21st opinion, of 2 December 2022, of the Ibero-American Commission on Judicial Ethics on 'Judicial reasoning and the language of judicial decisions from an ethical standpoint'. Reporting judge: Commissioner José Manuel Monteiro Correia

I. Introduction

1. The obligation to provide grounds for judicial decisions is intended to eliminate arbitrariness in the administration of justice. Since the court administers justice on behalf of the people, judicial reasoning serves to justify the court's decisions and respect the mandate it has been given by the people for this purpose. Judicial reasoning, therefore, ultimately plays a role in the democratic legitimation of the judiciary.

2. Since this is the function of judicial reasoning, the language used is vital for its fulfilment. The degree of adequacy of the language used will determine the degree of adequacy of the reasoning; it may sometimes even entail its negation.

3. In this context, the duties to state grounds for and ensure clarity in judicial decisions are structural elements that support the credibility and quality of justice provided to citizens and, therefore, constitute real ethical values that must be upheld and respected by judges in the daily exercise of their duties.

4. At the 12 September 2022 virtual meeting of the Ibero-American Commission on Judicial Ethics, the Commission decided, on its own initiative, to issue an opinion on the different aspects related to judicial reasoning and the language of judicial decisions, from an ethical standpoint.

5. The Commission intends firstly, to analyse the rationale behind the legal principle of judicial reasoning; secondly, to address the importance of the language used as an indicator of the quality of the decision taken; and finally, to determine the ethical dimension of a judge's duty to state the grounds for their decisions clearly.

II. Stating the grounds for judicial decisions: a duty and a legal imperative

6. As a starting point, we can define *judicial reasoning* as the logical and rational externalisation of the justification for the court's decision in a given judicial decision. More specifically, it concerns justifying the reasonableness of the judicial decision, taking into account the circumstances of the specific case and its adherence to the current legal framework.

7. The obligation to state the grounds for a judicial decision derives from the State's duty to prevent arbitrariness in the administration of justice. Its origin, especially in continental legal systems, can be found in the French Revolution, as a response to the distrust

harboured toward the judges of the *Ancien Régime* who, as substitute executors of royal power and as mere mouthpieces of the law – '*la bouche qui prononce les paroles de la loi*', as Montesquieu claimed – did not have to justify their decisions.

8. Since then, the courts, as organs of sovereignty, according to Paulo Saragoça da Matta, by ceasing to be *'seats of power'*, have become '*vehicles for the formation and manifestation of the will of the sovereign,* that is, of the people'. Thus, it is only through an explanation or justification – or effectively, a statement of the basis – of why a decision was taken in the way it was taken, that the 'organ of the State or its incumbent' can continue its mission and fulfil its 'mandate from the *sovereign*'[1].

9. The duty to provide grounds for judicial decisions derives, therefore, from the principle of the democratic legitimacy of the judiciary and, as Gomes Canotilho and Vital Moreira point out, it is a 'guarantee that forms part of the very concept of the democratic rule of law'[2].

10. Its enshrinement in law tends to be universal and transversal in modern legal systems. Firstly, we can examine it from the standpoint of international law. While not expressly provided for, it is a logical and teleological consequence of the provisions of Article 10 of the *Universal Declaration of Human Rights,* Article 6 of the *European Convention on Human Rights,* Article 14 of the *International Covenant on Civil and Political Rights,* Article 8 of the *American Convention on Human Rights* and Article 47 of the *Charter of Fundamental Rights of the European Union*. All these precepts are underpinned by the fundamental idea that everyone has the right, in full equality, to a *fair trial,* and one of the components of a *fair trial* is the judge's clear and unequivocal disclosure of the reasons that guided their decision.

11. It is also enshrined in the national law of the majority of States. We are witnessing the very *constitutionalisation* of the duty to state grounds, which is now seen as the counterpart of a genuine fundamental human right. From the outset, it is directly and expressly enshrined. By way of example, Article 205.1 of the Constitution of the Portuguese Republic provides that '*court decisions which are not merely procedural shall be reasoned in the manner prescribed by law'*. Article 122.3 of the Spanish Constitution, meanwhile, provides that '*judgments shall be reasoned'.* While this provision is limited to judgments, it follows from Article 24, which enshrines the principle of effective legal protection, as the Spanish Constitutional Court has stated, that '*the obligation to state grounds (...) is part of the fundamental right of defendants and litigants to effective legal protection* '[3]. Mention should also be made of the Constitution of the Federative Republic

[1] See 'A Livre Apreciação da Prova e o Dever de Fundamentação da Sentença' - *Jornadas de Direito Processual Penal e Direitos Fundamentais*, Lisboa, 2004, pp. 261-263.

[2] See *Constituição da República Portuguesa Anotada*, Vol. I, Coimbra, 1993, p. 798.

[3] See Judgment 24 of 14 July 1982 in Ciro Milione, 'El derecho a la motivación de las resoluciones judiciales en la jurisprudencia del Tribunal Constitucional y el derecho a la claridad: reflexiones en torno a una deseada modernización del lenguaje jurídico' (*'The right to judicial reasoning in judicial decisions in*

of Brazil, in which Article 93, paragraph IX states that '*all judgments made by the organs of the judiciary shall be public and all decisions must be reasoned, subject to penalty of nullity (...)'.* This is also the case with the Constitution of the Dominican Republic, in which (while restricted to criminal law) Article 40.1 provides that '*every person has the right to liberty and security'* and that no one may be '*arrested or deprived of their liberty without a reasoned and written order from the competent judge, except in the case of* flagrante delicto'.

12. With this process of constitutionalisation, the duty of judicial reasoning becomes the highest expression of the function discussed above, i.e., to serve as a guarantor to society of control over the powers of the State and, at the same time, to legitimise the exercise of judicial power. In the same vein, the Inter-American Court of Human Rights has stated that '*the duty to state grounds is a guarantee linked to the proper administration of justice, protecting the right of citizens to be tried for the reasons provided by law, and giving credibility to the legal decisions adopted within the framework of a democratic society*'[4].

13. Judicial reasoning, according to Michele Taruffo, has two functions: one, of an *intraprocedural* nature; and the other, of an *extraprocedural* nature [5].

14. The first function is linked to proceedings and directed at the court and the parties. Firstly, it aims to guide judges in their decision-making process. By imposing on judges the duty to state grounds for their decisions, it encourages them to expand their analysis, reflection and reasoning and obliges them to exercise their decision-making powers responsibly. In the case of collegial deliberation, the members of the court undertake to reflect and debate, thus ensuring that their decisions do not result in a mere sum of opinions. Secondly, it is aimed at the parties to the process. By making the judge responsible for stating the grounds for their decision, it is intended that the judge's logical and rational reasoning should persuade and, if possible, convince the parties of the reason for their decision. It is not a question of seeking their agreement with the decision itself, but of enabling them to understand the logical and rational process underlying the decision. Thirdly, it allows for review by a higher court. By stating the grounds for their decision, the judge allows the parties to understand it, which in turn enables them to react when they disagree with it. It also allows the court of appeal, in light of the reaction of the party in disagreement, to review the decision.

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the jurisprudence of the Constitutional Court and the right to clarity: reflections on the modernisation of legal language'), available at https://dialnet.unirioja.es/, p. 174.

[4] See Case of Apitz Barbera et al. v. Venezuela, 05/08/2008, Medina, García, Ventura, Franco, May Macaulay, Abreu, p. 78, in 'Enfoque actual de la motivación de las sentencias. Su análisis como componente del debido proceso' ('*Current approaches to judicial reasoning in decisions: their analysis as a component of due process*'), *Revista del Derecho*, No. 21, p. 77, available at https://revistas.ucu.edu.uy/.

[5] See 'Note sulla Garanzia Costituzionale della Motivazione', *Boletim da Faculdade de Direito,* Year 55 (1979), p. 31 onward, in Marta João Dias, 'A fundamentação do Juízo Probatório - Breves Considerações', *Revista Julgar* , 2011, No. 13, pp. 181-184.

15. The extraprocedural function, meanwhile, aims to guarantee the legitimacy of the decision, and is thus aimed at society in general and, to some extent, public opinion itself.

16. Judicial reasoning makes it possible, according to Michele Taruffo, 'to monitor, in each case, whether principles such as legality or *due process* have been effectively observed'[6]. In addition, 'it serves the function of legitimising the decision, since it demonstrates that it follows the criteria that guide the legal system and the work of the judge'. In the opinion of Perfecto Andrés Ibáñez, a judge's duty to state grounds allows the 'community [...] to understand the criteria followed by the judge and assess their legitimacy, reasonableness and acceptability'[7].

17. Underlying this function of judicial reasoning, therefore, is the idea of convincing the community that the decision is not the result of the judge's free will, but of its adherence to the current legal framework, with the consequent recognition of its benevolence and legitimacy.

18. In short, the duty to state grounds represents, in its origin and essence, an undeniable civil victory in recent centuries, realised in the transfer of the power of control over the exercise of the administration of justice to the people, who are both the beneficiaries and the custodians of this power. It also guarantees the externalisation of the internal logic of the process that leads to the court's issuance of the judgment and, consequently, to the rationality of the decision resulting from that judgment. We can say, therefore, as Henriques Gaspar points out, that 'judicial reasoning, which also constitutes communication, provides the means to confront the act of judging and its assumptions, which allows the construction of the instrument of control. And if no power of democracy is exempt from scrutiny, the external control of the judge in the act of judging can only be realised by rational, logical, and complete analysis of the bases of their decision'[8].

III. The language of judicial decisions: a genuine right to clarity and comprehensibility

19. Reasoning, as a mechanism of logical and rational externalisation of the grounds for a judicial decision, is, as we have seen, a form of *communication*. The question of the *language* and the *characteristics of the language* to be used in judicial reasoning is therefore related to the issue of reasoning itself; the degree of adequacy of the language used will determine the degree of adequacy of the reasoning and may sometimes even entail its negation.

[6] See *Paginas sobre Justicia Civil*, Marcial Pons, Madrid, 2009, pp. 516-517, Acórdão do Supremo Tribunal de Justiça 17-01-2012, available at www.dgsi.pt.
[7] See 'La profesión de juez, hoy' ('A judge's profession today'), *Revista Julgar*, 2007, No. 1, p. 37.
[8] See 'La justicia en las incertidumbres de la sociedad contemporánea' (*'Justice and the uncertainties of contemporary society'*), *Revista Julgar*, 2007, No. 1, p. 29.

20. Of all the different social sciences, the law is the most concerned with and dependent on language in order to exist, as well as to be studied and applied. Its enshrinement in law, its systemic and epistemological analysis, its practical and jurisprudential application and, in addition, its use in everyday life by citizens constitute phenomena that have both their origin and their vehicle of transmission in language. For this reason, we can state, as Maria da Conceição Carapinha Rodrigues points out, that the law constitutes the 'most linguistic of all institutions'[9].

21. In law, there are several types of discourse, namely: legal discourse; dogmatic and scientific discourse; practical and judicial discourse; and common legal discourse. They are all different in their origin, in their conception and in the purposes they pursue. In addition, they are all different because of the type of language they use in their production and/or application.

22. Consequently, legal discourse, which aims to *predict* the reality that it intends to encompass and the *provisions that it intends* to establish for that reality, is naturally abstract in its conception, generic in its scope and simple and concise in its expression, insofar as it can be understood by ordinary citizens. Dogmatic and scientific discourse, on the other hand, which is oriented toward the analysis, systematisation and understanding of law as a science and which, therefore, has an epistemological dimension, is by nature not only more developed and dense in its expression but, above all, more technical and complex, being practically inaccessible to the lay person. Judicial discourse, meanwhile, whose main purpose is to apply the law to specific cases in real life, is consequently more practical in its realisation and presentation, and therefore requires greater levels of clarity and intelligibility. Finally, common legal discourse, associated with current social use, is simple, lacking technical and scientific rigor and characterised by the use of common words, disconnected from the technical or legal concepts used in these other types of discourse.

23. In this opinion, our interest lies in judicial discourse and its associated language, namely, *judicial language*. As we have underlined, this must be guided by criteria of more marked clarity and intelligibility, especially adapted to the characteristics and sociocultural backgrounds of those it serves.

24. This requirement is derived from the constitutional framework in force in most democratic states under the rule of law. Under the terms of Article 202.1 of the Constitution of the Portuguese Republic, the courts administer justice on behalf of the people, who are thus both the source of legitimacy for the work of judges and the beneficiaries of this work.

[9] See 'Discurso Judiciário, Comunicação e Confiança', in *O Discurso Judiciário, A Comunicação e a Justiça*, which includes texts relating to the 5th Annual Meeting of the Higher Council of the Judiciary, Coimbra, 2008, p. 34.

25. As Rui do Carmo has stated, between the people and the courts, there is 'a *democratic relationship'*, which will be all the more so if citizens are informed citizens and understand, irrespective of the type and level of information, the justice that is administered'[10].

26. As a result of this 'democratic relationship', there is a particular need for clarity and comprehensibility in the language used by the courts in their discourse, without which the essence of judicial power, within the architecture of the powers of the State, will be definitively called into question.

27. There is currently much debate on what should constitute the characteristics of judicial language. It is well known that the language used in court decisions is often characterised by its particular complexity and, at times, ambiguity. As Maria da Conceição Carapinha Rodrigues has stressed, its negative aspects include 'its excessive verbosity, its seeming redundancy, the excessive length of some sentences and the complex syntactic structure of its clauses', which together result in 'long-winded, high-toned and often confusing language'. This is exacerbated by the extensive use of technical terms, long words and phrases, and even by excessive scholarship, with the use of Latin words and multiple quotations, which may often leave judicial discourse virtually unintelligible[11].

28. What is more serious still is that these characteristics, which are frequently associated with judicial discourse, are often considered a means of consolidating power. It is a common assertion that the best way of preserving class privileges is to act in ways which are opaque and obscure. Yet this is not only an ineffective means of administering justice, it poses particular risks to the credibility of the judicial system itself, given the distrust and suspicion it generates about the quality of the exercise of justice.

29. In the light of such concerns, there are numerous initiatives aimed at promoting a judicial linguistic culture marked by clarity and intelligibility crosscutting the different legal systems, especially in Europe and the United States.

30. By way of example, Rui do Carmo has drawn attention to *Council of Europe Recommendation* No. R (81) 7 on measures facilitating access to justice, according to which '*States should take measures to ensure that all procedural documents are in a simple form and that the language used is comprehensible to the public and any judicial decision is comprehensible to the parties*'[12]. The same author also refers to *Council of Europe Recommendation* No. R (94) 12 on the independence, efficiency and role of judges, according to which judges' responsibilities include the duty '*to give clear and complete reasons for their judgments, using language which is readily understandable*'.

[10] See 'Concisión, Comprensibilidad, Seguridad y Rigor Jurídico - Ingredientes del Lenguaje Judicial', in *O Discurso Judiciário, A Comunicação e a Justiça*, which includes texts relating to the 5th Annual Meeting of the Higher Council of the Judiciary, Coimbra, 2008, p. 60.
[11] See *op. cit*., pp. 39-42.
[12] See *op. cit*., p. 63.

31. Alongside these recommendations, other measures of greater scope have been implemented. Mention should be made of the programme launched at the beginning of this century in Belgium, called '*Pour une Justice en Mouvement',* which, according to the same author, included two projects. Starting from the premise of the '*complexity of judicial language as one of the greatest obstacles to citizens' access to justice',* these consisted, on the one hand, of a debate on '*better access to justice for citizens by improving the readability of judicial documents on criminal matters*' and, on the other, '*speaking the law and making it understandable'*.

32. In the Netherlands, there is a well established 'plain legal language movement', in which context the courts have been particularly concerned about their commitment to using language which is accessible to the average citizen. According to Iris van Domselaar, a national criminal law project was launched in 2004 to improve communication between the criminal courts, the parties to the procedures and society at large, through clearly drafted court judgments. This type of initiative was subsequently replicated at an individual level by various courts, while the Dutch Supreme Court recently committed to using '*plain legal language*', which, among other aspects, entails the avoidance of Latin words and expressions and the use of short sentences. As of 2017, an annual prize has been awarded for the best 'plain legal language ruling', with the aim of encouraging judges to write clearly and in a way that is accessible to ordinary citizens[13].

33. In Latin America, according to information provided by Maximo José Apa, the initiative implemented by the Peruvian judicial system has led to the publication of a '*Judicial Manual of Clear and Accessible Language'.* Similarly, although in another context, Brasilia's '*100 Rules on Access to Justice for Persons in Vulnerable Situations'* promote mechanisms aimed at the most vulnerable to enable them to understand the judicial decisions that affect them[14].

34. Mention should also be made of the '*Declaración de Asunción - Paraguay*', adopted at the XVIII Ibero-American Judicial Summit, held between 13 and 15 April 2016. Annex 13 of the Declaration includes guidelines on *clear and accessible language*, prepared by a working group coordinated by the Kingdom of Spain and Chile. Paragraph 63 of the Declaration included the following consideration, clearly related to the subject of this discussion: *'We affirm that the legitimacy of the judiciary is linked to the clarity and quality of judicial decisions, and that this constitutes a genuine fundamental right of due process; because of this, we understand that it is essential to use clear, inclusive and non-*

[13] See 'Plain legal language by courts: mere clarity, an expression of civic friendship or a masquerade of violence? *The Theory and Practice of Legislation*, pp. 93-111, available at https://doi.org/10.1080/20508840.2022.2033946.
[14] See 'El lenguaje judicial y el derecho a comprender' ('Judicial language and the right to understand'), pp. 165-166, available at http://www.derecho.uba.ar.

discriminatory language in court decisions and easily understandable judicial reasoning'.

35. All these initiatives (alongside many others that could be mentioned) clearly demonstrate the abiding importance of this issue at a global level, given that, as we have seen, the legitimacy of the judiciary is at stake. These concerns have, in fact, been enshrined in some legal texts, and the Portuguese case is a good example of this. In this respect, Article 9-A of the Code of Civil Procedure provides that '*the court, in all its actions and, in particular, in summons, notifications and other communications addressed directly to the parties and to other natural and legal persons, will preferably use clear and simple language'*. Similarly, paragraph 1 of Article 86 of Law No. 147/99 of 01/09, establishing the system for vulnerable children and young people, stipulates that '*the process must be intelligible to the child or young person, taking into account their age and level of intellectual and psychological development'*.

36. That said, it must be recognised that, despite these attempts by the courts to adopt a *clear and accessible culture of judicial language*, there is still no absolute enshrinement, particularly in the constitutional frameworks of the world's legal systems, of citizens' autonomous right to clear and comprehensible judicial decisions.

37. The issue is neither settled nor easy, with the defence of clarity in judicial decisions often confused with the advocacy of superficiality, insubstantiality and disdain for the technical aspects that such decisions, as vehicles for exercising the law, must include and respect.

38. Be that as it may, and considering the generality of the legal systems taken as a whole, duly linked to all the principles, rules and instruments mentioned above, we believe that it is not only possible but it is also necessary that clarity and comprehensibility in judicial discourse be recognised as a true *right* of citizens or, at least, as a *value*, axiologically considered, that must be adhered to by the courts in the daily exercise of their functions.

39. In fact, since the courts are obliged to *state grounds* for their decisions, only judicial reasoning which, both in fact and in law, is clear and appreciable to citizens will properly fulfil the function of legitimising the judiciary.

40. The *right of access to justice* or the *right to effective legal protection*, both fully enshrined in the constitutional texts of the majority of democratic states under the rule of law, naturally presuppose that citizens wishing to have recourse to the courts should be duly informed and aware of the course that they need to follow.

41. It should also be remembered that since the courts administer justice on behalf of the people, only with clear and understandable justice in the eyes of the *people* - its custodians and beneficiaries - will this mandate be properly fulfilled.

42. At the same time, the function of law as a social science intended to regulate human and social relations will only be truly fulfilled if one of the forms - perhaps the main form - of its application is respected and accepted, i.e., the judicial decision, through which 'the law speaks'. Yet this is only possible if it is written in such a way that it leaves citizens in no doubt as to not only the content in itself but also its underlying benevolence.

43. Consequently and ultimately, *citizens have a right to clarity and comprehensibility in judicial decisions*, with the consequent duty of the court to respect it. If such a right did not exist, there is at least a *value*, axiologically considered, that must be upheld and adhered to by the judge who makes the decision.

III. Judicial reasoning and judicial language from an ethical perspective

44. The duties to provide grounds for and clarity in judicial decisions are closely related to the fundaments of the work of the judiciary. The courts therefore have a special responsibility to comply strictly with these duties, or risk jeopardising their democratic legitimacy.

45. In this context, the duties to state grounds for and ensure clarity in judicial decisions are the essential cornerstones of the credibility and quality of the justice delivered to citizens, which must always be considered true ethical values to be upheld and adhered to by judges in the daily exercise of their duties.

46. This is recognised by multiple instruments that regulate the principles and ethical values that should guide the exercise of judicial functions. We will first consider the *Ibero-American Code of Judicial Ethics*. Our Code devotes the third chapter to the *reasoning* of the judicial decision, the value of which is recognised from the outset. Article 18.1 states that '*the obligation to state the grounds for decisions is intended to ensure the judge's legitimacy, the proper functioning of the system for procedural challenges, and the proper control of the power invested in judges and, ultimately, the justice of judicial decisions'.* The value assigned to judicial reasoning in the Code is such that Article 20 expressly states that a decision made without stating grounds is, in principle, an *arbitrary decision*, only acceptable to the extent that an express legal provision allows it. The obligation to state grounds is of the *utmost importance* when, in accordance with Article 21, a decision *withdraws or restricts rights* or when a judge exercises *discretionary powers*.

47. In addition to judicial reasoning in the strict sense, the Code also ascribes ethical value to the clarity and comprehensibility of the reasoning. While Article 19 states that reasoning entails expressing, in a clear and orderly manner, legally valid reasons that can justify the decision, Article 27 goes on to underline that these must be expressed in a '*clear and precise style, without resorting to unnecessary technicalities, and with conciseness that is compatible with the complete understanding of the grounds stated'.*

48. The *Statute of Ibero-American Judges* aligns with this position, recognising judicial reasoning, in Article 41, '*as an inescapable obligation for judges, as a guarantee of the legitimacy of their function and of the rights of the parties, to duly justify the judgments that they make'.*

49. The duties to provide grounds for and clarity in judicial decisions also derive from principles such as *competence* and *diligence*, which together constitute the sixth value of the *Bangalore Principles of Judicial Conduct* and the second value of the *Ethics Charter for Portuguese Judges*. These values are closely related to the preparation, dedication and professional manner of the judge in the exercise of their function. They are therefore required to strive to obtain the knowledge that will support their decision-making process in a robust and coherent manner. The commentary on this value included in the *Ethics Charter for Portuguese Judges* is particularly discerning in this regard, underlining that '*a 'diligent' judge must base their decision on discourse that is intelligible to those they address, using clear and concise language, so that they can understand not only its scope, but also the logical and argumentative process that constitutes the decision, even when they disagree with it*'.

50. Providing a comprehensive statement of grounds and expressing it clearly constitute factors that guarantee the quality of justice, reinforce the credibility of the system and public trust in the decisions of the courts and, as such, they are true ethical values that should guide judges in their daily work.

IV. Conclusion: the conditions of compliance with the duties of judicial reasoning and clarity

51. It is important here to point out some guidelines for judges to follow in fulfilling their duties to provide grounds for and clarity in judicial decisions. In this respect, we should begin by stating that the clear reasoning of a decision should not depend on any previously determined plan or model. According to Rui do Carmo, we should follow, 'neither forms nor formulas that compel us to make life uniform and engulf differences and stereotype and encrypt discourse'[15].

52. The starting point for discerning judicial reasoning is and always will be the judge as an individual, who, with their own particular characteristics and manner and, above all, independence, will find the best way to externalise the rationale for their decisions. There are, however, pathways that should not be overlooked, along which, while safeguarding the judge's own individuality, there are parameters of conduct that must be observed.

53. Thus, *reasoning* must be *authentic from the outset*. In other words, it must faithfully portray the process by which the judge forms their conviction (in terms of the facts) and reflect the arguments that substantiate their legal understanding (in terms of the law). As

[15] See *op. cit*., p. 65.

Marta João Dias affirms, reasoning 'must consist in the externalisation of the real, rational and decisive causes that underpin the conviction of the person who decides' and not in 'an invented set of causes (...) which do not correspond to the conviction held'[16].

54. It must also be the result of a *rational and thorough appraisal* that takes into account all the relevant facts and evidence (in terms of the facts) and all possible decisions in light of the interests at stake (in terms of the law).

55. It is also important that it is not only *persuasive and convincing*, assuring the parties of its underlying benevolence, but also *exhaustive and illuminating*, encompassing not only all the means of evidence presented, but also all the questions that must be resolved, in the name of the *doctrine of completeness* which should guide it[17].

56. As regards the clarity of the decision, this is ultimately related to the judge's position with respect to the party to whom the decision is addressed. The decision, which seeks to resolve a conflict and is based on a specific, real-life case, is addressed to the parties or, in a broader sense, to society and not to the judicial system or their fellow judges. When drafting their decisions, therefore, judges must position themselves in such a way that their discourse effectively addresses the person intended. In other words, the choice to draft a decision in a clear and understandable way will be, from the outset, according to Rui do Carmo, 'a matter of attitude' on the part of the judge[18].

57. Everything else will be a logical consequence of the necessary clarity and comprehensibility of the judicial decision, that is, its ability to be understood by the citizen to whom it is addressed.

58. The matter that is being decided is certainly relevant when determining the language to be used in the decision, since its characteristics, the nature of the issues concerned and the sociocultural status of the parties involved in the process may condition the use of specific aspects of discourse.

59. It must also be taken into account that the clarity of the language will always and insurmountably be limited by the necessity of legal rigor; if this is disregarded, the result will be more than merely a text which is incomprehensible to the citizen but rather a superficial or opaque decision that the citizen will not accept and will disregard.

60. The essence of clarity and comprehensibility of discourse will always, however, derive from logical, easily intuited properties. These can be grouped and summarised, according to Ángel Martín del Burgo y Marchán, as follows: 'naturalness, propriety, clarity, conciseness, precision'[19].

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[16] See *op. cit*., p. 189.
[17] See, in relation to this principle, the Judgment of the Supreme Court of Justice of 17 January 2012, available at www.dgsi.pt.
[18] See *op. cit*., p. 65.
[19] See *El lenguaje del Derecho*, Bosch, Barcelona, pp. 198-211, in Rui do Carmo, *op.cit*. p. 65.