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Justification of court decisions as a form of communication with the public

ABSTRACT

The justification of a court judgment is a special kind of statement, which is a resultant of the procedural obligation imposed on the court on the one hand, and on the other – socially and culturally conditioned need to indicate the motives of decisions of a ruling nature taken against other entities. Unfortunately, it is noticeable that the addressees of court justifications are in some cases almost completely ignored and the creation of justification is treated only to meet the procedural requirements imposed by procedural law. Therefore, the article attempts to answer the question whether the justification of the court decision is an elementary component of the issuance of the decision and how does it affect communication – including judges relationship with the public? During the development of the article, the methods of analysis and criticism of the literature were used. The result of the study was to determine that in front of judges and the judiciary there is a challenge to regain public trust, which among others it can be improved by dint of proper communication via justifications of decisions.

KEYWORDS: *communication, justification, decisions, court, judge, court system, public, society.*

Introduction

Every decision of the court should be regarded as a special culmination of a certain stage of court proceedings, which should be understood as an

act of law enforcement issued by the judiciary established by the legislative authority. However, we cannot look at court decisions through the prism that judges are „mouth of the act", rather as a result of a procedural declaration of the will of the court and not only of the act (Gapska, 2010, p. 25). Court proceedings are usually the result of a dispute involving at least two parties, given to the judge. Is one of the examples of „interpersonal interaction, having a publicly settled course and institutionalized nature" (Stadniczeńko, 2008, p. 158). Judgment should be subject to some form of legitimacy, which must take place through fair visualization of the thinking process of ruling body amplifying the judgment in the justification. It has multiple roles, especially among professional representatives, wherein there should be an exhaustive, logical answer to the question: why such and not a different sentence was given (Pawlak, Stadniczeńko, 2015, p. 234). In Poland, almost all decisions must be justified, even in a short form. Therefore, it is assumed that the justification of the judgment takes two forms: oral – the court is limited to the essential reasons for the decision issued (in the courtroom) written – should contain fully exhaustive arguments that will confirm the correctness of the decision (Pawlak, Stadniczeńko, 2015, p. 239). The issue that ignited public opinion in recent years was undoubtedly the improvement of public confidence in the judiciary. Repair of this field will fail without proper communication of courts and judges with the rest of society. The resulting problem is not solvable at the level of legal act, as communication mostly depends on the judges themselves. The main complaints to the judges include: formalism, communication by „paragraphs", writing incomprehensible justifications for defendants which are actually created only for a higher court. For the majority of ordinary citizens, the lawsuit is an experience that affects the fact cause it concerns the area they are emotionally involved and face a person (judge) who has the opportunity to make a decision regarding their lives. However, should not misunderstand the problem that has arisen over the years. Changes in the relationship between courts and citizens is an action to improve communication with parties and witnesses. Such a chance really gives every hearing, during have to treat the parties in each case individually. For a judge, the case may be non-emotional and just one of many on the

day, but he must be aware that for the parties it is most likely the only case in the court that makes them very emotional. The culmination of these emotions will be a decision and its justification. Therefore, the article raises the question whether the justification of a court decision is an elementary component of the decision and how does it affect communication (including relations of judges) with the public?

I.

There is no doubt that a model decision, including a judicial one, may be a ruling, arbitrary or the effect of a more or less advanced consensual resolution of the dispute. As it is argued in the literature, "every court, whether "state" or "arbitrator", rules *ratione imperii* (and this empire may have a different genesis and scope), and justifies – *imperio rationis* (except that the selection of reasons may be less or more arbitrary, subjective or objective). Justification of court decision is therefore stretched between the argument of force and strength of the argument" (Łętowska, et al., 2015, online).

In literature, justification is considered to be an ambiguous concept – „just like the commentary or interpretation means both the process (action, activity) and its result. The interest in jurisprudence includes the difference between a verb and a noun. However, the semantic limit between justification and justifying is fluid, therefore, when examining one phenomenon, one must inevitably at least partly refer to the other. Regardless of whether the jurisprudence deals with issues, „whether" the decision is subject to justification, or the „how" it is to be done, or whether it focuses on the production itself or the reception of justification (not to mention that not every analysis can be lead from the perspective of duty or reality) – justification and justifying are joined together, creating a complex and heterogeneous phenomenon" (Rzucidło-Grochowska, et al., 2015, online).

In the literature it is noted that the term „justification" has numerous designations in legal language and in the language of law it is an acute name, convergent with a dogmatic approach, binding the *designatum* of the name with a document presenting the arguments of the law enforcement body, which contains a set of arguments for the decision (Kotowski, 2015, online; Jabłońska-Bonca, 2002, p. 223–224).

The methodology can distinguish three main types of ideal justifications (Rzucidło-Grochowska, et al., 2015, online). The first one is characterized by a „practical-commentary" attitude, which is primarily for those who make the justifications. The focus is mainly on the structure of reasoning elements of its content and to a lesser extent – the art of argumentation. From this perspective, justification is seen primarily as a „task to make up" – writing or control (e.g. in the case of a court of appeal). On the other hand, another approach assumes the „theoretical-structural" style, which aims to embed justifying and justifications in theory – not only legal, but also social, political and dogmatic. It is the most classic and usually closes within the typical methods of jurisprudence. Its result is a variety of classifying and analytical remarks, trying to penetrate to the essence of what the justification is, what are its tasks, creation standards and the framework in the legal order. The third type of justification is the „functional-empirical" type. Within this type of interest is to understand justification as a product of human thought, not limited to the issue of justification method nor to analytical and structural problems, more often reaching for interdisciplinary tools and more strongly emphasizing the need for a holistic approach. Each of these methods complemented each other, all of them expanding another part of our knowledge of justification and justification, discovering areas imperceptible from a different perspective – showing a slightly different picture of justification.

I. Rzucidło-Grochowska (Rzucidło-Grochowska, 2017, p. 65–71), distinguishes „justification techniques", which within the strategy also include some techniques emphasizing particular aspects of justification in both parts of the statement. The first is „ornamental setting up the utterance of doctrine and jurisprudence" (Newland, 1960, p. 26). It consists in citing in the justification views of the representatives of law and jurisprudence in order to support their own view of the court in the case – however, it is not related to the actual use of these statements in the court's own reasoning (Cross, 2010, p. 489 i n.). The second technique is the "technique of avoiding the obvious", which boils down to the *clara non sunt interpretanda* principle (Grzybowski, 2012, z. 9; Tobor, 2013, p. 24 i n.; Zirk-Sadowski, 2012,

s. 156–159). Another technique is "legitimization by quantity". It involves the citation of a large number of views of the jurisprudence and judicial decisions, similarly to the ornamental techniques, but in contrast, these references show a connection with the court's reasoning actually carried out (they became, for example, an interpretative argument in the decision-making process). Another technique is the technique of "concealing", it comes down to that the author of justification omits certain elements – especially claims or pleas of the parties, so that they do not have to refer to them in the legal part. The fifth technique specified in the literature is the technique of „targeted display of content in the justification", which consists in highlighting in the justification those elements that speak in favor of the decision chosen by the court and omitting the opposite (Schmidt, 2012, p. 11 i n.; Moss, 1991, p. 106). The last one is the technique of "control justifications", which consists in constructing a legal part in two ways, depending on the preferences of the author of the justification and circumstances accompanying the settlement of the case.

In this respect, attention should also be paid to arguments, which are, after all, an inherent element of justification. L. Leszczyński notes that "the judicial justifications give the greatest importance to the formulation and development of arguments concerning linguistic rules, especially semantic ones. This usually refers to the language of the regulations, although with the increase in the role of jurisprudence, more attention is paid to the meanings of expressions formulated in separate theses or text of justifications. Similarly, the courts do not avoid the developed systemic-structural argumentation, but the analysis of the narrower aspect of this perspective – the systematics of the normative act – prevails. Statements about the vertical structure of the system are not uncommon, which cannot be said about referring to the analysis of horizontal structure. Apart from higher courts, systemic-axiological or functional and functional arguments are quite rare, especially if they are to fulfill the function of arguments determining the outcome of the reconstruction of the norm (their role is strengthened by the participation of other decisions and non-system criteria as sources of reconstruction)" (Leszczyński, 2015, online).

For many years, the conviction that meeting the formal premises of a fair trial is a guarantee of convincing the parties about the justice of the process. Nothing could be more wrong. Citizens judge the judge in terms of his impartiality, after whether he treats them with respect (also on the level of justification). Society evaluate the judge and his impartiality by how he treats them with respect (also on the level of justification). Thus, the level of the judge's work is not only confirmed by the correctness of his actions from the point of view of their compliance with the procedural rules, but also, and especially by the culture of judging. The language of the judge, both in speech and in writing, should be correct, precise and concise, clear and understandable also for people without legal education (Bladowski, 2013, online).

II.

Focusing on the national judiciary so far, we cannot ignore the international aspect. The obligation to justify international judicial decisions in the sense of largo and the basic rules defining the scope and methods of justification developed recently, because only at the turn of the 19th and 20th centuries – and for many centuries the indication in the ruling clearly stated the basis of the decision was an exception rather than a rule (Zaręba, 2015, online; Abi-Saab, 1998–1999 p. 921; Kocot, 1966-1967, p. 247).

S. Zaręba rightly notes (Zaręba, 2015, online) there is currently a relatively large number of organs of a judicial and quasi-judicial nature, usually independent of each other, operating on the basis of separate and often very different procedural rules. This state of affairs obviously directly affects the structure and nature of issued judgments. One common method of their editing by appointed international bodies cannot be indicated, which results in the fact that there is no uniform model of justification among international judicature. Nevertheless, the provisions of the Statutes and Regulations of the Permanent Court of International Justice and his successor – the International Court of Justice, regarding he justification of their judgments regulate basic issues, in fact specifying what their justifications should look like, has been left to the practice of both Courts. Due to their international

character, the manner of constructing their decisions ultimately took the form of a resultant method of creating justifications in common law countries and in the continental legal tradition, which often led to communication misunderstandings resulting from the assessments presented by these Courts. On the other hand, the growing importance of basic solutions in this area adopted by the International Court of Justice that affect the practice of other international courts can certainly be seen.

Naturally, an attempt to capture the ideal justification will always have to do with a certain evaluation sphere and the emerging question: what really means perfect, correct or proper justification, and which can be considered improper? This question can be answered by analyzing the justification from its basis, starting from the problem related to the philosophical law approach, the concept of interpretation, which the author operates or implemented by its theory, the way of understanding the law, its objectives and above all, its function and its essence in human culture (Kotowski, 2015, online; Zieliński, Ziembiński, 1988, p. 6).

III.

The proper standard of the court session and its courtesy may also be disrupted by representatives of the press, radio and television as a result of improperly performing their professional functions. The court, allowing representatives of press, radio and television to record image and sound, should also determine the conditions for performing these activities without hindering the conduct of the session and without disturbing justification of court decision. In any case, the participation of mass media cannot turn a courtroom into a theater or a press conference, but it does imply an information blockade. (Samborski, 2013, online)

For fulfilling the preventive and educational purposes of the court meeting, the manner of announcing the ruling and the chairman declaring the main reasons for the settlement have a significant meaning (including in the area of shaping the awareness and legal culture of the society).

The verbal motives of the verdict should be convincing and understandable for every listener who is in the courtroom. However, the motives given by the judge should explain not only the factual and legal

basis of the decision, but also its social aspects (Samborski, 2013, online). Substantive accuracy of the court case decision and its legal basis as well as socio-educational aspects should be discussed by the judge in the verbal motivation of the judgment in a comprehensible and at the same time convincing way for both the parties and the audience present in the courtroom (Bladowski, 2013, online).

Turning to the solutions expressed in statutes in relation to the formulation of justifications, I would like to focus on the civil aspect in Polish legislation. According to art. 326 § 3 k.p.c., after the verdict is announced, the presiding judge or the judge-rapporteur verbally presents the main reasons for the decision. In turn, contained in art. 328 § 2 k.p.c. the legal norm defining the mandatory content of the justification is unambiguous. It follows, that the justification should contain: an indication of the factual basis, i.e. facts which the court found to be proven, evidence on which it based and reasons for which other evidence refused to be credible and evidential, as well as clarification of the legal basis of the judgment with reference to provisions of law. This regulation undoubtedly has (as has already been emphasized) an important social dimension, because this way of using it is one of the important factors that shape the citizen's attitude to justice. The holistic implementation of these requirements should lead to the addressee of the court decision justifying why his case has been determined in a certain way. It should be remembered that the addressee is basically a party or participant in the proceedings, so the way of expressing the statement should be clear and understandable. There can be no situation that the justification is understandable only for the professional representative of the party or the court of appeal. Of course, it is necessary for the representative also to present, duly explain and discuss his justification with his client, however it seems justified to postulate that the trial court should consider who is the basic recipient of the justification.

J. Gudowski emphasizes that "preparation of justification of a judgment is a jurisdictional activity organically related to the decision contained in the operative part of the judgment; it is an integral part of it, attending various procedural and non-procedural functions. In addition to the control,

interpretation, jurisprudence, preventive and social functions justification also have a very important subsidiary function in determining the scope of material validity of the decision and its significance of *res judicata* (*vide:* judgment of SN, 29.03.2006, II PK 163/05, OSNP 2007, nr 5–6, poz. 71; judgment of SN, 9.04.2015, II CSK 392/14, LEX nr 1729688; SN order 18.11.2015 r., III CSK 237/15, OSNC 2016, nr 4, poz. 52 z glosą A. Łazarskiej, OSP 2016, z. 5, poz. 43)". (Gudowski, 2016, online).

An interesting comparison was made by the Supreme Court in the justification of the judgment (5th June 2014, Ref. Act I PK 311/13), in which it stated that the written justification should be exhaustive, and therefore may be more extensive and contain more legal arguments than oral justification, because only the main reasons for the decision are orally given after the verdict is announced. The Supreme Court also pointed out that the written justification may differ from the oral justification in details, but it should not be completely different. In other words, the written justification should not be significantly different from the verbal, including the fundamental reasons for decision, as regards the assessment of the evidence, established facts and legal argumentation.

At this point, should ponder that art. 328 § 2 k.p.c. does not specify the required ratio or mutual relations between individual parts of the hypothetical justification. Of course, the size or proportions of the justification is not a criterion for assessing legitimacy, allegation of violation of art. 328 § 2 k.p.c. but it can lead to the lack of proper communication with the society through its conciseness of understandable argumentation.

Summary

Nowadays, judges are faced with a very serious task of restoring public trust, which will determine the attitude of the majority of society to themselves – but the motivation for its restoration should not be to care for the image of judges and the judiciary. One of the essential elements that has been discussed for many years is also transparency and reliability of justifications. The profession of a judge is associated with a certain burden of

responsibility related to education and public assistance. A. Peyrefitte notes that "judiciary is a creation of people and these people should be constantly supported to reach a level equal to the heights of their duties" (Peyrefitte, 1987, p. 127). For the *de lege ferenda* postulate, it can be considered that the repair should be started from the implementation into the program of law studies several subjects related to the practical and theoretical training of communication skills with other people. Then the system of training and evaluation of judges may be changed, e.g. during a judge's traineeship and during the further career, mandatory (periodic) workshops with trainers of proper communication, psychologists may be considered. Often the special importance of the coherence of verbal and non-verbal messages is often forgotten, which also affects the direct reception of the judge. Despite numerous deficits in this aspect, it can be assumed that the awareness of judges is slowly increasing, especially in the aspect of communication with the public. However, only a planned strategy to reformulate the training program of judges can bring a real change in a broader perspective. The use of this potential is quite a challenge because it requires changes in certain patterns and habits, and often actions against innate intuition. The ability to communicate in an understandable way with the public can be learnt, especially when it comes to oral and written justification. Especially, this is one of the few elements of the judicial system that depends exclusively on the judges themselves.

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