Twenty-second decision, of 20 February 2023, by the Ibero-American Commission for Judicial Ethics on the ethical duty to briefly and concisely justify judicial decisions. Reporting judge: Commissioner Octavio A. Tejeiro Duque

I. Introduction

1. The correct functioning of the system for administering justice requires judicial decisions that are intelligible, brief and concise, meaning that a fundamental focus on quality over quantity is required. This ensures effective judicial protection that enshrines the guarantees of defence, confrontation and information that is clear, appropriate, sufficient and comprehensible, as all litigants have the right to understand the decision that resolves their litigation. Therefore, it is only when the decision is communicated to them and they are able to understand it that they are able to determine whether they agree with it. Thus, it is here where the need to respect the right to understand, to expression and opinion arises—which cannot be exercised without clear and adequate information—as well as the right to contestation, confrontation and trial.

2. In many cases, judicial decisions are cluttered with rhetorical, ambiguous, dense and imprecise arguments, making them difficult to understand and creating unease among users, who cannot easily grasp their fundamental argument and who must resort to deep intellectual effort or seek technical advice to decodify the fundamental points therein.

3. In this regard, recent studies of import have warned that "***Experienced judges report that*** *less than one quarter of the documentation in a file is pertinent to the decision of the case. The volume of proceedings and* ***the length of texts is such that****, even in the case of a document classified as essential,* ***they are forced to "skim" through the text****"3.* ***Judges, in turn, give lawyers a taste of their own medicine by issuing kilometre-long judgments***"[1]. These studies have also shown that "*Another critical point in court judgments is their excessive and meaningless verbosity, largely the product of the issues described, which makes clear and concise ideas all but impossible without resorting to lengthy and otherwise redundant rationales*"[2].

4. Such conduct does not meet the needs nor the challenges posed by contemporary society because both information technologies and the speed with which legal subjects interact require that the judiciary make decisions with high quality standards that inspire confidence in users, other officials of the judiciary and society as a whole in general. To make this important aspiration a reality, concise yet reasoned decisions are required, i.e. they must be brief and reflect a weighted study of the evidence that supports the parties' arguments, in such a way that the argumentative discourse of the judge is timely, sufficient and capable of preserving the cross-sectional guarantees to the right of action, thereby contributing to the efficiency and effectiveness of the jurisdictional task.

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[1] López, M. Diego. *Manual de Escritura Jurídica [Judicial Writing Manual]*. First Edition. Legis. Colombia, 2018, pg. 1; Emphasis added.

[2] Apa, M. José. *El lenguaje judicial y el derecho a comprender [Judicial language and the right to understand]*. Text available (in Spanish) at: www.derecho.uba.ar/publicaciones/pensar-en-derecho/revistas/18/el-lenguaje-judicial-y-el-derecho-a-comprender.pdf

5. The description of the facts of the case must be brief and concise, in such a way as to identify the epicentre of the litigation and can resolve it in the judgment under those same standards, which avoids the need to address aspects that are external to the debate and that serve to divert the judge's attention and lead to inconsistencies.

6. Precision and clarity are not a licence to proceed with superficiality and without due consideration. Quite to the contrary, they require that arguments be brief and timely, thoroughly and satisfactorily resolving the judicial matter at hand. This means that extensive transcription of bibliographical citations, philosophical texts, doctrines or jurisprudential precedents is unnecessary, as this not only detracts from the value and originality of the decision, but also makes it tedious, difficult to understand, and makes it easy to lose interest in studying it and reflecting on it.

7. To that end, much legislation has set out rules that call for and, in some cases, require that judicial decisions meet criteria related to clarity, correctness, precision and conciseness[3].

8. In a transnational scope, the Ibero-American Code of Judicial Ethics, when mentioning the obligations of the person resolving litigation, establishes in article 27 that: "*Grounds should be expressed in a clear and concise style, without making use of unnecessary technical details and with a conciseness which is compatible with the full comprehension of the reasons explained*", a precept that serves as a torch to illuminate what is expected of a judge within the framework of their constitutional and legal function.

9. This opinion is intended to underscore the importance of conciseness in judicial decisions and make recommendations on the need for them to be expressed using brief and clear language that facilitates their due, correct and timely understanding, thereby achieving good service in the administration of justice.

II. Conciseness of judicial decisions as a legal obligation and its legal framework in different legal systems that fall under the umbrella of civil law

10. Many countries incorporate general standards on the way in which judicial decisions must be reasoned into their codes and laws, attaching special importance to the need to do so in a brief and concise manner. This seeks to ensure that the content can be easily understood by its recipients, i.e. that the message reaches its target in an accurate, perceptible and complete way, so that they can understand it without having to resort to interpretation, deductive means or conjecture that distorts the decision, its scope or the underlaying argumentative rationale. This

[3] The Commission's mandate makes specific mention of brevity and conciseness, however, once the definition of the latter is consulted, it seems more appropriate to place emphasis more specifically on the definition of *conciseness* included in the *Diccionario de la lengua española [Dictionary of the Spanish language]* as: Brevity and economy of means in expressing a concept accurately". Similarly, the *Dicionário Priberam da Língua portuguesa [Priberam dictionary of the Portuguese language]* defines *conciseness* as "Brevity and clarity (in speech or writing)". Therefore, when we refer to conciseness, we are also referencing brevity, precision and clarity in judicial decisions.

is the case, for example, in countries such as Argentina[4], Brazil[5], Chile[6], Colombia[7], Cuba[8], Spain[9], France[10], Mexico[11], Peru[12] and Venezuela[13], which have various legal provisions that

[4] Article 161 of the *Código Procesal Civil y Comercial de la Nación [Argentinean Federal Code of Civil and Commercial Procedure]* states that judgments must include, among others, "2) An express, positive and precise decision on the matters at hand".

[5] Article 489 of the Brazilian Code of Civil Procedure states that "The essential elements of the judgment are: I – the report, which shall include the names of the parties, the identification of the case, with the summary of the claim and of the defence, as well as the registration of the main procedural events; II – the *ratio decidendi*, in which the judge shall analyse the points of fact and law; III – the conclusion of judgment, in which the judge shall resolve the main issues submitted by the parties. § 1 The reasons are not considered to have been given in any judicial judgments, be it an interlocutory decision, a judgment or a decision of the bench, if it: I – is limited to quoting or paraphrasing an act of law, without explaining its connection with the case at hand or with the issue decided; II – employs indeterminate legal concepts, without explaining the concrete reason for their applicability to the case; III – states reasons that could serve to support any other decision; IV – does not confront all the arguments put forward in the proceedings capable of, in theory, annulling the conclusion adopted by the judge; V – limits itself to making reference to precedents without identifying the determining grounds nor demonstrating that the case at hand fits that reasoning;" among other requirements.

[6] Article 170 of the *Código de Procedimiento Civil [Chilean Code of Civil Procedure]* states, regarding the matter at hand, that "Final judgments from [courts of] first or primary instance and from those of second instance that modify or revoke [judgments] of other courts in its decision, shall contain: 1. The precise designation of the parties, their addresses, profession or trade; 2. A summary of the petitions and actions exercised by the plaintiff and their rationales; 3. A similar summary of the exceptions and defences alleged by the defendant; 4. The factual and legal arguments that serve as the basis for the judgment".

[7] According to article 279 of the *Código General del Proceso [General Procedural Code of Colombia]* (Law 1564 of 2012), "Except for decrees that are limited to ordering a procedure, orders shall be set out in a brief and precise manner", trial rule supplemented by article 280 ibid., according to which "**The grounds of the ruling shall be limited to a critical analysis of the evidence** with reasoned explanation of the conclusions drawn about it, **and the** constitutional, legal, equity- and scholarship-based **rationales that are strictly necessary to substantiate said conclusions, setting them out with brevity and precision**, specifying the provisions that have been applied […]".

[8] Article 152.1 of the *Código de procesos [Procedural Code of Cuba]* states: "Rulings must be clear, precise and consistent with the intentions and exceptions duly deduced in the proceedings and, where appropriate, with newly assessed aspects, in accordance with the conditions and formalities established in articles 62 and 547 of this Code; to this end, the court considers or rejects them and decides all points under litigation that have been the subject of debate, with the proper separation and succinctness".

[9] Article 218 of the *Ley de enjuiciamiento civil de 2000 [Spain's Law 1/2000 of 7 January on Civil Procedure]* states that "Judgments must be clear, precise and coherent with the claims and with the other intentions of the parties, as deduced in due time during the proceedings".

[10] Article 455 of the *Code de Procédure Civile [French Civil Procedure Code]* states that "a judgment must be reasoned".

[11] Article 222 of the *Código Federal de Procedimientos Civiles [Mexican Federal Code of Civil Procedure]* states: "Judgments shall contain [...] the applicable legal and doctrinal considerations, including, in them, the reasons for or against an order for costs, and shall accurately resolve the points subject to the consideration of the court and setting, where applicable, a time limit within which it is to be complied with".

[12] Article 121 of the *Código Procesal Civil de Perú [Peruvian Code of Civil Procedure] states that* "Through the sentence, the Judge puts an end to the instance or the proceedings, ultimately ruling in an express, precise and reasoned decision on the matter in dispute, declaring the right of the parties, or, by way of exception, on the validity of the procedural relationship".

[13] Article 190 of the *Código de Procedimiento Civil [Bolivian Code of Civil Procedure]* states: "The judgment shall put an end to the dispute in the first instance; it shall contain express, positive and precise decisions; it shall deal with the litigated matters, in the manner in which they have been claimed, the truth being known given the evidence from the proceedings; it shall acquit or sentence the defendant".

enshrine, as a priority, the need for judges to provide brief and concise justification of jurisdictional resolutions. More specifically, this applies to judgments handed down when a defining a dispute, a rule that extends to other orders in which an in-depth decision is made on an issue that is part of the litigious framework or has an impact on it.

11. Good judicial practice makes it essential that judicial decisions be brief and concise when judgments are made, regardless of whether they are decrees, judgments or any other decision in the scope of their public functions, so that both the resolution and its rationale can be easily understood by litigants and the general public in particular. This is relevant because in the twenty-first century, judicial decisions, except where legal confidentiality applies, are publicly accessible and, therefore, are within reach of the reasonable observer, as well as anyone who can issue value judgments about them.

12. If these formal requirements for the brief and concise reasoning of a judicial decision are met, the judicial decision is also legitimised, since it guarantees that the parties to the proceedings, other courts and society itself—which are the natural target audiences thereof—can understand the decision and exercise the pertinent oversight, whether they accept or dispute it, through the corresponding channels and before the corresponding instances.

13. On the other hand, if the judicial decision is ambiguous and verbose, it runs the risk of injuring and seriously wounding the overriding interests in the orbit of the litigants, such as due process that, being a constitutional and supranational category, involves other guarantees of equal temperament, namely those of defence, confrontation, and contestation. These serve as the basis to maintain oversight of a judge's power and, specifically, excessive authority, especially since the right to be informed of jurisdictional decisions and argue against them when they are contrary to the interests of the litigants or of society itself is typical of democratic systems.

14. Legal grounds should also aim to clearly and concisely guarantee access to information with high quality standards, thus necessitating that its content be reliable, sufficient, coherent, persuasive and intelligible, and, above all, easily accessible and understandable by human reason without the need to resort to deeper and less legal reasoning to understand its logic. The user is entitled to know why litigation was resolved in a certain sense and not in another, because only when they know and understand this reasoning can they discern whether they accept or disagree with it, through the means of recourse set forth for oversight of jurisdictional work.

III. Conciseness of judicial decisions versus judicial ethical duty

15. The imperatives of brevity and conciseness are presupposed by prior compliance with the unavoidable duty of reasoning, which is nothing more than the argument that supports the judicial decision. Therefore, since the legal argument is "*a linguistic and social activity aimed at justifying (or criticising) a claim or decision in dispute*"[14], this means that a simple and plain allusion or reference to the legal system is insufficient. There must be an explanation, as well

[14] Canale. D. y Tuzet Giovanni. *La Justificación de la decisión judicial [The rationale of a judicial decision]*. Palestra Editores S.A.C. Derecho & Argumentación. Peru. 2021, pg. 25.

as reasoned and sufficient justification that is meritorious from a legal perspective, and, above all, accessible to the parties and the community, allowing them to understand—without great difficulty—the logical meaning of the decision, i.e. why the solution is what it is and not another.

16. This judgment criterion is also supported by article 24 of the Ibero-American Code of Judicial Ethics, which states: "*Grounds in matters of Law cannot be restricted to invoking applicable regulations particularly in decisions on the merits of a case*", without forgetting article 34 *idem*, which states: "*The judge should endeavour to contribute, with his/her theoretical and practical knowledge to the improved development of Law and the administration of justice*".

17. Whoever judges must always avoid the desire to seek the limelight and must also refrain from expressing their decision based on unnecessary technical details or extensive and sophisticated decisions as well as those that, before satisfying the interests of the parties, end up fulfilling their own aspirations and eagerness for recognition or social acknowledgment. This is mentioned in article 60 of the Ibero-American Code of Judicial Ethics, which states: "*Judges should avoid conduct or attitudes that might be considered an unjustified or excessive pursuit of social recognition*". This is because the judicial decision is a legal instrument of control at the service of society to resolve conflicts between societal actors, as well as to generate legal certainty and contribute to the realisation of coexistence and social peace.

18. The uncontrolled and often unjustified and excessive use of information technologies encourages resorting to unorthodox practices, such as citing extensive regulations, texts or jurisprudence to illustrate and justify the premises of a judicial decision. This leads to a sacrifice of reasoning, as well as the formation of the conviction of the administrator of justice and the criterion of authority is lost, giving way to broad decisions without consideration, which are often unintelligible, full of technicalities and expressions in foreign languages that are not the official language of the respective judicial system. Thus, the expected conciseness and precision are done away with, quickly deteriorating constitutional guarantees when access to quality information becomes elusive and the judicial decision becomes difficult to understand and control by the interested party.

19. For practical reasons, proceeding in this way is ill-advised and they instead demonstrate that it is advisable to pay particular attention to the simplest judicial decisions—whether these are judgments or decrees—since, on numerous occasions, they can adequately guide the dispute towards the resolution that is most satisfactory for the parties, which is the ultimate goal of the judicial process.

20. The burden of reasoning in the jurisdictional decision varies in extent, and depends on the area in which it is applied, which means that there are moments or procedural stages in which greater emphasis is required, without this preventing or justifying the sacrifice of conciseness and clarity of language. In this regard, article 21 of the Ibero-American Code of Judicial Ethics states that "*The requirement of grounds acquires maximum intensity in respect of custodial judgments or those which are restrictive of rights or when the judge exercises a discretional power*".

21. In any case, conciseness and clarity in judicial decisions shall be ensured though adequate training of those who judge. This is explained in article 29 of the same Code, which states: "*The well-trained judge is aware of the law in force and has developed the technical skills and adequate ethical attitudes to apply it correctly*".

IV. Conclusions

22. The argumentative density with which decisions are supported is one of the problems facing the judicial systems of the Ibero-American region, to the detriment of the standards of conciseness, precision and clarity demanded by the various legal systems for the decisions issued by the courts.

23. Extensive reasoning means that, in many cases, one can easily lose sight of the epicentre of the decision and unnecessary technical details and foreign words are used in the argument, which make the decision difficult to comprehend, limiting the right to quality information and, consequently, the possibility of maintaining oversight for possible excesses or abuses of judicial power.

24. To solve this problem, legal systems have adopted regulations in their codes and laws requiring that disputes be resolved with clarity, precision and brevity, without sacrificing substantive law, naturally, since there will always be cases that require greater argumentative reflection than others.

25. Conciseness and clarity are good practice in judicial work and when applied as a decisional criterion, thereby contributing to its improvement, particularly when composing decisions, whether verbal or written, anchored in brief arguments that address the magnitude of the matter raised and resolve it in depth with the fewest number of grammatical expressions possible, as suggested by the maxim "*Good things, when brief, are doubly good*; *and bad things, when scarce, are not as bad*"[15].

V. Recommendations

26.- Based on the foregoing considerations, the Ibero-American Commission for Judicial Ethic has formulated the following ethical recommendations in exercising the judicial function:

> a. Decisions dictated under the framework of a judicial process or action constitute an instrument and also an institutional space to resolve—peacefully and neatly—the conflicts of interest raised by legal subjects before the various levels of the administration of justice; therefore, they turn into scenarios wherein those who judge reaffirm egos, personal pride or their own interests aimed at obtaining social recognition.

[15] Gracián, Baltasar. *The Art of Worldly Wisdom*, 1647. Review consulted and available at: https://cvc.cervantes.es/lengua/refranero/ficha.aspx?Par=58946&Lng=0

b. Administrators of justice shall seek to ensure conciseness as a criterion in the formulation of judicial decisions, without compromising the clarity, depth or adequacy expected in their reasoning.

c. The transcription, quotation or paraphrasing of jurisprudential regulations, doctrines or precedents shall be carried out in a brief and concise manner, provided that they are suitable or necessary to justify the decision, without including passages that are irrelevant and lack any degree of relationship with the resolution of the conflict.

d. In order to safeguard due process for litigants, judicial proceedings must be resolved with decisions that are brief and concise, but are also in line with high quality standards in terms of the depth of the argument and the tidiness of the language with which it is communicated. This will ensure that decisions can be understood and value judgments can be deduced about them regarding whether they are accepted, obeyed or challenged.

e. Conciseness in judicial decisions must be adopted as a judicial practice to yield brief and comprehensible decisions, not only for the parties, but also for other officials and the general public, thereby greatly contributing to the continuous improvement of the public service that is the administration of justice.

f.- Within each country, law schools and universities must implement programmes and protocols in which officials, teachers, and students are made aware of the need to resolve legal conflicts through brief and concise resolutions without sacrificing quality, depth or adequacy of the argument. This will ensure that the justice system is strengthened, performance significantly improved for judges and those who are involved in the process, and that it generates important benefits in the eyes of any reasonable observer who may be the recipient of a judicial decision.