JOURNAL OF EASTERN-EUROPEAN CRIMINAL LAW

No. 1/2014

Evolution of the Penal Legislation in Romania and Hungary, in the Post-Communist Era

2014

Confrontation in the Mirror of International Documents and the European Court of Human Rights

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Abstract:

In the past few years I surveyed under my research the criminal procedure legal institution of justice, the confrontation (confrontatio), the international and human rights documents that concern in any forms, and the connected court practice of the European Court of Human Rights special decisions, interpretations, guidance. This study tries to present the confrontation's newest international research results as a procedure as an evidentiary procedure action.

Keywords: *confrontation; ECHR case-law; right to a fair trial; international criminal courts case-law; Hungarian domestic legislation; evidentiary rules.*

I. Universal and international basic treaties, framework decisions

The considerable and be of account list of documents, following the Hungarian proclaim, are the next:

International Covenant on Civil and Political Rights, proclaimed in Hungary by the Law decree 8 in 1976.

The „Behavior Codex" for the civil servants of the UN Forces accepted by the general assembly of the United Nations, 17 December 1979.

The Law Decree 3 in 1988 of the proclaiming of international treaty against cruel, inhuman or humiliating treatment.

The Law Decree 24 in 1988 of the proclaiming of ICCPR optional minutes.

Treaty about the child's rights, 20 November 1989 – New York, proclaimed by the Act LXIV in 1991.

European Human Legal Convention about the „defense of human rights and basic liberties", European Convention on Human Rights in popular title, created on 4th December in 1950, Rome. That Convention and its eight minutes proclaimed in Hungary by the XXXI Act in 1993. The LXXVI Act in 1994 about the proclaiming of the ninth minutes and the II Act in 1999 are connected to it. European Convention about the persons of European Court of Human Rights' procedure, proclaimed in Strasbourg on 5th March 1996 and the XLII Act in 1998 about the proclaim of the fourteenth minutes about the „Defense of human rights and basic liberties", connected to the European Court of Human Rights.

European Convention on Extradition, proclaimed by the XVIII. Act in 1994.

The European convention on the prevention of torture and inhuman or humiliating treatment, created on 26 November 1987, in Strasbourg, which established the European Control Commission, proclaimed by the III. Act in 1995.

The XXXVIII. Act in 1996 on the international criminal legal aid.

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The UN convention against the transnational organized crime, accepted in 2000.

Convention by the Council about the mutual criminal legal aid among the states of European Union, according to the Article 34 of the Treaty of EU (1 July 2000).

The Europe Council framework decision 2000/383/IB of 29 May 2000 on the enforcement of criminal and other sanctions against the counterfeiting of euro's initiate.

The Europe Council framework decision 2001/220/IB of 15 March 2001 on the legal stand for the injured party in the criminal procedure.

The Europe Council framework decision 2001/500/IB of 26 June 2001 on the money laundering and the identification, search, freeze, distrainment and the seize of the used appliances and the income of it.

The Europe Council framework decision 2002/187/IB of 28 February 2002 on the establishment of EuroJust for the increased fight against the serious forms of crime.

The Europe Council framework decision of 13 June 2002 on the European warrant for arrest and the passing procedure among the member-states.

The Europe Council framework decision 2002/475/IB of 13 June 2002 on the fight against the terrorism.

The Europe Council framework decision 2002/629/IB of 19 July 2002 on the fight against the human trafficking.

The Europe Council framework decision 2003/80/IB of 27 January 2003 on the criminal law defense of environment.

The Europe Council framework decision 2003/80/IB of 22 July 2003 on the execute of decisions about insure arrangements connected to property and evidence in the European Union.

The Europe Council framework decision of 22 July 2003 on the fight against child pornography and sexual exploitation of children.

The Europe Council directive 2004/68/EC on damage reduce of crime victims.

The Europe Council decision 2004/757/IB of 25 October 2004 on the minimum rules of penalties and elements of crime on the field of prohibited narcotic drug trade-

The Europe Council framework decision 205/222/IB of 24 February 2005 on the attack against information systems.

II. European Union recommendations

Europe Council Ministerial Committee recommendation No. R(80) 11. on the imprisonment before judgment.

Europe Council recommendation No. R(81) 7. on the devices of easier ways of using jurisdiction.

Europe Council Ministerial Committee recommendation No. R(82) 17. on the imprisonment and treatment of dangerous convicts.

Europe Council recommendation No. R(83) 2. on the legal defense of the insane and involuntary treatment in mental institution.

Europe Council recommendation No. R(86) 12. on the other arrangements about reducing and prevention of overtaxing the courts.

Europe Council Ministerial Committee recommendation No. R(87) 18. on the simplification of criminal procedures.

Europe Council recommendation No. R(95) 12. on the control of criminal jurisdiction.

European Union Council recommendation No. R(95/C 327/04) of 23 November 1995 on the protection of witness in the frame of fight against organized international crime.

Europe Council Ministerial Committee recommendation No. R(96) 8. on the policy of criminal law in the changing Europe.

Europe Council Ministerial Committee recommendation No. R(97) 13. on the right for defense and the intimidation of witnesses.

European Union Council recommendation No. R(97/C 10/01) of 20 December 1996 on the people cooperating in jurisdiction on the field of fight against organized crime.

European Union Council recommendation No. R(97/C 251/01) of 28 April 1997 on the action plan for the fight against organized crime.

Europe Council Parliament General Assembly recommendation No. 1245/1994. on the custody before judgment.

Europe Council Parliament General Assembly No. 690 decision on „statement about the police."

European Convention on the mutual aid in criminal cases (2 April 1959, Strasbourg).

Additional minutes on the mutual aid in criminal cases (17 March 1978).

European Convention on the valid of international sentences (28 May 1970, Hague).

European Convention on the offer of criminal procedure (15 May 1972, Strasbourg).

European Convention on the liquidation of terrorism (27 January 1977, Strasbourg).

Hague Program on the advance success of the liberty, safety and law in the European Union (4-5 November 2004, Presidential Conclusions, Brussels).

III. International documents connected to the confrontation

Neither of the documents consist any particular formulations about confrontation, only we can conclude from connection and bond. First of all I stress the importance of the *European Convention on Human Rights* (EJEE in further) cause if anybody feels that the European state, included Hungary, has infringed his rights in the EJEE or its additional minutes he is allowed to use the legal defense of European Court of Human Rights (ECHR) in Strasbourg within 6 months by using his own name, tax free and without the compulsion of a lawyer after the domestic legal aids.

The Convention protects, among others, the important rights in the view of confrontation, so:

the right for fair procedure both in civil and criminal cases (Article 6.),

the right for efficient legal aid (Article 13.),

On the other hand, among others, it is prohibiting the important and possible act in the view of confrontation, so:

the torture, the inhuman of humiliating treatment and penalty harmonized with international agreements.

Within the fair procedure the Article 6 of EJEE there lies the importance of the right for fair hearing.

1. Everybody has a right for his case have heard by an independent and impartial court in a fair and public way, being heard within reasonable time and give decision in his civil rights and obligations and in the substantiate of his criminal charge. The judgment has to declare in public way but entering the courtroom can be prohibited for the press

and audience in under the whole period of hearing or partly if it is necessary in a democratic society cause the morality, public order or the national security, if the limits are important in the welfare of minors or the defense of the privacy of parties from procedure or if the court feels it necessary cause where the public can be dangerous for the welfare of jurisdiction.

2. Every suspect is innocent until his guilty have been stated by the law.

3. Every suspect has a right at least for

a) information, within the shortest time and on an audible language, about the nature and grounds of his charge;

b) to have the necessary time and devices for the preparations of defense;

c) to have a chance for defiance by personally or his chosen lawyer, and if he unable to pay for lawyer, so far as the jurisdiction's welfare need it, he can get a free appointed counsel;

d) to ask or address questions for the witnesses of charge and obtain the summon and hearing witnesses of defense among similar conditions as the witnesses of charge.

e) to have free interpreter if not understand or not speak the language of the trial.

Especially Article 3.d deserves regard in the circle of confrontation cause from the view of accused the witnesses, within on the interrogation of injured party-witness able to have contradiction, opposite statements and incriminating evidence against him. The convention does not call the confrontation as an available device for the accused and jurisdiction. It states to give only the right of query to the accused, but there is no rule of the form, the time or the mode of action.

On the other side the fix of mode cannot be lucky cause the confrontation is an unknown and non-used device among some European states, as I presented it in chapter 3.1, on the other hand in each countries have to decide about the modes of searching for just by domestic features and unwanted in the future to give communal directions as my opinion.

From Article 6 of the convention the following requirements can be draft on confrontation:

nor this proceedings can cause the unjustified draw of procedure and the unreasonable length of time,

the confrontation must be conduct in impartial way by the authority,

the presumption of innocence have to be prevalent on the confrontation,

because the confrontation is a special form of interrogation in consequence of fair procedure, the accused has a right to take part in it, further silencing, to be passive on confrontation,

the accused cannot be forced by any agreement or domestic rules to confess and taking active part in it by an opposite mode,

prohibition of self-accusation is current on confrontation because the fair procedure

also on confrontation the unlawful (illegal) evidences are unacceptable,

also the accused able to initiate the confrontation but non-obligatory for authority to hold it, it can use other modes (like cross-examination on hearing or giving written points),

on confrontation „the equal of weapons", worked out by jurisprudence, must be kept into the period of judiciary emphasizing that only in the period of judiciary,

confrontation also the part of public hearing, except the restriction justified by reasons in the convention,

the right of using the mother tongue and free, suitable interpreter are also necessary on confrontation,

the accused can use defending counsel creating efficient defense,

the necessary time and devices for the preparation of defense also need time in confrontation like in their period of confess,

Result from EJEE Article 13, the accused has a right for efficient legal aid also in confrontation, if he feels that the authority and its members infringed his right for life, fair procedure or legal aid during the confrontation. Moreover for torturing, inhuman or humiliating treatment or discriminated among the rights of the convention. (The latest one also can be found in the international European convention on „against the torture and other cruel, inhuman or humiliating penalties or treatments" and in Strasbourg European convention on „prevention of torture and the inhuman or humiliating penalties or treatments."

Also important, besides the EJEE, Europe Council Ministerial Committee recommendation No. R(97) 13. on the intimidation of witnesses and right for defense.

Prima facie, namely „clear at first sight", that there are cases when „the witness is in need of defense" with the words of Imre Kertész.[1] Also recognized in European relation showed by the recommendation. Special criminal procedure advices been drafted, which are able to action against intimidation, on the other hand they are able to make safe the fragile balance between the defense of public order and the defense of accused rights in a fair procedure.

The recommendation accounted the directions of EJEE and the connected practice of ECHR. Basically making forward the contradictorily procedure, where the national court collects and examine the evidences on a public hearing, consider them in the presence of accused. But it does not mean that the witness must do his testify always in the courtroom, cause it is possible that he will be frightened or become under psychological influences. Thus on the efficient of witness-protection behalf advisable the use of video cameras or other technical tools what give the chance of following the events by the attendants, their persons of procedure (authorities and people, within the accused and his defending counsel).

The recommendation also gives the importance of testifies on preliminary or interrogation period (police interrogation), what the court has to accept as evidence, maybe the confrontation if meanwhile the witness dies, disappears or unexpected events come and make impossible the repeat of testify.

The chance, the legal possibility of confrontation totally fall out it so-called „anonymous" witness actions in procedure. It means that the details of witness will stay fully unknown before the accused (defense) allowed by the court usually the fact of threat.

The anonymous witness always means a risk-hiding witness since the defense is not able to check the accuracy, authenticity and the truth of testify. Among the risk:

the anonymous witness cannot be authentic cause subjective reasons connected to the past for example because of such circumstances (*e.g.* insane), what cannot be reveal if the identify of witness is unknown,

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[1] See: „The witness in need of defense" by Imre Kertész: Magyar Jog (Hungarian Law), 1993/4. pp. 193-199.

the anonymous witness can be a tool in a conspiracy or complicity against the accused.

It is needed an impartial mechanism practiced by jurisdiction to remove these doubts, this mechanism used for replace and enforce the accused's welfare by an effective and well-meant way. Be guard continuously:

must over the balance between the right of getting information for defense and the hide of witness's identify details,

hiding of witness must be grant by the court and initiated by the prosecutor,

investigation of the witness's past and controlling his validity must be done by an impartial judge or prosecutor,

give the chance for the defense to ask questions about the witness's past, prejudice and essentials of the case at least in writing.

It is in sight from the last recommendation that it does not order or advice any compulsion of confrontation or right for direct question by accused exactly in the protection of witnesses mostly the most important witnesses.

If the hide of witness not allowed but he needed it the recommendation will not advice the confrontation with witness in that case, too. Instead, it supports to make more difficult the identification of witness by the defense in a way of hiding the face of witness, distort the voice of him or use audiovisual record or broadcast. (A similar idea can be found in the European Union Council recommendation 95/C No. 327/04 what lay in the circle of organized crime that the identification of witnesses and it recommended the relatives can be charged cause high threaten).

The Convention on the Rights of the Child, created in New York 20 November in 1989 and proclaimed in Hungary by the Act LXIV in 1991, touch with many articles the minor's criminal procedure. From Articles 37-40, which consist the prohibition of torture, cruel, humiliating treatments and unlawful and high-handed deprivation of liberty and other many important rights.

, I want to emphasize Article 40, which says:

„1. The states share in the Convention admit the child's, charged, suspected or guilty of crime, right for treatment what advances the personality's impeachment of sense for its dignity and value, strengthen the respect for others human rights and basic liberty and which account his age and the necessary of fit in society and take useful part in it.

2. From that aim and account the international documents' orders, the member states of this convention particularly take care of:

a) do not suspect, charge of find guilty of crime the child who act or default which was not mean crime nor by domestic and international law.

b) the child who been charged by crime at least has a right for the following guarantees:

(i) find him innocent until his guilty benne found by law

(ii) to be informed by direct of his parents, representative in care about the charges and share in legal aid for prevention in his defense, preparations of it and for other suitable help.

(iii) judge his case without late by free, independent and impartial authority of court on a way of just procedure in the presence of his lawyer, other counselors or his parents except that last if it is opposite with the welfare of child, which stands over everything, particularly cause his age or social standing.

(iv) do not force him to be witness or confess his guilty, ask or arrange questions or witnesses standing against him and witnesses standing with him and heard them by similar conditions.

(v) if he been found guilty in crime or have chance for legal aid by free, independent and impartial authority or court against this decision or other arrangement.

(vi) to have free interpreter if he do no speak or understand the spoken language on the hearing.

(vii) his private life has been respected in every period of procedure.

3. Member states of the convention will on with their all power to accept special acts and procedures, establishment of authorities and institutes for the minor suspected, charged or be found guilty with crime, especially:

a) accept a limit of age where the child cannot be charged;

b) possible and wanted cases make arrangements to handle the child's care without judiciary procedure and reservation of keeping totally the human rights and lawful guarantees.

4. Many arrangements needed to make it safe, especially with taking care, control and supervision, consultation, release on parole, family placing, general and professional educational programs and non-institutional solutions connected to these needed or make arrangements to have suitable welfare, social standing and treatment measured to the committed crime.

In Point 2/B/iv the following known requirement drafted at adult (general) accused: the right for interrogate the witnesses but it does not include the compulsion, need or creation of confrontation. (The terminus is not in the convention). The official translated and published, proclaimed „to do manage" causative verb shows much rather that the interrogation through much rather the official defending counsel or maybe legal representative, executed by then under the needed special (act-form and spirit) procedure.

I studied the prove and procedure rules regulating the operational estate of international courts (standing and ad hoc tribunals) by international documents. The Hague standing International Criminal Court (ICC), the ad hoc International Criminal Tribunal for the Former Yugoslavia (ICTY – to punish acts seriously violate the international humanitarian law in the territory of former Yugoslavia), and the International Criminal Tribunal for the Rwanda (ICTR – to punish people in charge of violating the humanitarian law, genocide and other serious infringements in Rwanda and to punish people of Rwanda in charge of genocide and other serious infringements in the neighbor states) organization and operation rules' sources are the statutes (fundamental rules),[2] but the procedure rules consisted in other codex, named Rules of Procedure and Evidence (RPE).

Neither investigation procedure consist the right for confrontation or the possibility of it for the court in procedure. The accused has the same classical „legal package", detailed in the EJEE's fair procedure. This includes their interrogation and motion competences, the witnesses and their said reliability and authenticity and investigation of them. On the other hand these are allowed by considering the defense of injured party and witnesses.

I want to remark here that the confrontation also was not known on the Tribunal of Nuremberg, established after World War II, which was the historical preliminary of

[2] Fundamental rule of standing International Criminal Court, called as Treaty of Rome of 18 July 1998, came into force on 1 July 2002, confirmed Hungary's signer status by Parliament Decision 72/2001 (XI. 7).

international criminal courts. The interrogation of witnesses and accused executed by cross-questions as a hard American and English influences, which gave serious problems for the German defending counsels, who used to the continental comprehension.[3]

I states with the international documents, notified in the previous list, about the international criminal cooperation that all of them supports the omission of confrontation (the direct confrontation between witnesses and accused or injured party) in the maximum defense of witnesses.

After all of these we can say that in spite of that the confrontation is a living and used mode in the searching of justice in the most of European continental countries, but cannot find in international within European conventions and statutes, procedure recommendations and directives.

As soon as the Anglo-Saxon influence prevails, included the Anglo-Saxon samples followed countries, first of all the USA and Great Britain's law, jurisprudence, jurist requirement system and mentality the confrontation is not exist moves in its place the cross-question, oath etc., so other mode of searching justice moved into international (European) level and at last the omission of confrontation as a mode of collecting evidences. Besides the Anglo-Saxon influences the omission procedure of confrontation helped by in our days too, an international level of the defense of witnesses and injured parties in serious crimes and sometimes the accusing partners and penitent pentinos, too. I think we can account on this influence for a long time.

IV. Confrontation in the mirror of European Court of Human Rights decisions

The confrontation exists in the praxis of ECHR in spite of that the EJEE does not consist terms with it, but it can issue in each European states' legal practice and sometimes it can exist and give grounds for infringements in domestic and other European countries' legal practices.

Usually the requirements of fair procedure connects to the confrontation, the infringements usually exist in it.[4] Within the rules of interrogation the witnesses are really important. The EJEE, it does not name it, but draft the equal of arms in the terms of interrogation witnesses and the interrogation of experts. In the explanation of Article 6 Point 3/d makes safe the following suitable and real chances for the accused:

the interrogation of accusing-witnesses,

summon of accusing-witnesses,

Interrogation of saving-witnesses among as similar conditions as accusing-witnesses.

But the rights of accused about the interrogation of witnesses are non-absolute rights, in justified cases the restriction of it is acceptable. For example the witnesses and

[3] See: International and European Criminal Law by Péter M. Nyitrai: Osiris, Budapest, 2006. Page 58-62. and referred by him to The Nurenberg Suit and the International Criminal Law by I. Szabó. Officina Publisher's, Budapest, 1946. p. 12.

[4] The 90 per cent of Hungarian complaints arrives to the ECHR cause the draw of procedure, offending the „fair" Article 6, See: Judicial ethics and the fair procedure by Ferenc Kondorosi – György Uttó – Antal Visegrády. Magyar Közlönykiadó (Hungarian Official Journal Publisher's) Budapest, 2007. pp 77-109.

accused life and safe are protected by the Articles 2 and 8 of EJEE, so the fair procedure desires the balance of welfares.

In the legal practice of ECHR in contradictory proceeding the evidences needed to collect and examine on hearing. It does not mean that the witness always has to do his confess in the courtroom, cause he can suffer psychological influences or unjustified pressure by the accused on the confrontation. In the name of efficient defense of witnesses participants can follow the procedure by video or other technical equipment. The general requirement is that the accused need chance, in one of procedure parts, to argue the witnesses' testifies, in that case the balance among the defense, the rights of witness and the state's jurisdiction task are safe.

The ECHR says it is acceptable that criminal court will not interrogate all witnesses suggested by the defense, but it is indispensable to do it with people who know relevant facts in the name of justice. (For example: Gergely *versus* Hungary, admissible decision of 15 May 1996). It is acceptable to read the testifies from investigation period on the hearing period if the defense had a chance in one period of procedure to interrogate the witnesses, maybe on confrontation, and to check the witnesses' answers' authenticity and reliability. (For example: P.S. *versus* Germany, decision of 20 December 2001; Destrehem *versus* France, decision of 18 May 2004; Tánczos *versus* Hungary, admissible decision of 26 April 2005).

The Court said in P.S. versus Germany case that the German authorities infringed the Convention's Article 6 Point 1 (the right for fair procedure) with the fact that the accused, charged by rape, by only the injured party's mother's and policeman's testifies, who interrogated the injured party, in spite of the injured child was not interrogated cause to protect her moral progress so the accused could not ask questions for her to defend himself. (As appropriate confrontation was not held, too).

The anonymous witness's exist is a special case which have to be limited in a few cases, says ECHR and in this few cases the defense must has interrogate the witnesses in a way and to check the witness's authenticity, sot test it. But it is prohibited to sentence someone by only this type of witnesses. (See for example: Kotovski *versus* The Netherlands, decision of 20 November 1989; Windisch *versus* Austria, decision of 23 April 1997; Lüdi *versus* Switzerland, decision of 15 June 1992; Saidi *versus* France, decision of 20 September 1993; Doorsen *versus* The Netherlands, decision of 26 March 1996).

In *Lüdi vs Switzerland* infringement case the accused, charged by drug trade, has not got any chances to contest the mole's investigation testify. For the court did not interrupt the witness, whose name was unknown for the accused, and did not try to absolve the opposition between the defense and prosecution. In his request argued that his right for fair procedure had been denied by do not confront with the agent-witness who was known for him in physical way (not the real identify) because he met him five times. In similar special cases cannot leave out of consideration that the police authority wants to protect the real identify of its agent in drug cases and to cooperate further.

Similar arguments were said in *Saidi vs France* case where the accused, charged by drug crime, did not have any chances either under investigation or hearing periods to ask questions for witnesses whose testifies absolutely used for charge him.

We can similar arguments in *Delta vs France* case, too. The accused had been charged by only the injured party and his girlfriend's testifies from investigation period. These witnesses had been summoned by the court but they did not come and the court

did not use any force actions against them and gave sentence without their presence. Moreover their interrogation was not done in the legal aid period, too.

It does not infringe the right for fair procedure if no so relevant witnesses be interrogated only under the investigation and give the minutes as a material of suit in the case of it, if the defense also do not ask the summon of them. (See about it in: Brandstetter *vs* Austria, decision of 28 August 1991).

In the marked Doorson case the court also did not stated the infringement of Article 6 Point 3/d cause, it said, the problems what suffered by the defense included the accused were suitable solved.

The court of first instance took in consideration in the case the two testifies of anonymous witnesses by the examining judge and in the presence of defending counsel and another named witness testify form the police interrogation period which was repealed on the public hearing. At last an also named witness testify had been took in consideration, who also did it in the previous investigation and so cannot been interrogated by the defense.

The applicant contested the first decision. Under the appeal the defense could interrogate the two witnesses, but confrontation did not been held cause the witnesses further asked to keep in secret their identifies which was strengthen by the examining judge.

The Court of Appeal found guilty the applicant. After it the Court of Cassation refused his request of states void invalidate and after that the ECHR did not state the infringement of the convention, too.

The court explained itself that the defending counsel had chance to interrogate the witnesses. Besides it the witnesses identified the accused with pictures which used were used for identify the accused himself and accepted by him and the witnesses also gave descriptions about his clothing and physique. The court also gave importance for that the Court of Appeal of Amsterdam based or no based the guilty on only and conclusively the anonymous witnesses' testifies.

By the interrogations of witnesses the ECHR also said that the fair and equal in arms procedure requires the ability of following the procedure either by the accused and defending counsel (also the court and the sworms, in physical way, too) and to answer the questions and give motions without suffer exaggerated exhaustion. Cause in this, infringement, case the jury hearing took 2 days which finished at 4:00 am and all of the motions of adjournment by the defense had been refused by the court. (See: Makhfi vs France, decision of 19 October 2004).

It is a requirement of defending counsel, also rated in confrontation, that the provision of defense for needy is a duty of the state. Moreover not only the provision of official defending counsel needed but it has to be efficient (really skilled) under the whole period of procedure. (See about it in: Artico *vs* Italy, decision of 13 May 1980; Pakelli *vs* Germany, decision of 25 April 1983; Gaddi *vs* Italy, decision of 9 April 1984; Daud *vs* Portugal, decision of 21 April 1998; T. and V. *vs* United Kingdom, decision of 16 December 1999; R.D. *vs* Poland, decision of 18 December 2001)

The Court separately emphasized in Daud case that the requirement of efficient defense (which includes the presence, case knowledge, practice of licenses forwarding cases, right to complain etc.) stands not only in the hearing period but in the preparatory (investigation) period, too.

Under the confrontation the accused also has the right for using his mother tongue and have a free interpreter it he in charge or been charged. (See: Luedicke, Balkacen and

Koc vs Germany, decision of 28 November 1978). On the other hand the guarantee of interpreting by the state is not enough, it has to be „suitable" standard which does not mean that it is a minutes details. A general guarantee of interpreting by the state which also includes the absences for a well defense more enough. (See: Kaminski *vs* Austria, decision of 19 December 1989).

The Article 13 of EJEE on legal aid also connects to the confrontation. Exactly a Hungarian case connects to it, named Balogh *vs* Hungary, decision of 20 July 2004, which said, besides many insulting and non-insulting, that Article 13 did not happen in the applicant's case.

The applicant found injurious among others that he did not have suitable legal aid in this dishonest criminal procedure full with abuses and discrimination, too. The court examined that the needed solid and efficient national inquiry had happened or not because the complaint of applicant. (Article 13 also requires the complainant to take efficient part in the investigation by his complaint). In the relevant case the authorities were ready to investigate seriously the statements of complainant and did not refuse them immediately, by the statement of court. Inquiry did by three attorney level and the prosecutor's office started again (twice times) the procedure by the request of the National and Ethnic Minority Bureau. Under the investigation the applicant had been interrogated about what happened in the police department. The suspected policemen also had been interrogated by confrontation in the presence of the applicant, too. The policemen on duty and the partners of applicant also had been interrogated as witnesses. Medical expert also had been appointed to determine the nature and possible reasons of the injuries of applicant and the medical examination of National and Ethnic Minority Bureau also had been considered. The criminal procedure had been closed cause there were not enough evidence that the ear wounds had been caused by the suspected policemen. But the efficient of legal aid does not depend on the certainty of the favor result for applicant, in the view of Article 13.

The court said that the investigation by the request of applicant was substantiated and eligible to punish and identify the representatives of the state who are responsible by the gathered evidences. After all of this the court weighed that the applicant had efficient legal aid.

I want remark here that the fair of procedure must be guaranteed under all judicial level by the court's general norm system, on their other side infringements on lower level can be remedy in the later periods of procedure so the honesty can be examined under the entire procedure. The weight of evidences is the exclusive competence of the national courts, but the ECHR can overrule by the honesty in flagrant high-handed weighs.

Examining the ECHR within the past ten years cases of confrontation we can say that the court acted in this decade by the spirit of what written above.

I have found 27 cases, where the „confrontatio" (as expression especially not examined by state) can be found but I only chosen the following five which were worthy for examination and were relevant.

Hülki Günes vs Turkey (decision of 19 September 2003) case the court found the infringement of fair procedure cause the accused, charged for treason, could not meet the three witnesses under the entire procedure who identified him by 5 photos. His

request for personal identify procedure had been rejected, he could not able to ask questions for witnesses, or confront them cause road-safety grounds the court did not summon the policemen witnesses in spite of the numbered request of defense. So he could not ask questions by his defending counsel, could not able to check the identity, trustworthy of witnesses or notice their behavior in neither of periods of the procedure. His counsel also was not on the photograph present for identification or their signatures were not in the minutes of it.

The court did not find infringement in the part of *Belevitskiy vs Russia* decision of 1 March 2007, which been established on the applicant's objections that he had not got fair procedure under the investigations of witnesses. The rejection argument said that the accused, suspect later been charged for abuse of drugs, was already confronted to the witness, who testified against him, also on the trial in the first instance. There he and his counsel were able to ask the witnesses and examine the authenticity. (Here the court looked back on its Isgró *vs* Russia, decision of 19 February 1991). On the repeated procedure the witness was not on it personally but the previous investigation and trial minutes stated by the new adjudication court, made them material proof and those were in harmony with other witnesses' testifies and other physical evidences, which referred to the guilty of the accused.

The court condemned in *Bak vs Poland* decision of 16 January 2007 cause the unreasonable length of procedure (but not for the previous long one). The applicant has been charged for two counts of armed robbery, which were organized, said the Polish government, so inspite of it solid trial and investigation were needed. For example they examined 300 evidences, interrogated 130 witnesses and confronted the accused in many times. But all of this did not give fund of this 7-year-long procedure. (Applicant had been arrested on 28 September 1999 and the case was still on regional court level on 28 March 2006).

The court in it's 130 long argument found the serious infringement of Articles 3, 5 and 8 of the convention and found a significant compensation for the injured parties in *Elei and others vs Turkey*, decision of 24 March 2004. Here the applicants were Turkish lawyers, had been arrested in December 1993 for violation of Criminal Code. Actually they were arrested for representing clients before the State Security Court and take part in human rights work. They said, as their complaint, they were tortured and had cruel treated under their detention.

The most of the lawyers confronted to a witness who gave a false but testify against them. He said about all of them that they were in contact with the Kurd Labour Party which is a terrorist organization. Some of their partners were not confronted but everybody charged by the confronted witness's false testify. After the confrontations and accuses applicants were forced to sign the minutes by detention. These contents could not be known by the applicants cause their eyes were covered under the whole detention.

It is sad in Irfan Bilgin *vs* Turkey decision of 17 October 2001 that in a complicated, ramifying and full with contradictions case like it was not been done a deep investigation and judicial inquiry by national authorities, moreover though nothing of their duties, said the Court of Strasbourg. By that they violated Article 2. (guarantees the

right for life), Article 5. (right for liberty) and Article 13. (the right for suitable, efficient legal aid) of the convention. The substance of the case is that Ankara Security Directorate apprehended the applicant's brother. Later the applicant enquired for his brother but came to a dead end with either of authorities. All of the authorities said that his brother is not among the arrested ones. After it hi hired a lawyer who made contact with the Human Right Council of Turkish National Assembly and reported what happened.

The applicant enquired further for his brother, turned to the chief prosecutor of Ankara, too. After it he collected 10 prisoners' written testifies what said that his brother was within the prisoners. But the testifies of prisoners were inconsistent with the statements of policemen and prison guards cause they denied that Kenan Bilgin, brother of the applicant, was in arrestment. At that time Selahattin Kemaloğlu was a prosecutor in Ankara did not start the investigation in Kenan Bilgin's case but Özden Tömük did it. When he got the case from the Ankara Security Directorate he asked for information about Kenan Bilgin's arrest. The Directorate said that they never arrested him. After it he listened to the witnesses and made sure that there is something wrong and as a prosecutor he must search for Kenan Bilgin or other similar disappearances. He applied for the chief prosecutor to join the cases but his application had been returned. He filed for action against the Security Directorate's leader because he denied to cooperate with the authorities, but it was also unsuccessful. Many times he motioned to confront the affected policemen with the witnesses, but it was no happened cause nobody answered to his pleadings.

Anyway the confrontation or interrogation of the affected policemen must have to be done what could be by the prosecutor, the competent authorities never gave him the list of policemen.

At last I remark that because of the unjustified draw of pre-trial detentions there were many cases where under the term of investigation, except Sulaoja case, was confrontation but neither of the cases said the confrontation was responsible for the unjustified draw of detention. (See: Contrada *vs* Italy, decision of 24 August 1998; Díkme *vs* Turkey, decision of 11 July 2000; Cesky *vs* Czeh Republic, decision of 4 October 2000; G.K. *vs* Poland, decision of 20 January 2004; Belcher *vs* Bulgaria, decision of 8 July 2004; Vachev *vs* Bulgaria, decision of 8 October 2004; Sulaoja *vs* Estonia, decision of 15 May 2005; Mitev *vs* Bulgaria, decision of 22 March 2005; Iovchev *vs* Bulgaria, decision of 2 May 2006; Celejenski *vs* Poland, decision of 4 May 2006).

5. Further discountable conclusions by the ECHR's decisions connected to confrontation

As is referred as stated above the confrontation in the convention is not be named in spite of that it can be found in the practice of ECHR, sometimes it needed and possible to deal with it cause the most of continental countries includes and us it in their domestic legal system.

It is well perceptible that the confrontation can be connected to the interrogations by the meaning of Strasbourg, cause in reality it is a special form of interrogation as might as in the cases of witnesses or accused. The court says the confrontation is a form of interrogation, a procedure act which able to help and fulfill the right within the accused (human right) legal package ordered in the Convention. Especially the right of accused that he can secure the authenticity of testifies or personality (behavior) of

witnesses against him or maybe other accused as personally with questions, deservations or simply surveillance.

The court says that the confrontation is a form which able, also in the period of investigation and trial, to exhaust the requirement that the defense (counsel, accused) to control the person who makes testimony against them, or we can use the mean of confront, at least in one period of the procedure.

Just the default of confrontation, if besides it was possible to ask questions from incriminating persons by the defense, does not give fund for violate the fair procedure within the Convention.

We also say that the absence of confrontation for itself cannot be illegal, cause it is possible that it was not legal to sit two persons in front of each other cause rational reasons, within witness protection reason (*e.g.* case of anonymous).

Just only the great number of confrontations does not give enough arguments in the practice for funding the unreasonable term of procedure, as regards it could be a justify circumstance for the delaying tactic behavior of domestic authorities.

Some cases show that under confrontation sometimes possible not only the violation of fair procedure, legal aid, principles of the defense, but also the use of inhuman, humiliating treatment where the court must be so strict against them and emphasize the following noble idea, that not only the remedy of violation is the duty of the state, but also the prevention of it. Nor the act and the legal practice can contain „integrated" infringements what always scream for legal aid in all European states.

V. Summon of the study

We can see that the confrontation is a very important part of criminal procedure. International and European Union decisions, conventions makes rules for it. It is said, that in the 21st Century we can find too much negative cases, where the law, the fair procedure, the equal of arms, right for innocence suffer violation. Of course some of this special cases are from countries, where we cannot find a real legal state (*e.g.* Turkey, where the real power is in the hands of the army), but we also can find similar cases in European countries. As I remarked, in Nuremberg the German defending counsels could not be efficient, because the Anglo-Saxon type of cross-examination. The most of the accused did terrible, inhuman and cruel crimes against the human race, but everybody has a right for innocence until an impartial, independent court find him guilty. So I can remark the Hülki Günes *vs* Turkey (decision of 19 September 2003); Belevitsky *vs* Russia (decision of 1 March 2007); Elci and others *vs* Turkey (decision of 24 March 2004); and Irfan Bilgin *vs* Turkey (decision of 17 October 2001) etc.

It is a good fact, that there are many international conventions, like International Covenant on Civil and Political Rights and the European Convention on Human Rights, they are not only empty platitude, not just symbols of the legal state and independent judgment, but a living creatures what make the balance between the prosecution and defense. That balance is not a modern idea, but it can be found in the ancient Egyptian myology, when the spirit of the dead stands before the court of gods in the Hall of Justice, where the gods (Anubis, Toth and Osiris) give the fair procedure for him. So the fair procedure, equal of arms and other elements of a modern legal system are immortal.