



The Main Requirements of the Law to the Verdict of the Court

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Abstract: The obligatory reference in the decision to its legal basis forces the decision maker to actively use legal information, carefully familiarize himself with the current legal acts, the guiding resolutions of the Plenum of the Supreme Court of Justice. The need for normative justification strengthens the rule of law, raises the legal culture of all legal proceedings. Exact adherence to the law when making a decision and the requirement of normative validity of decisions are an important guarantee against abuse of power and official position, against the manifestation of subjectivism.

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1. Introduction

In accordance with the current criminal procedural legislation of the Republic of Moldova, the verdict of the court must be lawful, justified and motivated (part (3) of article 384 of the Code of Criminal Procedure).

The principle of legality, known from Roman law: “Without law there is neither crime nor punishment” (*Nullum crimen, nulla poena, sine lege*), is considered very widely (Maltsev, 2003, p. 37). With regard to the legality of the verdict of the court, it is necessary to note a slightly different specificity, although not opposed to legality as such.

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First of all, it should be noted that a court verdict is legal if it is issued in strict observance of the rules of procedural law and in full compliance with the rules of substantive law that are subject to application to this legal relationship (Baranov, 2003, p. 8).

Concretizing this provision, it should be noted that in order to conclude on the legality of the decision, it is of great importance to indicate in the introductory part the place, time, person (or persons) pronouncing the sentence. These data, as well as the signatures on the decision, indicate that the sentence was passed by a competent person or an appropriate body.

The absence of these details in the document leads in some cases to the recognition of the decision as illegal, subject to cancellation.

The legality of the sentence means its “normative validity”. At the same time, the justification must contain a correct reference to the substantive and procedural law. Thus, in the judgment to terminate the proceedings, there should be a reference to the grounds provided for by the procedural, and not by the substantive law. The legitimacy of a decision requires a correspondence between the content of the decision and the form of its expression.

2. Result and Discussion

Meanwhile, the exact expression in the motives of the decision of its legal basis is of great importance for recognizing the decision as justified and fair.

The form of the decision to release from criminal liability, established in the criminal procedure law, must be consistent with the material and legal grounds for this release. Thus, a guilty verdict is issued without imposing punishment, with release from criminal liability in cases provided for in Articles 57 and 58 of the Criminal Code, with release from punishment in the case provided for in Article 93 of the Criminal Code, or in case of expiration of the statute of limitations.

Thus, the legality of each of the sentences handed down in criminal proceedings is determined by the following aspects:

- the verdict must be issued by a competent court;
- the sentencing must be preceded by procedural actions carried out in accordance with the law, with the help of which the circumstances determining the adoption of the sentence are established;

- when qualifying an act, imposing punishment, resolving a civil suit, the material law must be correctly applied;
- the verdict must contain all the details necessary for this legal act, established by the relevant articles of the Code of Criminal Procedure.

A verdict can be recognized as justified when it reflects the facts that are relevant to the case, confirmed by evidence verified by the court that meets the requirements of the law on “relevance” and “admissibility”, or well-known circumstances and facts that do not need to be proven, and also when the verdict contains exhaustive conclusions of the court, arising from the established facts (Zazhitsky, 1999, p. 26)¹.

The procedural requirement for the validity of the decision on the merits is a manifestation of the nature of the verdict as an act containing, on the basis of established factual circumstances, answers to legal questions. Since each decision is made in connection with certain factual circumstances, all the procedural activity preceding the adoption of the decision ultimately consists in collecting, verifying and evaluating those factual data that lead to a certain decision, substantiate it.

In this sense, we can say that the procedural requirement of validity is a manifestation of the informational nature of the decision. For each decision, the necessary and sufficient information must be obtained, which allows one to establish the situation provided for in the hypothesis of the norm as a condition for deciding, and entails certain legal consequences.

The reasonableness of the verdict is the correspondence of all the conclusions set out in it to the factual data that are available in the case and which were obtained as a result of the activities preceding the decision to collect, verify and evaluate evidence. Each judgment must be based on evidence examined and evaluated to the extent necessary for the decision (Kolokolov & Sinyakov, 2003, p. 17).

All statements contained in both the descriptive and resolute parts of the judgment must be substantiated. At the same time, the decision itself, expressed in the operative part of the act, must follow from the circumstances recognized as established in the descriptive part.

To make each decision in accordance with its purpose, content and features, the decision maker must have the necessary and sufficient information to justify the

¹. See also: (Shestakov, 2004; Kostenko, 2004, p. 18)

conclusion that there is a “legal situation” with which the law associates certain legal consequences.

It should also be noted that the verdict of the court must be justified both in terms of qualifying the crime, and in terms of sentencing or release from serving a sentence.

Compliance with the procedural form of the adoption of the sentence ensures the validity of the sentence. Strict observance of the procedural form provided for by law is an indispensable condition for establishing the truth in the case and issuing the necessary verdict. Legitimacy and validity are interrelated and interdependent properties of a positive characteristic of a sentence. Validity is one of the manifestations of the legality of the sentence!

In the descriptive part of the document - the sentence, the requirement of reasonableness as a manifestation of the informational nature of the sentence should be expressed. This part of the decision should indicate that the person making the legal decision had at his disposal the necessary and sufficient information, on the basis of which the circumstances provided for in the hypothesis of the norm as conditions for deciding were established; it should set out the result of the first stage of decision-making - the factual circumstances of the case are established. It also sets out the evidence that led to the conclusion about the presence (or absence) of legally significant circumstances. This part of the decision must contain the factual and legal substantiation of the conclusion stated in the operative part.

The reasonableness of the verdict means that the court, in its decision: proceeded from the materials of the case considered in the court session; based his conclusions on reliable evidence in the aggregate, which exclude a decision other than that adopted by the court; deeply analyzed the composition of the crime and its qualifying features; if a person was found guilty, he imposed a punishment taking into account the nature and degree of public danger of the crime, his personality and the circumstances of the case, mitigating and aggravating responsibility; if the defendant was found not guilty, he acquitted him¹.

For a reasonable presentation of the descriptive part of the decision and the correspondence between it and the operative part, the consistency and clarity of the issues that the law proposes to solve is of great importance. In this regard, it should

¹ Timoshenko, S., *Legality and validity of the court verdict*, accessed on <http://www.law.isu.ru/science/vestnik/20002/timoshenko.cgi>.

be noted the order of the issues listed in Art. 385 Code of Criminal Procedure. It is in this sequence that the law proposes to state the descriptive part of the sentence.

Logical and legal contradictions in the sequence of questions put to the decision of judges lead to the fact that in the decisions made, both the factual and legal grounds for decisions are not always clearly formulated (for example, the absence of “the event of a crime” or “elements of a crime”) which, as you know, entails various legal consequences when resolving a civil claim.

The verdict must clearly set out the factual grounds for the decision and the evidence on which the conclusions about the presence (absence) of these grounds are based. Ignoring the differences between the facts constituting the subject of proof and the evidence leads to the fact that in decisions, sometimes, instead of circumstances of legal significance, evidence is given (Gorobets, 2003, p. 37).

The foregoing allows us to conclude that the verdict-document should contain all the factual and legal material that allows us to characterize the verdict as a legitimate and justified decision, to give it a moral assessment as fair.

The validity of the decision is expressed in the motivation, indicating that the decision must be motivated, the law does not give a general concept of a motivated sentence.

The conclusions of the court, contained both in the descriptive and substantive parts, must be motivated. These should be the reasons why the court accepted some evidence and rejected others (Gorobets, 2003, p. 37).

Differences in the reasoning of decisions depend on whether the law requires the citation of the established circumstances and evidence in the verdict itself, on which the conclusion about the existence of these circumstances is based, or limits the motives of the verdict only by citing the established circumstances.

The study of the legal requirements for the content of the sentence shows that the motivation of the descriptive part depends on what type of rules governs the adoption of this decision. This finds a direct expression of the unity of the content and form of the sentence. The reasoning of the verdict includes bringing the established facts in it. The epistemological significance of these facts lies in the fact that they are the source material for the conclusion. The description of the facts in the verdict consists in their fixation, enumeration, some grouping, establishing their connection with legal concepts, the verdict reveals the connection of facts.

This makes it possible to reveal their essence, meaning, correctly determine their legal nature.

Bringing evidence in the verdict with an explanation of why some of them are the basis of the conclusions, while others are rejected, is a necessary condition for the motivation of the verdict. The law requires evidence to be presented, and the verdict must explain not only why some evidence was rejected, but also why other evidence was recognized as reliable.

Art. 394 of the Code of Criminal Procedure, defining the requirement for the descriptive part of the verdict, indicates that the guilty verdict must set out the reasons why the court “rejected other evidence”, and in the acquittal, the motives explaining “why the court rejects the evidence presented in support of the accusation. Compliance with this rule excludes violations that occur in practice, when evidence that contradicts the conclusions of the court is not examined at all and is not evaluated, or when the decision indicates only the names of witnesses, victims and other persons whose testimony, in the opinion of the court, confirms certain circumstances, but the essence of these indications is not stated.

The rationale for the decision is intended to reveal that logical activity in evaluating evidence and determining the meaning of the circumstances of the case, which leads to a judgment about the reliability and sufficiency of evidence, which in turn entails certain legal conclusions.

In general, the motivation for the decision is a system of arguments, arguments, considerations of a factual, logical, legal nature, leading to certain conclusions on the case.

The motivation of the verdict makes it convincing and thus increases its educational and preventive value. The discrepancy between the motives of a particular sentence and the legal grounds makes the decision unlawful¹.

In whatever form the requirement of motivation is expressed in relation to a particular sentence, the motivation itself must meet the requirement of legality. It should also be borne in mind that the motivation of decisions made in criminal proceedings is an important guarantee of the rights and legitimate interests of the participants in the process.

¹ S. Timoshenko. Legality and validity of the court verdict // <http://www.law.isu.ru/science/vestnik/20002/timoshenko.cgi>

At the end of the 1980s, along with the legality, validity and motivation of the verdict, one more requirement was noted - justice. The close connection between the justice of the sentence and its legality and validity is obvious. Only such a verdict, by which the case is resolved correctly on the merits, a truly guilty person is convicted and his guilt is fully proven, can be perceived as fair, and nevertheless, modern legal science is characterized by a clear boundary between the world of existence and the world of due (Batiev, 2005, p. 164).

In most articles of the Criminal Code, sanctions provide the court with an alternative choice of a particular type of punishment, as well as the amount within the limits provided for by law. And although any punishment within these limits will formally comply with the law, the court is obliged to appoint not any, but a punishment that is fair for each specific case (Rushin, 2004, pp. 38-39). According to a number of proceduralists, a sense of justice should guide judges in such, for example, the issue of determining the amount of compensation for the harm caused by a crime, considering the property status of the perpetrator and the degree of guilt of the victim (Pitetsky, 2005, pp. 91-94).

Philosophical duels over justice gradually seeped into the legal sciences. Moreover, the spread of opinions of scientists on this issue is so striking that finding a common ground between them presents a certain difficulty. According to the deep conviction of some, "today there is no justice and judicial justice" (Bozrov, 2005, p. 15). Others, on the contrary, categorically state that the criminal and criminal procedure legislation, as never before, is focused on justice (Podolny, 2002, pp. 13-15).

In our opinion, it would be wrong to agree with the opinion of the authors who spoke in favor of the concept of singling out justice as one of the requirements for a sentence, both from a legal point of view and from a theoretical one. From a legal point of view, Part (3) Art. 384 of the Code of Criminal Procedure clearly defines the basic requirements of the law for a court verdict, where nothing is said about justice. In theoretical terms, the essence of this issue lies much deeper, namely, in the totality of factors influencing the formulation of the sentence.

Judicial decisions, by definition, can be neither fair nor unfair, because when justice is included in the category sought by the court, it is subject to proof, which, in turn, should entail its inclusion in the subject of proof with a specific legal formulation. However, this cannot be done, since each side has its own idea of justice. In addition, if we are talking about fair decisions, then this requirement

should also be extended to the pre-trial stages, since, logically, without a fair preliminary investigation, there can be no fair verdict (Bozrov, 2005, p. 15).

There is no unanimity in jurisprudence regarding the requirement of fairness of a court verdict. Some scholars believe that justice has no material expression and characterizes the verdict only from the moral side, that “the justice of the verdict cannot be reduced to its legality and validity” (Gutsenko, 1998, p. 344). It acts as their moral assessment in the eyes of society and should reflect social justice.

At the same time, some of them believe that a lawful and justified sentence may not always be fair. For example, if the current and applied criminal law no longer meets social needs. The law may not reflect the changed moral and legal views of society, however, a sentence that meets the requirement of justice, according to supporters of this point of view, must take this into account (Lupinskaya, 1998, p. 399).

Other proceduralists believe that justice as a criterion for the justice of a sentence is a legal category, which is formed on the basis of an assessment of the conformity of legal norms and acts of their application. It is in line with the law. To be legal means to have the quality of legal justice. And vice versa, whoever violates the law, does not comply with legal norms, acts contrary to legal justice (Ekimov, 1980, p. 98).

There is also an opinion that justice in the criminal process plays the role of a principle, the requirements of which apply to all procedural documents, including the court verdict. (Najimov, 1987, p. 54).

From all of the above, we can conclude that the allocation of justice as one of the requirements of the law to the verdict of the court has neither legal nor deeply moral significance. Fairness in general is an evaluation category (Zheludkov, 2004, p. 42). The decisions made in the verdict, and the verdict itself, must correspond to people's ideas about justice, the moral and legal views of society, but no more.

3. Conclusion

The requirement of justice, as well as the requirements of humanity, expediency, and many others, should be considered in the context of the above procedurally stipulated requirements. We believe that such moral concepts as justice, humanity and expediency cannot be substantiated by means of reason and experience, they are comprehended by a person intuitively, i.e. as self-evident truths.

Ultimately, all the requirements of the sentence are based on the main thing - its legality. Despite this, only if all the above requirements are met, the sentence will have great educational and socio-political significance.

Bibliography

- Baranov, A. (2003). Ensuring the legality and fairness of court decisions. *Criminal Law, No. 1*, 8.
- Batiev, L. (2005). Law and Justice. *Jurisprudence, No. 5*, 164.
- Bozrov, V. (2005). On the problem of justice in criminal proceedings. *Russian judge No. 4*, 15.
- Ekimov, A. (1980). *The justice of socialist law*.
- Gorobets, V. (2003). Legality, validity and fairness of the verdict in the conditions of competitive process. *Russian Justice, No. 8*, 37.
- Gutsenko, M. (1998). Criminal process. *Textbook*, 399.
- Kolokolov, N., & Sinyakov, I. (2003). The legality, validity and fairness of the verdict are the essential qualities of any court decision. *Russian judge, No. 4*, 17.
- Kostenko, R. (2004). The procedure for resolving the constitutional requirement for the admissibility of evidence in the course of criminal proceedings. *Russian judge, No. 9*, 18.
- Lupinskaya, M. (1998). Criminal Procedure Law of the Russian Federation. *Textbook*, 399.
- Maltsev, V. (2003). The principle of legality in the Criminal Code of the Russian Federation. *Criminal Law, No. 1*, 37.
- Najimov, V. (1987). Justice as a principle of the Soviet criminal process and the most important property of the sentence. *Development of procedural legislation*, 54.
- Pitetsky, V. (2005). Categorization of crimes and the principle of justice in criminal law. *State and Law, No. 4*, 91-94.
- Podolny, N. (2002). The principle of justice in criminal proceedings. *Russian judge, No. 12*, 13-15.
- Rushin, N. (2004). Punishment must be fair, not formal. *Legality, No. 10*, 38-39.
- Shestakov, S. (2004). Admissibility of evidence in criminal proceedings in Russia and the USA. *Criminal Law, No. 3*, 100.
- Zazhitsky, V. (1999). On the Admissibility of Evidence. *Russian Justice, no 3*, 26.
- Zheludkov, M. (2004). Cancellation of confiscation of property and the principle of justice. *Law and Law, No. 8*, 42.