

OPTIMIZATION OF DECISION MAKING IN JUDICIAL CASES. A COMPARATIVE VIEW BETWEEN USA AND ROMANIA

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Abstract

The article has a twofold goal: bringing to light both the advantages and the disadvantages of individual and group decision in juridical cases (the situation of the jurors is considered in the sociological literature as a quasi-natural experiment. The paper analyzes various dimensions and aspects of this topic, including a short history of each model, in order to better understand the reasons why both systems are operating today. The research started from the question: which of these two juridical systems (the American system and the Romanian one) are regarded as more efficient by those who practice law. A series of semi-structured interviews applied to experienced lawyers from both countries focused on: differences perceived between decision-making processes involving a court of jury and a judge vs. judge alone; advantages and disadvantages of each decision making system; weak points of each system; possible changes for the optimization of the decision-making process; and an evaluation of the reaction of the public opinion. The analysis of the data showed that some of the hypotheses were partially valid. In the final part, I discussed the perspectives of the implementation of the decision-making process based on a court of jury in Romania.

Key words: *decision making process, jury court and judge only system, rationality and subjectivity in the individual / group system.*

1. Theoretical issues and models in decision making processes

The decision is considered as a process of rational choice, representing the final stage in establishing the course of the action taken to achieve a goal. The decision is the resolution made following the consideration of a problem, a situation or the adopted solution (of several possible alternatives). There are correct decisions, with positive effects, and less correct decisions, with negative effects on the achievement of the envisaged goal. But, as underlined by the specialized literature, decisions are neither just rational nor perfectly rational.

Thus, decision making¹ is defined by establishing and anticipating three fundamental directions, which also represent, at the same time three decisional types:

1) The decision as a rational-cognitive process of choice among several possible alternatives (the normative approach);

2) Decisions refer to spontaneous, impulsive, habitual behaviors, where the decisional process is not considered as a rational-cognitive one, but from a behaviorist

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¹ *The Social Science Encyclopedia*, A. Kuper and J. Kuper Routledge Publishing House, London, 1985, p. 183.

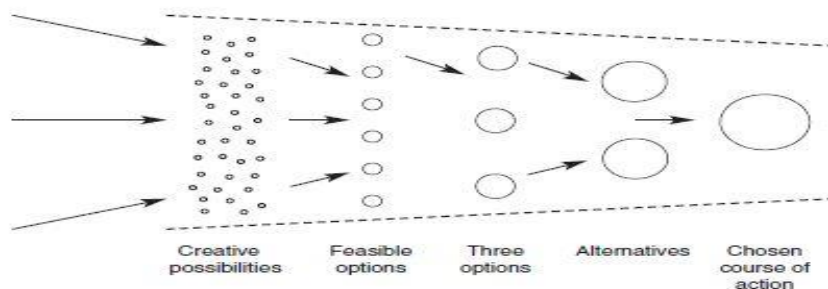
perspective. 3) The decisional process is regarded as a complex one, involving several stages and factors (e.g. collecting information), being characteristic for collective decisions and having a cognitive function.

Group decisions are distinctive for small, limited groups, and by excellence, the jury court is such a group involved in crucial decisions. Synthetically speaking, and taking into consideration relevant bibliographic resources², the major characteristics of limited groups are: a) The limited group is a restricted number of individuals, which interact in an intense, manifold, direct, "face to face" way. b) Mutual dependencies are based on and take place through a collective activity, subsumed to a clearly circumscribed purpose (nevertheless, not all limited groups have such a purpose. For example, the purposes and tasks of a group of friends are more vagues. Par excellence, the team, as a specific group, has very well defined purposes and tasks, and sometimes very precise missions). c) Usually, even in small groups, dependencies and interactions are structured horizontally and vertically in a network of statuses and roles, which sometimes are very different. This refers more especially to teams. d) In time, groups develop values and norms generally shared by their members, and, although these are sometimes very different, they are based on socially shared systems of values.

An effective decision making process is associated with the completion of some steps, the collection and analysis of information; it is also important that this process should be concluded by a corresponding feedback.

J Adair (2007) synthesised 5 stages:

- Defining the problem/the objective; this has a major importance in the decisional process;
- Collecting relevant information; this includes both the analysis of available information and the search for new relevant (required) information³;
- Generating feasible options: the structuring of feasible options from a multitude of options;



² R. Baron, D. Byrne, N. Branscombe, *Social Psychology*, Pearson, Boston, 2006 ; S. Chelcea, *Gândire de grup*, In A. Ducuciuc, L. Ivan; S. Chelcea, eds., *Psihologie socială*, comunicare.ro, București, 2013.

³ J. Adair, *Decision making and problem solving strategies. Creating Success*, Kogan Page, London, 2007, p. 20.

Fig. 1 “*Lobster Pod*” Model for the option generate ⁴

- Making the decision – selecting the best option which mandatorily meets the three criteria: must, should, may⁵;
- Implementing and evaluating - the decision must be regarded as part of a five-step process: defining the objective, collecting relevant information, generating feasible options, making the decision, implementing and evaluating⁶.

A series of variants were suggested in the description of the decision making process. Many of the decision making models elaborated in the last two decades (Poole and Baldwin 1996, Poole and Roth 1987)⁷ derive from Simon’s rational model (1965)⁸ regarding the individual decision making process. According to him, after the identification of a decision making opportunity, three steps are involved in the decision-making process: “*the intelligence*” – all the relevant information is collected, “*the design*” – all the possible alternatives are generated, and “*the choice*” - making the final decision. Nevertheless, a study concerning the decision development in small groups showed that the normative models are not appropriate for rendering the nature of the decision making successions. Moreover, Simon (1976)⁹ observed that those who make decisions don’t always respect the rational models.

Poole and his colleagues admitted that several decision making successions may be possible, as well as the dynamic nature of the process, and proposed another class of phasic models, the multiple sequential models. These models argue the fact that groups can follow different development successions, depending on the contingent factors of the decision making situation.

According to Hage (1980)¹⁰, regardless of the fact that the decision might have a high or a low risk level, it completes the steps of a decisional process. Its approach from the point of view of the characteristics of the decisional process is from the perspective of the risk level. The decision making process can be predicted even though it seems to be a unique phenomenon. Hage defines 13 characteristics of the trajectory of a single decisional process, of interest to the court jury being the following: The routine level is the point where some characteristic steps of the process are defined and used; The delegation stage is the point where most of the process takes place at inferior levels; The degree of participation refers to the involved number of interest groups; The quantity of collective creation is the point where the result of the final decision represents the outcome of the various interest groups’ and/or individuals’ ideas; The quantity of negotiations represents the quantity of time invested in negotiations; The sum of conflicts is the degree of the quantity of disagreements of the interest groups; The duration of the conflict represents the quantity of time of continuous disagreements.

⁴ *Idem*, p. 23.

⁵ *Ibidem*, p. 24.

⁶ *Ibid.*, pp. 17-33.

⁷ A. K. Crowston, R. Heckman, Q. Li, and K. Wei, *Decision-Making Processes and Team Performance in Self-Organizing*; paper partially sustained financially by US National Science Foundation Human and Social Dynamics Program Grant 05-27457, 2010.

⁸ *Apud idem*.

⁹ *Apud P. Drucker, Despre decizii și eficacitate* (trans. D. Criste), Meteor Press, București, 2010.

¹⁰ *Apud idem*.

Hage also developed a model that he called *only one decisional trajectory*, where two variables determine the decisional process: the risk and the frequency of the decision. For high risk decisions, he considers that the high risk of the decision problems is positively related to the intensity of information search, the quantity of discussions and the stability of alliances. In Hage's model, the duration of the process and the quantity of collective creation are considered as results, and both are positively related to the intensity of information search, and the quantity of discussions. The low risk decisions involve different decisional processes determined by the frequency of the manifestations of decisional problems. Frequency is positively related to the routine and delegation stage. Routine is negatively related to information search, and the quantity of discussions, but positively related to the degree of participation. The delegation is positively related to the degree and the intensity of participation.

The Bradford group model was proposed by Astley, Axelson, Butler, Hickson, and Wilson (1981)¹¹, a group of researchers from Bradford University. They argue that there are two fundamental factors that explain the nature of the decisional process: the complexity of the decision task and the political delimitation of the involved interests. They consider that both separately and together, these two factors describe the content of the decision making process. The Bradford group defines complexity as being the point where the intricate subject of the decisional process is created out of multiple thoughts and is difficult to evaluate.

The experimental researches demonstrated that, irrespective of the procedure used to adopt a group decision, the so-called "risky-shift" effect may appear:

It consists in the fact that groups can make more risky decisions than those made by an individual, and they can manifest themselves in various ways such as:

a) *Decisional polarization*, a phenomenon that indicates the fact that the stance of the group in the final decision is much more radical than the initial opinions of the group members. Thus, as the debate on the problem to be solved becomes more and more vivid, the participants' opinions become more radicalized and are far away from the initial stance.

b) *Group thinking*, that represents the uncritical adoption of decisions, determined in its turn by various factors, such as: a high degree of group cohesion; the leader's authority; the perception of a major danger from outside the group; time pressure¹². The group actions can be mistaken in the following ways: The incomplete research of alternatives; The incomplete formulation of objectives; The impossibility to examine the risks of the favorite choice; The impossibility to re-evaluate already rejected alternatives; Prejudices in selecting the information collection; The impossibility to elaborate emergency plans.

J. Irving (1972) framed seven ways of preventing this type of thinking, the misconceptions of forced consensus: a) Leaders should assign the role of the "critical evaluator" to each member. b) Leaders should not express their clear opinion when a mission is assigned to a group. c) The organization should set up several independent groups to work on the same problem. d) All effective alternatives should be analyzed. e) Each member should discuss the ideas of the group with reliable persons outside the

¹¹ *Apud ibidem.*

¹² A.M. Hogg and R.S. Tindale, *Blackwell Handbook of Social Psychology*, Oxford: Blackwell Publishers Ltd., Oxford, 2003, pp. 46-70.

group. f) The group should invite experts from outside the meetings. g) At least one member of the group should be assigned the role of the devil's advocate. The devil's advocate should be a different member for each meeting¹³.

c) *The effect of collective knowledge*, a group phenomenon that consists of the group tendency of discussing and using mostly the information known and shared by all the members of the group, and of neglecting the information defined by only one or some of the members. In most of the cases, this effect leads to an insufficient use of the group members' informational potential and, through this, to a decision that can be questionable from the point of view of its quality.

In group decisions, the well-known rules are: the rule of unanimity; the rule of simple majority and the rule of absolute majority. All three are involved in juridical decision making processes, to different extents and having their intrinsic logic in each particular situation.

The *advantages of group decisions* are: many ideas that provide the support for an optimum decision, increased team cohesion and interest for the integration into the organization; the personal interest is subordinated to the team solution; routine is avoided and new ideas are generated.

The *disadvantages of group decisions* are: the decision can be blocked when different team opinions do not get to a consensus; excessive time-consuming discussions and digressions; possible tensions and conflicts generated by different points of view.

Regarding *individual decisions*, in their collective study on privacy and rationality in the individual decisional process (2005), A. Acquisti and J. Grossklags combine theoretical and empirical approaches to study factors and obvious inconsistencies of the privacy of the individual decisional process. They maintain that, in respect of privacy, the individual decisional process is affected and hindered by many factors. They include incomplete information, restricted rationality, and systemic psychological deviations from rationality. These factors lead to the idea of perfect rationality, but which does not capture appropriately the nuances of an individual's privacy-sensitive behavior¹⁴.

First, incomplete information affects the individual decisional process because of: a) externalities - namely when a third party shares personal information about a person, this can affect the person without the person being part of the contact between the parties; b) the information asymmetry - relevant information to the privacy of the decisional process; c) the risk - most of the compensations related to privacy are not determined; d) uncertainties - the compensations can be both random as well as dependant on unknown random distributions.

Second, individuals, even if they had access to complete information, they could not process and work on large amounts of data in the best way possible. Especially with complex and multiple consequences associated with the protection or issuing of personal data, the inborn limited rationality limits our abilities of obtaining,

¹³ L.J. Irving, *Victims of Groupthink*, Houghton Mifflin Company, Boston, 1972.

¹⁴ A. Acquisti and J. Grossklags, *Privacy and Rationality in Individual Decision Making*, IEEE Security & Privacy, Washington DC, 2005, pp. 18-23.

memorizing and processing all relevant information, and causes us to rely on simple mental models, approximate strategies and heuristics.

Third, even if they have access to complete information and can calculate optimizing strategies for their private-sensitive decisions, individuals can deviate from the rational strategy. Psychological researches show that individuals predict their future personal preferences incorrectly, or draw wrong conclusions from past choices. Moreover, individuals frequently suffer from self-control problems, particularly the tendency of compromising between costs and benefits, affecting the future utility in favor of the immediate satisfaction. The individual behavior can also be influenced by norms or social preferences, such as correctness or altruism.

Any of these factors can influence both internally and externally the individual decisional process, although not all the factors are always present. The empirical evidence of their influence does not mean that individuals behave recklessly or that they make choices against their best interest. However, these factors involve biases and limitations in the individual decisional process¹⁵.

2. The organization of the juridical system in Romania and SUA

According to the information provided by the Superior Council of Magistracy (SCM), the principles, the structure and the organization of the Romanian judiciary system were provided for by the Constitution of Romania (2003) and by Law 304/2004 (republished), regarding the judiciary organization. The Romanian judiciary system has the following structure: i) The High Court of Cassation and Justice is the only supreme court that functions in Romania, with the premises in the capital of the country, being organized in four sections (The Civil and Intellectual Property Section, The Criminal Section, The Commercial Section, and The Fiscal and Administrative Claims Section), The Nine Judges Panel, and The Joint Sections. ii) The courts of appeal are courts in whose jurisdiction function several tribunals and specialized tribunals. At present there are 15 courts of appeal¹⁶.

Courts of jury are used in Austria, Belgium, Switzerland, France, Greece, Italy, Norway, Sweden and Russia, but the most well-known jury system is the American one¹⁷.

In USA, according to documents issued by the Bureau of International Information Programs, United States Department of State, the juridical system has the following structure: The Supreme Court of Justice of the United States, that has in its jurisdiction the Court of Appeal, composed of 12 regional courts, the Court of Appeal for the Federal Circuit, and the Court of Appeal for the Armed Forces. The 12 regional courts have in their jurisdiction 94 courts and the Tax Court. The Court of Appeal for the Federal Circuit has in its jurisdiction: the Court of International Trade, The Court of Federal Claims, The Court of Veteran Appeals. The Court of Appeal for the Armed Forces has in its jurisdiction The Army, Navy-Marine Corps, Air Force, and Coast

¹⁵ *Idem*, pp. 24-30.

¹⁶ <http://www.csm1909.ro/csm/index.php?cmd=9401#Link1>, accessed on April 20th 2015.

¹⁷ http://www.avocatnet.ro/content/autori%7CdetaIiu/authorID_486/Alina-Botezatu.html, accessed on April 22th 2015.

Guard Courts of Criminal Appeals¹⁸.

In his article “The organization of the USA judiciary system vs. the organization of the Romanian judiciary system”, C. Ignat (2013)¹⁹ shows that the jury system has the advantage of a rational judgment, where the evidence is adduced to popular, impartial judges. The 6th amendment of the Federal Constitution states that “*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed*”. Usually, there are 12 jurors in a jury but jurisprudence decided, as a minimum requirement, that the jury should be made up of at least 6 jurors. Being a constitutional right, the beneficiaries can expressly waive it with the approval of the Public Minister and of the Tribunal.

The fundamental requirement is that the jurors should be representative for the respective community, and they should be selected without discrimination, and with respect for the equal right of the accused to be judged by an impartial jury. Nevertheless, according to some state laws, certain persons such as convicts, members of the clergy, lawyers, etc. are ineligible.

In criminal trials, the jurors have the fundamental role of establishing the facts and deciding whether the accused is guilty or not. However, in case the accused is erroneously convicted by the jury against the rules of law, the judge can correct this, but he/she cannot intervene if the accused is found not guilty. The judge can and sometimes must instruct the jury regarding the laws that can be enforced in the respective case, the proof of evidence, the benefit of doubt and other general instructions. To avoid the influence of the media, the jurors secretly deliberate and give a verdict unanimously or with a majority of votes, in accordance with the laws of the state. After the verdict is pronounced, the judge hands down a sentence according to the verdict of the jury. The judge has the possibility to dismiss the jury and reopen the case, in case the jury cannot give a verdict. The Grand jury, that exists at the federal level, too, is controlled by the Public Ministry and has completely different competencies from the petit jury, has the role to issue a criminal indictment.

The procedures for the appointment of judges are different, ranging from the appointment by the Governor or by the Legislative to the selection and appointment based on merit. Both the judges of federal courts and those of the Supreme Court are appointed by the President of the country, and are irremovable, but can be dismissed through the procedure of impeachment, when they are guilty of treason, corruption, crime against public property, or felonies. The judges’ term of office is very different from a state to another.

However, according to the Constitution, federal judges are appointed for life under the condition of a good conduct. In the Romanian judiciary, the judge is appointed by the President of Romania, is immovable, independent and impartial. Following the differentiation of the status of judges from that of prosecutors, Art. 3 of

¹⁸ Outline of the U.S. Legal System, Bureau of International Information Programs, United States Department of State, <http://usinfo.state.gov> accessed on April 18th 2015.

¹⁹ <http://avocatura.lexignat.ro/avocatura-articole/-ORGANIZAREA-SISTEMULUI-JUDICIAR-AL-S.U.A.-VS.-ORGANIZAREA--SISTEMULUI-JUDICIAR-ROM%C3%82N-9> accessed on April 20th 2015.

Law 303/2004 is describing the prosecutor as it follows: “The prosecutors are appointed by the President of Romania are enjoying stability and are independent, under the law; they are not immovable, but only stable in their function.” Although different, the two judicial systems, of USA and of Romania, have some common institutions or rules²⁰.

The jurors are fulfilling a very important function in the American judicial system. Any person in USA has the right to be judged by a juror court, except when the case is a minor one or the competence belongs to a Special Penal Court. By consequence, the jurors are not asked in all the cases. Jurors are used in some civil cases of insult and aggression, but for the majority of civil cases of body injury and family law the decision belongs to a judge. The jury is formed by 12 members, USA citizens, which assist to the trial. One of the jurors is elected chief of the jury before the trial begins. That person acts as a speaker on behalf of the jury.

Acting as a juror is compulsory for the American citizens. The 12 jurors are selected in a random way among those who are called for this service in that day. They cannot be removed during the trial. If the trial will take more than 2 months, the law allows that 15 jurors will be appointed.

The jurors have to obey the following rules: to take a decision based only on the facts presented in that case, to accept legal instructions from the judge, even if they agree or not with them, to remain impartial and independent, to stay not influenced during the trial (they have to report if a jurors tries to influence her or him), to keep confidentiality²¹.

3. Individual judge vs. jurors court: a comparative study regarding the advantages and disadvantages of decision systems during trials

The difference between individual and collective decisions can be illustrated in a quasi-experimental way by taking into account various cases. We are taking into account the jurors system, as in USA, and the individual judge system, as it can be seen in the majority of countries, including Romania. Our research consists in a series of semi-structured interviews with lawyers from Romania and USA.

The efficacy of the two systems is very difficult to measure, due to a large number of external factors. Therefore, I conducted a qualitative research consisting in 6 interviews with practicing lawyers from the two countries (three of each one).

The *goal* was to analyze their opinions and to find out which system is seen by them as more efficient. The two countries have been selected because the American system is representative for the juror court and the Romanian one is traversing a period of changes and adjustment. The *objectives* of the research have been: a) to identify a link between the efficacy of individual (the Romanian system) and collective (the American system) decisions and decision-making process; b) to identify reasons in favor or against the implementation of the juror courts in Romania. The research *questions* have been: A) Which of the two juridical systems is more efficient from the

²⁰ *Idem*.

²¹ <http://www.citizensinformation.ie/en/justice/courtroom/jury.html> accessed on May 13th 2015.

standpoint of time/cost of implementation of the decision?, and B) Which system would be more efficient in Romania?

Three *hypotheses* have been formulated: 1. The American judicial system, in which jurors are called, is more efficient; 2. Judicial decision-making in a system with jurors is more rational than that in which a single judge is involved; 3. Romania is not prepared to implement a juror courts system.

The *method* that has been chosen is a qualitative one: the interview with semi-structured, open questions, applied to practicing lawyers from Romania and USA. They have been all interviewed by email. They had 7 days to answer.

Table. 1. Interview guide for American/Romanian lawyers

In order to make a comparative analysis of the law decisional process in which the decisions are made by a court with a jury and a law system in which the decisions are made by a judge only, please give complex and augmented responses to the questions below. I assure you for the discretion of your personal data.

1. What are the major differences, in your opinion, between a decision made by a judge and one made by a court of jury?
2. What decision do you find more effective: the one made by a judge or the decision made by a court of jury?
3. Do you consider more efficient a system with no jury in which decisions are made by a judge?
4. Can you name some pros and cons for the jury system?
5. Can you name some pros and cons for the system in which judges make the decisions?
6. Do you think the jury legal system works in your country?
7. If you could, what would you change in the jury system that applies in Romania / USA? (depends of the country appartenance of the respondent)
8. Which of the decision system of these you believe to be more desirable for your country public opinion?

Below, the synthesis of the results is available as a table:

Table 2. Results' synthesis – the comparison of the responses according to proposed themes

Experts Topics	SUA			România			Sinteza
	Subject 1	Subject 2	Subject 3	Subject 4	Subject 5	Subject 6	
The efficiency of the two systems	The judge has a greater competence in judging judicial matters. The juror court is less subjective.	The judge is more objective, but more influenced by the policies in the system. The juror court is working slower, because of the need for unanimity.	The judge puts the facts and the law at the basis of his/her decision. The juror court takes into account only the described facts and the decision is collective.	The costs of the juror court are greater, but it suits the cases which require interpretation.	The trial in the juror court lowers the subjectivity level of the judge. The trial by single judge is more effective as time and costs.	The juror court is close to the common sense. The judge follows the letter of the law.	<i>The juror court is better evaluated from the standpoint of the decision-making, i.e. it has lower risks (corruption, politics).</i>
Advantages / Disadvantages for the juror court system	Less sensitive to politics, more correctness / A lot of emotions.	High trust in justice objectivity / Only apparent objectivity.	Comfort due to the similar views of the jurors and of the incriminated person concerning the equality of chances in front of law / Jurors may be influenced, too.	The democratic-participative nature of the trial / Lack of juridical education, difficulties in selection, costs.	High efficacy / Limits of the law knowledge.	Perception of the social equity, higher acceptability / Lack of law education, lack of motivation.	<i>The advantages for the juror courts are numerous.</i>

Advantages / Disadvantages for the single judge system	Correctness, strict application of the law / Perceived as undemocratic.	Application of the spirit of the law / The judge is biased by personal experiences and other influences.	Celerity and efficiency / Risk of corruption and influence from judicial policies.	Competence and experience of the judge, low costs / Risks: Corruption, fatigue.	Academic studies, homogeneity of jurisprudence / Subjectivism, risk of corruption.	Image of the judge as a justice of the legislation.	<i>The problem of corruption and of the influence of policies in the single judge system is underlined by the experts.</i>
Vulnerability, Assessment, Proposals	Highly functional system in USA, has however few deficiencies. Proposal: Trials with single judge should be adopted for certain cases.	Equality in front of the law, correctness. Some problems in decision making by jurors: risk of errors.	American judicial system is highly efficient. Proposal: use of the participative model to marginalized categories.	Juror court system would be difficult to implement. Proposal: some cases could be put on trial using this system.	Difficulties in implementing the juror court system. Proposal: hybrid system, for cases where there is an emotional side.	Difficulties from an administrative and financial point of view. Proposal: a system with elements of both.	<i>Experts from USA declares a higher satisfaction towards their system that the Romanian ones. Difficulties in implementing the juror court system are perceived as numerous. Romanian experts are seeing the need for a hybrid system.</i>

4. Conclusion

Such a complex research can be done adequately only through as systematic inquiry, based on opinion pools and focus groups. However, a limited number of respondents from the two countries, not only key informants, but also experts, might bring an important contribution to the topic. Therefore, the results of this research can be considered valid and realistic.

The respondents from the two countries stated quasi-unanimously that the collective decision-making process, based on jurors, provides a better quality of the final decision. On for the civil litigations the decision of a single judge is considered to be more efficient in terms of costs and time. The juror court is a better choice, more appropriate, when it is about penal cases or those cases which require a multitude of opinions and avoiding risks related to policies.

Taking into account an aggregated view, we see that the juror court seems to have more advantages than disadvantages. The possibility of the corrupting or influencing the single judge is frequently discussed. The juror court is perceived as less corruptible. It is also better suited for multiple opinions and for finding a middle way. Therefore, the hypothesis that *taking judicial decisions in a juror court is more rational than taking decision by a single judge* can be defended partially, since the rationality of the decision of a juror court is also vulnerable (lack of legal education or unforeseen effects).

The answers led to confirming the hypothesis that *Romania is not prepared for implementing a juror court system*. Two of the Romanian experts estimated that, even if this system would be opportune for some cases, the implementation would encounter many difficulties related to costs and heavy administrative procedures, and people's mentality and the long period that would be required for such a system to be functional. Regarding the opinion of Romanian interviewed experts in this matter, the following fragment is relevant: *“Paradoxically, although it is a novelty, the juror system would be well received by the public. There is a general opinion that the judges as well as politicians, are corrupt or, on the contrary, totally intangible. Therefore, in the collective mentality, a juror system would represent the return to the justice of the people”*.