

ASPECTS REGARDING THE APPLICATION OF THE PRINCIPLE OF CONTINUITY IN THE JUDGING STAGE IN THE LIGHT OF THE EUROPEAN CONVENTIONALITY BLOCK

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Abstract

The principle of continuity, as a result of the principle of immediacy in the criminal trial, is one of the important principles of the Romanian criminal trial, the content of which is given by the rule of the uniqueness of the panel of judges, which must remain the same. The continuity of the court panel is a guarantee of a fair trial, since the trial at the trial stage provides the parties with the faith that before the same panel of judges, composed of the appropriate number of judges, provided under the law, for the cases deducted from the judgment, fulfilling the requirements of immutability, independence, impartiality, responsibility and professional competence, the hearing of the parties, administration of evidence, discussion of applications, and then debates take place, giving expression to the lawfulness of criminal proceedings.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, subject to art. 6 § 1, as well as the case-law of the European Contentious Court has established concrete criteria for the application of the principle of continuity of the panel of judges, as a result of the principle of immediacy.

In our study we aim to make a brief analysis of the jurisprudence of the European Court of Human Rights on how to apply the continuity of the panel of judges as well as the limitations in the cases concerning Romania and other member states of the Council of Europe in report to the national regulatory standards, namely the Romanian Criminal Procedure Code and Art. 11 of Law no. 304/2004 republished, on judicial organization.

We consider that the observance of the principle of continuity of the panel of judges in the court stage gives it content, and on its violations only the courts have the power to decide, since sanctioning the violation of the provisions regarding the composition of the panel of judges is absolute nullity.

Keywords: *the principle of immediacy, the principle of continuity, the composition of the panel of judges, the absolute nullity, the interpretation of the application of the principle of continuity only by the courts.*

Introduction

The trial stage in the criminal proceedings in Romania, as regulated by the Criminal Procedure Code in force, is experiencing a new vision on the part of the legislator, relative to the European vision, in the sense that new procedural safeguards, which provide the parties with confidence in a fair trial, have been introduced.

Moreover, the trial stage also relates to the requirements of the new realities, since the participants in the criminal proceedings have acquired a thorough knowledge of their rights and obligations, in the context of increasing the level of legal education and culture, which requires the awareness of the accountability of all the parties involved in the criminal proceedings.

A trial in the criminal proceedings in Romania, as provided in the Criminal Procedure Code in force, falls within a process in which the participants have foreseeable, predictable, clear and qualitative provisions, giving effectiveness to the rights and obligations, compatible with the European legal area, with respect to other trial-related provisions in the European legal system, whether continental or common law.

In other words, the trial regulation, as a stage of the criminal proceedings in Romania, by the principles governing it, namely the principles of legality, adversariality, immediacy, continuity, oral proceedings, finding the truth, the procedure itself, either simplified or ordinary, with its stages, offer procedural safeguards for all participants, with respect to the president of the panel of judges, explaining to the defendant what the accusation is, informing the defendant of his/her right not to make any statement, advising him/her that everything he/she says can be used against him/her, as well as the right to ask questions to the co-defendants, the injured person, the other parties, the witnesses, the experts, and to explain during the course of the inquiry, when deemed necessary, the filing of applications, pleas, requests for the taking of evidence and presenting the proof of evidence, by the lawyers, the parties, the injured person, as main litigant and other litigants.

In this context, one of the criminal procedural safeguards of the criminal proceedings in the trial stage is the observance of the principle of continuity of the panel of judges, which is an effect of the principle of immediacy, and it can be said that the two principles together superpose and ensure consistency, both in terms of the observance of the law and of all legal instruments, the manner of use of the agreed evidence,

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the proceedings and of the perception of the participants in the stages of the criminal proceedings, as well as the effectiveness thereof.

Our study aims to address aspects related to the application of the principle of continuity in the trial stage in view of the European conventionality block, on the one hand, by presenting some cases from the European Court of Human Rights case law in which Romania itself was convicted for the non-observance of the principle of immediacy, having in effect the principle of continuity in its essential component, the uniqueness of the panel of judges, and of other cases in the case law of the court and, on the other hand, in addition to the content to be taken into account in complying with such principle, as regulated by the Criminal Procedure Code and by Law No. 304/2004 on judicial organization, as amended, and the subsequent development of the national case law, especially that of the High Court of Cassation and Justice.

In our opinion, the importance of such an approach will lead to the establishment of a method for analysing concrete situations when there is a change in the composition of the panel of judges and the application of the criteria for verifying the relevant legal provisions, both in terms of national regulation and of the case law of the European Court of Human Rights, the conduct to be observed by the panel of judges, when there is a change in its composition, by replacing the judge, in the case of one-judge panels, or one or two judges, in the case of multi-judge panels, which will confer a strong practical character, in ensuring the observance of the continuity principle.

Such a method will give effectiveness to the convergence of the application of the national law, as regulated in the Code of Criminal Procedure in force, harmonized with the European norms, with the development of the case law of the European Court of Human Rights, in terms of the principle of immediacy and, implicitly, of the principle of continuity, in view of ensuring a fair trial, as provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

It should also be emphasized that the principle of continuity, as a result of the principle of immediacy in the Romanian criminal proceedings, is experiencing a doctrinal approach,¹ which has guided the national case law in complying with the legal provisions in the matter, however, we consider that the national case law in the application of the principle of continuity has significantly contributed to giving concrete meaning to

this principle, being important to present in our study how this principle was applied.

Content

The Romanian Criminal Procedure Code in force regulates the principle of immediacy in Article 351 (1),² and the principle of continuity in the content of codified provisions, i.e. Article 354 (2) and (3) and Article 388 (6),³ as well as in Article 11 of Law No. 304/2004 on judicial organization, republished, as amended.⁴

As regards both the principles of immediacy and continuity, as is apparent from the very content of the procedural rules mentioned above, it follows that the court must be established according to the law, i.e. the composition of the panel is legal when it remains unchanged after the proceedings start.

Should there be set another hearing during the one in which the proceedings occurred, and the court have a different composition at such subsequent hearing and continue the trial in such a composition, without ordering the resumption of the proceedings, the court disregards the provisions of Article 354 (2) and (3) of the Criminal Procedure Code.

Another situation is when the court decision is signed by a judge whose name is not mentioned in the introductory part as being part of the panel.⁵

The European Court of Human Rights has ruled in two cases in which it condemned Romania for breaching Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, in the first case, *Beraru vs Romania*, the judgment of which was delivered on 18 March 2014,⁶ the European Court of Human Rights held that there had been a violation of Article 6§1 taken together with Article 6§3 (b), (c) and (d) of the Convention, the respondent State having to pay to the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 3,000 in respect of costs, plus any tax that may be chargeable, within 3 months from the date on which the judgment becomes final, converted into the currency of the respondent State at the rate applicable on the date of settlement.

In the recitals of the judgment of the European Court, it presented its arguments in §63-84. In essence, it was considered that... The principle of immediacy is an important guarantee in criminal proceedings in which the observations made by the court about the demeanour and credibility of a witness may have important consequences for the accused. Therefore, a

¹ Nicolae Volonciu, Andreea Simona Uzlău et al, *Criminal Procedure Code - commented text*, 3rd Edition, revised and supplemented, Hamangiu Publishing House, 2017, pp. 1058-1059.

² Article 351 (1) of the Criminal Procedure Code states that "The case shall be tried before a court established according to the law and shall be conducted in hearings, observing the principles of oral proceedings, immediacy and adversariality."

³ Article 354 (2) and 3 of the Criminal Procedure Code provides that. "(2) The panel of judges shall remain the same throughout the trial. When this is not possible, the panel may change until the proceedings begin. (3) After the beginning of the proceedings, any change in the composition of the panel shall lead to the resumption of the proceedings."

⁴ Article 11 of the Law No. 304/2004 on judicial organization, republished, as amended: "The trial shall be conducted in accordance with the principles of random distribution of cases and continuity, except in cases where the judge cannot participate in the trial for objective reasons."

⁵ HCCJ, Criminal Chamber, Judgment No. 5964 of 17 December 2003, available on www.scj.ro.

⁶ The Judgment in *Beraru v. Romania* of 18 March 2014 was published in the Official Gazette, Part I, No. 944 of 23.12.2014.

change in the composition of the trial court after the hearing of an important witness should normally lead to the rehearing of that witness (see *P.K. v. Finland* (dec.), No. 37442/97, 9 July 2002). 64;§65. In the instant case the Court notes that the single judge had heard all of the applicant's co-defendants and the witnesses in February and March 2002. After the appointment of the second judge the co-defendants and witnesses previously heard were not heard again. §66. The Court accepts that while the second judge was appointed in May 2003, 5 months after the proceedings commenced, the first judge, who heard most of the evidence alone, remained the same throughout the proceedings. It also accepts that the second judge had at his disposal the transcripts of the hearings at which the witnesses and the co-accused had been heard. However, noting that the applicant's conviction was based solely on evidence not directly heard by the second judge, the Court considers that the availability of those transcripts cannot compensate for the lack of immediacy in the proceedings. §67. Furthermore, the Court is aware that the possibility exists that a higher or the highest court might, in some circumstances, make reparation for defects in the first-instance proceedings (see *De Cubber v. Belgium*, 26 October 1984, §33, Series A No. 86). In the present case the Court notes that the court of last resort not only upheld the judgment of the first-instance court, but also based its decision on the evidence adduced before the court of first instance without a direct hearing of it." The European Court examined the change in the panel in the light of its consequences for the fairness of the proceedings as a whole, noting that in the present case the applicant's lawyers were unable to gain direct access to the case file until a late stage; they were not initially provided with a copy of the indictment. Moreover, they could not obtain either a copy of the transcripts of the recordings of the tapped phone calls or a taped copy of the tapped phone calls used as evidence in the file. In this respect, the applicant's lawyers submitted numerous requests to the domestic courts for access to the file. The Court also notes that the lack of access to the file, which caused difficulties in the preparation of the defence, was exactly the reason advanced by the applicant's lawyers for seeking to withdraw their representation of the applicant.

(§71).. The Court observes that the recordings played an important role in the body of evidence assessed by the courts. Thus, at the beginning of the proceedings the first-instance court considered a technical expert report on the recordings as absolutely necessary and ordered that such a report be produced. Furthermore, the first-instance court based its reasoning on the transcripts of the recordings, concluding that they "leave little room for doubt" as regards the accused's guilt, while acknowledging that the statements given by the other co-accused were not totally reliable, as they could "be considered

subjective". (§78). Despite the importance of the recordings in the assessment of evidence the first-instance court changed its initial position concerning the necessity of a technical report in order to establish the authenticity of the recordings. At the end of the proceedings it considered the report as superfluous and revised its decision to adduce this evidence. (§79). In addition, despite the INEC submitting a technical report stating that there were doubts about the authenticity of the recordings before the delivery of its judgment, the first-instance court relied on the transcripts instead of re-opening the proceedings in order to allow the parties to submit their observations on the report. (§80). The Court noted that not only did the domestic courts base their decision on recordings of contested authenticity, but they did not reply to the applicant's submissions that he had not been presented with the transcripts and therefore was not aware of their content. (§81). The Court noted that none of the defects noted at the pre-trial and first-instance trial stage were subsequently remedied by the appeal court. Despite having jurisdiction to review all aspects of a case on questions of both fact and law, both the Bucharest Court of Appeal and the High Court of Cassation and Justice merely reiterated the prosecutor's findings, and did not address the repeated complaints made by the defendants concerning various defects in the trial. (§82). In view of the above findings, the Court concluded that the proceedings in question, taken as a whole, did not satisfy the requirements of a fair trial, considering that there had been a violation of Article 6§1 taken together with Article 6§3 (b), (c) and (d) of the Convention. (§83-84).

In the second case, *Cutean v. Romania*, the judgment of which was delivered on 2 December 2014,⁷ the European Court of Human Rights held that there had been a violation of Article (6) of the Convention, the respondent State having to pay to the applicant EUR 2,400, plus any tax that may be chargeable, in respect of non-pecuniary damage, EUR 1,953, plus any tax that may be chargeable, in respect of costs and expenses, into a bank account indicated by the applicant, within three months from the date on which the judgment becomes final.

In the recitals of the judgment, in essence, the European Court of Human Rights held that an important aspect of fair criminal proceedings is the ability for the accused to be confronted with the witnesses in the presence of the judge who ultimately decides the case. The principle of immediacy is an important guarantee in criminal proceedings in which the observations made by the court about the demeanour and credibility of a witness may have important consequences for the accused (see *Beraru v. Romania*, No. 40107/04, §64, 18 March 2014). The Court considers that, given the high stakes of criminal proceedings, the aforementioned considerations also apply as regards the direct hearing of the accused

⁷ The Judgment in *Cutean v. Romania* of 2 December 2014 was published in the Official Gazette, Part I, No. 261 of 20.04.2015.

himself by the judge who ultimately decides the case. (§60). The Court recalls that according to the principle of immediacy, in a criminal case the decision should be reached by judges who have been present throughout the proceedings and evidence-gathering process (see *Mellors v. the United Kingdom* (dec.), No. 57836/00, 30 January 2003). However, this cannot be deemed to constitute a prohibition of any change in the composition of a court during the course of a case (see *P.K. v. Finland*, cited above). Very clear administrative or procedural factors may arise rendering a judge's continued participation in a case impossible. Measures can be taken to ensure that the judges who continue hearing the case have the appropriate understanding of the evidence and arguments, for example, by making transcripts available, where the credibility of the witness concerned is not in issue, or by arranging for a rehearing of the relevant arguments or of important witnesses before the newly composed court (see *Mellors*, cited above; and *P.K. v. Finland*, cited above). (§61). The Court notes that it is undisputed that the original panel of judges examining the applicant's case had changed during the course of the proceedings before the first-instance court. In addition, the judge who convicted the applicant had not heard him or the witnesses directly. Moreover, the appellate courts that upheld the applicant's conviction also failed to hear him or the witnesses directly. (§63). The Court notes that none of the judges in the initial panel who had heard the applicant and the witnesses at the first level of jurisdiction had stayed on to continue with the examination of the case (contrast and compare with *P.K. v. Finland*, cited above; and *Beraru*, cited above, §66). (§64). The Court observes that there is no evidence in the file suggesting that the first-instance court's composition was changed in order to affect the outcome of the case to the applicant's detriment – or for any other improper motives – or that the Bucharest District 1 Court's single judge lacked independence or impartiality and also notes that the District Court judge had at his disposal the transcripts of the hearings at which the witnesses and the applicant had been heard. However, the Court also notes that the applicant's and the witnesses' statements constituted relevant evidence for his conviction that was not directly heard by the District Court single judge. Consequently, the Court considers that the availability of statement transcripts cannot compensate for the lack of immediacy in the proceedings. (§70). Furthermore, the Court is aware that the possibility exists that a higher or the highest court might, in some circumstances, make reparation for deficiencies in the first-instance proceedings (see *Beraru*, cited above, §67). In the present case the Court notes that the courts of last resort not only upheld the judgment of the first-instance court, but also based their decisions on the evidence adduced before the court of first instance without a direct hearing of it. (§71). The Court therefore concludes that the change of the first-

instance court's panel of judges and the subsequent failure of the appellate courts to hear the applicant and the witnesses was tantamount to depriving the applicant of a fair trial. (§72). It follows that there has been a violation of Article 6 of the Convention. (§73).

In the case of *Cerovsek and Bozicnik v. Slovenia*, delivered by the European Court of Human Rights on 7 March 2017, which became final on 7 June 2017,⁸ it was held that there had been a violation of Article 6§1 of the Convention, the respondent State having to pay to the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage, EUR 2,500, plus any tax that may be chargeable, in respect of costs and expenses, within three months from the date on which the judgment becomes final.

In the recitals of the judgment, in essence, the European Court of Human Rights held that it was called upon to determine whether the applicants had a fair trial despite the fact that the reasons for the verdicts, that is their conviction and sentence, were not given by the judge who had pronounced them but by other judges, who had not participated in the trial. (§38). The court notes that the present case concerns a trial before a professional judge sitting as a single judge (see paragraph 6 above) and, secondly, that the applicants' situation was a departure from the procedure envisaged in the Slovenian Criminal Procedure Act. Indeed, pursuant to that Act, the judge who conducts the trial and who deals directly with the evidence is supposed to give the verdict and provide written reasons relating to the relevant factual and legal aspects of it, if so requested by the parties (see paragraphs 22 to 24 above). The situation in the present case, referred to by the Government as being of an exceptional nature (see paragraph 35 above), arose because the judge who had examined all the evidence produced during the trial had retired after pronouncing her verdict, without providing written grounds. (§39). In the present case, the aforementioned purpose of the requirement to give reasons could not be achieved since the judge who conducted the trial, A.K., did not set down the reasons that had persuaded her to reach her decision on the issue of the applicants' guilt and their sentence. Furthermore, there is no indication in the records of the hearing that she gave any reasons orally (see paragraph 11 above). The written grounds given by Judges D.K.M. and M.B. (see paragraphs 14 and 15 above), which were put together post hoc some three years later, and, as appears from the evidence before the Court, had no input from Judge A.K., could not compensate for that deficiency. (§41). In addition, the Court is mindful of the two judges' lack of involvement in the evidence-gathering process. It observes that Judges D.K.M. and M.B. did not participate in the trials in any way and drew up their grounds solely on the basis of the written case files. By contrast, Judge A.K.'s verdict was not based on documents only. In particular, Judge A.K. heard the applicants during the trial, examined a number of

⁸ In the Hudoc database of the European Court of Human Rights.

witnesses and must have formed an opinion as to their credibility. She must also have made an assessment of the elements of the alleged offences, including the subjective element, namely the applicants' intention to commit them, for which the direct hearing of the applicants was particularly relevant (see paragraphs 7 and 8 above, and *Cutean v. Romania*, No. 53150/12, §66, 5 February 2014). (§42). Therefore, as recognised through the principle of the immediacy in criminal proceedings (see *Cutean*, cited above, §60 and §61, and *P.K. v. Finland* (dec.), No. 37442/97, 9 July 2002; see also the Slovenian Constitutional Court's decision of 11 October 2006 cited in paragraph 28 above), Judge A.K.'s observation of the demeanour of the witnesses and the applicants and her assessment of their credibility must have constituted an important, if not decisive, element in the establishment of the facts on which the applicants' convictions were based. In the Court's view, she should, for precisely that reason, address her observations in the written grounds justifying the verdicts. Indeed, under domestic law, such observations should form one of the essential components of written judgments (see section 364(7) of the Criminal Procedure Act, cited in paragraph 24 above). (§43). As to the question of whether Judge A.K.'s retirement, which was allegedly the reason for her failure to provide written grounds, gave rise to exceptional circumstances that justified a departure from the standard domestic procedure (see paragraph 35 above), the Court observes that the date of her retirement must have been known to Judge A.K. in advance. It should therefore in principle have been possible to take measures either for her to finish the applicants' cases alone or to involve another judge at an early stage in the proceedings. Moreover, it notes that the case was not a particularly complex one and that the applicants gave notice of their intention to appeal as soon as the verdict was pronounced (see paragraph 12 above). That means that Judge A.K. was immediately aware that she would have to provide written grounds. The Court therefore cannot agree with the Government that there were good reasons to depart from the procedure to which the accused were entitled under domestic law. Furthermore, it is particularly striking that despite a statutory time-limit of thirty days, the written grounds were not provided for about three years after the pronouncement of the verdicts, during which time the case files were lost and had to be reconstituted (see paragraphs 13 and 23 above). Those factors raise further concerns about the way the applicants' cases were handled by the domestic courts. (§44). Lastly, the Court is aware that there is a possibility that a higher or the highest court might, in some circumstances, make reparation for defects in first-instance proceedings (see *De Cubber v. Belgium*, 26 October 1984, §33, Series A No. 86). However, it notes that in the present case the courts at higher levels of jurisdiction upheld the first-instance court's judgment without directly hearing any of the evidence (see paragraphs 17, 19, 21, 27 and 42 above, and,

mutatis mutandis, *Beraru v. Romania*, No. 40107/04, §71, 18 March 2014). It therefore cannot be said that the deficiency at issue in the present case was remedied by the appellate courts. (§46). In conclusion, the Court considers that the applicants' right to a fair trial was breached because of the failure of the judge who conducted their trial to provide written grounds for her verdict and because of the absence of any appropriate measures compensating for that deficiency. (§47). There has accordingly been a violation of Article 6 of the Convention. (§48).

The case law of the European Court of Human Rights has highlighted the importance of correlating the principle of immediacy with that of continuity, when hearing the defendant and adducing evidence, by hearing witnesses before the legally established panel of judges.

The Court has highlighted the fact that the panel may change during a trial, but it is significant that the new member(s) of the panel must become aware of the consequences of such change, the procedural safeguards and the reiteration of the requests for re-taking evidence, applications, pleas and confrontations that participants have in the criminal proceedings.

Thus, it is essential that the new judges have access not only to the written statements of the parties and witnesses, but also, in order to form an opinion on the charges, it is necessary to re-take the evidence, directly, to allow the possibility of discussion on other evidence, when required by law.

At the same time, it is important for the grounds of the decision rendered to be drawn up by the judge participating in the inquiry, the proceedings and the defendant's final address, as the arguments to be set out are also based on the oral arguments brought in the criminal proceedings, in what regards its content staged in front of the court, forming a complete and direct opinion on the whole case, and also answering the incriminating or exculpatory criticisms.

Therefore, we consider that beyond the above-mentioned legal requirements provided by the Criminal Procedure Code and Law No. 304/2004 on the judicial organization, as amended, it is necessary that in every case brought before the courts, the panel of judges formed as provided by law to have in place its own verification mechanism also based on the criteria set forth by the ECHR, the consequences involved by the occurrence of a cause for a change in the composition of the panel of judges, inclusively with the re-taking of means of evidence, the re-discussion of applications, the possibility to reiterate the conclusions of an expert report, for the judges to form an opinion on the factual base and the typical character conditions of the charges held against the defendants.

If, after entering the proceedings, one or more judges join the initial panels of judges, the proceedings must be repeated in a subsequent hearing during the trial stage, as otherwise the sanction of non-compliance with the principle of continuity of the judge panels is

the absolute nullity of the judgment given, according to Article 281 (1) (a) of the Criminal Procedure Code.

Following a change in the composition of the panel of judges, the discussion on the scope of the cases of *Beraru and Cutean v. Romania* should be mandatorily requested, *ex officio* or by any party or the prosecutor, in the presence of the new judge(s), which is equivalent to the direct application of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the specific consequences in such case in relation to the evidence taken, the conclusions of the parties and of the prosecutor, leading to the observance of the principles of immediacy and continuity, as well as to a fair trial, in terms of the effectiveness of the procedural safeguards of the parties.

In examining the case law of the 5-judge panel of the High Court of Cassation and Justice, during the appeal, following the judgments delivered in the cases of *Beraru and Cutean v. Romania*, we found observance of the continuity of the 5-judge panel at the time of allowing the evidence, taking the evidence and delivering the judgment, ensuring the observance of the above-mentioned principles, but also of the criteria stated in the two cases.

Thus, by way of example, by the decision rendered by the 5-judge panel of the High Court of Cassation and Justice on 15 December 2014 in the case No. 1768/1/2014,⁹ the panel of judges composed of L.D.S., as president, and the judges F.I.D., L.T.R., S.L.M. and I.A.I., partially allowed the applications for evidence filed by the civil party appellant respondent A, by the defendant appellant respondents B., C., D., E., F., G., H and I., also postponing the discussion of an application for change of legal classification in respect of one of the defendant appellant respondents, postponing the case until 26 February 2015.

During the hearing mentioned above, the panel of judges consisting of the above mentioned judges took the evidence allowed, heard the arguments in the proceedings, and the decision was postponed until 10 February 2015.

On 10 February 2015, the 5-judge panel consisting of the same judges, L.D.S., as president, and the judges of F.I.D., L.T.R., S.L.M. and I.A.I., delivered the Criminal Judgment No. 22 in case No. 1768/1/2014.

In another case, the 5-judge panel of the High Court of Cassation and Justice consisting of I.M.M., as president, and the judges F.I.D., L.T.R., S.D.E. and I.A.I., during the hearing of 15 December 2014 in the case No. 2678/1/2014, having regard to the provisions of the hearing decision of 24 November 2014, in observance with Article 119 (2) of the Criminal Procedure Code, Article 120 (1) (d) of the Criminal Procedure Code, Article 121 (3) of the Criminal Procedure Code and Article 381 of the Criminal Procedure Code, continued the inquiry by interviewing

the witnesses A., B., C., D. and E., their statements being recorded and attached to the case file (pages 127-140 of the case in the appeal stage). When asked, the lawyers of the defendant respondents, the representative of the appellant civil party F. and the representative of the Ministry G. answered that they had no other applications to file during such hearing and requested for a new hearing to be set in order to continue the inquiry.

The High Court of Cassation and Justice, with a view to continuing the inquiry, set another hearing for 26 January 2015, when the allowed witnesses, H., I., J., K., L. and M., would be summoned.

During the aforementioned hearing, the 5-judge panel, in the same composition, interviewed the allowed witnesses, in attendance, discussed an application filed by the lawyer of the defendant respondent and allowed the sending of a letter requested to the mentioned institution regarding specific information and, for the continuation of the inquiry, set another hearing on 27 February 2015 and ordered the summoning of the allowed defence witnesses: N., O. and P.

Subsequently, the evidence was taken during the hearings of 27 February and 9 March 2015, and at the latter hearing the proceedings were recorded and the delivery of the judgment was postponed until 23 March 2015, the 5-judge panel having the same composition.

On 23 March 2015, the 5-judge panel, in the same composition mentioned above, delivered the Criminal Judgment No. 40 in the case No. 2678/1/2014 pending before the High Court of Cassation and Justice, the 5-judge panel.¹⁰

Conclusions

By examining the principles of immediacy and continuity together in their effective application in criminal cases in our study, the connection between them and the impact of their non-observance on the procedural safeguards of the participants in the criminal proceedings is revealed.

The presentation of the applicability of the two principles in the light of the case law of the European Court of Human Rights has been able to ensure compliance by the domestic courts, the finding of actual and different violations, as well as the criteria that proves to be necessary in their examination when they have not been observed, impacting the fair trial, as presented by the ECHR.

The consequences and the manner in which the judgments delivered by the European Court of Human Rights have been applied in the subsequent case law of the Supreme Court in the given matter are in a position to ensure the establishment of a mechanism for

⁹ Criminal Judgment No. 22 delivered on 10 February 2015 by the High Court of Cassation and Justice, the 5-judges panel, in the case No. 1768/1/2014, not published.

¹⁰ Criminal Judgment No. 40 delivered on 23 March 2015 by the High Court of Cassation and Justice, the 5-judges panel, not published.

verifying the provided criteria in ensuring compliance with the procedural safeguards of the parties.

We believe that further research into the application of the two principles in the criminal cases pending before the Supreme Court should continue in

order to verify the concrete and different aspects of the specific application so as to assess the stability of the mechanism for verifying the incidence of the case law of the ECHR and to increase the quality of the trials, both at the first instance and during the appeal.

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- The Judgment in Cerovsek and Bozicnik v. Slovenia available in the Hudoc database.
- Criminal Judgment No. 22 delivered on 10 February 2015 by the High Court of Cassation and Justice, the 5-judges panel, in the case No. 1768/1/2014, not published.
- Criminal Judgment No. 40 delivered on 23 March 2015 by the High Court of Cassation and Justice, the 5-judges panel, not published.