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# THE RIGHT TO A REASONED JUDGMENT

## ABSTRACT

The right to a reasoned judgment is the most important mechanism to restrict arbitrariness of a state and to counterbalance the presumption of innocence. The duty of giving reasons for the court's decision derives from the Constitution of Georgia, the European Convention on Human Rights and many other international legal acts. Jury institution poses some kind of challenge for realization of the right of reasoned decisions. This institution, in its turn, is one of the most important democratic mechanisms and it begins to take off in the reality of Georgia. In this article, we analyze the ways to put the jury judgment within the framework of the right to a fair trial.

## PREFACE

In the domain of law it is impossible to determine the propriety of any assertion with the help of a method similar to a scientific experiment. The only possibility to check a hypothesis here is to deliver comprehensive and logical reasons. Without these reasons a decision cannot have any pretensions not only to accuracy but also to its legal nature<sup>1</sup>.

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<sup>1</sup> Stefan Trechsel "Human Rights in Criminal Proceedings", Tbilisi, 2009, p.127.

The right to a reasoned decision is not directly laid down in the Constitution of Georgia, but the right to a fair trial entails a duty for a court to state reasons for their decisions. We should squarely call the right to a reasoned decision a basic human right. From the standpoint of this meaning, it is necessary to determine whether there is any barrier in the realization of this basic right under the Constitution and the European Convention on Human Rights.

In many cases the duty of stating reasons for the court's decisions is established by the European Court of Human Rights. Reasoned decisions exclude arbitrariness of a state, and in this regard, it should be interesting to analyze the conformity between the existing legislation of Georgia and case law.

The European Convention on the protection of Human Rights and Fundamental Freedoms is the part of Georgia's legislation and as it stands in the hierarchy above the normative acts of Georgia, it is necessary to give preferences to mechanisms that restrict arbitrariness of the state under the Convention and interpret the Criminal Procedure Code of Georgia and other laws in accordance with the Convention.

The Criminal Procedure Code of Georgia provides for the trial by a jury. A legislator does not demand the reasoning for jury's verdict. Therefore, this article will focus on the interrelation between the verdicts rendered by a jury trial under the Georgia's Criminal Procedure Code and the right to a fair trial defined by Article 6 (1) of the European Court of Human Rights.

## II. CONSTITUTIONAL RIGHT — JURY-INSTITUTION

### 2.1 Reasoned Judgment – Basic Right

The right of a reasoned judgment is determined by the Constitution of Georgia. However, Articles 40 and 42 include some guarantees to ensure a fair trial, which entails a duty for a court to provide reasons for their decisions.

The right to a fair trial is guaranteed by Article 42 of the Constitution of Georgia. However, the obligation to give reasons for the decision has a strong connection with the presumption of innocence, since a reasoned judgment is the only remedy to outweigh a presumption of innocence.

In the case "Citizen Zurab Mikadze v. the Parliament of Georgia" The Constitutional Court considered Article 40 (3) of the Constitution as a safeguard of the authentic evidence. "Only in case of

incontrovertible evidence, the principle of imposition of responsibility stands as an assurance not to charge an innocent person with a crime as a result of arbitrary actions and errors of state officials<sup>2</sup>. In other words the exclusion of the state officials' arbitrariness is only possible, when a judgment is grounded on the eloquent evidence.

The Georgian Criminal Procedure Code defines the concept of a reasoned decision. "A decision is reasoned, if it is based on undoubted, cumulative proofs which have been examined at the trial. All inferences and decisions established in the verdict shall be stated with reasons<sup>3</sup>". Thus, unwarranted verdict indicates the fact that it is not based on the authentic proofs and is in direct contradiction to Article 40 (3) of the Georgian Constitution, which absolutely violates the presumption of innocence.

The obligation of giving reasons for the court's decision emanates from Article 42 of the Constitution of Georgia. Article 42 shall be interpreted in the same way as Article 6 of the European Convention on Human Rights and the right to a reasoned decision shall be regarded as a basic human right. Without a reasoned decision, the guarantee of the right to a fair trial does not sound possible.

In contrast to the Georgian Constitution, the Constitution of Belgium directly envisages the duty to provide reasons for the court's judgment. Particularly, Article 149 states that "each judgment is supported by reasons<sup>4</sup>". Certainly, this clause in ordinary cases does not have significant effect on the matters, because as we have already mentioned, the duty of giving reasons for the court's judgment has already derived from the right to a fair trial. However, the aforementioned clause has revealed the controversy between the jury-institution in Belgium and the right to a reasoned judgment.

## 2.2 Jury Institution – Constitutional Regulation

According to Article 98 of the Belgium Constitution of 8 February 1831, the jury shall be constituted for all serious crimes, and for political and press offences. A law passed in 1930, broadened jury participation, and gave the system the form it has today<sup>5</sup>. The 1994 Constitution of Belgium was amended in 1999 to make an exception for press offenses motivated by racism or xenophobia. The duty to state reasons for the court's decision also was determined by Article 149. Constitution imperatively requires reasoning and does not say anything about reasons for the jury's verdict. Ob-

<sup>2</sup> Citizen of Georgia – Zurab Mikadze v. the Parliament of Georgia, №1/1/548 p.10 & 2 .

<sup>3</sup> The Criminal Procedure Code of Georgia, Article 259 (3), 11 October 2015.

<sup>4</sup> THE BELGIAN CONSTITUTION, constitutional revisions of 6 January 2014 – Belgian Official Gazette of 31 January 2014, article 149.

[http://www.const-court.be/en/basic\\_text/belgian\\_constitution.pdf](http://www.const-court.be/en/basic_text/belgian_constitution.pdf).

<sup>5</sup> Stephen C. Thaman, „Should Criminal Juries Give Reasons for Their Verdicts“, April 2011 pg.621.

<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3797&context=cklawreview>.

viously, none of the other restrictive mechanisms of arbitrariness are regulated by the Constitution. Is it possible to supersede a judgment, based on reasons, so that the restrictive mechanism of arbitrariness could amount to an obligation of giving reasons? The Belgian Constitution and legislation does not provide an answer to this question. Nevertheless, the European Court of Human Rights considered the alternative mechanisms of reasoning in compliance with the Convention, which will be discussed in detail below.

When it comes to the jury institution, the only case, the Constitution of Georgia, underscores its existence, occurs in the locus of the common courts' system and entrusts its regulation to the law. As regards the interrelation between jury's verdict and the right to a reasoned decision, there is no specific regulation in the Constitution about this issue. It was not also raised before the Constitutional Court, so we should try to find out the solution to the problems among the European standards of human rights protection.

### III. REASONS FOR JUDGMENT — STANDARD OF THE EUROPEAN COURT

The duty to state reasons for the court's decision is not also directly provided by the European Convention on Human Rights. Article 6 of the Convention implies the right to a fair trial which, in turn, involves an obligation of providing reasons for a court's decision. Why the domain of a fair trial encompasses the duty of giving reasons for the court's judgment? Especially considering the fact that, a reasoned judgment is rendered after the trial. It should be noted that the European Court of Human Rights broadly interpreted this right and brought even the enforcement process into protected areas<sup>6</sup>. Article 6 serves "the interest of justice and it is impossible to ensure, if the court's judgment is not fully motivated"<sup>7</sup>.

In addition, the obligation of giving reasons for a decision ensures the right to a transparent process and assures the public that the decision is not arbitrary and corresponds with the Constitution and law. Beyond that, a reasoned decision always fosters the point of admissibility from one party or another, since the court's decision is almost undesirable for one of the parties. An admissibility of the decision is also important to the society, in order not to make an impression that the judgment has breached the law or the court has not got enough grounds.

It is noteworthy that the European Court of Human Rights not only defines the duty of a reasoned decision but any court's decision shall be provided by reasons. For example, in the Bricmont case, the

<sup>6</sup> Assanidze v. Georgia § 181, §182.

<sup>7</sup> Stefan Trechsel "Human Rights in Criminal Proceedings", Tbilisi, 2009, p.126.

commission concluded that there had been a breach of the Convention, because an application for requesting a witness to attend the hearing had been rejected without giving any reasons<sup>8</sup>.

## IV. JURY TRIAL

### 4.1 General Overview

Jury trial represents the challenge for the right to a reasoned judgment, as for the component of Article 6, since the jury verdict, usually, does not require to be reached by reasoning.

“The jury exists in a variety of forms in different States, reflecting each State’s history, tradition and legal culture; variations may concern the number of jurors, the qualifications they require; the way, in which they are appointed and so forth<sup>9</sup>”.

The European Court on Human Rights indicates in the number of cases that it does not perform abstract control of laws<sup>10</sup> and consequently, the jury trial system itself may not be incompatible with the Convention. However it really represents the challenge, because the decision of jury trial has to meet that minimum standard of reasoning, which derives from the Convention and the court’s case-law.

Although the jury trial system and its regulatory norms are not the subjects for the European Court’s consideration, it is necessary to define the compatibility of standards of the Criminal Procedure Code of Georgia with case-law of the European Court of Human Rights. This requirement is vital, because in a particular case, the decision is based on the procedure, established with the help of these standards and it is possible that a norm does not allow the court to make a decision, compatible with the Convention.

### 4.2. Case of Taxquet v. Belgium

In its judgment of 13 January 2009 the Chamber of the European Court of Human Rights held that there had been a violation of Article 6 §§ 1 and 3 (d) of the Convention<sup>11</sup>. By this judgment the court had considered the reasoned judgment an indispensable factor to ensure a fair trial. The chamber

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<sup>8</sup> Ibid. p.126.

<sup>9</sup> *TAXQUET v. BELGIUM*, §83.

<sup>10</sup> *N.C. v. Italy*, § 56.

<sup>11</sup> *TAXQUET v. BELGIUM*, §4.

noted that it was necessary to support a verdict with reasons and “It had to be clear why the questions had been answered in the affirmative or the negative by the jurors<sup>12</sup>.” Certainly, such a decision called into question the existence of jury institution not only in Belgium, but in all contracting states to the European Convention of Human Rights, where this institution is established.

After the abovementioned decision of the chamber, the case was referred to the Grand Chamber of the European Court of Human Rights, which reached the final judgment in the case *TAXQUET v. BELGIUM* on 16 November 2010. The Grand Chamber considered the jury court’s ill-grounded verdict incompatible with Article 6(1) in this particular case. However, it had stressed the possibility of replacement of a reasoned judgment with alternative mechanism, which will be discussed in more detail below.

The case *TAXQUET v. BELGIUM* was concerning Belgian jury court’s guilty verdict in connection with group crime against the minister and an attempted murder of minister’s partner. The applicant (Mr. Taxquet) submitted that his conviction had been based on a guilty verdict, which had not included any reasons and had not been subject to any form of appeal.

In order to deliver a guilty judgment, the jurors responded thirty-two questions put to them by the President of the Assize Court. Four of them concerned the applicant. Questions were concise and identical for all the defendants. The jury answered “yes” to all four questions if the accused had committed intentional, attempted or planned murder. On 7 January 2004 the Assize Court sentenced the applicant to twenty years’ imprisonment.

The applicant, on the basis of Article 6(1), had considered that the trial in the Assize Court was unlawful due to the lack of reasoned judgment, and with main aspects of the case, could not be appealed to a body with full jurisdiction too.

It follows from the case-law examples (*Papon v. France*, no. 54210/00, ECHR 2001; *Goktepe v. Belgium* (no. 50372/99, 2 June 2005); *Saric v. Denmark* ((dec.), no. 31913/96, 2 February 1999 etc.) that the Convention does not require jurors 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. Nevertheless, for the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given; this is a vital safeguard against arbitrariness<sup>13</sup>. The Court underscores in many of its decisions that the rule of law and the avoidance of arbitrary power are the core principles of the Convention<sup>14</sup>

<sup>12</sup> Ibid &63.

<sup>13</sup> *TAXQUET v. BELGIUM*, §90.

<sup>14</sup> *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005.

In proceedings conducted before professional judges, the understanding of the accused of his conviction stems primarily from the reasons, given in judicial decisions. In such cases, the judge is obliged to indicate with sufficient clarity the grounds on which they based their decision<sup>15</sup>.

Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part<sup>16</sup>. It should be clear for the party that the underlying circumstances were taken into account<sup>17</sup>.

The European Court of Human Rights states that the jurors are not usually required to give reasons for their decisions. Nevertheless, Article 6 (1) of the Convention demands to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his conviction. Such procedural safeguards for obviation of arbitrariness may include, for example, directions 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 or sufficiently offsetting the fact that no reasons are given for the jury's answers. Lastly, any avenues of appeal must be open to the accused<sup>18</sup>.

The European Court of Human Rights considers that the case *TAXQUET v. BELGIUM* significantly differs from the court's earlier case – *Papon v. France*<sup>19</sup>, in which the jurors answered 768 questions, put to them by the court's president as well as instructions about the facts on which the case was founded and the Articles of the Criminal Code which had been applied<sup>20</sup>.

It follows that, even in conjunction with the indictment, the questions put in the present case did not enable the applicant to ascertain which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to deliver a guilty verdict<sup>21</sup>.

The applicant was unable to make a clear distinction between the co-defendants as to their involvement in the commission of the offence; to ascertain the jury's perception of his precise role in relation to the other defendants; to understand why the offence had been classified as premeditated murder, rather than murder; to determine what factors had prompted the jury to conclude that the involvement of two of the co-defendants in the alleged acts had been limited, carrying a lesser sentence and so forth.

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<sup>15</sup> *Hadjianastassiou v. Greece*, no. 12945/87, 16 December 1992, § 33.

<sup>16</sup> *TAXQUET v. BELGIUM*, §91.

<sup>17</sup> *Boldea v. Romania*, no. 19997/02, § 30, 15 February 2007.

<sup>18</sup> *TAXQUET v. BELGIUM*, §92.

<sup>19</sup> *Papon v. France*, no. 54210/00, ECHR 2001.

<sup>20</sup> *TAXQUET v. BELGIUM*, §96.

<sup>21</sup> *Ibid.*, §97.

### 4.3 Violation of Article 6 (1)

In the case *TAXQUET v. BELGIUM*, the European Court of Human Rights concluded that giving precise questions to the jury was an indispensable requirement, so that the applicant had been able to understand any guilty verdict reached against him. Furthermore, since the case involved more than one defendant, the questions should have been geared to each individual as far as possible<sup>22</sup>.

One of the most important and noticeable fact in this decision is the European Court's assessment of the possibility to appeal only to the Court of Cassation against judgments of the Jury Court. It purely and simply presupposes an examination of the decision's legality and does not give the accused an opportunity to get an adequate explanation as to what the charges were based.

As regards the norm of Belgian Code of Criminal Procedure, under which if the jurors have made a substantive error, the Assize Court must stay the proceedings and adjourn the case until a later session for consideration by a new jury, that option, was not considered sufficient safeguard by the Court do to its rare usage.

The European Court of Human Rights noted that, in this case, "the applicant was not afforded sufficient safeguards enabling him to understand why he was found guilty. Since the proceedings were not fair, there has accordingly been a violation of Article 6 § 1 of the Convention<sup>23</sup>."

## V. JURY TRIAL IN GEORGIA

### 5.1 General Overview

The Criminal Procedure Code of Georgia provides for trial by Jury. Two forms of "guilty" and "not guilty" verdict are presented to the jurors by the presiding judge<sup>24</sup>. In fact, the jurors' replies can only concern the question whether the accused is guilty of the facts of the case. The court's judgment unequivocally stands on this verdict. Certainly, the jurors have no obligation of giving reasons for their verdict. The Code also exempts the presiding judge from an obligation of giving reasons. "The presiding judge does not provide reasons for the verdict<sup>25</sup>".

<sup>22</sup> Ibid §98.

<sup>23</sup> Ibid §100.

<sup>24</sup> The Criminal Procedure Code of Georgia, Article 262 (1); 11 October 2015.

<sup>25</sup> Ibid. Article 265 (3).



How the jury decision under The Criminal Procedure Code of Georgia could correspond with the European Court's standard of giving reasons for the judgment? We can state it unequivocally, that it is quite difficult to give the straightforward answer to this question. As the European Court does not see jury institution itself and non-existence of the classic method of giving reasons for the judgment, as the violation of Article 6 (1) of the Convention, it is necessary to find out if there are some other safeguards in the Code for the accused to understand what were the specific factual background for the decision and why the jury court delivered a guilty verdict.

## 5.2 Compliance with the European standard

The European Court of Human Rights in the above discussed case (*Taxquet v. Belgium*), invokes some examples to offer an alternative to a reasoned decision for the purpose not to breach Article 6 (1) of the Convention. In the case *Papon v. France* the jurors answered 768 questions put by the court's president. At the same time, they were provided directions by the presiding judge on the evidence the case was based and regulations of criminal law. In this case, The European Court did not identify the violation of the right to a fair trial, which means that the verdict reached by such methods, was considered to be equal to a reasoned decision. The Criminal Procedure Code does not provide for questions to be put to the jury by a presiding judge; they are obliged to answer only one single question whether a person is guilty or not. The Code does not embrace such restrictive mechanism against the arbitrariness; therefore it is necessary to search for others.

In its judgment of *Taxquet v. Belgium* case, the European Court believes that procedural safeguards for restricting arbitrariness may include "directions provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced<sup>26</sup>". The Criminal Procedure Code stipulates to provide the jury with explanations by the presiding judge<sup>27</sup>. Moreover, "during the proceedings the jurors have the right to be afforded with additional explanations which include: law issues from a presiding judge, factual circumstances from witnesses, closing speeches from the parties<sup>28</sup>". In other words, the proper application of the Code of Criminal procedure, allows for the possibility of the decision reached by the jury, which will comply with the minimum standard of justification, set by Article 6 (1) of the Convention. However, if the explanations made by the presiding judge are general and are not tailored to the particular circumstances, as well as there is a group crime, and explanations are stereotypical for all accused persons, we will face the breach of the Convention. That is why it is so important to understand the procedure, set by Procedure Code, in connection with

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<sup>26</sup> *Taxquet v. Belgium* & 92.

<sup>27</sup> The Criminal Procedure Code of Georgia, Article 231; 11 October 2015.

<sup>28</sup> *ibid.* Article 235 (1).

the explanations about an applicable law, specific accusation and similar things, afforded to the jury by the presiding judge.

In accordance with Article 231 §4(a) of the Criminal Procedure Code of Georgia the presiding judge clarifies “the substance of the charges and its legal basis”. The clause is very general in its nature and it is preferable to give pin-point information not only about the law but about the particular case, about the charges brought before the court. For example, if there is a murder charge in aggravating circumstances, a judge must explain to the jury, what reasons are stated, in this particular case, that entails a murder, as well as, aggravating circumstances. If a presiding judge only clarifies the definition of a murder under aggravating circumstances in compliance with the Criminal Code, it will amount to a violation of the European Convention on Human Rights, since the accused will know what it means to commit a homicide under aggravating circumstances. Nevertheless, it will be impossible for him to understand why he was accused. The Criminal Procedure Code of Georgia allows of a possibility to appeal against the decision made on the grounds of a guilty verdict.

### 5.3 The element of an Appeal

The Criminal Procedure Code of Georgia allows the possibility of an appeal against a judgment based on guilty verdict: “A guilty verdict may be appealed on one occasion by the party through the cassation procedures to the Court of Appeal<sup>29</sup>”. Although the clause enables to verify the legitimacy of the decision, the Procedure Code does not determine the examination of the judgment’s justification. The European Court of Human Rights did not consider the same regulation as proper safeguards, which could provide the accused with adequate clarification of the reasons for his conviction<sup>30</sup>.

The Criminal Procedure Code of Georgia, like the Belgian Code of Criminal Procedure, stipulates the provision, which in special case, when the jury makes essentially irrelevant decision, empowers the Assize Court to stay the proceedings and adjourn the case until a later session for consideration by a new jury; however, even this clause was not considered by the European Court to be a sufficient mechanism against arbitrariness<sup>31</sup> owing to the extremely rare use of it.

Thus, in case the Georgian Jury Court makes the unwarranted verdict, which is incompatible with the Convention (for instance, if explanations for the jury are stereotypical and are not adjusted to a particular case), a convict will be deprived of opportunity to appeal his/her case before a higher

<sup>29</sup> The Criminal Procedure Code of Georgia, Article 266 (2); 11 October 2015.

<sup>30</sup> Taxquet v. Belgium & 99.

<sup>31</sup> see 33.

court in connection with factual circumstances and find out why he/she was found guilty and what were the grounds for a guilty verdict. However, a concept of jury institution will be degraded if the higher instance court is afforded an opportunity to review and invalidate the verdict as a decision reached about the facts<sup>32</sup>. Consequently, we should confine ourselves in working within the existing system and it is desirable to find a mechanism that will create sufficient safeguards.

In case of imperfect clarifications given to the jury by the presiding judge, the only mechanism to appeal against the decision, is provided by Article 266 §2 (c) of the Criminal Procedure Code of Georgia.” Before the jury has retired to deliberation room, the presiding judge has made a substantial error while giving explanations.”

However, in the given case, it is a matter of opinion, how an accused will be able to understand what were the specific factual circumstances, which underlay the jury’s verdict, if it is checked only in compliance with law. It is desirable to specify the grounds of an appeal in order to enable a convict to dispute not upon the material errors of a presiding judge but particularly on the standard and obscure clarifications made by him.

For the purpose of avoiding arbitrariness, it is advisable for the Criminal Procedure Code to take into account an obligation of putting specific questions to the jury by the presiding judge in connection with factual circumstances. This is important for imposing the qualification of a criminal crime on an action, as well as, with aggravating and mitigating circumstances and so forth. The code should oblige a presiding judge to adjust these questions to a particular case and not to have a standard character.

## VI. CONCLUSION

On that account, the European Court on Human rights looks upon the reasons for making a judgment as an essential aspect to ensure the right to a fair trial. In this regard, not only the judgment, but all types of court’s decisions ought to be reached by reasoning (e.g. rejection of admissibility of evidence). An accused/convict as well as the public should have the opportunity to understand the basis on which the court decision was reached.

The standard of the European Court of Human Rights is quite high in terms of stating reasons for a judgment. An obligation of giving reasons is afforded to all courts and this obligation is not estab-

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<sup>32</sup> The Criminal Procedure Code of Georgia, Article 261 (1); 11 October 2015.

lished only for the purpose to ensure the right to appeal. Court of last resort is also obliged to provide reasons for its judgment. This is a clear indication, that the European Court views the right to a reasoned decision as one of the most important leverages to secure the right to a fair decision and against arbitrariness.

As regards jury trials, this institution, itself, does not contradict the Convention; however, it is necessary to enjoy such regulation, which does not allow of the limitations on the right, conferred upon people by Article 6. Instead of giving reasons for the verdict (judgment), with the help of other methods, there should be an opportunity of realization for the defendant's right, to find out the grounds, on which he was convicted. In agreement with Case law of the European Court of Human Rights, particular questions put to the jurors, as well as clarifications given to them by a presiding judge, may serve as a counterbalance to a reasoned decision. Implanting such methods in practice is the best way to preclude arbitrariness and give an accused and the public a perspective on the reasons for the court's judgment.