

Formal and Linguistic Aspects of Judicial Decisions

Abstract

The central theme of the thesis is a written form of justification of judicial decisions, which is a crucial element in preventing arbitrariness in judicial decision-making. The aim of the thesis is to examine current form of civil judicial decisions of district courts. In order to do so, the thesis starts by doctrinally defining types of macrostructure and internal logic of judicial decisions, bound and free decision-making, and especially historical and ideological background of the Anglo-American, French and German judicial styles, which also includes the Czech judicial style.

The second part describes sources of legal regulation for the reasoning of a civil judgment at the constitutional, statutory, and sub-statutory levels. From sources of law with contribution of case law and expert literature emerges analytical-descriptive section presenting structure of the present reasoning in Czech civil judgments of courts of first instance. In the next part, the thesis proceeds towards achieving its goal – it subjects 150 judgments to empirical research inspired by content analysis, thereby revealing actual compliance with the requirements placed on judges in providing written justifications for judgments. Furthermore, this research enables the thesis to uncover additional phenomena, whether positive or negative, occurring in the reasoning that have not been mentioned in expert literature.

The final part of the thesis presents and subsequently discusses results of the analysis and proposes its own solutions to identified shortcomings. Overall, the analysis confirms that the Czech judicial decisions are part of the German judicial style. In the introductory part of the reasoning, in which courts present the case, and in the factual part, in which courts establish facts of the case, seems to be the most significant shortcoming copying from a court file. The legal analysis section suffers, among other things, from meaningless copying of statutory text without proper connection to the rest of the reasoning or inappropriate application of case law to the facts of the resolved case. Furthermore, the paper identifies various ways of adopting case law and doctrinal conclusions into legal reasoning and monitors their frequency, compares certain elements of reasoning by generations of judges or draws attention to selected linguistic phenomena typical of legal language.

Keywords:

judicial decision making, legal writing, legal language, judicial application of law