How to Measure the Quality of Judicial Reasoning

Abstracts of the second day

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ABSTRACTS

Mihály Maczonkai

Legal Argumentation – Is It a Science or Art?

The uncertainties in methodology of interpretation and argumentation, the lack of specific methods to be followed brings the interpreter into a particular situation in law. In this case, the question inevitably arises whether it is possible to work in this area with scientific standards. However it cannot be ruled out that the art of legal reasoning may exist.
Accordingly, in the interpretation of the law, in legal hermeneutics, the main issue is the judicial conduct. The sociological situation of the judge does not allow following criteria prevailing in science. The judges do not work in conditions under which one could expect justifications of academic nature. The authentic legal interpretations developed by higher courts deal with a wide range of cases, so it is impossible the degree of specialization that is naturally in academic institute environment. In addition, the audience of legal reasoning is not primarily academic, scientific circles. Furthermore in legal interpretation and argumentation the judge is bounded by certain traditions, has to respect opinions of other actors and inevitably social realities. This does not mean the disparagement of judicial activity, because the justification of the verdict may have a strong intellectual force, even if it does not meet the academic requirements. Clear presentation of the case and thus highlighting the importance of the specific problems and the proper handling of issues of principles with taking notice the interests at stake require significant creativity. An approach that the true interpretation and argumentation should be a scientific one is too narrow, as there are other rationalities as well. Aristotle on rationality differentiated between two types of the human mind. One is the scientific rational mind, which deals with the explanation of permanent, unchanging principles of the world. The other rationality is the calculating, judging intellect, which is connected to changing features of the world. The latter is by nature not only deals with the exploration of general principles and regularities, although these are assumed knowledge in that reasoning. The real task of judging intellect is the understanding of the particular. While the scientific rationality of the world provides explanation, judging intellect provides opinions. However, these opinions are justified and not arbitrary. In the formulation of opinions same scientific techniques, induction, deduction, causal explanations are used. Thus, the difference comes from the special aims and conditions of explanation and understanding. Scientific explanations are based on fixed axioms they require certain premises, while the premises are uncertain in judging intellect, general or mainstream beliefs provide the starting point for argumentation.

Zsolt Ződi

Citations and the Quality of Reasoning

Two years ago a small group of IT experts and lawyers made a (partly) computer based research on the corpus of 60 000 Hungarian judicial decisions published on the central website of courts. The goal of the research was to tackle the precedential character of Hungarian judicial reasoning via *citations* to previous cases. The research had two parts: a quantitative, where we made statistics on the hyperlinks (citations) inserted into the texts. In the qualitative part we read and analysed 520 decisions from five additional viewpoints.

The results of the research were the following in a nutshell. Between 2007 and 2012 the number of references to previous cases increased nearly 10% (in 2007 30% of the documents contained a citation to a previous case, while in 2012 40%). While this increase was both present at lower and upper courts, the difference between the upper and lower courts remained significant, some 12%. And it is not just the volume, which differs at lower and upper courts. While lower courts still follow the continental method of logical subsumption in reasoning, upper courts, and especially Curia (Hungarian Supreme Court) is more willing to use the method of reasoning with previous cases. Another important conclusion is, that, like in case-law systems the use of precedents is mostly influenced by the field of law: there are precedent-driven and statute-law driven fields of law. Finally the research has shown the importance of "abstract acts" within the reasoning. Abstract acts, (like the "opinion of civil department of Curia") which were originally products of the communist era, and served as control tools of the Supreme Court over the lower courts, survived the democratic changes, and still play a significant role.

In my presentation, based on the research I will tackle two simple questions. 1. Is there any connection between the reasoning with cases (case law method) and the quality of reasoning *in general*? Can we say that a reasoning based on a huge number of previous cases is more persuasive compared to a justification using statutory provisions as arguments? 2. How does this work in the everyday practice of Hungarian courts? For example are upper courts more willing to uphold the lower court's decisions, if there are more citations inserted into the decision?

Levente Völgyesi

Historical Aspects of Quality Control of Judicial Reasoning

The present lecture discusses the historical aspects in the framework of the Hungarian law system in connection with the complex investigation of the qualification of judicial activity and reasoning. In Hungary, the legislation of the second half of the 19th century bears relevant lessons. The division between the three classical branches of power took place in 1869, thus administration of justice became an autonomous and independent power branch. The autonomy was declared by the Act IV of 1869; the disciplinary liability of the judges and the question of removability – including retirement due to inadequateness or mental-corporal infirmity – was regulated by the Acts VIII and IX of 1871. By building upon this legal basis, the particular questions were regulated by the Ministry of Justice through decrees. Out of these, it is worth to note the regulation on the practical examination which preceded the occupation of a judge's position. This provided a chance to the candidate to compile a written judgement suitable to cause a legal effect by simulating a real situation. Further on, the statistical data supplying prescribed for practicing judges meant the most important measurement, by which the extent of acceptance of the judge's verdict by the courts of appeal's councils was revealed. The adjudicational work of a judge is well indicated by the number of (a) cases not attacked by the client, as well as (b) appellated but by a superior court not approved, (c) modified and (d) overruled verdicts. The present lecture intends to draw conclusions from the legal situations existing at the time of the genesis of the independent judicial system outlined briefly above.

Alina I. Szabó

Legal Mechanisms to Assess Bad Quality of Legal Reasoning According to Romanian Legislation

The presentation starts from two premises: 1. The rule is that the act of justice and legal reasoning are of good quality, due to competency of one who earned the right to become a judge through a very difficult exam, and also due to his obligation to exercise his duties with good will, and 2. As an outsider, one cannot measure the quality of legal reasoning, but only accept or appeal a decision of a judge, as the only one who can judge this, is a superior court of law in an appeal or a review procedure. But there is no rule without exception. Therefore, the Romanian lawmaker accepted the possibility that in some cases, a magistrate may be held responsible for `not stating reasons` or `motivation manifestly contrary to legal reasoning, likely to affect the reputation of justice or dignity of a magistrate`.

Further, the presentation shows the legal instruments to identify and measure the quality of a decision without stating the reasons or wrongly applying the legal reasoning, instruments which give the possibility of disciplinary sanctioning but also of remaking the act of justice, according of compensation and consequently, regaining the trust in justice. Finally, the author seeks into the Romanian jurisprudence to find out if there was any case of disciplinary action against a judge for `motivation manifestly contrary to legal reasoning, likely to affect the reputation of justice or dignity of a magistrate`.

Alzbeta Kondelová – Libor Havelka – Katarina Sipulová

Judicial Reasoning and Judicial Dialogue: The Application of EU law by National Civil Courts

Integration of the Czech Republic into the European Union brought profound changes both for national legal order and judiciary. Principles of direct effect and primacy of EU law contributed to the change of general position of international law within the Constitution. However, while we can observe gradual strengthening of judicial interaction between domestic and international courts, EU law still enjoys special position as courts are obliged to refer and interpret its provisions as well as CJEU case law under the requirements of a right to a fair trial. Furthermore, institute of preliminary ruling and CILFIT criteria require national judges to use comparative law more frequently as a means to strengthen the validity of their reasoning when interpreting provision derived from EU law.

For several years, International Department of the Supreme Court engages with the analysis of application of the EU law and the comprehension of the shape of judicial dialogue (or judicial interaction) between the Czech civil courts and European Court of Justice. In order to fulfil this objective a database of national decisions applying the EU law and CJEU case law has been developed. The database records frequency of citation of treaties, regulations and directives in particular EU policies, references on CJEU cases and decisions of other foreign courts. The dataset enables to determine both quantity and quality of EU law application by domestic courts of different instances.

The following presentation focuses on the quality of judicial reasoning in domestic decisions applying the EU law. We aim to address the following questions:

1) Frequency of citations of EU law and CJEU case law: Is there a gradual increase in such citations? When do the courts resort to such references?

2) Is there a general observable trend in the approach of domestic civil courts to CJEU case law and EU law? Are there any differences between the quality of reasoning of the Supreme court and lower instances? We seek to answer, whether the national courts **actively** transform their doctrines in compliance with the interpretation developed by the CJEU (while directly referring to its particular relevant case law), **passively** implement the necessary minimum (in case of retrial after complaint of individual/preliminary question) but do not change their doctrines significantly and do not push forward more progressive change, or if they approach the EU law **negatively** and explicitly refuse to adhere to CJEU – either by ignorance or explicit refusal of its case law.

Ievgen Zvieriev

Legal Interpretation Theories As Applied by Ukrainian Courts – Past Experience and Current Tendencies

Legal interpretation is an important tool in courts' hands. Interpretation techniques draw their roots from Roman Law, and Ancient Greek philosophers' works. Most of these techniques are still applied by judges on daily basis. However, none of the main developed interpretation theories (textualist, contextualist, teleological – this list is not exhaustive) may be considered as governing. Researchers mostly point out that a certain combination of these theories should be applied when dealing with legal interpretation in a given case. Choosing the right combination, which is the main responsibility of a judge, provides interpretation with the attributes of an art that has its own canons of assessment. However, it is my understanding that these canons should provide a certain borderline which is not to be crossed by the interpreter.

Ukrainian courts have applied and continue to apply this art extensively. This presentation intends to analyze several interesting decisions passed by Ukrainian courts of different levels at different times, focusing on applied interpretation techniques, as well as their social and political outcomes. I shall analyze famous Constitutional Court of Ukraine cases (the case concerning the third presidential term; the case concerning the procedure of constitutional amendments in 2004) as well as several cases of the Supreme Court of Ukraine and lower courts having great political value (Supreme Court of Ukraine case concerning the third round of presidential elections in 2004, Pecherskiy district court of the city of Kyiv case concerning the criminal prosecution of Yulia Tymoshenko and other cases). The analysis will be conducted in terms of appropriateness and/or inappropriateness of application of certain legal techniques with regard to political, social and other factors. I will conclude with my propositions of the exact borderlines (as mentioned above) to be applied to the process of legal interpretation by the courts in the specific case of Ukraine.

Eszter Kirs

Measuring the Quality of Judicial Reasoning at the ICTY with the Litmus Paper of Accessory Liability

Judgments delivered by the judicial chambers of the ICTY provide a major point of reference for other international, hybrid and domestic courts adjudicating upon criminal accountability of perpetrators of war crimes and crimes against humanity. Judges appointed to the Tribunal have played a significant role in the development of International Criminal Law, and in the

process of their deliberations nothing less has been at stake than the conviction or acquittal of masterminds of mass atrocities. Procedural and substantive fairness is supposed to be safeguarded by the professionalism of ICTY judges. At the same time, even though the Tribunal's chambers are composed of "professional" judges, many of them had not had any experience as judges or legal practitioners but built up diplomatic or academic career prior to their appointment. This provides an additional reason for testing their conduct in the courtroom and during deliberations.

The paper will measure "judicial wisdom" by analyzing ICTY judgments including reasoning on accessory liability, more particularly, the concept of aiding and abetting. Whenever the Tribunal issues a judgment, it falls into an extremely sensitive political environment, especially in cases where the accused used to be an iconic or significant political or military leader. The wider public was shocked by the acquittal of Momčilo Perisić in 2013, former Chief of General Staff of the Yugoslav Army, who provided substantial assistance to the armed forces of the Bosnian Republika Srpska, thereby, facilitating the military operations of the Mladić-led military units allegedly responsible, inter alia, for the 1995 genocide of Srebrenica. The acquittal was based on a vague interpretation of the concept of aiding and abetting. The paper will provide a presentation of judicial reasoning included in judgments leading to and following the acquittal of Perisić (e.g. decisions delivered in the cases of Furundžija, Tadić, Aleksovski, Mrkšić, Lukić, Simić, Blaškić, Šainović). The ultimate goal of the paper will be to raise questions on the quality of judicial reasoning by measuring two different methods appearing in the relevant judgments, namely, (1) in-depth analysis of precedents and customary international law, and (2) verbatim citation of iconic precedents without further analysis.

Zoltán Pozsár-Szentmiklósy

The Principle of Proportionality and the Quality Control of Judicial Decisions in Fundamental Rights Disputes

The research focuses on the principle of proportionality as a unique instrument used in legal reasoning concerning the adjudication of fundamental rights disputes. The conference paper argues that in cases in which conflicts of fundamental rights are involved the appropriate use of the principle of proportionality offers secure steps of examination for the judges and strengthens the justifiability of the decisions.

Every judicial decision has to be supported by sufficient reasoning. Legal disputes regarding conflicts of fundamental rights from certain aspects are much more complex than other judicial cases: the norms which have to be interpreted are formulated in a very abstract language, and the constitutional values which are in conflict in most of the cases are of equal importance. [Even there are different approaches, for the purpose of the conference paper it seems appriopriate to count on the Principle Theory of Robert Alexy. In his view fundamental rights – as principles – are optimization requirements with equal value which gain for the highest possible realization. *See* Robert Alexy: *A Theory of Constitutional Rights* (translated by Julian Rivers) (New York: Oxford University Press, 2010) 47-48.]

Within these circumstances, the appropriate use of the principle of proportionality can strenghten the justifiability of the well-founded nature of the decision: the reasoning is structured and the fixed order of the different steps of examination has to be respected. Every step needs separate argumentation, and the arguments used should be located in the chain of arguments at their proper place – that is why the argumentation is traceable. One can also

realize which arguments and counterarguments were challenged, which of those were denied and which were considered decisive. The relevant manner of the arguments used, and the coherence and constistency of the argumentation are also verifiable. Besides, the transparency of the argumentation pushes the courts to deal with complex and controversial issues with plain and clear arguments. An endless debate exists concerning the authorization of the courts to make final decisions on essential social relations and the liberties of individuals. Critics argue that only elected legislative bodies should have the right to make those decisions, because they bear political responsibility to the public. On the other hand, it can be emphasized that making crucial decisions by courts is a better option, taking into consideration the law and not the political expectations. Reasoning based on the principle of proportionality can also contribute to the softening of the tensions between democracy and constitutionality. The structured and transparent framework of argumentation makes the decisive arguments verifiable and justifiable. If proper used, the framework also pushes the judges to base their decisions on rational arguments instead of subjective intentions, and to evaluate the context of the case, as well as the social and historical circumstances. All these factors foster the possibility that the public and the politicians can accept the decisions of the courts – therefore it can be concluded that the principle of proportionality *strenghtens the legitimacy of the judicial decisions on a substantive basis*.

Kálmán Pócza

Evaluating Judicial Activism from the Point of View of Democratic Theory

Mapping and qualifying different types of judicial activism from the point of view of constitutional interpretation is quite common in legal scholarship. Evaluating judicial activism by means of democratic theory is, however, a less explored research field in spite of a normative demand of clarifying the role of constitutional courts' judges within a democratic system. This is why analyzing the problem of judicial activism from the perspective of a multidimensional model of democracy (Coppedge et al. 2011) might be a promising enterprise in achieving a better understanding of constitutional adjudication and its quality. By focusing on the practice of constitutional courts we aim to present a qualitative-analytical tool which might be applied on three levels. Since the specific nature of constitutional review necessitates an *a priori* reflection on the exact function and role of constitutional courts within the democratic system a multidimensional model of democracy might give some insight into the theoretical background of the court's decision and activism (*a-priori/institutional level*). On a second level the general topic (fundamental rights, state organization, social rights etc.) of a court's decision implies also some indicators which might shed light on the interdependence of this general topic (or even a general term) of a decision with a particular dimension of democracy. In this regard different concepts of judicial activism are interconnected once again with certain dimensions of democracy more than with others (*general topic level*). On a third level the subject of a particular case before the court might also have some implications on the evaluation of the judicial activism (and arguments) from the perspective of democratic theory (*particular case level*).

Nevertheless there are decisions (referring mostly on formal unconstitutionality of a bill) which does not have any relations to any specific kind of democratic theories: they escape evaluations from the perspective of democratic theory.

Consequently the empirical efforts based on the presented analytical tools does not aim to encompass all decisions made by the constitutional courts. It aims merely to locate *relevant* decisions of the courts within the framework of a constitutional discussion and offers a specific form of *discourse analysis* with regard to the general constitutional discussion.

András Molnár

Dogmatic and Social Scientific Activisms and Passivisms – A Framework to Assess Judicial „Activism"

The *Lochner* decision was and is famed as a prime example of "judicial usurpation of power"—even though contemporary and modern studies demonstrated that decisions of the Supreme Court striking down acts of legislature constitute only a slight minority among the whole body of decisions—, and the era in which it was born is interpreted as a time when different notions of the role of the judiciary and judicial review, as well as the current constitutional legal dogma and social reality, clashed. According to common knowledge, the *Lochner* era came to an end when the Court upheld a Washington state minimal wage statute in the *West Coast* decision. This narrative, however, received, and is still to receive various corrections.

The *Lochner* era has much to say about conceptions of judicial role and judicial activism even today, and it is eligible to be used as an analytical example. I examine the era from the aspect of judicial reasoning. My analysis is built up of two parts. First, I find it important to point out that it is necessary to bear in mind a distinction between activist decisions (which are single decisions) and tendencies—when examining judicial reasoning, focus should be placed on the first.

Second, I sketch a theoretical framework that concerns the inclusion of social sciences into judicial reasoning. According to this consideration, I distinguish four types of judicial reasoning. "Social scientific passivistic" reasoning features references to exact data from social sciences, and tends to uphold the legislative action in question. On the other hand, "social scientific activistic" reasoning refers to social scientific data and aims to strike down the legislative action in question. In a similar vein, "dogmatic activistic" reasoning is grounded on precedents and methods of legal interpretation, tending to strike down a legislative act, while "dogmatic passivistic" reasoning aims at upholding such an act. These categories are not mutually exclusive; however, they help to analyze constitutional decisions with directing attention to their nature behind their *prima facie* content. For example, if we look at the *West Coast* decision, even though it is popularly considered as the end of an era, its inherent nature nevertheless remains dogmatic, as it only postulates the circumstances that make the respective act of legislation reasonable—as opposed to Brandeis' style, who in certain cases heavily draws on empirical data concerning the relevant field. Thus it becomes apparent that while the content of decisions like the *Lochner* and *West Coast* decisions are antithetical, the nature of their reasoning is similar. Such an approach is useful in describing the appearance and role of social sciences in judicial reasoning.

Huang Gui

On the Dilemma of Sentencing Justly in China and its Solutions

In China, the justice of the judges' sentencing decisions is always generally questioned by the whole society in recent years. The highlight features of unjust sentences in judicial practice are the unbalanced measurement of penalty, namely, different judges punish the same crimes and similar circumstances differently however, they apply the same sentencing laws and regulations. Taking this problem of injustice seriously, the judicial authorities in China, for the sake of ensuring the impartial sentencing, have proposed a bottom-up judicial reform of measurement of penalty. However, the problems of how to promote the judicial reform of sentencing in China, and which concept of justice - the formal justice or the substantial justice or the balance of them - the judicial reform does want to appeal, are always debated by the theorists and the practitioners. Based on this view and in order to analyze the dilemma of sentencing justly in China, this paper plans to take the judges' perspective as the starting point of the research to explore the basic process of the reasoning behind sentencing so as to find the limitations of the reasoning behind sentencing and to study the inner and outer elements which affect the judges to sentencing justly. After that, this paper will take the value of justice proposition into consideration. Finally, this paper will try to find the solutions that guarantee that judges' will pronounce sentences justly under the guidance of the value of justice to which the judicial reform in China should appeal.

In all, this paper will be divided into four parts:

Firstly, it takes the judges' perspective as the basic starting point of the research to explore the basic process of reasoning behind the sentences and its limitations. Because of judges are subject to the statute-law system, China's criminal code and its judicial interpretations are primary legal grounds for the judges' to sentencing, which serve as the major premise of reasoning, and the facts related to the punishment fit the crime in the individual case is the substantial grounds for judges' sentencing, which serve as the minor premise of reasoning. At the end, the judges will produce the sentencing decision based on the two of the aforesaid premises. This reasoning process of sentencing is called the deductive reasoning. In this part, the paper would like to describe in detail of the deductive reasoning of the judges sentencing in China, and then summarize the limitations of the reasoning behind sentencing in practice. These limitations could be described as follows: 1) explaining the sentencing laws and regulations which serve as major premise is not adequate; 2) it is difficult for the judges to identify the substantial elements of sentencing which serve as the minor premise of reasoning; 3) the basic process of this kind of deductive reasoning is too simplified and its conclusions are too simply without any sufficient reasons; 4) the system of the selection of judges and their appointment and the sentencing system also need to be modified and improved.

Secondly, based on studying the process of the reasoning of judges', this part will explore the inner and outer elements which affect the justification of sentences. The inner elements could be the following: the background of judges' knowledge and its cultivation, their experience in judicial practice, special personal experiences, personal character traits, and their attitude to the crime. And the outer elements could be included as follows: victim factors, personal factors of the offender, the interventions of the outside powers and social conditions and public opinions.

Thirdly, what kind of value of justice does the judicial reform want to appeal, the formal justice or the substantial justice or the balance of them? These issues will be debated in this part. The formal justice, in terms of the justice between similar cases, contains the principle that the same punishment should be applied to the same crime or similar case, namely, the judges should apply the uniform standards during they making sentencing decisions. And the

substantial justice, in terms of the justice of an individual case, means that the judges' decision concerning the sentence should reflect the deserved punishment of the crime in an individual case, and the personal risk lever of the offender. This justice should be substantially reasonable and meet the demand of the individual case's justice. This paper advocates the balance of the formal justice and the substantial justice.
Fourthly, it explores the solutions that guarantee that judges' will sentence justly. These solutions could be the following: 1) the sentencing laws and regulations of China need to be reformed and improved; 2) judges' skills of choosing the right sentences also needs to be improved; 3) the appointment and selection of judges need to be reformed and improved; 4) an effective communication channel between the society and the court should be constructed.

Dodik Setiawan Nur Heriyanto

Understanding of Judges. On the Annulment of International Arbitral Awards. Experiences from the Case of Karaha Bodas Company v. Pertamina

Corporations and business entities find arbitration as a place where they can settle their disputes. This form of alternative dispute resolution provides a win-win situation for both parties involved in the debate. Arbitration is the only institution that has full authority to settle their disputes, once parties got to a consent to choose an arbitration committe over a classic judicial forum. Even though arbitral awards have final and binding characters, they may be challenged using two legal methods: refusal or annulment of the arbitral awards. The New York Convention 1958 ruled that the annulment of foreign arbitral award could be done by a "competent authority of the country in which, or under the law of which, the award was made". Although Indonesia has ratified this Convention and has specific national regulations on arbitration, judges on the first instance and second instance courts in fact do not have sufficient understanding about the rule on the annulment of foreign arbitral awards. The case between Karaha Bodas Company v. Pertamina shows that judges on the District Court of Central Jakarta did not have jurisdiction to annul the Geneva arbitral award. Only Switzerland District Court had the competency to annul the arbitral award, because Switzerland was the original situs of the award. This paper will not only analyse which forum or country has the competent authority to annul the foreign arbitral award but also demonstrates the way on how to make Indonesian judges, especially in the first instance courts (district courts), understand what the legal background on the annulment of foreign arbitral award really is. The case reflects a very typical way of not thinking outside the box and disregarding international treaties that sadly seem to be a commonly followed 'habit' in many cases all over the world. The paper aims to criticize these mistakes in the reasoning of the judgment, while identifying patterns that lead to such outcome in judicial practice.

Stephan Foldes

Reasons for Conviction or Remand in Custody: Some Cases Before the EHCR

Codes of penal procedure prescribe in more or less detail the obligation of the courts to provide reasons for their judgments and other decisions affecting the liberty of persons. In several decisions, the European Court of Human Rights considered the reasoning that supports a judgment to be an element of the fair trial requirement of Article 6 of the Convention on Human Rights and Fundamental Freedoms. It also considered detention ordered by courts during criminal proceedings to be a violation of the right to liberty guaranteed by Article 5 of the Convention when the court orders failed to include articulated

reasons. A trial may fail to be a fair trial, even when the sentence is justifiable in terms of the law and the facts of the case, if this justification is not sufficiently expressed in reasons recorded as part of the judgment. The right to liberty will be violated even by a justifiable restriction, if the restriction of liberty is not justified by reasons expressly stated at or near the time when it is put into effect. The EHCR considers abstract reasons, or reasons expressed in stereotyped wording insufficient. Commonly the cause of deficiency in reasons provided by criminal courts appears to be some form of lack of *specificity.* Examples from the case law indicate that specificity may be lacking in indicating the relevant *factual elements* of the case, or in reference to the circumstances of the *person charged* or of the *proceedings*, particularly in reassessing situations subject to *change with time*, or in assessing the concrete *arguments of the defence* in the case. Beyond criminal procedure in the strict sense, some of the issues remain relevant in relation to administrative sanctions, and in civil cases as well. Particular ECHR cases briefly looked at include *Letellier v. France*, 1991, *I.A. v. France,* 1998, and *Boldea v. Romania,* 2007. Tangentially, the recent case of *K.M.C. v. Hungary,* 2012, involves a complaint based on failure to give reasons in a non-judiciary procedure, which failure was successfully claimed to prevent judicial review, in violation of Article 6 of the Convention, hindering also the respondent state's ability to argue effectively for non-receivability before the ECHR based on non-exhaustion of domestic remedies.