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LEGAL ARGUMENTATION IN PERFORMING THE ACT OF JUSTICE

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SUMMARY

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Content

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The work "*Legal argumentation in the realization of the act of justice*" started from the need to approach a little researched field, but of great interest, given the fact that a large number of trials take place annually in our country, without the debate within them being conducted in an appropriate manner so as to enable the judicial body to easily folow the considerations of each participant in reaching its decision.

As a result, avoidable miscarriages of justice end up being committed, undermining litigants' procedural rights and overburdening judicial review courts.

The research was carried out from the perspective of a magistrate who, at the moment, had solved approximately 8,000 cases, some of which were judiciously presented, allowing an easy understanding of the party's position, so that the solution was adopted in relation to the relevant aspects.

However, in those cases where the parties or even the judicial bodies did not focus on ensuring the success of the argumentative process, the trial was delayed and there were risks of violation of the procedural guarantees provided by the national legal provisions and the conventional standard established in the jurisprudence of the European courts.

Therefore, in the work, all diligence is undertaken in order to outline good practices aimed at encouraging a productive exchange of perspectives, so that the end of the process reflects the concrete circumstances of the case and brings about an adequate resolution of the conflict of law.

In **chapter 2**, an analysis is carried out on the state of the research up to the present moment, starting from the international context, since ancient times, the initial leading exponents of the field of legal argumentation being identified as **Corax** and **Teisias**, who popularized the concept of "*enthymemes*", originally introduced by **Isocrates**.

The thesis embraces the philosophy behind it, under the conditions that the quality of the argument proposed by the party is important and not its size.

It is also necessary to point out the role of **Socrates** and **Plato**, the former contributing, among many others, to the development of the art of dialogue or *maieutics*, in ensuring a productive exchange of questions and objections that allow the one who uses them to reach the truth. The importance of this exchange in the economy of processes is revealed in the following chapters, one of the main messages of the study being that only through a genuine dialogue can all the objectives of the trial be achieved.

His student Plato approached *critical analysis* and *intellectual reflection* on problems raised in logic. Starting from the first one, an important part of the paper focuses on its usefulness in decision-making and the need to reduce the impact of reasoning errors.

These were initially categorized by **Plato's** student, **Aristotle**, the most harmful being the subject of the present research. In addition to sophistry, he also addressed the main ways in which the audience is convinced, namely through *pathos*, *ethos* or *logos*, the latter reflecting the preferable approach that is supported in the work.

The prominent Roman representatives are also mentioned, the most notable being **Vico**, **Grotius**, **Quintilian** and **Cicero**, the Roman school significantly enriching the wealth of knowledge in the field of debate.

Their successors after the year 1000 were identified in the person of **Thomas d'Aquino**, Francis **Bacon** and Rene **Descartes**, the latter developing the deductive and the inductive method of knowledge.

In the modern and contemporary era, it is necessary to refer to **Chaim Perelman** and **Kant** who debated the role of the judge and the lawyer in the argumentative process.

For his part, **Feteris** distinguished between *logic*-based and *rhetoric*-based argumentation, with significant diligence in the study confirming the significantly higher utility of the former and the secondary role of the latter.

An analysis is also carried out on the impact of the trend of dishonesty manifested by the abuse of law as a problematic factor in the judicial debate.

In the final part of the chapter, the national representatives of the field are mentioned, the most important of which can be individualized in the person of **Petre Bieltz** with his reference work "*Legal Logic*".

In the chapter on the syllogism, an analysis is carried out in order to identify the most comprehensive definition of it.

It starts from the one offered by **Aristotle** that represents a statement in which if something was given, then something other than the given necessarily results from what was given (Sgarbi, 2018,1).

The main ancient authors who studied it apart from this great classic are also identified: **Theoprasthus**, later **Aristo** of Alexandria and **Boethus** of Sidon (Sgarbi, 2018,1).

The main Latin exponents are represented by **Severinus Boethius**, who translated his teachings into Latin, in two treatises, ,,*De hypotheticis syllogismis"* and ,,*Introductio ad syllogismos cathegoricos",* as well as **Avicenna**, with his huge commentary, "*Analytica Priora*".

Among the most notable authors of the modern and contemporary era can be listed **Kant**, **Hegel**, **Jarvis** and **Fox**, but at the same time, even the opinion of his critics is examined.

Next, the main types of the syllogism are illustrated, with concrete examples, as well as its structure and the main laws that govern it.

Its importance in building an effective exposure that allows tracking of the party's position cannot be successfully denied. Any serious argumentative endeavour requires compliance with the rules that govern it if notable results are to be hoped for.

In chapter 4, aspects related to legal argumentation, critical thinking, the interpretation of the legal text as well as sophistry are examined.

Regarding argumentation, a definition of it and the argumentation operation is formulated, accompanied by certain recommendations extracted from the bibliographic sources to enhance its effect.

For example, the importance of distinguishing between the informative role deriving from the expression of an argument and the transmitter's tendency to issue a value judgment regarding what has been reported has been emphasized (Allen, 2004, 55).

The main conditions of a well-constructed argument by reference to the analyzed doctrine are considered.

Starting points are provided towards defining the concept and highlighting its impact on the debating approach.

It has often been stated that people with critical thinking are those who are perfectly aware when they do not possess the relevant information, but who excel in filling in any data gaps by identifying the most pertinent sources (Allen, 2004,103,104) .

The thesis demonstrates the role that critical thinking can have in the mechanism of building a well-founded position and its usefulness in solving trials by correctly reporting to the sources of information materialized in the evidence of the case.

Regarding the barriers in applying the principles of critical thinking, doctrinal opinions are synthesized in order to identify the generative factors of illogical thinking.

One of the strongest is felt when insufficient resources are allocated to the search for counterarguments and evidence in support of a contrary thesis (Baron, 2007, 200-201). There are also discussions about thoughts, feelings, as well as personal experiences (Vaughn, 2005, 48), group pressure, whether it is about the political, professional, religious, family or even ethnic element in the sense that the influenced can be pressured to adopt ways, ideas or even attitudes pertaining to the group to which he belongs (Vaughn, 2005, 37), the tendency towards cynicism by some of the legal subjects who tend to ridicule the proceedings before the judicial body (McInerny, 2004, 93-94), the omission of insufficient verification of the sources of information (Fisher, 2006, 93-100), when conclusions are adopted hastily with excessive confidence (Baron, 2007, 200-201), the case where there are prejudices favourable to the initially thought possibilities (Baron, 2007, 200-201), when one vehemently refuses to look for alternatives to an initial

conclusion or model (Baron, 2007, 97) as well as when one fails to look for counter-evidence to support an argument (Baron, 2007, 97).

Duplicitous behaviour is also addressed in the paper, considering the orientation that it represents another major impediment to critical thinking.

The main reasons why this behaviour is adopted: to obtain a personal advantage, when businessmen hide the true financial situation of their companies, in order not to discourage shareholders; to avoid punishment, innocent suspects sometimes admit their involvement in the crime during police interviews only to avoid their mental torture by the investigator; to make a positive impression on others or to protect themselves from embarrassment or disapproval - sometimes they may not want to admit that they have made a mistake -; to make others feel better or for the benefit of another person (Vrij, 2000a) - and efforts are made to identify methods to counteract or at least reduce its influence.

In the **Subchapter regarding the interpretation** of the legal text, a definition of this approach is outlined and the harmful consequences that the deficiencies in the law are also shown.

Situations in criminal law, public international law and the administrative field are illustrated in which the margin of appreciation of the one who interprets the law is greater and allows an easier compensation of them.

The concept of *antinomy* is also debated, emphasizing the importance of the priority application of the principles enunciated by the international provisions established in the treaties to which Romania is party.

The main classifications of interpretation are listed and explained, ***pro subjecta materia***, ***semi-indirect, a simili ad simile, indirect, historical, extensive, systemic***, with the illustration of examples.

A wider analysis is devoted to the operation of interpretation in the criminal field, by virtue of the stakes of these processes for the participants and the importance of the appropriate interpretation of the applicable provisions.

As for **sophisms**, the study starts with their definition by referring to two authors, Hamblin and Washburn, and also the merits of Bieltz are recognized, who inventoried a number of 176 reasoning errors, including different variations of the basic ones.

In addition to indicating the most common ones, the research is oriented towards establishing some working methods aimed at limiting their negative effects.

Later, in the segment on cases pending before the European courts, a special examination is carried out aimed at identifying the existence of those who were the basis for the pronouncement of the unjust and harmful solutions that are addressed.

Initially, the most problematic ones are mentioned, such as ***ignoratio elenchi***, which refers to the situation in which the participant in the process considers that he has demonstrated a certain thesis, when in fact he has demonstrated another (Pirie, 2006, 95).

In turn, ***ad populum*** is able to profoundly affect the decision-making process, but countermeasures are also illustrated, such as that expressed by a Roman emperor, **Marcus Aurelius**, who stated that the opinion of 10,000 people means nothing if none knows anything about the subject (Aurelius, 2020).

Ad hominem occurs when someone tries to discredit another's argument by attacking that person's character, instead of the possible shortcomings of their reasoning (Thomson, 2002, 56).

Ad ignoratiam (Pirie, 2006, 94) can lead to erroneous conclusions due to the lack of evidence in support of the alternative proposed by the party. For example, the insufficient evidence proposed by the prosecutor in proving the guilt of the accused person should not lead the court to establish his innocence. Just because the said allegation has not been proven, nothing prevents it from carrying out its own steps to clarify all the questionable aspects.

In addition to these, the appeal to feelings, such as ***ad odium*** (Pirie, 56, 2006), is equally problematic, when the party tries to make up for the lack of evidence by cultivating the magistrate's repulsion towards the opposing side, so as to make him ignore the claim and to "*punish*" her for the reprehensible act of which she is accused.

Ad misericordiam refers to the situation where the mercy of the judicial body is appealed to in order to make up for the lack of grounds of a certain position (Pirie, 2006, 128).

There are also variations such as the appeal to **guilt**, in the situation where the lawyer refers to the defendant's large family in support of a solution that would limit the length of time spent away from them, trying to pass the blame for the situation on the magistrate (Moore and Parker , 2004, 157).

Another type of fallacy has been termed as ***ad baculum***, which refers to the situation in which an appeal to fear is made to the receiver of the message to convince him of a truth that is not supported by valid premises (Cohen, 2009).

Argumentum ***ad verecundiam*** is not rare either (Walton, 2002, 239).

It was assessed as incidental in the cases of absence of decisive evidence, so the opinion of an expert is used who can better clarify the situation. However, it was noted that this is a case of coercion with a profoundly unilateral character (Tindale, 2007, 127-128).

Last but not least, also presented in the work is ***ad autoritatem***, when the thought promoted by a subject that enjoys a high professional prestige is embraced, which would make an own examination of the quality of the source seem unnecessary (Cohen, 2009, 319) .

Regarding the abuse of rights, the examination starts from its definition by reference to the doctrine.

Boroi carried out a pertinent analysis on the elements of the abuse of procedural law, noting the existence of a subjective element that refers to the exercise of procedural law in bad faith for the purpose of harassment, without the justification of a special or legitimate interest. The reason may consist in harming or damaging the opponent, diminishing or delaying the possibilities of defending or capitalizing on his rights, as well as forcing him to abandon his claims or make other concessions (Boroi and Stancu, 2019a, 68).

The conditions to be able to retain its existence are analysed, cases in which they were committed are exemplified and the negative consequences on the smooth running of the trial such as the situation in which an obviously unfounded request is introduced or the formulation of repeated requests to reject relocation or verification of documents.

At the same time, it is analysed for each individual case what remedial measures would be required, considering the relatively generous margin of appreciation established by the legislator in favour of the magistrate.

The most important ones regarding **critical thinking** concern the obligation of diligence of each participant to verify the quality of his sources, to corroborate it with the legally administered means of proof as well as to anticipate possible objections even before they are expressly raised.

Conclusions regarding the **interpretation** operation take into account the need for a preliminary control by all legal subjects in order to identify the applicable provisions and to successfully argue that the conditions are met so that they can lead to the termination of the respective legal relationship.

It is desirable that the semi-indirect interpretation does not become the rule in our legal system, as it is necessary for the legislator to swiftly react to the changes occurring in society and to regulate the new legal situations that call for interventions.

As to conclusions regarding the research on sophisms, it is first necessary to underline the fact that ***ad populum*** has a more pronounced impact among magistrates at the beginning of their career who do not yet have sufficient professional experience and pay more attention to the opinion embraced by the majority to their colleagues, in application of the adage *vox populi vox dei*. Its

power derives from the professional respect they give to this majority in the challenging cases with novelty elements.

Ad hominem should not be committed by the magistrate when issues are presented to him by a person uninitiated in law, but who expresses a pertinent perspective. When it is committed by one of the participants in the trial, the magistrate must expressly mention that personal attacks will not be accepted and that it is not in the interest of either party to continue the debate under these conditions.

Ad odium is also common, but it should not be omitted that it is the duty of every diligent participant in the process to be aware of a possible antipathy towards a certain person and not to allow it to hinder the proper functioning of his cognitive processes. Even a person who wilfully engages in adversarial conduct may still present a pertinent argument with a significant impact on the outcome of the trial.

Nor can ***ad misericordiam*** have any beneficial effect in the litigation, given that some judges or prosecutors have already resolved a significant number of cases in which the party's situation was delicate. It is often disguised as requests to judge fairly. The solution must be free from these influences, the discussions must be marked strictly by the presentation of useful arguments and not by such strategies.

Ad baculum can take the form of a threat to notify the Judicial Inspection or the prosecutor's office by the litigant in bad faith when the aim is to force the magistrate to adopt a certain solution. He must not be intimidated by these attempts, but seek to resolve the case fairly and accept that there will always be parties dissatisfied with the outcome of the trial who will yearn retribution.

The last, ***ad autoritatem*** starts from the erroneous premise that the issuer of the position that enjoys the professional respect of the participants in the debate is right only because of his skills and professional accomplishments and not in terms of the quality of his argumentation.

As for the **abuse of right**, it exists when one party only pursues the injury of the other by exercising a procedural right in bad faith. Regardless of the definition, an active intervention is required in these situations, in sending a clear message to these litigants that such conduct will not be tolerated.

In **Title II,** aspects regarding the **participants** in the debate are pointed out.

In subchapter 5.1, the role of the judge in the entire argumentative approach is addressed, by referring to the relevant legal provisions and the doctrine, in establishing good practices aimed at facilitating the fulfilment of his constitutional function.

The duties that fall to him during the trial are analysed, aiming at establishing the procedural framework in terms of the subject of the judgment and the parties, establishing the competent court, maintaining the appearance of impartiality, asking questions to the witness and recording his statement, granting the word, interacting with all participants in the debate, ensuring its unfolding in good conditions, counteracting any tendencies to obstruct the procedures, approval of the evidence and its interpretation, the determination and application of the legal norms, the adoption of a solution and its motivation on the civil and criminal side, taking into account cases from court practice.

For example, he is to establish, based on control questions, whether the testimony of the witness given during the criminal investigation, as well as during the trial, is truthful. These may concern aspects such as the clothes worn by the perpetrator at the time the witness saw him, or any other details that confirm both the presence of the witness where he claims to be and whether he directly and accurately perceived what he reported. If what he declares is not supported by certain elements arising from the evidence on the record, the court will record both the answers to the control questions and the answers to the essential issues that are the subject of the case so as root out discrepancies. Thus, it will be relatively easy to remove the deposition, since its content did not attest to the fact that the witness is credible.

At the same time, the measure of fining, when it is necessary to be applied, must be carried out in an impersonal tone, likely to remove any suspicion of bias. The one who applies it fairly will appear as credible, professional, especially when he expressly communicates that he had to proceed in such a manner. It should not seem as a punishment, but merely that he was forced to adopt such a solution.

In this segment of the paper regarding the activity of the prosecutor, his involvement in the criminal and civil process is debated, by referring to all the relevant provisions, to the doctrinal opinions, with the extraction of rules of conduct that allow the adequate exercise of his attributions.

The measures that can be undertaken within the civil process, in ensuring the rights of vulnerable persons, with the justification of some legislative interventions in this regard, are taken into consideration.

In the criminal process, his attributions regarding the hearing of procedural subjects, ensuring that their rights are not violated, the management of the criminal investigation, the instrumentation of the cases established in his exclusive competence, those with multiple perpetrators as well as those with a plea agreement are taken into account.

The research confirms the crucial nature of his contribution both in the criminal prosecution phase and during the trial and reveals why it is necessary that the initiative in the administration of evidence in criminal litigation should rest with it and not with the court.

For example, in the case of crimes committed by multiple perpetrators, he is to identify those participants who show remorse, in order to convince them of the possibility of confessing the facts and describing the crime in detail, including the contribution of the others.

Appealing to the suspect's conscience, identifying contradictory aspects of his account and offering false moral justifications for committing the act were the tactics most likely to produce results. On average, each interviewer was found to use 5.62 strategies per hearing (Leo, 1996).

The research also aims to focus on this discipline, in order to outline a more adequate perspective on the conditions necessary for a productive debate.

With regard to the values that need to be displayed by the judge in carrying out the act of justice, the paper outlines the importance of avoiding offensive behaviour, assertively managing stressful situations, discouraging interventions that disrupt the judgment, showing moderation and firmness when required, as well as detachment from the emotional charge of the process.

An analysis is carried out on the behavioural traits recommended for exercising the profession in good conditions, concluding that the most suitable personality is that of the introvert-reflexive-sensory type, but also with certain extrovert elements. It is the case of a combination of both personality types, with the emphasis on the importance of avoiding the extremes of each (Neamț and Neamț, 2018, 2018, 93).

As for the profession of prosecutor, based on the opinion of a renowned author, an individual with a less introverted personality, but at the same time with more pronounced investigative orientations, would adapt more easily (Neamț and Neamț , 2018, 94).

In this respect, he needs to have a personality oriented towards the resolution of conflicts, by displaying tactfulness in managing new situations that could not be foreseen initially at the start of the criminal investigation. He must also be prepared to be corrected when, as a result of the evidence administered, his initial suspicions have not been confirmed. He must not be affected by possible failures and demonstrate more patience than the judge, as a significant part of his solutions may be disproved.

A sanguine type of personality would in this sense be suitable for the undertaking of specific activities since an impeccable self-control is necessary for the successful completion of the operational tasks. As the first magistrate who comes into contact with the suspect, he must not allow his own prejudices to affect his decisions during the course of the investigation.

A comparison is made with the judge, with the scoring of the most notable difference, namely the need to work with a hierarchical coordinator with the right to control the judicial activity (Othman, 2005, 345).

The main traits recommended for practicing the profession are outlined, consisting in patience, resistance to failure, creativity, as well as the ability to improvise, in order to maximize the available resources in order to fulfil the objectives.

Concerning the lawyer, the paper confirms the thesis that he is a partner of the utmost importance for the magistrate in the trial and that when he displays diligence and good faith, the impact of his work can be decisive in the debate.

The interventions in the early stages of the process are taken into account, when he is to check whether the procedural measures and acts of the judicial bodies in the moments before his employment are legal, and if necessary, to request their restoration in order to ensure the right to defence of the accused person.

Objectives are outlined regarding the task of completing and interpreting the evidence, handling of the trials with the abbreviated procedure, or in which the change of legal classification was ordered, presenting conclusions as concise as possible, but with the most effective communication of the position of the represented party and ascertaining the opportunity to adhere, when required, to the claims of the opposite party.

Expressing his opinions synthetically represents a real professional challenge, but at the same time a highly desirable trait that requires training (Neacșu, 2014, 129-130).

In establishing the desired outcome of the trial, he should not focus on winning of the trial since in many situations this result does not decisively depend on his contribution. Instead, efforts should best be directed towards conveying the party's perspective as effectively as possible so that his feedback is taken into account.

As to the **litigant**, different tasks are outlined in terms of the proposal of evidence, including the need to show initiative in this regard, as well as to provide constant feedback to all the essential aspects raised in the case.

In the criminal trial, notifying the judicial bodies is warranted only if all the conditions stipulated by the law are met, he should display an active participation in the proceedings and perseverance in going through all the procedural stages, he should propose the relevant additional evidence only when required, so as to ensure its educational and punitive role.

His contribution in the civil litigation is also analysed, manifested in the express indication of the factual and legal basis in support of his claims, why it is required, as well as the impact of informal requests.

Following the previously undertaken research activity, certain aspects are extracted in the final subchapter, in outlining some rules that, if respected, can significantly boost the efforts to resolve the legal conflict, for the benefit of all participants in the trial.

They are structured considering the role of each actor within the debate and are the result of the examination of the bibliographic sources as well as specific cases, in establishing recommendable approaches in full accordance with the principles of legal argumentation.

For example, regarding the individualization of the punishment, it should be remembered that whenever the prosecutor failed to propose evidence on the behaviour of the defendant prior to the start of the trial, the judge must address the opportunity of administering some that also cover these circumstances. Some courts limit themselves to aspects such as civic activities in which he participated, the family and workplace situation and his conduct at the start of the investigation. The circumstance that only after the notification of the criminal investigation bodies or even after the referral to the court, the defendant expressed his regret for his acts should not weigh as much in the determination of the punishment as in the situation in which he reported the crime to the authorities and collaborated with them in order to establish the judicial truth.

As far as the **prosecutor** is concerned, during the hearing it would be appropriate to focus initially on those questions that do not necessarily tend to clarify whether or not the suspect was involved in the commission of the act, but on his place and time coordinates at that moment and to ask for an alibi that would completely negate the evidentiary thesis of the accusation. In the situation in which the information is provided, a point of departure is created that allows to determine veracity of his claims. Their confirmation or denial may justify additional investigative steps in a certain direction. If the alibi is confirmed, no more time will be wasted with the initial evidentiary thesis, as other working hypotheses are to be explored.

Regarding the **lawyer's involvement** in the criminal process, in those cases in which the defendant is to be heard regarding the act he is accused of, it is required that he insists on the audio recording of the discussions, so that the judge is informed about to the state of mind of the accused and ascertain, if it is the case, possible pressures exerted against him in order to force a confession.

When the proof in support of the accusation is sufficient, he must in all cases also propose the version of the acknowledgment of the fact by his client. On occasion this was omitted, with the defendant not even being informed of the right to benefit from a milder punishment in case of going through the abbreviated procedure.

The work cannot be considered complete without including case studies which concretely portray how the actors in the debate end up violating the principles of legal argumentation, with the presentation of the harmful consequences for those affected and with the identification of specific remedies intended to prevent any deviations from the normal course of the debate in future cases.

Following an extensive analysis of the case law of the European courts and the recommendations of the Consultative Council of European Judges, certain representative cases were selected that can aid future argumentative efforts so as to carry out justice, which is urgently needed in a democratic society.

Each case study includes a brief summary as well as an analysis of the serious errors that were made in relation to the issues discussed in the previous chapters. Although rare, these useful instances are capable of allowing an adequate examination of the problem of reasoning errors and the role of the participants in the procedures.

In chapter 7, a series of good practices are elaborated to ensure the adequate application of the principles of legal argumentation both in terms of written and verbal debate.

For example, in civil litigations, it is necessary for the defendant to be properly identified, with the indication of his name and last residential address, so that the court can conduct a trail for a real person, and the enforceable title can be capitalized. It is necessary that his personal numerical code can be identified, so that the person who is entitled to participate in the debate and express a point of view can clearly be identified.

In the segment regarding the **verbal debate**, it is demonstrated that it is useful for the proceedings and certain rules are outlined in order to fulfil the objective of addressing the essential elements for reaching the solution in the trial.

Even if it is sufficient for the arguments to be presented in writing, it is useful for the decision-maker to directly perceive the position of the participants, in order to guarantee the fairness of his solution.

The basic components of communication in the process are indicated, linking the perspective of the party to that of the recipient of his message. Measures that can be taken to counteract the

tendency to hijack the debates by expressing irrelevant reasoning are pointed out, as well as recommendations in order to build an effective discourse that guarantees that the message is fully understood.

In the sub-**chapter regarding the pandemic** context, the changes brought by the pandemic in the dynamics of the trials are conveyed and it is demonstrated that the solutions adopted as a result of its intervention are useful even after the health crisis and that the argumentative methods are even enhanced by the new policies in civil and criminal procedural matters.

Aspects such as the remote hearing of people, the issue of the protection of personal information, scheduling cases in intervals, the need for the urgent operationalization of the Electronic File, digital communication of the documents in the files, as well as the opportunity to extend the applicability of the procedure regarding low-value claims for requests over 10,000 lei and up to 20,000 lei are analysed.

For example, the generalization of the Electronic File means that the user can obtain in editable "*word*" format all the phrases from all the attached documents, so that the drafting of the segment of the decision concerning the arguments of the parties or of the written conclusions can be done much faster. At the same time, the search for essential information in the multiple volumes of complex files is facilitated as an alternative to traditional browsing, where the "*find*" function can prove invaluable in finding the desired item. It allows law firms to manage a large number of cases, the solicitors appearing in court term only in case of need, or when the opposing party formulates defences.

Within the segments on the practical aspects of argumentation, reasonings built on the basis of the principles outlined in the work are presented, highlighting their indispensable character for the smooth running of the trial.

Examples are used from civil, criminal, administrative, contravention law as well as civil and criminal procedural law.

In the final stage, with respect to the opportunities for expanding the research, starting from the chapter on the **history** of **legal argumentation**, the usefulness of its study emerged, which could be expanded into a larger work, targeting more authors and more material from those already mentioned, the expansion of the **analysis of sophisms**, with new addition to the list and ways of countering them, given that their impact can be very harmful through the multiple judicial errors they generate, as well as the segment with the **psychological** dimension of the argumentation, with the inclusion of the other actors, the lawyer and the litigant.

In the following, a series of conclusions, recommendations and legislative proposals are presented, as a result of the use of all bibliographic materials and the completion of the research stages in order to advance the field and for the benefit of all the people involved in the millions of pending cases, which require that the act of justice to be carried out in optimal conditions.

Regarding the **argument**, the study managed to define it as rigorously as possible, by referring to a significant number of bibliographic sources and to outline a series of recommendations for its construction that can immensely contribute to clarifying the cause.

In connection with the **interpretation of the legal text**, the establishment of a new procedure, similar to that of the appeal in the interest of the law, is supported to address the serious legislative gaps identified in the application of the legal text by the magistrates.

As for the issues related to the **efficient course of the litigation**, it is argued in favour of establishing an additional stamp duty in the case of informal requests, because the judge ends up spending additional time for their verification, thus reducing the time allocated for other cases due to the fact that the party that did not express a minimum of due diligence, as well as in favour of the legislator establishing the obligation for the party to also specify the legal basis in support of his claims, under penalty of cancellation.

It is reasoned why the attempt to mislead the judge or the prosecutor by presenting as true a false fact or by omitting the disclosure of essential elements on which the resolution of the trial depends without constituting a crime should be the subject of a new case for applying a fine, as well as in the situation when is later discovered, as the sanction is to be applied directly by decision.

In order to counteract the defendant's efforts to delay the trial, it is proposed to amend the provisions regarding the limitation of criminal liability, with the addition of a new case of suspension of the statute of limitations of criminal liability represented by the fault of the person in whose favour it passes, and as to the cases with many parties, the introduction a new case for its extension.

It is reasoned why the practice of retrials needs to be limited, why the rejection of evidence should be an exception, and measures are proposed to increase the number of judicial experts.

Regarding the **establishment of the preliminary chamber stage**, the research reveals that it does not represent a beneficial innovation of the Code of Criminal Procedure, its passage many times leading to the delay of the criminal trial, the removal of this institution being proposed, while

preserving the possibility of ordering the return of the indictment to the prosecutor and to invoke the reasons for the annulment of the acts made during the criminal investigation phase until the first appearance in court.

Proposals caused by the **health crisis** generated by the pandemic are outlined in order to facilitate the proceedings with the help of electronic means, in the sense of conducting remote debates, communicating documentation by email, using electronic signatures and accessing documents through the Electronic File.

The obligation to schedule cases at different intervals is also supported, as well as the extension *de lege ferenda* even after the health crisis of the scope of cases in which the debates should be carried out only in writing for those involving patrimonial rights of up to 20,000 lei.

With reference to proposals aimed at **critical thinking** and the legal training of litigants, it is advocated for the establishment of a legal education course with elements of applied logic as a compulsory subject for high school level studies and the creation of a national digital platform with all the court decisions in our country , accessible to the public free of charge, accessible also in the premises of the courts and prosecutor's offices.

As for **sophisms**, recommendations are made to limit the impact of the most harmful ones. For example, using the ***ad misericordiam*** strategy requires delaying the decision in question to allow for some detachment from the emotional charge of the process.

As to the aspects dealing with **communication** within the debate, it is advocated in favour of the involvement of the legislator in regulating the possibility of conducting *ex parte* discussions between the judicial body and a litigant, when there are suspicions regarding the existence of threats to which the latter could be subjected to and in favour of the establishment of a new reason for applying a fine for expressing clearly irrelevant aspects in the trial.

Relating to the **questioning** of the suspect or the accused, the most important conclusion consists in the need to go through two distinct stages, the first that can be likened to an interview and only later, the second can take on the form of an interrogation. The investigator should focus on encouraging the continued exchange of information with the suspect, on convincing him that it is to his benefit to present his own version of events, so that his innocence is confirmed as quickly as possible and efforts can be diverted towards on other hypotheses. The judicial body will be able to determine if he is trying to mislead, if the investigation around the same suspect should be

continued or if it is necessary to expand the investigations onto other individuals, advantage that would otherwise not exist in the case of a total refusal to make statements.

As to the **role of the judge**, it is proposed that the legislative authority re-analyze his obligation to establish the applicable legal basis, as mentioned by the provisions of Article 22 of the Code of Civil Procedure, in the sense of reforming the legal institution in order to avoid breaking the procedural balance.

Aspects such as his conduct in public hearings are also addressed, in the sense that it is crucial to refrain from offending the parties with whom he interacts, even when they manifest themselves in violation of the provisions that regulate the proper conduct during the trial, the exercise of his margin of appreciation vis-à-vis the application of the suspension sanction, the establishment of the final form of the statement to be recorded, the analysis of the evidence by reference to the provisions of art. 103 Criminal Procedure Code, with the formulation of *de lege ferenda* proposal to replace the term "*evaluated*" from these provisions with another such as "*decisive*".

As for the party's involvement in the debate, his main task should be to focus on communicating his perspective as effectively as possible.

Regarding the **duties of the prosecutor**, it is recommended in the paper that he should also mention the level of cooperation during the criminal prosecution of the investigated person, a circumstance that should have a definite influence in establishing the sanction. Conversely, if the suspect admitted to the charges brought against him only after the evidence of his guilt has been administered, then the prosecutor, as a rule, should refer the matter to court.

In terms of plea agreements, it is proposed to carry out an examination by the legislator so as to amend the legal text so that for certain crimes that do not present a high social danger, the maximum punishment limits agreed by the perpetrator and the prosecutor have a binding character for the judge called to verify the legality of the respective agreement, without it being possible to reject it for establishing a too lenient punishment.

With respect to conclusions on the **psychological** dimension of the activity of the judge and the prosecutor, it is proposed that the legislator subject them to a periodic examination in order to confirm that they are psychologically fit and establish the possibility of requesting it *ex officio* in the case of events such as the death of close relatives or to their attack by litigants at work.

As for the **lawyer's contribution**, it is advocated that he present only those defences that are relevant, especially in the situation where their number is significant, avoid strategies that involve

the use of sophistry in order to divert the magistrate's attention from the aspects useful for the case, the practice of long conclusions or bombarding him with numerous requests with only a marginal influence.

Continuing this reasoning, it is argued in favour of changing the legislation, in offering the possibility of fining the parties for formulating some clearly unfounded **and inadmissible** requests.

As for the **litigant**, it is emphasized the need for his request to be as well specified as possible, to have all the articles indicated or, if necessary, even the fragment of the applicable article, with the mention of proof he intends to use and the evidentiary theses that are hoped to be achieved through their administration.

In the criminal trial, if the defendant is innocent, he must present his alibi as early as possible in the investigation and indicate the evidence that could exonerate him, so that the investigators can focus their efforts on a new working hypothesis, to exhaust all the evidence as close as possible to the moment of the crime and not after the pronouncement of an acquittal.

When the party is arraigned as a defendant, he must conduct an effective examination of his options. Only if he is able to propose means of evidence capable of successfully contradicting the factual situation retained by the prosecutor, he should refrain from resorting to the provisions regarding the abbreviated procedure provided by art. 374 Criminal Procedural Code. Otherwise, it is proposed to accept the benefits stemming from it, given that the alternative would only constitute a waste of resources, with the unnecessary prolongation of the trial.

The conclusions regarding the European dimension begin with the ***Alpar*** case, the main one being on the focus of the judicial authorities on the administration of the essential evidence as close as possible to the time of the illicit acts.

In those concerning ***Anghel***, the litigants who intend to file a misdemeanour complaint must remember that the mere initiation of the process is not enough to justify the automatic annulment of the sanction. At the same time, however, judges must be open to the legitimate and pertinent proposals for evidence of those in good faith and not automatically grant a higher probative value to the claims of the policeman.

As to ***Avraimov*** and ***Khayredinov***, it is stated that they reflect abuses that must be actively prevented by the national authorities, an intervention by the legislator is proposed in the case of criminal litigations with several persons detained at the same time and for which the term of only 24 hours is insufficient to allow a thorough examination of the case, namely the possibility of extending the duration of the initial custodial measure to 48 or even 72 hours so that the reasoning can be effectively analysed.

Berbani and ***Fatullayev*** reveal the need for caution on the part of the magistrate when there is evidence that would have a decisive impact on the sentencing decision, to supplement it if possible and to allow the defendant to exercise all his procedural rights, including to request it to disprove the accusations against him and not to violate the principle of equality of arms.

Moreover, in Fatullayev, the applicant himself gave the domestic authorities the opportunity to avoid an infringement by his repeated appeals for additional proof. Whether the decisive one cannot really be challenged by the accused, or there are other inconsistencies in the case, when the factual situation is denied, the exhaustion of all evidentiary opportunities is required.

The paper also reveals that the reasoning of the European Court of Human Rights in the sense of re-administrating the essential evidence when a judge is replaced should not automatically occur in all disputes, it being necessary to carry out a evaluation on the existence of the risk that for one of the parties the procedure as a whole to be unfair. A universal re-administration solution would not be able to ensure the respect of rights for all participants in the process. The need to guarantee a just procedure, but at the same time within a reasonable time, should sometimes limit such a measure, the newly appointed judge being in a position to determine whether all the procedural guarantees for the parties are in place.

By referring to ***Fatullayev***, it is concluded that once the court is presented with a criminal charge on which suspicions are raised, the defendant must be allowed to elaborate his perspective. In this way, even a solution of conviction could be accepted, as long as he has the representation that he has been heard and that he has been given every chance to effectively defend himself.

Regarding the ***Bogatova*** and ***Hirvisaari*** cases, in order to avoid the issues that were the subject of those litigations, the paper proposes granting a reasonable term of 30 or even 60 days for drafting the court decision, including in civil cases.

In relation to ***Case C against Romania***, the main aspects that are extracted are aimed at maintaining a balance between the interests of the accused and the victim and that the solution is not motivated in a generic way, by simply mentioning that there is no evidence to reveal the commission of the illegal act. All diligence must be done to confirm or deny the claims of the accuser, to avoid the manifestation of a purely reactive behaviour, limited only to hearing the victim and the suspect, without administering any other evidence before adopting a decision.

Lupaș outlined the need for a proper examination both by the magistrate and by the other participants in the debate when they are going to accept a certain position and not just because it is popular or because it comes from a public entity. The study highlighted the crucial role of the Strasbourg court, which allowed the outline of essential instructions for any procedural subject: to be open to new ideas, to challenge the existing approach if necessary, when convinced of the

validity of his own position and to promote it in all the procedural stages because maybe only in the last one will his reasoning be confirmed.

Rummi revealed the problem of the excessive duration of judicial procedures. The standard that needs to be extracted according to the paper is that magistrates must fulfil their duties and resolve the cases with which they have been entrusted without undue delay.

The solution is reiterated that the legislator should increase the deadlines for the elaboration of judgments in civil cases to 60 days, and that this stage should precede the moment of the decision as in criminal trials.

In the event that this solution does not prove its usefulness or is no longer implemented, the study analyses aspects related to work regulation, more precisely, the establishment of a maximum number of cases per each court session, so that the quality of the judicial act is not affected.

In the event that the resolution times of cases becomes excessive, it is proposed that the legislator intervene to supplement the personnel schemes and adopt measures to reduce the number of disputes such as updating the amount of stamp duties, which at the moment is at the same level as about 10 years ago, the establishment of new administrative authorities that could take over some functions from the courts and resolve the requests made in prior procedures or even the settlement of mediation fees from public funds.

In the investigation of the ***Sara Lind Eggertsdóttir*** case, issues related to the impartiality of the magistrate were addressed, which caused serious harm due to the failure to carry out the double examination of both the objective and the subjective element. Among the solutions, the need to maintain a balance between the interests of the parties emerged. Only when one understands how to formulate a request in which he can reasonably justify why it would be appropriate to remove the magistrate from the trial, the postponement of the trial becomes an acceptable inconvenience.

The study of the ***Tatu*** case revealed that sometimes it is necessary for the proper exercise of the role of litigant, prosecutor, lawyer or judge to go beyond the limits of the trial so that other legal subjects can also benefit from the effects of the judicious implementation of the principles of the legal argumentation.

Although in the ***Andriciuc*** case, tasks for economic operators and courts were made clear, the work also showed the need for a legislative intervention that would expressly establish obligations to inform the consumer by banks regarding the effects deriving from contracting loans in another currency than the one in which they receive their income.

It was argued that although the courts can *ex officio* determine that certain contractual provisions are excessive, without the initiative of the litigants to initially request the analysis of the contracts, the beneficial effects of the trials are limited.

From ***Rusu***, the same urgency emerged for the legislator's intervention to expressly regulate which claims can be granted in the situation where a flight is cancelled.

In addition to the establishment of rights, it also draws concrete obligations in the light of the findings of the Court of Justice, so that it is no longer necessary to address the national court since pecuniary sanctions may be adopted that constitute adequate incentives for economic operators to regulate their conduct.

Regarding the ***drafting*** activity, conclusions are formulated in the sense that it would not be useless to organize a monthly contest in which the most relevant works are sent by the participants, and a committee to determine which of them best reflects European values and the standards established by national and community legislation in the matter.

Regarding the extent of the magistrate's involvement, recommendations are made that he must address all pertinent arguments, indicate only the applicable paragraphs in the legal texts, sometimes only certain segments thereof. The document should not be limited to the indication of these provisions, with their completion only with a generic expression regarding the admission or rejection of the request. He must extract the conditions for applicability of the respective legal text, with the justification sometimes why other provisions cannot be used to resolve the case. Later, he is to check if they are met in the respective litigation and only at the end will mention whether it is necessary to admit or to reject the claim.

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