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**THE LANGUAGE  
OF SUPREME COURT STATEMENTS OF REASONS  
AS A VARIANT OF THE LEGAL LANGUAGE?<sup>1</sup>**

There are many aspects or facets of the statements of reasons for judicial decisions, including those of the Supreme Court, that may and should be analysed. Here one may distinguish among others the philosophical (general theory) facet, including the ontological, methodological and logical one. A separate facet of the analysis is the normative aspect of judicial statements of reasons, on account of the statutory determination of their content and form, time limits for making them, etc. Another facet is connected with the social function of the statements of reasons for judicial decisions. Another one is connected with the necessity of taking the psychological aspects of making and perceiving them into account. The teaching aspect of such statements is also important. This includes their role in shaping judicial decisions, inspiring and shaping thinking in the science of law, their use in university teaching and indirectly also in influencing the practice outside judicial decisions and the attitudes of citizens and their institutions. It is also important to look at the judicial statements of reasons as an instrument of social communication, and, within its framework, at the role of the language in which they are worded. A separate problem is represented by the issue of the methodology of making judicial statements of reasons including such things as whether they should be concise or lengthy, whether their argumentation should be exhaustive or give only examples, whether it should refer to legal literature and to what extent it should draw on the achievements of other fields of knowledge, e.g. sociology, psychology, ethics, economics, statistics. One may also distinguish a mercantile or market-related aspect

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of judicial statements of reasons, since their publication is also the source of income for people and publishing houses specialising in this. Judicial statements of reasons can also be approached in a slightly different way, i.e. from the descriptive, functional and evaluative-postulative point of view. Apart from that, one can distinguish an IT-related aspect of judicial statements of reasons. The individual facets of such statements are obviously interrelated with each other in different ways, so it is not fully possible to separate them precisely and consistently in the course of the analysis.

Among all the judicial statements of reasons, those made by the Supreme Court are significantly different in many respects. In general, the purpose of a judicial statement of reasons is to rationalise the court's decision. In other words, it is aimed at giving a judicious, convincing explanation for why a certain decision with certain content was reached. However, there is a prevalent opinion that it is not necessary to give the rational reasons and clarification of the grounds for the decision at all and that it is enough to rely on the authority of the court (according to the rule *Roma locuta causa finita*) which should be sufficient justification, assuming that the court always acts reasonably and adjudicates justly, which assumption is well founded or merely imposed on those whom the decision concerns. It is understandable that this cannot be assumed where the possibility of appealing against the reached decision is anticipated. If the actual reasons for it are unknown, the effectiveness of such appeal becomes illusory. This issue is important for the Supreme Court's judicial decisions, since its decisions are not appealable against in due course of instance. A particular problem appears in connection with giving reasons for decisions that are part of the so-called preliminary acceptance. It is given by a single justice whose decision cannot be appealed against and does not concern the case that has already been adjudicated before (the opinion as to whether the last resort appeal should be received for hearing or not cannot either before or, as I suppose, later be given by an authority other than the justice to whom the last resort appeal was referred for preliminary acceptance), as is the case e.g. when the Supreme Court hears the complaint, as well as in the event of rejecting the last resort appeal, since in fact it challenges the position of the court of second instance which did not see any grounds for rejecting it (as part of the so-called proceedings between the first and the second instances). Taking the conditions and the nature of the preliminary acceptance into account, it should be assumed that the positive decision, i.e. the receipt of the case by the justice for hearing, does not require any rationalisation (clarification of the reasons for its adoption, justification), whereas the negative decision may be accompanied only by a concise, in other words formal,

statement of reasons (one that consists only in specifying the relevant provision of the Code of Civil Procedure, a formal provision). It appears from the existing mechanism of judicial procedure that every decision of the Supreme Court reversing a given decision and referring the case for re-hearing must be justified, because it has to specify – even though only indirectly – (under Article 393<sup>17</sup> of the Code of Civil Procedure, the court to which the case is referred is bound only by the interpretation of the law made in such case by the Supreme Court) – how the court to which the case is referred should act. This consideration does not occur with decisions dismissing an appeal and decisions changing the previous decision. However, there are other reasons why it is necessary to justify them. The lack of the statement of reasons may cause the involved parties' distrust in the factual accuracy of the decision. With Supreme Court decisions, there is another circumstance, namely their social (as regards a positive impact on social relations, the society's legal culture and people's attitudes toward the law) and teaching function. The fuller and more convincing is the statement of reasons, the fuller and more effective is the teaching function of the decision, which [function] generally exists only when the decision is accompanied by a statement of reasons in general. One should also bear in mind that to a certain extent the Supreme Court's decisions may become the subject of a constitutional remedy and a complaint lodged with the [European] Court of Human Rights. In general, the principle of providing judicial decisions with a written statement of reasons should be regarded as the elementary requirement of the state of law. The point is that the decision should be actually – and not merely appear to be – substantiated. However, this does not mean that the statement of reasons cannot be concise. On the contrary, this is its advantage, provided that it is exhaustive in terms of the scope and complexity of the issues that are disclosed in connection with the subject of the case and its determinants in the proceedings.

The role, nature and methodological status of the statement of reasons obviously depend on its subject, and thus on the court's decision. In principle, the judicial statement of reasons is not about hearing the evidence of truth, but merely about rationalising (giving rational prerequisites for) the decision. The law (legal norm) is not a being that can be presented in descriptive terms (which is suggested by the saying that there is a world of duties), or a being about which one can say – just like the Romans used to say – that it is true. The judicial decision – its conclusion – establishes an individual and specific norm, and thus formulates the model of how one should behave and in this sense it does not contain a logical sentence (sentences) (in terms of formal logic), although it uses grammatical sentences.

The legal norm (also individual and concrete, and thus one that is worded in the conclusion of a judicial decision), which expresses the duty of certain behaviour, is neither true nor false. In consequence, the statement of reasons for the decision cannot be based on the assumption that its purpose is to justify the truth of the court's decision. Thus, it is only about its rationalisation which can be better or worse. Therefore, the sense of the statement of reasons for a judicial decision boils down to showing that the decision results from the applicable provisions of law, or legal rules within the broader meaning of that term (in particular, taking into account the rules existing outside the system that the provisions of law clearly refer to). In connection with this issue, a distinction is often made between the normative basis for a decision and the rule of a decision.<sup>2</sup>

However, the rationalising sense of a judicial statement of reasons does not mean that such statement cannot or should not contain descriptive utterances that can be verified as true or false. The process in which the court applies the law consists of many stages. In the model of judicial application of the law one can distinguish in particular the stage of determining the binding force of a legal norm (norms) and its meaning to the extent that is applicable in the adjudicated case; the stage of determining the facts of the case (factual basis for the decision); the stage of subsuming the fact of the case under the predetermined legal norm; and the stage of the binding determination of the legal consequences (as part of the so-called margin of decision) of the facts regarded as sufficiently proved. The findings obtained at each stage need to be justified in a slightly – and sometimes substantially – different way. In particular, in order to determine the factual grounds for the case, in principle it is necessary to hear the evidence of truth (witnesses, experts, other evidence), although in many cases the nature of the truth is specific (therefore, what is referred to is the formal truth), in particular because of the rules of evidence distribution, implications of law and of the facts and fictions of law, or the justice's freedom of evidence appraisal. In general, certain facts of the case either actually occurred or did not occur, and therefore they are adjudicated by means of descriptive sentences which can be true or false. A different nature and methodological status is represented by sentences used in adjudicating on a certain legal

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<sup>2</sup> According to J. Wróblewski (*Sądowe stosowanie prawa [Judicial Application of the Law]*, Warsaw 1972, p. 82 and next), in general, the rule of a decision can be represented by the following: 1. legal norms presented in their direct meaning, 2. legal norms following their interpretation for the purposes of the adjudicated case, 3. norms interpreted irrespective of the adjudicated case, 4. rules of the system of law or of its part, 5. rules or appraisals existing outside the law.

norm and its meaning (way of understanding, interpretation). It is difficult to assume that a sentence stating that a certain legal norm has a certain meaning, i.e. that it should be understood in a certain way, can be valued as true or false, because this among others would mean that the norm can be understood only in a strictly defined and only one way, which is a clearly counterfactual assumption. This arises among others from the fact that the law interpretation process is not about determining the legislator's actual will (of which one can say that it either exists or does not exist, and thus it can be reasonably described using sentences in the meaning of formal logic), but only – as it is often assumed – the will of a rational or perfect legislator representing a mental concept of a particular kind that has little to do with reality. Hence the sense of the line of argument aiming at showing that a certain legal norm should be understood in a certain way does not consist in proving the truth and the existence of any of its objective meaning that is independent from appraisals and adopted rules of interpretation, but in presenting arguments that are more or less rational (judicious) and more or less convincing to those to whom they are addressed. This means that it is possible to restrict the freedom of interpreting the law to some extent, but its full elimination would be unthinkable. This freedom can be restricted to a large extent by means of using good argumentation presented in the judicial statements of reasons. This means that the Supreme Court and the statements of reasons for its decisions have an important role to play here. The correctness of the interpretation results cannot be verified in terms of whether it is true or false. However, such verification generally applies to facts constituting the elements of the so-called factual grounds for the case.

The operation consisting in subsuming the facts of the case under the applicable legal norm is of a specific methodological and logical nature as well. It is accompanied (it can also be assumed to be preceded) by a set of mental operations that consist in the legal qualification of facts regarded as proven, such qualification, as a rule, requiring complex appraisals due to the fact that the legislator uses opinions, vague expressions, or makes reference to notions that exist outside the system. It is difficult to refer to such appraisals and legal qualifications as true or false, whereas they are correct or incorrect, just like the act of subsumption itself. The criterion of truth cannot be applied in establishing the binding legal consequences of the facts regarded as proven, which are established by the court within the margins specified by the law, either. The choice of legal consequences within the justice's margin of decision is grounded (justified, rational, convincing) or ill-grounded, but it cannot be said to be untrue or false. Hence we do not refer to the judgement of a court as false or true, but it may be incorrect,

unlawful (inconsistent with legal norms), it may breach the law or be unjust, or it may satisfy the law and the requirements of justice.

The conclusion of a court's judgement is the expression of an individual and concrete legal norm, however so-called declaratory judgements may give a different impression, namely that they do not determine anything but only ascertain the existence of a certain state of affairs. By declaring that a certain legal relationship or right exists (does not exist), in the conclusion of its judgement the court not only pronounces that such relationship or right exists (existed) or does not exist, but at the same time it orders the litigants, and to a certain extent also other parties, to treat this declaration as legally binding. The special nature of a declaratory decision has certain consequences as regards the manner (technique) of preparing the statement of reasons for it.

In civil procedure, the issues of a duty to give reasons for a judgement, the content of the statement of reasons, the time limit for preparing it, signing the statement of reasons and serving it (judgement with the statement of reasons) upon the litigants is governed by the provisions of Article 326 Section 3, 328–331, 387, 393<sup>19</sup> of the Code of Civil Procedure. The judgement determines the rights of the litigants and in that case the statement of reasons for it should generally be prepared assuming that it is addressed to those litigants and it should explain to them why the court adjudicated the case in a given way. Among others, the language of such statement should be adjusted to this assumption. In other words, as regards the degree of its comprehensibility, one should take into account the fact that the purpose of the statement of reasons is to clarify the factual and legal grounds for its determination to the litigants, assuming at the same time that they may use professional legal aid offered by competent persons. In the statement of reasons for a reversing judgement one must take into account also the fact that as a result of it the case is re-heard by another court and in this sense the clarifications contained in it are addressed to that court. Under Article 386 Section 6 of the Code of Civil Procedure, the legal appraisal and the recommendations for further procedure made in the statement of reasons for a judgement of the court of second instance are binding for that court to which the case is referred, whereas according to Article 393<sup>17</sup> of the Code of Civil Procedure that court is bound by the interpretation of the law made by the Supreme Court. This means among others that the judicial statement of reasons may contain not only utterances rationalising its decision, but also include determinations that are binding for the court of lower instance, thereby representing a kind of an individual and concrete norm obliging a specific court to understand (read) the applicable provision(s) of law –

and, in effect, to behave accordingly while hearing the case. Such a special norm expressed in the statement of reasons requires a separate justification, in this case it being difficult to assume that it should consist in specifying the factual grounds for the determination and the legal grounds for the judgement including the provisions of law (Article 328 Section 2 of the Code of Civil Procedure), if the point is exactly (in typical cases, and in the case of Supreme Court judgements exclusively) to formulate the binding interpretation of these provisions, and thus it is necessary for the court of second instance and for the Supreme Court respectively to explain why certain provisions of law should be understood as they are by the court to which the case is referred for re-hearing. Thus, it is correctly assumed that Article 328 Section 2 of the Code of Civil Procedure (just like the whole set of other provisions concerning first instance proceedings) can be applied before the court of second instance only “accordingly”. This leads among others to the conclusion that the burden of argumentation presented in the Supreme Court’s statements of reasons must shift to issues concerning the interpretation guidelines followed by it, their type, choice and order of application. And this applies not only to reversing judgements, but also to judgements of dismissal and judgements changing the previous decision.

In general, here it is worthwhile to stress – taking into account among others the statement that the application of the law by courts is a means of social control by the law – differences in the subject matter and the objectives of control exercised by the courts of first instance and the courts of second instance and the Supreme Court. The court of first instance directly controls the behaviour of litigants being subject to its decisions in the meaning that its decision is based on the ascertained violation (or non-violation) of the law (rights or legal duties) by them. Its decision is aimed at correcting the behaviour of the subjects of legal relations (litigants) (also by way of compensation given to the litigant whose rights have been violated). However, the aim of the decision of the court of second instance as well as the Supreme Court is generally different, because such decision is directly aimed at correcting the decision issued by the lower instance – and in this sense it means the exercise of control over the operations of the court of lower instance – whereas control over the litigants’ behaviour in the case of the decisions of the second and third instance is exercised only indirectly. For obvious reasons, this circumstance influences the way of preparing statements of reasons for decisions made by the first instance on the one hand, and by the second instance and the Supreme Court on the other. From this point of view, there are more similarities between the statements of reasons for decisions made by the court of second instance and the Supreme Court

than between those of the first and second instance. However, this does not mean that there are no differences between statements of reasons for decisions made by the courts of second instance and those of the Supreme Court resulting from the fact that the Supreme Court is the third authority in the hierarchy of the application of the law by courts as a means of social control by law, which means that it directly controls only the behaviour of the court of second instance and indirectly the correctness of the decision of the first instance, and thus indirectly also the legality of the litigants' behaviour.

The specific character of the Supreme Court's decisions, and thus the resulting specific nature of the statements of reasons for them, is also connected with the specific way of regulating the last resort appeal as the instrument of control over the application of the law by the court of second instance. The Supreme Court does not conduct any proceedings to take evidence and it does not establish the facts, which means that the description of the facts of the case presented in its statements of reasons is only important and justified to the extent that it is necessary for explaining the irregularities that occurred in the application of the law by the court of second instance or why its judgement is correct. This leads to the conclusion that in the Supreme Court's statements of reasons the burden of argumentation should be connected with the issues of the interpretation of the law within the broad meaning of that term. Additionally, what calls for this position is the changes that occurred in the provisions governing the last resort appeal, in particular the introduction of the so-called preliminary acceptance. Generally, the last resort appeal (except the cases of invalid proceedings and the manifest violation of the law by the challenged judgement) may be received for hearing only when the case involves an important question of law or there is a need to interpret the provisions of law which raise serious doubts or cause discrepancies in judicial decisions (Article 393 of the Code of Civil Procedure). Such regulation of the issue of receiving the last resort appeal for hearing is based on the assumption that the Supreme Court's judgement should be about more than determining the rights of the litigants in a particular case. Therefore, it is often said that this is about precedent decisions. This means that the statement of reasons for the Supreme Court's judgement is assumed to be addressed not only to the litigants and – in the case of a reversing judgement – to the court to which the case is referred for re-hearing, but also to a wider audience. As a result of this, this circumstance has to be taken into account in the manner of argumentation presented in the Supreme Court's statement of reasons, and this has to be done to a greater extent than it did before the last reform of the last resort appeal procedure. These changes indicate an emphasis on

a particular, separate role of the Supreme Court as the authority supervising the judicial decisions of the courts of lower instances, this supervision being expressed or having to be understood from the constitutional perspective mainly as a set of activities aimed at unifying the interpretation and practice of applying the law by the courts of lower instance. At the same time, it is a circumstance that calls for a wider publication of the Supreme Court's judgements and for taking into account in their statements of reasons the fact that they should influence the practice of judicial decisions and the out-of-court practice to a great extent. This should also be reflected in their language.

Apart from the Supreme Court's judgements, separate attention should be paid to decisions made in the form of resolutions in which the Court answers juridical questions in specific cases (asked by the courts which hear appeals – Article 390 of the Code of Civil Procedure and those referred by the Supreme Court's benches composed of three persons to an extended bench of its justices for re-hearing – Article 393<sup>14</sup> of the Code of Civil Procedure) and questions concerning the so-called abstract interpretation. The Supreme Court's answer to a juridical question concerning a particular case is binding for the court (bench asking the question), whereas this is not the case with a decision which presents the Supreme Court's position explaining in an abstract way how to interpret a specific provision or provisions of law. By answering the juridical question asked under Article 390 or 393<sup>14</sup> of the Code of Civil Procedure, the Supreme Court in fact formulates a binding legal (however, interpretative) norm, since it orders the court (bench) presenting the legal problem to understand the particular legal regulation in a specified way. However, the Supreme Court does not formulate such norm in the case of the so-called abstract interpretation. The differences between the resolutions adopted in certain cases and abstract resolutions must be properly reflected in the manner of preparing the relevant statements of reasons and in their content. In general, argumentation presented in the statements of reasons for abstract resolutions should be more extensive and precise, among others because they do not have any binding force, they are addressed to a wider audience, and their impact and practical effect to a great extent depend on the accuracy of arguments used and the skill of convincing and persuasion.

According to Article 393<sup>17</sup> of the Court of Civil Procedure, the court to which a case is referred for re-hearing is bound by the Supreme Court's interpretation of the law (in fact, it is about the result of mental operations in the form of a predetermined understanding of a legal norm by following certain interpretation guidelines). If one takes the regulation of Article 390,

393 Section 1 Point 1 and 2 as well as 393<sup>17</sup> of the Code of Civil Procedure into account and also bears other circumstances in mind, it should be stated that the fact of binding the court of lower instance applies to the interpretation of the law within the broad meaning of that term which includes various types of rules of the exegesis of legal texts together with validation rules (concerning the binding force of a certain legal norm rather than the manner of understanding its content, such as *lex superior*, *lex specialis* *lex generalis*, *intertemporal* rules), the rules according to which certain legal norms arise from other legal norms, as well as the issues of subsumption (e.g. the legal qualification of facts) and the selection of the legal consequence of a fact that is regarded as proven, and not only the results of following the so-called law interpretation guidelines (relating to language and logic as well as systemic, functional, and historical guidelines, etc.), the use of which is limited only to determining the meaning (way of understanding) the legal norm previously declared to be binding (applicable to the established factual state). Since the interpretation of the law understood in this (extensive) way is binding for the court to which the case is referred for re-hearing, it is understandable that it needs to be accompanied by a statement of reasons, at best by specifying the applied rules of interpretation and the adopted reasoning. Since in this case the interpretation of the law is presented in the statement of reasons, one should strive to make sure that what is determined in it by the Supreme Court as the binding interpretation of the law is articulated as precisely as possible and separately (e.g. that the provision or expression used in a given provision should be understood in a particular way, or that the particular provision is not in force or cannot be applied, because it is inconsistent with the provision of a higher order). This should be done through the consolidation and development of the practice of formulating separate theses representing the “interpretation of the law” in the Supreme Court’s statements of reasons.

To prevent any possible misunderstanding, the above thesis concerning the understanding of the “interpretation of the law” as a broad concept in the context of Article 393<sup>17</sup> of the Code of Civil Procedure requires an additional explanation in connection with the comparative analyses of this provision and the provision of Article 386 Section 6 of the Code of Civil Procedure according to which the legal appraisal and the recommendations for further procedure made in the statement of reasons for a judgement of the court of second instance are binding for both the court to which the case was referred and the court of second instance in re-hearing the case. The comparison of Article 393<sup>17</sup> of the Code of Civil Procedure with Article 386 Section 6 of the Code of Civil Procedure leads to the right conclusion that

the scope of binding recommendations made on the basis of the latter provision is wider than that provided for by Article 393<sup>17</sup> of the Code of Civil Procedure. The “legal appraisal” should be treated as a wider category than the “interpretation of the law”. Moreover, that interpretation does not fall into the notion of recommendations for further procedure. In this context, there is an opinion that the “interpretation of the law” as provided for in Article 393<sup>17</sup> of the Code of Civil Procedure should be understood as a narrow concept.<sup>3</sup> It is the right opinion to the extent that one compares the regulation of Article 386 Section 6 of the Code of Civil Procedure with that of Article 393<sup>17</sup> of the Code of Civil Procedure. It is understandable that the “interpretation of the law” as provided for in Article 393<sup>17</sup> of the Code of Civil Procedure cannot be identified with the legal appraisal and with the recommendations for further procedure provided for in Article 386 Section 6 of the Code of Civil Procedure and in this respect it should be understood as a narrow concept. However, it would be a mistake to consider the way of understanding the “interpretation of the law” in the context of what the theory of law says about the scope of this term if one limited it only to the interpretation of the law in the strict sense of that word (determining the meaning of the provisions of law using the so-called law interpretation guidelines), ignoring other rules of the exegesis of legal texts, including in particular validation rules, inference rules as well as the rules of specifying the criteria restricting the scope of the margins of decision provided for by legal norms.

Considering the role and function of the Supreme Court’s statements of reasons, the demand that their language should be constantly improved and that care be taken to ensure their highest possible linguistic standards is obvious, although, on the other hand, one cannot accept a situation where striving after linguistic perfection has a negative impact on the factual aspect of the statement of reasons. The language of the Supreme Court’s statements of reasons should be a model for the statements of reasons issued by the courts of lower instance. It should be precise, but the question arises whether and to what extent it should be vivid and close to the literary language. Although the judgement is passed by the Supreme Court, it is the reporting judge who writes the statement of reasons. The resulting certain

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<sup>3</sup> Compare M. Lochowski: *Wiążąca wykładnia prawa, ocena prawna, wskazania co do dalszego postępowania (uwagi na tle art. 386 § 6 i art. 393<sup>17</sup> k.p.c)* [*Binding Interpretation of the Law, Legal Appraisal, Recommendations for further Procedure (remarks in the context of Article 386 Section 6 and Article 393<sup>17</sup> of the Code of Civil Procedure)*], *Przebieg Sądowy* No. 10/1997, p. 26–28.

variety of the ways of drawing up statements of reasons, their argumentation and writing styles should, as I believe, be fully accepted. Striving after some kind of schematism or convention in this respect would impoverish the social expression of the Supreme Court's judicial decisions and its perception by the circle associated with the science of law and the legal didactics (especially at the university level). An important factor that to some extent influences the unification of and greater care for the linguistic correctness of the statements of reasons is the participation of all the justices in the editing work aimed at preparing the decisions of the Supreme Court for publication as an official collection of documents, assuming at the same time that all the decisions are generally sent for publication.

The language – but not only – standards of many statements of reasons prepared by the courts of lower instance are poor. This is even worse as regards writs addressed to the court by attorneys *ad litem*. This should be combated by giving a good example. However, one should not give up pointing out mistakes, but this should be done in a balanced way, without insults or adjectives classifying individual language (or similar) errors in a spiteful and clearly negative way. I think that it is enough to limit oneself – stressing it clearly – to quoting language errors or stylistic ineptitude that can be found in the statements of reasons of the courts of lower instance and in writs drawn up by attorneys. There is obviously a certain dilemma if the Supreme Court's statement of reasons contains utterances that are unacceptable or even compromising from the linguistic point of view. This may cause misunderstandings (treating the “unfortunate” utterances as originating from the Supreme Court or as ones that are accepted by it) or the lack of understanding of the Supreme Court's (teaching) intentions in this case. But the price is worth paying in striving not only after raising the standards of the statements of reasons prepared by the justices of that Court but also by other courts and professional attorneys *ad litem*.

The language of the statements of reasons should be as simple as possible, deprived of bizarre effects and neologisms and concise, while their content should be internally coherent and exhaustive. The Supreme Court gains its actual authority thanks to clear, concise, simple and convincing argumentation that cannot be replaced by bizarre stylistic effects or convoluted and sophisticated terminology aimed at overawing the reader and making him or her wonder whether he or she properly understands the sense of the words and expressions used in the statement. However, at the same time it is necessary to stress clearly that it is extremely difficult to achieve full simplicity and full understanding of the line of argument presented in the Supreme Court's statement of reasons due to the fact that the issues

addressed by it are often extremely complex. As a rule, the Supreme Court expresses its opinion as the court of third instance and hence it is often necessary to build multi-level utterances in its statements of reasons, which take into account what was said (appraised, established, applied) by the courts of first and second instance, as well as what was presented by the litigants in the proceedings before the court of first instance, in the appeal (in the reply to the appeal) and in the last resort appeal (in the reply to the last resort appeal). At the same time, in its line of argument the Supreme Court many times has to use statements qualifying certain behaviour of a given authority as consistent/inconsistent with a given legal norm, because it is necessary for it to make legal qualifications and the so-called appraisal of the facts in the light of the applicable legal norms, as well as assess whether the mental operations of this type conducted previously by the courts of lower instance are correct.

In jurisprudence, reference is made to the language of the law and the legal language, and their existence is associated with the specific character of the language of normative texts and the particularities of the language of the so-called legal practice. Language differences are sought in the area of language phenomena covered by semantics, syntax and language pragmatics. The specific character is mostly discerned in connection with the occurrence of the so-called legal terminology. It is obvious that legal terms (in particular those that usually do not occur in the colloquial language or outside the area of law and jurisprudence, or to which laws lend a more or less modified sense compared with their established meaning) spread to the language of the statements of reasons including those of the Supreme Court. It is doubtful whether one can talk about the existence of the language of those statements as a variant of the language of legal practice (legal language) merely on this basis. However, a question arises whether, because of its specific needs, in its statements of reasons the Supreme Court creates any system of notions or stylistics that is typical of it only. In my opinion, even if this is the case to some extent, the scale of this phenomenon is so small that it does not justify the thesis that there is a separate language of the Supreme Court's statements of reasons; the language used by the Supreme Court is simply the legal language.

A problem that should be taken into account, especially in the future, is the spreading of foreign vocabulary to the language of the Supreme Court's statements of reasons and the resulting popularisation of it by the Court. The influence of different kinds of international legal regulations and the developing internationalisation of our legal relations lead to the invasion of foreign legal vocabulary. It is my conviction that the Supreme Court should

not be in the vanguard of popularising foreign legal terminology. In its word formation activity, which it should not avoid, while supporting the legislator and the science of law in this respect the Court should rather find or create Polish equivalents of foreign terms. A special question arises also with regard to language errors committed by the legislator or where it is necessary to apply a legal act that was passed long ago and contains linguistic archaisms. It is my conviction that the contemporary legislator should not be corrected in the Supreme Court's statements or reasons even if it commits language errors. However, archaisms in the language of law should be approached in a different way.

A separate question is the methodology (technique and tactics) of preparing judicial statements of reasons. One of the issues that occurs here is the question of drafting such statements still before the Supreme Court adjudicates the case. As a general rule, there are advantages and disadvantages of such way of dealing with this. A disadvantage is represented especially by the fact that the early drafting of a statement of reasons often encourages one to defend it at any price, as a result of which one is less open to accepting arguments against what is already written in the draft statement. Another problem is what should be included in the statement of reasons if the bench comes to believe that it made a wrong decision. More frequently the question arising in the process of writing a statement of reasons is not about the repudiation of the Court's own decision, but one that was made in other proceedings before the Supreme Court. This is often about differences resulting from dissimilarities between the adjudicated facts of the case, which should call for an opinion that there is no disparity in expounding the law by the Supreme Court, even if this thesis raises doubts or is only partially justified. In other cases it is necessary to point out to the existing disparity in the Supreme Court's judicial decisions, but it should be regarded as exaggerated e.g. if it were said on that occasion that the Court's previous decision is obviously incorrect, say, due to what arises from the saying that a given case may be handled by the law in this or that, or quite a different way.

#### S U M M A R Y

The subject of the article is the language of the court decisions, particularly the language of the Supreme Court decision justification. The author presents the thesis that the language used by the Supreme Court while formulating their decision justification is simply a legal language rather than a specific variety of the legal practice language. Presenting this thesis, the author extensively analyzes the aspects and functions

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of the judicial decision justification. Due to a specific character of the Supreme Court and its systemic position, determined by the rules and principles of the judicial proceedings which introduce significant differences of the language and justification functions, the author focuses on the Supreme Court decision justification. Not only does he characterize a general-theoretical and normative aspect of the court preparation of the decision justification (judgments), but he also broadly examines a social function of the decisions. What is more, the author discusses their didactic and scientific function. Being an experienced Supreme Court judge and professor of law, the author presents the issue of methodology of judicial decision justification preparation. In his discussion, the author emphasizes that the role of judicial justification, basically, is not to prove the truth, but to rationalize the court decision (to give rational prerequisites) in the process of the law application. This affects the understanding of the decision judgment practice making as a way to interpret the law. The role of judicial judgement, which aims to rationalize decisions taken by courts, also results from the claim, which frequently appears in the paper, that the courts' law application is a means of social control through the law.

