitrariness. It also stated that the rule of law and the avoidance of arbitrariness are principles underlying the Convention. The Court noted that although courts are not required to provide a detailed response to every argument raised by a party, the statement of reasons for the judgment must clearly show that the court has addressed the fundamental issues raised in the case[38]. In considering the function, role, and form of a statement of reasons for a court decision, the Court is of the opinion that the grounds for a ruling enable public oversight of the administration of justice and allow the petitioner to personally familiarize himself or herself with the reasons for the ruling rendered in his or her case. A statement of reasons also helps the judges hearing a case to gather and organize their thoughts[39]. The Court emphasised, in *Tatishvili v. Russia*[40], both the supervisory function of the statement of reasons for a judgment and its broader social significance, holding that the reasons underpinning a judicial decision also serve the purpose of enabling public scrutiny of the administration of justice. This depends largely on the nature of the judgment and should always be assessed in light of the circumstances of each case. In any case, however, the drafting of a statement of reasons allows the court to reflect on the content of its ruling. It is clear that the requirement to draft a statement of reasons obliges judges not only to thoroughly analyze the case, but also to base their reasoning on objective arguments, which helps

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[38] The ECtHR judgment of 22 February 2011 in the case of *Lalmohomed v. Netherlands*, application no. 26036/08, § 43, https://hudoc.echr.coe.int/fre?i=001-103598; The ECtHR judgment of 1 July 2003 in the case of *Suominen v. Finland*, application no. 37801/97, § 36; the ECtHR judgment of 21 May 2002 in the case of *Jokela v. Finland*, application no. 28856/95, § 72.

[39] See BRONIECKA, Rossana; Uzasadnienie wyroku w polskim postępowaniu karnym, Warszawa, WoltersKluwer, 2014, p. 135–145.

[40] The ECtHR judgment of 22 February 2007 in the case of Tatishvili *v. Russia*, application no. 1509/02, § 58, https://hudoc.echr.coe.int/eng?i=001-79564.

protect the parties from arbitrary rulings[41]. This means that a statement of reasons for a judgment should specify the factual basis for the ruling, in particular, a statement of the facts that the court found to be proven, the evidence on which it relied, and the reasons why it rejected other evidence as lacking credibility and probative value, as well as an explanation of the legal basis for the judgment, citing the relevant legal provisions.[42]

The right to receive a statement of reasons for a judgment, as interpreted under Article 6(1) of the Convention, does not permit challenges to the jurisdiction of national courts or allegations that those courts reached erroneous conclusions in the statement of reasons. Nor does Article 6 require a detailed answer to every argument raised by the parties. As established in *García Ruiz v. Spain*[43], the scope of the duty to give reasons depends on the nature of the decision and the circumstances of the case; what matters is whether the judgment, viewed as a whole, discloses the essential grounds on which it is based. This standard cannot, however, be understood in purely quantitative terms. The existence of "at least some grounds" is not sufficient where the reasoning fails to establish a rational connection between the facts, the applicable law and the conclusion reached. National courts must address the parties' specific, relevant and potentially decisive submissions, although they are not required to respond expressly to every argument. The statement of reasons must also demonstrate that the parties were heard, enable effective appellate review and permit public scrutiny of the administration of justice.

The Court's judgments in *Tatishvili v. Russia*[44] and *Tchankotadze v. Georgia*[45] illustrate the qualitative dimension of this requirement. In those

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41 The ECtHR judgment of 22 February 2007 in the case of Tatishvili *v. Russia*, application no. 1509/02, § 58; the ECtHR judgment of 27 September 2001 in the case of *Hirvisaari v. Finland*, application no. 49684/99, § 30.

42 The ECtHR judgment of 16 November 2010 in the case of *Taxquet v. Belgium,* application no 926/05, § 90.

43 The ECtHR judgment of 21 January 1999 in the case of *García Ruiz v. Spain*, application no. 30544/96, § 26-30.

44 The ECtHR judgment of 22 February 2007 in the case of Tatishvili *v. Russia*, application no. 1509/02, § 58, https://hudoc.echr.coe.int/eng?i=001-79564.

45 The ECtHR judgment of 21 June 2016 in the case of *Tchankotadze v. Georgia*, application no. 15256/05, § 102

cases, the domestic courts' reasoning was not merely incomplete but disconnected from the relevant facts and evidence, and failed to address essential arguments raised by the applicants. This resulted in such rulings being deemed arbitrary and leading to a violation of the principle of a fair trial[46]. However, such cases are exceptions.

The Court's case law demonstrates that the right to receive a statement of reasons is not absolute. It also follows that the Convention does not impose on lay judges any obligation to give reasons for their decision, and Article 6 does not preclude a defendant from being tried by a lay jury even where reasons are not given for the verdict. The absence of reasons in a judgment, owing to the fact that the applicant's guilt has been determined by a lay jury, is not in itself contrary to the Convention[47]. However, in the judgment in the *Taxquet v. Belgium* case, the ECtHR held that the failure of the judges to provide the grounds for their finding of guilt, although this in itself does not constitute a violation of the right to a fair criminal trial, in the circumstances of the case in question, resulted in a violation of the right to a fair criminal trial as set forth in Article 6(1) of the Convention[48]. In this case, in the Court's view, the petitioner did not know which evidence and factual circumstances considered during

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[46] The ECtHR judgment of 22 February 2007 in the case of *Tatishvili v. Russia*, application no. 1509/02, § 59-63; the ECtHR judgment of 21 June 2016 in the case of *Tchankotadze v. Georgia*, application no. 15256/05, § 102. In the second case, the Court noted that "reflecting a principle linked to the proper administration of justice under Article 6 § 1 [...] [ECHR], the judgments of courts and tribunals should adequately state the reasons on which they are based, and which should be void of manifest arbitrariness, in order to show that the parties were duly heard and ensure public scrutiny of the administration of justice". See also DJUKIC, Drazan, The right to a fair appeal in international criminal law, Tilburg University 2017, p. 102-103.

[47] The ECtHR judgment of 29 November 2016 in the case of *Lhermitte v. Belgium* [GC], application no. 34238/09, § 66, https://hudoc.echr.coe.int/eng?i=001-169053; the ECtHR judgment of 30 June 2022 in the case of *Rusishvili v. Georgia*, application no. 15269/13, § 58, https://hudoc.echr.coe.int/rum?i=001-218078.

[48] The ECtHR judgment of 16 November 2010 in the case of *Taxquet v. Belgium*, application no. 926/05, § 93–96; Roberts, Paul: Does Article 6 of the European Convention on Human Rights Require Reasoned Verdicts in Criminal Trials? *Human Rights Law Review*, Vol. 11, Issue 2, 2011, p. 213–235, https://doi.org/10.1093/hrlr/ngr003

the proceedings formed the basis for the affirmative answers to the four questions concerning him, he did not learn what his role in the murder was in relation to the other co-defendants, why he was found guilty of premeditated murder rather than murder without premeditation, especially since his case and that of the other defendants were complex, and the proceedings were lengthy and involved the examination of numerous witnesses and experts[49]. What was also significant for the Court's position in the *Taxquet* case was that the Belgian criminal procedure did not provide for an appeal against a judgment that would challenge the findings of fact or the determination of guilt, but only allowed for an appeal to the Court of Cassation solely on legal matters, thereby failing to provide the defendant with the reasons for his conviction[50]. Generally speaking, the Court held that the absence of the reasoning for the jury's verdict may violate the right to a fair trial if the defendant is unable to understand the basis for the conviction.

The ruling in the *Taxquet* case is unique. The Court seeks to reconcile in it two distinct legal systems: common law, where historically the verdict of a criminal jury has been viewed as "the conscience of the community" and enjoys inherent legitimacy, since the jury always "spoke the truth"[51] and the civil law system, in which a statement of reasons for a judicial decision is closely linked to the concept of judicial review and the prohibition against arbitrariness. This raises the question of whether a jury can truly provide reasonable reasons for its decision without becoming something halfway between a jury and a mixed court.

In the *Taxquet* case, the Court did not challenge the institution of a jury itself, but held that the lack of a written statement of reasons must be compensated by other guarantees: precise questions, appropriate instructions from the judge, and a genuine opportunity to understand the grounds for the conviction. In other words, it is not about a single formal formula, but rather whether the entire mechanism of the process allows for arbitrariness to be avoided. In order to preserve the autonomy

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[49] Ibidem, § 97.

[50] Ibidem, § 99.

[51] THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 613.

of a jury, the Court proposes special procedural measures that take into account the fact that jurors are not usually required (or permitted) to explain their personal beliefs. These may include, for example, tips or guidance from the presiding judge to the jurors on legal issues or evidence, as well as the formulation of clear questions posed to the jury by the judge, which provide the framework upon which the judgment is based. In the Court's view, the legal solutions indicated could compensate for the fact that the jury's responses do not include reasoning[52].

The proposals presented here are not original, but are based on national solutions. Contemporary systems, particularly the Spanish one, seek to strike a balance between the autonomy of jurors and the requirement to provide reasons for rulings by using a specific list of questions. Thanks to this list, instead of reaching a general "guilty/not guilty" verdict, jurors answer a list of specific questions regarding facts. A well-structured list of questions allows a professional judge and parties to see the logical thought process of the jurors, which in itself constitutes a form of reasoning[53]. Another way to gain insight into the jury's thought process is to require a concise explanation of the motives

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[52] The ECtHR judgment of 16 November 2010 in the case of *Taxquet v. Belgium,* application no. 926/05, § 92. The Court reached similar conclusions in the *Rusishvili* case, holding that: "Article 6 requires an assessment of whether sufficient safeguards were in place to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his or her conviction. Such procedural safeguards may include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict is based and sufficiently offsetting the fact that no reasons are given for the jury's answers", § 60.

[53] As S. C. Thaman points out, following the questions referred to as the "objeto del veredicto" the judgment form "should set out the following propositions as to each charged crime and each charged defendant: (1) the facts which prove the commission of the crime (corpus delicti) and the defendant's identity as the perpetrator (hecho principal, or "principal fact"); (2) the defense allegations; (3) the facts which could completely justify or excuse the charged criminal acts; (4) a narrative of the facts that determine the degree of execution or participation in the offense, or any statutory aggravating or mitigating circumstances; and (5) the "criminal act as to which the defendant must be declared guilty or not guilty", por. THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 628-629.

the jury's decision[54]. Depending on the circumstances of the case and the jury's discretion, this requirement may take the form of more detailed and concrete reasoning, referring to specific testimony, expert opinions, or the positions of the parties. To avoid "denaturalizing" the jury's decision, jurors in Spain may call upon the court clerk (who has a legal education) to help them draft a statement of reasons, but the clerk does not participate in the deliberations themselves[55]. However, following the ruling in the *Taxquet* case, Belgium introduced a legal provision under which professional judges assist jurors in drafting the statement of reasons for their verdicts after the jurors have reached a guilty verdict. First, however, the jury retires to deliberate on the question of guilt, and after the verdict is issued, a three-judge panel is invited into the deliberation room to assist the jury in drafting the reasons for the judgment[56].

In light of the above considerations, the question arises of whether such a solution would allow professional judges to impose their own line of reasoning on the jury, thereby undermining the jury's autonomy and making the trial resemble a "mixed court"[57]. It seems that the criticism in this regard is exaggerated[58]. The jury may retain its current, autonomous status, provided that the reasons for a judgment focuses on the facts and the assessment of the evidence (the role of the jurors) rather than on legal interpretation (the role of the judge). It is therefore crucial to adopt a "flexible" approach to the reasoning behind judgments that

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54 THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 630.

55 THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 629.

56 See Section 334 CCP-Belgium; see also THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 624.

57 THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 664; MOOS, Reinhard; Die Begründung der Geschworenengerichtsurteile. *Juristische Blätter*, Vol 132, Issue 2, 2010, p. 81, https://doi.org/10.1007/s00503-010-1842-z

58 It is argued, however, that the Tribunal's ruling contains remarks and suggestions that could be interpreted as threatening to the long-term future of the common law jury in the common law, see Roberts, Paul: Does Article 6 of the European Convention on Human Rights Require Reasoned Verdicts in Criminal Trials? *Human Rights Law Review*, Vol. 11, Issue 2, 2011, p. 213–235, https://doi.org/10.1093/hrlr/ngr003

accepts the lay language used by jurors and recognizes that their role is to identify the evidence that was considered, in a manner that allows one to conclude that the ruling has a rational basis in the facts established during the proceedings and is not the result of pure arbitrariness. One cannot expect a jury to draft a "professional legal treatise" containing an in-depth assessment of individual pieces of evidence as well as the body of evidence as a whole[59].

Receiving a statement of reasons for a ruling allows a party to thoroughly review and evaluate the arguments contained therein, which, in practice, is a prerequisite for filing an appeal and, thus, for ensuring the two-instance nature of the proceedings. This serves to realize the party's individual interest, since an appeal must generally be based on objections to the court's arguments presented in the statement of reasons. Consequently, the inability to challenge a court's reasoning – due to the absence of a statement of reasons or its defects – makes the appeal process *de facto* illusory[60]. This leads to the conclusion that obtaining a statement of reasons is a prerequisite for filing an appeal to verify the correctness of a ruling[61]. In the *Hadjianastassiou* case, the ECtHR emphasized that "The national courts must... indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him"[62]. Consequently, the Court held that a situation in which the

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[59] THAMAN, Stephen C.: Should Criminal Juries Give Reasons for Their Verdicts..., p. 651-652.

[60] The ECtHR judgment of 16 December 1992 r. in the case of *Hadjianastassiou v. Greece*, application no. 12945/87, § 33-36; the ECtHR judgment of 27 September 2001 in the case of *Hirvisaari v. Finland*, application no. 49684/99, § 31-32; ŁĘTOWSKA, Ewa; PAPROCKA, Ada; RZUCIDŁO-GROCHOWSKA, Iwona; Podstawy uzasadnienia w prawie konstytucyjnym i międzynarodowym, in RZUCIDŁO-GROCHOWSKA, Iwona; GROCHOWSKI, Mateusz (eds.), Uzasadnienie decyzji stosowania prawa, Warszawa, WoltersKluwer 2015, p. 25.

[61] See BRONIECKA, Rossana: Uzasadnienie wyroku w polskim postępowaniu karnym, Warszawa, WoltersKluwer 2014, p. 135–145.

[62] The ECtHR judgment of 16 December 1992 r. in the case of *Hadjianastassiou v. Greece*, application no. 12945/87, § 33; the ECtHR judgment of 28 May 2009 in the case of *Karyagin, Matveyev and Korolev v. Russia*, application no. 72839/01, 74124/01, 15625/02, § 25; TRECHSEL, Stefan; Human Rights in Criminal Proceedings, Oxford, Oxford University Press 2005, p. 103.

deadline for appealing a judgment expires before the grounds for the judgment are served on the party constitutes a violation of the right to a fair trial. However, this does not mean that verdicts that cannot be appealed do not have to be supported by reasons[63].

3.2. Reasons for a Ruling by an Appellate Court and Supreme Courts (Courts of Cassation)

An analysis of the case law of the ECtHR shows that, from the perspective of the right to a fair trial, not only the statement of reasons of the first-instance court but also that of the appellate court and the supreme courts is of significant importance. Also in this regard it is noted that the court's obligation to provide reasons for its decisions is one of the elements of the right to a fair trial. It assures the parties that their case has been properly heard and that their positions have been considered. However, this guarantee is not only provided to the parties themselves, but also makes public oversight of the justice system a reality. It is of particular importance in cases where the legal system of a state party to the Convention does not provide for the possibility of filing an appeal[64].

Exceptions are acceptable when it comes to drafting statements of reasons for decisions of appellate courts and supreme courts. These exceptions stem primarily from the fact that Article 6 of the Convention does not provide for the right to appeal a ruling or for the case to be reviewed by an appellate court or a court of cassation. The right to appeal in criminal cases was introduced into the Convention relatively late. Article 2 of Protocol No. 7 of November 22, 1984, to the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted. In accordance with this article everyone convicted of a criminal offense by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law. This is not an

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[63] The ECtHR judgment of 16 December 1992 r. in the case of *Hadjianastassiou v. Greece*, application no. 12945/87, § 33.

[64] TRECHSEL, Stefan: Human Rights in Criminal Proceedings, Oxford, Oxford University Press 2005, p. 103.

absolute rule, as the right of appeal in criminal cases may be restricted in cases involving offenses of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

The scope of the right to appeal in criminal cases or the limits of the specified exceptions is not analyzed herein[65], as this is not the subject of this article. The Court takes the position that appellate courts and supreme courts (courts of cassation) are required to provide reasons for rulings in cases where they rule on the merits of a case[66]. In this case, the guidance and legal assessment set forth in a statement of reasons may also be necessary for lower courts to properly reconsider the case in the event of a cassation ruling. Much depends in this regard on the model of the appeal process adopted in the legal system. If, under a given national legal system, the adopted model of appeal proceedings allows for a broad review of a case – both in procedural and substantive terms – while going beyond the scope of an appeal, the reasoning for the second-instance court's judgment is insufficient if it is limited to repeating a party's position without the court offering its own analysis. An assessment of the allegations set forth in an appeal, conducted by a court of second instance, cannot, however, be limited to generalities, but must specify the concrete reasons why the appellate court considers the allegations to be valid, invalid, or irrelevant to the substance of the judgment of the court of first instance. In light of Article 6 of the Convention, an appellate court may not disregard the allegations raised in an appeal, although it is not required to respond in detail to each of

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[65] See VAN DIJK, Pieter; VAN HOOF, Fried; VAN RIJN, Arjen; ZWAAK, Leo (eds.), Theory and Practice, of the European Convention on Human Rights. Antwerpen-Oxford, Intersentia, 2006, p. 974; TRECHSEL, Stefan: Human Rights in Criminal Proceedings, Oxford, Oxford University Press 2005, p. 368-371.

[66] The ECtHR judgment of 10 August 2006 in the case of *Yanakiev v. Bulgaria*, application no. 40476/98, § 72, https://hudoc.echr.coe.int/eng?i=001-76682; the ECtHR judgment of 15 March 2007 in the case of *Gheorghe v. Romania*, application no. 19215/04, § 50, https://hudoc.echr.coe.int/eng?i=001-79795; the ECtHR judgment of 28 June 2007 in the case of *Wagner and J.M.W.L v. Luxembourg*, application no. 76240/01, § 96; the ECtHR judgment of 8 April 2008 in the case of *Grădinar v. Moldova*, application no. 7170/02, § 115, https://hudoc.echr.coe.int/eng?i=001-127805.

them separately. It may address them in a general manner, but always with appropriate reasoning of its own, rather than by making a vague reference to the accuracy of the findings, assessments, or views contained in the statement of reasons for the challenged ruling, by simply stating that something is correct or unfounded.

In two procedural arrangements, the reexamination of the grounds for the appellate court's ruling becomes relevant. The first is a situation where the appellate court issues a reformatory ruling, that is, it modifies the judgment of the court of first instance. In such a situation, the appellate court should analyze and evaluate all the evidence gathered in the course of the criminal proceedings to date, present its own findings that led it to conclude that a different decision is necessary (e.g., increasing or reducing the sentence), demonstrate that the position expressed in the judgment of the court of first instance was flawed, and present arguments justifying its own position. In the second arrangement, particular care should be taken in drafting the statement of reasons for the appellate court's decision, pursuant to which the judgment of the court of first instance is repealed and the case is remanded for reconsideration. It is necessary to clearly state the reasons for this decision in order to avoid them in the next proceedings.

The Court made a different assessment of a situation in which an appellate court or a supreme court (or another court of cassation) refuses to accept an appeal or a cassation petition, or dismisses it as failing to meet the requirements for admissibility, and provides a brief justification for its decision, stating only that the cassation petition is not supported by grounds for cassation. In such a case, the standard set forth in Article 6 of the Convention is met, since, given that the case has been examined on its merits twice, there is no restriction on the party's right to a fair trial[67]. In such a case, it is sufficient for the appellate court or the court of cassation to simply cite the specific provision serving as the basis for

[67] The ECtHR decision of 1 September 2009 in the case of *Wnuk v. Polska*, application no. 38308/05 *Wnuk v. Polska*, https://hudoc.echr.coe.int/eng?i=001-94312; TORBUS, Andrzej: W sprawie braku obowiązku uzasadnienia postanowienia Sądu Najwyższego o odmowie przyjęcia skargi kasacyjnej w kontekście prawa do sądu. Przegląd Sądowy, no 1, 2007, p. 46.

dismissing the cassation petition (which is clearly unfounded) without providing any further explanation[68].

3.3. Statement of Reasons for Interlocutory Decisions

Obtaining a statement of reasons for an interlocutory decision[69] concerning, for example, the application of preventive measures, including pretrial detention, a search, or a seizure of property, is also important for verifying the accuracy of the ruling. It also compels the trial court to consider its decisions more carefully before issuing them. Although it is obvious that the content of a statement of reasons must be tailored to the issue at hand, it must nevertheless always include a discussion of the facts and the evidence on which it is based[70]. It is also essential to discuss the legal basis in a statement of reasons, but not by citing the provisions of the applicable law, but rather by relating it to the established facts. Parties to criminal proceedings have the right to expect to receive a detailed statement of reasons for a procedural decision that often infringes upon their individual rights and freedoms. At this point, it is worth referring to the *Mazowiecki* case, which concerned a search of the complainant's apartment during the pretrial procedure phase. The Court, addressing the allegation of a violation of the applicant's right to respect for his home, noted that there had been an interference with the right to privacy (Article 8 of the Convention). In the ECtHR's view, the search and seizure in question, which were carried out without a prior court order, did not

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[68] The ECtHR judgment of 21 March 2006 in the case of *Salé v. France*, application no. 39765/04, § 17-18, https://hudoc.echr.coe.int/eng?i=001-72810; the ECtHR decision of 28 January 2003 in the case of *Burg and other v. France*, application no. 34763/02.

[69] The term "interlocutory decisions" is used here to denote those rulings which resolve ancillary procedural or factual questions arising in the course of the main proceedings and calling for immediate determination, without disposing of the criminal charge itself, including *inter alia* orders concerning the imposition of preventive measures, most notably pre-trial detention, as well as orders relating to arrest, search, seizure, the taking of evidence and comparable measures.

[70] The ECtHR judgment of 8 June 2023 in the case of *Mazowiecki v. Poland*, application no. 34734/13, § 1-10.

meet the criterion of cases requiring urgent action. The ECtHR also noted that in practice the wording of Polish laws leaves the authorities a wide margin of discretion in assessing the necessity and scope of searches and seizures. At the same time, the Court added that while the absence of a search or seizure warrant may be compensated by subsequent judicial review of the legality and necessity of such investigative measures[71], that review must be effective[72]. The case law of the ECtHR in this regard indicates that the issuance of a court order following such a review, while necessary, is not sufficient, but such a decision must also reflect an effective examination of the urgency of the case by the court and set forth arguments in this regard[73].

The Court, referring to the facts of the case, found that although the district court had authorized the search in question, the decision in this regard did not have the effect of compensating for the lack of a court warrant (§ 18). This was due to the fact that, in the reasoning for its ruling, the court merely cited the relevant legal provisions and stated that, since the purpose of the search was to determine whether there were grounds to suspect that a crime had been committed, the measure in question was lawful. The Court noted that the reasoning for the decision in question did not indicate that the district court had considered whether the search was justified by the urgency of the matter, nor that it had conducted any analysis of the case from that perspective, and therefore it did not conduct an effective review of the legality and necessity of the contested measure. Furthermore, the ECtHR added that such review was all the more necessary in this case because the offense

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71 The ECtHR judgment of 15 February 2011 in the case of *Heino v. Finland*, application no. 56720/09, § 45, https://hudoc.echr.coe.int/eng?i=001-103394.

72 The ECtHR judgment of 16 February 2016 in the case of *Govedarski v. Bulgaria*, application no. 34957/12, § 222, https://hudoc.echr.coe.int/eng?i=001-160627; the ECtHR judgment of 7 June 2007 in the case *Smirnov v Russia,* application no. 71362/01, § 45, https://hudoc.echr.coe.int/eng?i=001-80953.

73 The ECtHR judgment of 16 February 2016 in the case of *Govedarski v. Bulgaria*, application no. 34957/12, § 85, https://hudoc.echr.coe.int/eng?i=001-160627; the ECtHR judgment of 31 March 2016 in the case of *Stoyanov and other v. Bulgarie*, application no. 55388/10, § 130, https://hudoc.echr.coe.int/eng?i=001-169912.

with which the applicant was charged was not serious, and the applicant was not present at the time of the search.

Consequently, the Court found that even if the contested investigative measure had a legal basis under national law, national legislation did not provide the applicant, in the circumstances of that case, either before or after the contested search, with sufficient safeguards against arbitrariness (§ 21). Under these circumstances, the ECtHR found that the interference with the applicant's right to respect for his home was not "prescribed by law" within the meaning of Article 8(2) of the Convention.

It follows from the ECtHR's judgment in the *Mazowiecki* case that the Court does not question the procedural possibility of a search being conducted by a non-judicial authority, as long as a subsequent judicial review takes place in this regard. However, for the Strasbourg standard to be met, such review must be genuine and effective, providing protection against arbitrariness on the part of law enforcement authorities. Another indicator of this may be the quality of the statement of reasons, but it must not merely repeat the relevant provisions of the procedural statute, as this does not allow for understanding the grounds underlying the procedural decision made. The statement of reasons for a procedural decision, especially one involving an action that infringes upon an individual's rights and freedoms, should, among other things, explain the reason for the decision, including its legal basis, and thus why it was made on the basis of a specific legal provision, and set forth the arguments supporting its issuance. In the case of a decision authorizing a search of a residence, it is also necessary to determine whether the search was justified due to the urgent nature of the case. This is the only way to become familiar with the materials on which the decision is based and to understand the reasoning of the adjudicating body, which ultimately leads to a specific ruling. Certainly, vague, perfunctory, and arbitrary justifications merely give the appearance of justification and deprive the parties to the proceedings of an answer to the question of why the body made this decision rather than another one. In light of Article 6 of the Convention, a statement of reasons for incidental decisions must also reflect the thought process of the adjudicating body. This is particularly important in the case of decisions regarding pretrial detention. The lack

of a statement of reasons for a pretrial detention order prevents the Court from assessing whether the deprivation of liberty is lawful within the meaning of Article 5(3) and (4) of the Convention. It precludes the determination of the grounds for imprisonment and the assessment of those grounds for possible arbitrariness[74]. In its judgment in the *Stašaitis* case, the Court held that national courts cannot limit themselves to a general repetition of statutory grounds (e.g., concerns about tampering with evidence or flight) and rule on detention in brief decisions consisting of only a few lines. In this situation, the detained person has the right to a fair (adversarial) procedure that allows for a substantive challenge to the validity and legality of the preventive measure imposed before a court. This cannot be achieved if the statement of reasons for a procedural decision does not explain the grounds for the decision or does not cite the legal provisions that authorize the deprivation of liberty[75]. Such a decision does not provide sufficient protection against arbitrariness and fails to meet the requirement of "lawfulness" under Article 5 § 1 of the Convention.

The foregoing considerations demonstrate that the obligation to provide adequate reasons for certain interlocutory decisions derives not only from the general requirements of fairness under Article 6 of the Convention, but also from the substantive and procedural safeguards guaranteed by Articles 5 and 8. Where a procedural decision results in the deprivation of liberty, the reasons given must enable the person concerned to understand the grounds for the measure and to challenge its lawfulness and necessity, as required by Article 5 § 3 and 4. Similarly, in cases involving searches, seizures, or other interferences with private and the home, Article 8 requires effective safeguards against arbitrariness, including a genuine and adequately reasoned judicial review. A mere reference to the applicable statutory provisions cannot satisfy these requirements, since the reasoning must demonstrate how those provisions apply to the established facts and why the interference was necessary and proportionate. The adequacy of the statement of reasons is therefore an

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[74] The ECtHR judgment of 21 March 2002 in the case of *Stašaitis v. Lithuania*, application no. 47679/99, §§ 66-67, https://hudoc.echr.coe.int/eng?i=001-60337.

[75] The ECtHR judgment of 8 November 2005 in the case of *Khudoyorov v. Russia*, application no. 6847/02, § 157, https://hudoc.echr.coe.int/fre?i=001-70865.

essential component of the effective review of the legality and necessity of the measure, rather than a purely formal procedural requirement.

Three broader conclusions regarding the Strasbourg standard of judicial reasoning can be drawn from the foregoing analysis of the Court's case law. First, the Court's concern lies primarily not with the substantive correctness of the reasoning, but with the verifiability of the process by which the decision was reached. The reasons must disclose the basis of the decision and make it possible to assess whether judicial power was exercised in a non-arbitrary manner. Second, compliance with the Strasbourg standard cannot be reduced to the formal presence of reasons. A decision is adequately reasoned where its justification connects the facts, the applicable law, and the outcome in an intelligible manner and addresses specific, relevant and potentially decisive arguments. Third, the scope and form of the duty to give reasons depend on the procedural context and on the function that the reasons are expected to perform. The extent and form of the reasoning required depend on the role that justification performs in a particular procedural setting, including the nature of the decision, the mechanisms of review available, and the rights affected. Taken together, these conclusions indicate that the Strasbourg case law treats the duty to give reasons as a mechanism through which the exercise of judicial power is rendered intelligible and open to scrutiny, and thus as a necessary element of a fair trial.

4. Conclusion

The duty to provide reasons for legal decisions is inherent in the nature of law. Legal correctness cannot be verified through empirical methods but only through the quality of the reasoning, which must be complete and logically coherent. Without justification, a decision cannot be regarded as genuinely legal or reliably distinguished from arbitrariness[76].

Although the right to a reasoned decision does not follow literally from the provisions of the Convention, the European Court of Human

[76] TRECHSEL, Stefan: Human Rights in Criminal Proceedings, Oxford, Oxford University Press 2005, p. 368-369.

Rights derives it from Article 6 § 1 of the Convention, associating it with the right to a fair trial on the basis of a dynamic interpretation grounded in the idea of the rule of law. So construed, the right to a reasoned decision is properly understood as the right to be apprised of the relevant grounds and clearly reasoned conclusions of the tribunal on the questions of fact and of law upon which the judgment turns — reasons sufficient to address the essential factual and legal arguments advanced by the parties, whether substantive or procedural in nature[77].

This compels the conclusion that the statement of reasons is a necessary element confirming that the judgment rendered is the outcome of the parties having been heard by a competent court, a point aptly captured by J. Laffranque's observation that "*reasoned decisions also serve the purpose of demonstrating to the parties that they have been truly heard*"[78], and that it likewise enables public scrutiny of the decision by allowing society to exercise control over the administration of justice and by enabling the individual applicant to acquaint himself with the grounds of the determination made in his case.

Obtaining a statement of reasons is, moreover, a precondition for lodging an appeal in order to verify the correctness of the decision, while the very process of formulating and committing the reasons to writing helps adjudicating judges to collect and order their thoughts and thereby refine their assessment of the case. As has been demonstrated, the statement of reasons performs a communicative and legitimising function (with an educative dimension), a guarantee function (the realization of the right to a defense and protection against arbitrariness), a self-regulatory function (disciplining the judge's reasoning), and a supervisory function (as a precondition for effective appellate review).

As O. Katz and E. Zamir observe, the "reason-giving is a hallmark of judicial decision-making", and the very requirement to articulate reasons operates as a discipline upon judicial discretion. By compelling judges to translate their conclusions into a coherent chain of legal and factual

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[77] SPAIĆ, Bojan; DAJOVIĆ, Goran. Pravo na obrazloženu presudu: praksa Evropskog suda za ljudska prava. Podgorica: Centar za demokratsku tranziciju, 2016, p. 34. Available at: https://www.cdtmn.org/wp-content/uploads/2017/03/Pravo-na-obrazlozenu-presudu_ispravljena3001.pdf. Accessed on: 19 July 2026.

[78] LAFFRANQUE, op. cit., p. 13.

arguments, it reinforces adherence to applicable legal rules, particularly in situations where formal law appears to sit uneasily with the perceived equities of the individual case, and thereby guards against determinations driven by intuition or unarticulated preference[79].

The statement of reasons also constitutes an important safeguard against arbitrariness. The rule of law and the avoidance of arbitrariness in the exercise of power are principles underlying the Convention system, and in the judicial sphere these principles serve to strengthen public confidence in an objective and transparent system of justice, which is one of the foundations of a democratic society.

According to the case-law of the European Court of Human Rights, a court must give reasons for its judgment so as to ensure that any party with an interest in the case is informed of the basis of the decision, to enable the public in a democratic society to know the reasons for judicial determinations, and to allow the accused in criminal proceedings to exercise effectively the right of appeal available to him. It is precisely this multifunctionality that renders the statement of reasons an indispensable element of a fair trial under Article 6 § 1 of the Convention. That said, the obligation to fulfil all of the aforementioned functions ought not to be treated as absolute. It must be accepted that the requisite scope of an adequate statement of reasons depends upon the nature of the case, and national courts enjoy considerable discretion as to the content and structure of their judgments.

A reasoned judgment need not address every argument raised, provided that it indicates with sufficient clarity the grounds on which the decision is based. However, if a point would be decisive for the case if accepted, it must be dealt with specifically and expressly by the court. In every instance, it must be apparent from the decision itself that all the essential issues have been examined, for it is this alone that confirms that the case has been fairly determined by a competent court in the course of a fair trial within the meaning of Article 6 § 1 of the Convention. This obligation applies also to incidental decisions, as well as to the judgments of appellate courts and of the supreme (cassation) court against which no appeal lies, even where the statement of reasons

[79] KATZ, ZAMIR, op. cit., p. 243, 244.

does not, in such cases, serve a supervisory function (that of enabling appellate review). Appellate courts at second instance, entrusted with filtering out unfounded appeals and with jurisdiction over questions of fact and law, are themselves required to give reasons for their refusal to accept an appeal for adjudication.

As the Court's case law concerning interlocutory decisions demonstrates, the duty to give reasons extends to procedural rulings that encroach upon the individual's fundamental rights and freedoms - most notably orders authorising searches and seizures, assessed under Article 8 of the Convention, and orders imposing pre-trial detention, assessed under Article 5(1), (3) and (4). In this domain the statement of reasons assumes a distinct significance: it is the very instrument through which the requisite safeguards against arbitrariness are rendered effective. A reasoned decision that merely reproduces the applicable statutory provisions, without relating them to the established facts or addressing the urgency and necessity of the measure, does not satisfy the Strasbourg standard, for it deprives the person concerned of any genuine understanding of why the interference was ordered and forecloses meaningful review of its lawfulness. It follows that, whether the court adjudicates upon the merits of a criminal charge or upon an incidental measure affecting liberty or privacy, the statement of reasons remains the decisive guarantee that the exercise of coercive power is grounded in law rather than in the unfettered discretion of the authorities.

This conclusion is reinforced by the idea of a democratic culture of justification[80]. In such a culture, the exercise of public power cannot rest merely on institutional authority or on the fact that a competent body has spoken. It must be accompanied by reasons capable of justifying the interference with the legally protected rights of those affected. In this sense, the duty to give reasons for a criminal judgment is not only an element of procedural fairness under Article 6 § 1 of the Convention, but also an expression of a broader rule-of-law requirement – the coercive public power must be answerable to the individual through reasons. A criminal judgment that fails to provide such reasons risks aligning itself with a culture of authority rather than with a culture of justification,

[80] See DYZENHAUS, op. cit., p. 425.

the very means through which procedural fairness shall be realised in a democratic state governed by the rule of law.

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