1P-ISSN 2233-3746 / E-ISSN 2720-782X
https://doi.org/10.60131/jlaw.1.2024.7940
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The Content and Structure of the Decision adopted by the Court of First Instance according to the Civil Procedure Norms of Georgia and Germany

Georgian judicial practice indicates that for 25 years of operation of the Civil Procedure Code, in relation to the structure and content a certain legal tradition has been formed.

There is a certain perception of Article 249 of the Code of Civil Procedure of Georgia, which the courts usually apply. The article analyzes to what extent this structural, content and stylistic standard correspond to the requirements of the law and the needs of the addressees of the decision, and how it can be possible to change and improve the existing practice.

Subsequently, the author reviews the relevant norms of Georgian and German law and offers Georgian judges an alternative method of decision structuring. The article also contains some stylistic and content recommendations.

Keywords: *Court decision, structure, style, motivational part, descriptive part*

1. Introduction

The court decision is the final document of the court process which provides the circumstances of the case and justifies the outcome of the trial. For this, the decision must clearly report facts and legal assessment presented by the parties. The purpose of the court is to convince the parties and public of the correctness of the decision. The prime addressees of the decision are the parties to the dispute. The text of their decision ensures an opportunity to judge the correctness of the decision and decide if it is appropriate to be appealed. The addressee of the decision is the Court of the Second Instance, for which the decision is the subject to verification and the source of discerning the motivation of the court. The addressees of the decision are also lawyers who do not have direct contact with a specific dispute (judges, legal consultants, lawyers, scientists) and society on some occasions. According to the interests of all these addressees, the least requirement for a decision is the material facts and legal reasoning to be complete and understandable. This purpose is served by the norms of procedural law on the structure and content of the decision, which we will evaluate in detail below.

The aim of this article is to review the norms and established court practice of the Civil Procedure Codes of Georgia and Germany on first instance decisions in civil litigation cases. Simultaneously, I will refer to the expediency of changing the observed practice and promotion to increase the transparency of decisions.

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2. Norms on the Content and Structure of Procedural Law Decisions

The content and structure of the decision of the Court of First Instance are regulated by Articles 249 of the Civil Procedure Code of Georgia and 313 of the German Civil Procedure Code. To simplify their comparison, separate parts of these norms can be grouped according to the subject of regulation as follows.

CPC Georgia Article 249	CPC Germany Article 313
1. The decision consists of introduction, descriptive, motivational and resolution parts. 2. The introductory part of the decision indicates the time and place of its making, the name and composition of the court making the decision, the secretary of the court session, the parties, representatives, and the subject of the dispute.	The decision contains: 1) naming the parties, their legal representatives and procedural representatives; 2) Naming the court and the judges who participated in making the decision; 3) on the day of the oral hearing 4) the conclusion of the decision 5) factual circumstances of the case 6) Justification of the decision
3. The descriptive part of the decision specifies the claim of the plaintiff, the approach of the defendant to the claim, the circumstances under which the court reaches the conclusions or avoid evidences.	2. The factual circumstances of the case should include the applications of the parties emphasizing their demands and the means of attack and defense related to these demands. The explanation of the situation and the dispute should be indicated on documents in writing.
4. The motivational part of the decision should mention the legal assessment and the laws by which the court was guided.	3. The reasoning of the decision contains the considerations on which the decision is based from a factual and legal point of view.
5. The resolution part of the decision must include the conclusion of the court on the satisfaction or rejection of the claim fully or in part, allocation of court costs, as well as the term and procedure for appealing the decision.	

The German part is translated as literally as possible. I will apply the terms used by the GCPC in the relevant context with reference of German law. So, for example, instead of the “reasoning for the decision” (Entscheidungsgründe), I will use the “motivational part”, the factual circumstances of the case (Tatbestand), will be replaced with the “descriptive part”, and in place of the “conclusion of the decision” (Urteilsformel), I will apply the “resolution part”.

3. Content and Structure of the Decision

Before we discuss the structure of the decision, I will supply all the information that the decision should provide. Since Georgian and German civil procedure law are based on the same principles, this list is essentially the same in both laws. The judicial practice of both countries reveal that despite the differences between the specific norms, the decisions in both Georgia and Germany correspond to this list in terms of content. The differences are only in the sequence and partly, in the style of forming individual parts. Therefore, I think that the decision should contain the information presented below.

1. Information about the actual dispute (court, parties, their representatives, case number, decision date, case review date, etc.)

2. What do the parties demand? What do they want to achieve?
   Here, I mean the claim and the position of the defendant. For example, imposing a payment of 20,000 GEL on the defendant (the demand of a plaintiff) and failing to satisfy the claim (defendant's position)

3. Which factual circumstances are undisputed?
   This part contains the facts that both parties assert in their definitions or one party affirms and another admits the existence of that fact. In German law, the facts are considered undisputed if only one party asserts, another is silent to these facts.

4. Which factual circumstances are in question and what do the parties claim about them?

5. What evidences did the parties present?

6. Which evidence was rejected by the court?
   Here, I mean those evidences which the law excludes from consideration (for example, Article 102, Part 3, Article 103, Part 3 of the Civil Code).

7. What did the court define based on the evaluation of the evidence regarding the contested factual circumstances (in Georgian law, for example, according to Article 105 of the Civil Code)?
   Here, I mean the facts, the existence of which the court has convinced itself.

8. How was the court convinced of the existence or non-existence of this disputed circumstance?
   This refers to the argumentation of the court about its belief in the existence or non-existence of the disputed fact following Section 3 of Article 105 of the Civil Code: “the opinions that are the basis of the internal belief of the court”.

9. Which disputed factual circumstances did the court consider as existing or non-existent on the ground of the principle of competition and the norms on the distribution of the burden of proof?
   Here, I mean the cases when the court itself was not convinced of the existence or non-existence of the fact. In this situation the explanation about the relevant circumstances made by the party bearing the burden of proof is imprecise or the evidences are inadequate.

10. Justification of the result of point 9.
11. Disputed factual circumstances which have not got legal significance for making the decision and because of this the court has neither determined nor considered it determined.
    For example, if the court has already reached the conclusion that in accordance with Article 84 of the Civil Code of Georgia, there has not been an avoidance within a year, the invalidity of the contract due to deception is already excluded for this reason. The circumstances related to actual deception are legally insignificant for making the decision.
12. Explaining lack of decisive significance of a specific disputed fact, i.e. justification of the previous paragraph 11.
    This justification is usually very short ("Because the defendant did not declare the recusal within the specified period, the invalidity of the transaction is excluded. Therefore, the court leaves open the question about occurring fraud contract.").
13. Legal Views of the Parties
14. History of the process
    Here, I mean activities of procedural importance, such as a motion, extension or limitation of a claim, recusal, recognition.
15. Provision of law by the court on the basis of facts established or deemed to be established.
    Here, I mean the actual process of subsumption which includes comparing the factual circumstances with the norms of law and explaining the norms of law.
16. Conclusion on Claim, Execution and Procedural Costs.
17. Reference to the term and procedure for appealing the decision.

If we compare this list and the norms mentioned above, we will notice two things:

First of all, it is obvious that in German and Georgian law, the introductory parts and conclusion are neither completely identical in content nor in their approaches to the structure of the decision. In the German decision, the conclusion pursues the introduction while in the Georgian one it comes after the motivational part. The German decision does not indicate an appeal. This reference is met following the motivational part. There are other minor differences in content, but not essential and we will not discuss them in this paper.

The second and more important issue is that neither the German nor the Georgian legal norm specifically mentions all the suggested points and applies only general guidelines, which is a common phenomenon in the context of such legislative techniques. In German law, this ambiguity does not cause problems at all because in accordance to a very old and established legal tradition, the basic principle of structuring a decision is that legal argumentation should be only in the motivational part. The future lawyer gets used to this kind of structure in a student period. Such uniformity of judicial practice, of course, facilitates the orientation of the "trained" reader in the text of the decision.

In Georgian law the situation is not so clear. If we interpret the text of Article 249 of the Civil Code in a narrow sense, some of the points mentioned above will not be included in the decision at all.

For example, the legal opinion of a plaintiff is neither “the established circumstances of the case” nor “the claim of the plaintiff”. Therefore, if we want to consider the legal opinion of the plaintiff within the scope of Article 249 of the Civil Code, we must interpret the “circumstances of the case” very broadly or refer to “the claim of the plaintiff” or another legal argument because saying nothing about the legal opinions of the parties in the decision can’t be a serious alternative.

I will point out another problem: when the norm tells us that “circumstances established by the court” belong to the descriptive part, what does the legislator mean: the circumstances established on the basis of inner belief, the circumstances found already established or the entire content of the case? If specifically established or considered established circumstances are implied, should the corresponding justification be in the descriptive part?

Here, I will indicate the examples and note that a number of problems relating to the explanation of Article 249 of the Civil Code and structure of a decision concern the separation of the descriptive and motivational parts. Before I share my opinion about these issues, I will review the law practice of both countries regarding the content and structure of the descriptive part.

4. Descriptive Part

4.1. Germany

Unlike the Civil Procedure Code of Georgia, the German Code of Civil Procedure does not refer to an evidence or its assessment at all. The norm deals only with the statements of the parties (Anträge, in Georgian terminology “request” and “the position of a claimant” in a narrow sense) and means of an attack and a defense. The latter refers to the explanations of the parties regarding the factual circumstances in order to substantiate their own position (in the terminology of the GCPC, the factual circumstances confirming the request and the arguments). The German procedural code does not provide the factual circumstances determined by the court and the evaluated evidences in the descriptive part. The descriptive part is neutral with respect to disputed circumstances. The court does not convey its approach to the burden of proof or any other legal issue.

The established structure of court practice in Germany is as follows:[1]

1. Introduction

   The introduction usually consists of one very general sentence. For example: “The parties dispute the validity of the will to terminate the employment contract”.[2]

2. Undisputed factual circumstances

   This section contains the facts asserted by both parties in their pleadings and the facts that one part affirms but another is silent to them.

   This part does not convey the facts that one part clearly disputes but it provides an inappropriate explanation.[3] For example, if the plaintiff requests paying the price of the purchase on the basis

[1] For details see BeckOK ZPO/Elzer, 46. Ed. 1.9.2022, ZPO § 313 Rn. 138 ff. Also, Commentary on the Code of Civil Procedure, Selected Articles / Hagenloch, 2020, p. 952-967 (in Georgian).

[2] Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, A Rn. 43.

that the defendant has not paid it yet, and the defendant claims without any specification that the price has been paid, depending on the distribution of the burden of proof, the court will ultimately determine that the contention of the defendant is insignificant and when making decision the non-payment of the price will be taken into consideration. In such a case, the court will not set the fact of non-payment in the undisputed factual circumstances, and in the disputed circumstances will convey the explanation of the defendant that he paid the price. The motivational part includes a legal assessment of this definition of the defendant and the determination of its impropriety and insignificance.

3. Contested definition of a plaintiff
Here, the court presents the plaintiff's explanation of the disputed facts. The plaintiff's legal opinions are briefly reflected here.

4. The so-called "Process History"
This part contains the facts of procedural importance, such as changing the claim, partial rejection of the claim, partial recognition of the claim.

5. Requests of the parties
This part reflects what specific legal result the plaintiff wants to achieve and the position of the defendant in this regard. for example:
"The plaintiff demands the defendant to be ordered to pay 2,000 GEL to the plaintiff.
The defendant requests the claim to be dismissed."

6. The contested definition of the defendant
Like the contested definition of the claimant, the definitions and legal opinions of the defendant are presented here.

7. General reference to the explanations of the parties and the documents of the criminal case. Such a reference is widespread however, the scientific literature considers it quite rightly unnecessary.[4]

From the structure of the descriptive part presented above, it is clear that the descriptive part does not contain any legal assessment. In simple terms, the descriptive part informs the court about the facts, the desires and legal opinions of the parties, the procedure from the beginning of the process to the decision. The motivational part includes the approaches of the court to the mentioned above, the evaluation of the evidences and the legal estimations of facts. An exception is the application of the third part of Article 138 of the Civil Code which takes place latently when undisputed circumstances are separated. According to this norm, the facts that one party does not dispute will be considered admitted if the intention to dispute does not derive from other explanations of this party. By belonging such facts to undisputed factual circumstances, the court considers them recognized without referring

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[3] Feskorn in: Zöller, Zivilprozessordnung, § 313 Form und Inhalt des Urteils, Rn. 13.

[4] See.For example, Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, A Rn. 73; MüKoZPO/Musielak, 6. Aufl. 2020, ZPO § 313 Rn. 15.

to this norm. As this is a common practice, it is clear to the parties why this circumstance was found to be undisputed in the factual circumstances.

4.2. Georgia

The structure of the descriptive part in Georgian judicial practice is as follows:

1. Claim
   Request (“LTD A must be charged of paying 20,000 GEL to LTD “B”)
   Factual circumstances and legal arguments which the plaintiff bases the claim on (“The claim is based on the following factual circumstances: ...”). Here is conveyed how the plaintiff described the circumstances of the case (factual side) and why he/she thinks that he/she a disputed claim based on these circumstances (legal side).
2. Defendant's position
   Defendant's position in a narrow sense (“the defendant did not recognize the claim”).
   Factual circumstances and legal arguments on which the defendant bases the rejection of the request (“The defendant indicates that ...”).
3. Factual circumstances
   3.1. Undisputed Factual Circumstances
   3.2. Established Disputed Factual Circumstances

In this sub-chapter, the court conveys which circumstances of the case it was convinced of based on the evidence, and which circumstances it considered to be established or not established depending on the burden of proof.

The court indicates the evidences in the relevant place when referring to the disputed circumstances. The court presents the pleadings (for example, the recognition of the claim) in the first and second subsections.

As we can see, the main difference between the German and Georgian decisions is that the descriptive part in the Georgian decision is not neutral to the facts.

When interpreting Article 249 of the Civil Code, the courts consider that the motivating part should be restricted by the incorporation of the law (subsumption) in a narrow sense. Following the text of the norm, such an understanding is completely possible. However, there is one problem directly related to such an understanding.

Such a division between the descriptive and motivational parts leads to the fact that the court is forced to speak about substantive law issues in the descriptive part, particularly, the composition of the norm is used as the basis of the request and special rules on the burden of proof. In this way, the actual legal argumentation is partially replaced with the descriptive part. In other words, the court, before starting the legal evaluation of the request, precedes the narration and in the descriptive part tells us that the existence of a specific circumstance is legally important, why it is important and who had to prove the facts. Not infrequently, this legal argumentation is an essential and decisive part of the legal assessment of the case. As a rule, the court is forced to mention the same issues once again in the

motivational part. I think that this complicates the understanding of the decision and is inconsistent with the division of functions between the descriptive and motivational parts. In addition, there is another peculiarity in Georgian judicial practice, which I consider problematic, arising from the structure described above. At the beginning of the descriptive part, courts present the positions of the parties in detail. Because a part of the factual circumstances, not rarely a large part, is indisputable, we find a certain part of the already described circumstances once again in the sub-chapter "Undisputed factual circumstances". The reader is forced to read the same story twice.

4.3. Opinion Regarding the Structure and Content of the Descriptive Part

Despite the problems mentioned above, the observant reader has an opportunity to get aware about the factual circumstances of the case and the reasoning of the court within the existing practice. Nevertheless, I believe that the transparency of judicial decisions can be improved by several structural changes.

I have already mentioned above that the 3rd part of Article 249 of the Civil Code is not formulated so specifically that the scope of the descriptive part can be easily defined. There is no similar problem with the introductory, motivational and resolution parts. The relevant norms (Parts 2, 4 and 5 of Article 249 of the Civil Code) are quite clearly drawn up. Therefore, I consider it appropriate to define the volume of the descriptive part with a negative separation through a systematic explanation.

The descriptive part should contain everything that is necessary for making a perfect decision, and simultaneously, it does not belong to the introductory, motivational and resolution parts. The resolution and introductory parts are completely unproblematic in this respect. As for the motivational part, the law indicates that the legal assessment and the laws by which the court was guided should be mentioned there. Therefore, any legal assessment ought to be excluded from the descriptive part. An exception to this principle should be made only in relation to rejected evidences because the law clearly designates that the relevant considerations should be ptovided in the descriptive part. The circumstances considered to be established discerning the burden of proof, should be discussed in the motivational part because it is a legal assessment. The direct result of such an interpretation of Article 249 of the Civil Code is that "established factual circumstances" are given a wide meaning. It should mean not only the circumstances which the request or acceptance is based on, but the circumstances of the case in a broad sense, i.e. all material and statements before and during the process. Establishing by the court means not only defining the existence of a factual circumstance, but also determining what the parties have mentioned about the circumstance in the proceedings and how they assess it as a matter of law.

In accordance with such a definition of Article 249 of the Civil Code, the structure and content of the descriptive part should be as follows:

1. **Claim and plaintiff's position**

   The presentation of the positions of the parties should be very brief. It is quite enough for the court to convey the request ("The plaintiff demands from the defendant to be paid 20,000 GEL"), the ground of this request ("The plaintiff bases the claim on the agreement of

purchasing a car"), the position of the defendant ("The defendant does not recognize the claim") and a short reference why he does not recognize the lawsuit ("He claims that he has already paid the price of purchase").

2. **Undisputed factual circumstances**

Undisputed factual circumstances must include all circumstances that are indisputable because both parties uniformly describe it or because one party asserts it and another party admits its existence (Article 131 of the Civil Code). It is not necessary to specifically indicate why these facts are indisputable. It is enough to specify the relevant page of the case. As a rule, the narrative should be chronological. It is better for the judge to point out the disputed circumstances in a very brief manner and in a chronologically correct order of this part (for example: "At 5.22 o'clock, after damaging the car, the plaintiff contacted the defendant's employee G. The content of this conversation is disputed between the parties (see below ...)").

Here I would refrain from quoting the rule established in German practice, that in indisputable circumstances are also conveyed those circumstances which the opposite party is silent to. Unlike the German Civil Procedure Code, the Georgian Civil Procedure Code does not include a norm that equates such silence with direct confession. Practically, based on the principle of competitiveness, such silence will lead us to confession in Georgian procedural law. However, I think that due to the absence of a specific procedural norm, it is not appropriate to present such circumstances directly as undisputed circumstances.

Taking into account the 4th of Article 201 of the Civil Code (the obligation of the defendant to express his/her opinion on the factual circumstances in the reply) and the first and second parts of Article 217 of the Civil Code (the right of the parties to make an explanation after the judge has established the disputed and undisputed circumstances), the situation described here (silence of the party to the factual circumstances cited by the opposite part) should not be frequent.

3. **Disputed factual circumstances**

3.1. An explanation of a plaintiff about disputed circumstances

3.2. An explanation of the defendant about disputed circumstances

In these parts, a brief presentation of the explanations of the parties is sufficient, if, depending on the specifics of the case, the literal presentation of the explanations is not necessary. It is not essential to emphasize that the defendant denies the existence of the disputed circumstances presented by the plaintiff, and on the contrary, that the plaintiff denies the existence of the disputed circumstances presented by the defendant. This follows from the fact that the explanations of the parties are included in "controversial factual circumstances".

3.3. Disputed factual circumstances established by the court

In this part, the court must indicate only the circumstances that the court has established based on the evaluation of the evidence, and the evidence on the ground of which it has established these circumstances.

Example: “According to the following evidence, the court found that the defendant gave the plaintiff 2,000 GEL on February 25, 2018: the testimony of witness G (the report of the meeting, p. 4, p. 134), handwritten note on the payment of the amount (p. 25)”).

It is better to provide the process of evaluation of the evidence in the motivational part. At first sight, such a distribution contradicts the requirement of Article 249 of the Civil Code that “legal assessment” should be mentioned in the motivational part, which, in a narrow sense, means only the description of the relationship of the law. However, the possibility of providing the evaluation of evidence in the motivational part is indicated by the 3rd part of Article 249, which emphasizes that in the descriptive part should be ‘’briefly’’ indicated “the evidence on which judicial conclusions are based”. Briefly indicating the evaluation of the evidence in many cases, particularly assessing the counter-testimony of witnesses is completely impossible. The court evaluates the evidence for its inner conviction hinged on their comprehensive, complete and objective review, as a result of which it draws up a conclusion on the presence or absence of circumstances important to the case (Part 2 of Article 105 of the Civil Code). The opinions, which are the basis of the inner conviction of the court, must be provided in the decision (CPC Article 105, Part 3). Given these requirements, it is difficult to convey the basis of the internal belief of the court (for example, about the reliability of the testimony of a witness) with only a short reference. The disputed circumstances, which the court did not determine due to a lack of legal significance or did not determine directly according to the evidence, are considered in the motivational part.

I don't find it necessary to assign a name to the separate parts of “disputed factual circumstances”. It is enough to number (3.1, 3.2, 3.3) and start the narration accordingly (“The plaintiff explains that ...” or “The plaintiff claims the following: ...”, “The court established the following factual circumstances: ...”).

4. Legal opinions of the parties

The legal views of the parties should be provided here in more detail than in the first two subsections of the descriptive part. It is not mandatory to quote the arguments of the parties literally. It is necessary and sufficient to convey the essential meanings of the arguments of the parties and indicate the norms which the parties base their demands and objections on.

5. The evidence rejected by the court

In this subsection, the court must indicate which evidence was not taken into account and justify the reason. Here are considered the evidences which cannot prove the factual circumstances following the special procedural norms (Part 3 of Article 102, Part 3 of Article 103 of the Civil Code).

The structure of the descriptive part proposed here has one important advantage over current practice. Within this structure, the court is not forced to mention legal issues in the descriptive part. For better clarification I will give one example from Georgian judicial practice:

The defendant states that the claim of the plaintiff is obsolete. The plaintiff disagrees with him on this issue however, he does not provide any specific explanation or provide any evidence to the court about the attempt to satisfy the request before the expiration of the statute of

limitations. Based on the burden of proof and the principle of competition, the court stated that there was no attempt to satisfy the claim. Discussing the beginning of the term and the reasons for being the circumstances established by it, the court provided the descriptive part in the subsection "disputed factual circumstances".

On this occasion, following existing practice, the court was forced to discuss legal issues in the descriptive part, which contradicts the function of the descriptive part. It would be much better if in the descriptive part the court had mentioned the facts provided by the parties and the way of their legal evaluation. In the motivational part, the court could have noted and justified the existence of the claim, evaluated the explanations of the defendant as insufficient and proved that the claim was outdated and must not have been satisfied.

4.4. Obligation to "Briefly" Describe the Circumstances of the Case

Both Georgian and German law instruct the judge to briefly convey the circumstances of the case in the descriptive part. Briefly conveying, of course, requires some intellectual work. The judge has to summarize and structure the explanations of the parties, focus on the important issues and omit unimportant details. Providing the explanations of the parties without shortening is much easier for the court but it is exhausting and complicating for a reader to understand. That is why the legislator instructs the judge to be concise.

It is difficult to define in detail what "briefly" means. The legislator entrusts the judge to summarize the circumstances of the case. At least a few general principles can be distinguished:[5]

Literal rendering of any document or explanation is justified only if the text is short or the particular conceptualization is legally important.[6]

For example, if the parties have signed a purchase agreement and do not dispute the fact of signing the agreement, its content and explanation, then it is not appropriate to quote the text of this agreement literally. If the parties disagree on the content of the contract, it is acceptable to quote the part that was ultimately relevant to the decision.

Legally important circumstances should be well described. A legally insignificant circumstance, which any party considers legally appreciable, can be very briefly provided.[7] The judge should not mention the facts and details, which according to the opinion of the parties, have no legal importance for making the decision.[8]

It is appropriate to refer to any page or document in the case, but it does not change the provision of the essential circumstances of the case and the legal arguments of the parties. The text should make the decision clear.

In general, the judge should always keep in mind that no one reads the decision of the court for getting pleasure or intellectual exercising, therefore, the time required to read and understand the decision should be shrunk to a minimum.

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5 See also, BeckOK ZPO/Elzer, 46. Ed. 1.9.2022, ZPO § 313 Rn. 150.
6 Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, A Rn. 47.
7 Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, A Rn. 40.
8 MüKoZPO/Musielak, 6. Aufl. 2020, ZPO § 313 Rn. 12.

4.5. Separation of legal assessment and description of the circumstances of the case

As I mentioned earlier, the descriptive part serves to provide the circumstances of the case. The legal arguments of the parties also belong to these circumstances. According to them, in the descriptive part, the court does not express its own opinion, but only repeats the arguments of the parties. The legal assessment and argumentation of the court must be provided in the motivational part.

Unfortunately, in Georgian judicial practice we meet the legal assessment and the determination of the fact not sufficiently separated from each other. As a result of this, in the descriptive part the court sometimes "determines" what cannot be determined as factual circumstances.

For example, the court determines that the defendant violated the obligation arising from the loan agreement. The fact that could be established regarding this case was the payment of money (cash or money transfer) at a certain point in time. As for the proper performance of the contract, it depends on the content of the contract, relevant legal norms and factual circumstances. A finding that a person has breached a contract is a legal assessment, not a factual description. In the subsection of the descriptive part "Determined disputed factual circumstances", the following sentence "The obligations assumed by the assignment agreement shall be considered fulfilled by T." is not correct. This proposal is also the result of a legal assessment. Fulfillment of an obligation is not a circumstance that can be proved in reality, without the interpretation of the requirements of the contract and the law, and without reference to the law. I note that in the motivational part of the cited decision, the court explained in detail and very convincingly why it considers the obligations fulfilled. The only problem is that the court informed us about the result of this justification in the wrong place, in the descriptive part, in the form of "established factual circumstances".

Another notable example of indivisibility of facts and assessments is when the court "states" that the agreed default interest is not reasonable. The reasonableness of the default interest is not a factual circumstance that can be determined by the court. Actually, the court considered the amount of default interest unreasonable. In this particular case, the court also substantiated its assessment in the motivational part. Thus, this decision is also justified in the end however, it is confusing due to the improper separation of facts and assessments.

5. Motivational part

5.1. Germany

In German decisions, the pleadings begin with a brief summary introduction, in which the court informs about a conclusion on each claim or counterclaim.[9] For example: "The claim for paying the price of the purchase is admissible and substantiated in the amount of 12,000 euros. The counterclaim is admissible, but unsubstantiated."

Then, in separate subsections, the court explains why the claim should be satisfied or rejected. Individual subsections are separated from each other only by numbering. The use of titles is not accepted.

[9] BeckOK ZPO/Elzer, 46. Ed. 1.9.2022, ZPO § 313 Rn. 216

Each sub-chapter begins with a statement which norm provides a plaintiff with the right to claim.[10] If the claim is not satisfied, the court will consider the claim separately, taking into account all the norms that the plaintiff indicated or even without the reference of a plaintiff, based on the presented facts.[11]

Considering the basis of each claim, the court first establishes the legal requirements for the claim and then sequentially checks if these requirements are met or not. Evaluation of specific evidence is done by checking the premise that these evidences are supposed to confirm. If a particular claim does not exist due to the non-fulfilment of one of the requirements, the examination of the other requirements is not accepted, however, sometimes the court indicates that the claim does not exist because of the non-fulfillment of some other requirements. Such an additional indication is not prohibited but it is not necessary either.

As part 3 of Article 313 of the Civil Code of Germany requires brevity of justification, abstract reasoning not directly related to the case is unacceptable in the motivational part. Despite this fact, it is possible to find the solutions in which this rule is not strictly observed.

Detailed explanation of the reasoning of a particular legal or factual issue should correspond with the complexity of the issue. If there is an established opinion of the Supreme Court on a specific legal issue, then a brief presentation of this opinion and reference to the relevant decision is completely sufficient.[12] If the court relies on an opinion different from the existing judicial practice, then the explanation should be very accurate.[13]

After reviewing the claims, the court gives brief substance to the costs, enforcement, and, if necessary, leave to appeal.

5.2. Georgia

According to the existing judicial practice, the motivational part includes only the legal assessment, thus, it is essentially different from the German judicial practice.

Sharing my opinion about the descriptive part, then in addition to the subsumption, the motivational part should provide how the court was convinced of the existence of this or that disputed fact, which disputed facts the court considered established and which disputed factual circumstances were not necessary to establish due to a lack of legal significance.

On the other hand, the requirements for the motivational part are the same in German and Georgian law.

The legislator in the 3rd part of Article 249 of the Civil Code does not emphasize the necessity of shortness of justification, however, based on the function of motivational part and the decision in general, I think that the judges in Georgia should strive to conduct themselves in a way that can convince the parties.

Following the principle of transparency, it is necessary the motivational part to be well structured. In this regard, it would be good to share the German experience. I will focus on several issues:

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[10] Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, B Rn. 36.
[11] Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, B Rn. 40.
[12] Anders/Gehle, Das Assessorexamen im Zivilrecht, 14. Auflage, B Rn. 30.
[13] MüKoZPO/Musielak, 6. Aufl. 2020, ZPO § 313 Rn. 17.

It is essential to start the legal assessment of the claim with a conclusion ("The plaintiff has the right to demand 200,000 GEL from the defendant according to the article of the Civil Code ... or "The claimant's demand for paying 200,000 GEL by the defendant does not derive from the article of the Civil Code ...").

After that, it is appropriate to quote the relevant norm and list the preconditions for the request based on this norm. Subsequently, the court checks and substantiates the presence or absence of each precondition by referring to other norms, explaining and comparing them with the factual circumstances.

In the current Georgian decisions, the motivational part begins with a summary conclusion ("the claim should (not) be satisfied"), which is appreciated.

As for the legal assessment of individual requests, we sometimes meet less structured texts. There are cases when the assessment begins not with a conclusion, but with adducing a norm. Often this norm is not even the basis of the discussed requirement, but a general norm. There are also cases when the preconditions of the decisive norm of the dispute are not clearly established after the citation of the norm.

It is advisable to pay a lot of attention to the issues which the parties are disputing about. As for the rest of the issues, it is enough to mention them shortly.

For example, if the parties do not dispute the existence of a claim, it is not necessary to discuss these points in detail and apply to judicial practice and commentaries. If the parties do not disagree on the conclusion of the contract, the following sentence is not necessary:

"According to Article 327, Part 1 of the Civil Code of Georgia, the contract is considered concluded if the parties have agreed on all its essential conditions in the provided form".

Unfortunately, in current practice such cases are not rare.

It is also inappropriate to give a detailed account of the accepted part of the claim. In general, with regard to the motivational part, one should always take into account what is not the function of the decision.

The function of the judgment is not to provide a reader with legal education or to show a special discipline of the judge in the given field of law. Therefore, the used texts, which we sometimes find in decisions, are completely ineffective. In this regard, I will give two examples from Georgian judicial practice:

In the first case, the issue concerns the validity of terminating the employment relationship, taking into account Article 37 of the Labor Code. Before referring to the content of this article, the court reviews Article 42 of the Constitution, Article 2 of the Civil Code, Article 115 of the Civil Code, Article 30 of the Constitution, indicates the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Fundamental Freedoms, the African Charter on Human and Peoples' Rights and the Charter of Fundamental Rights of the European Union.

This part of the decision is more than two pages, and it is completely insignificant for the reasoning of the decision. Of course, in certain cases and in the appropriate context, all this can be important. For example, if one of the parties believes that the applied norm is unconstitutional, the court must justify why it does not agree with this opinion. Ignoring this issue due to the second part of

Article 6 of the Civil Code is not allowed. However, the above decision does not indicate that there was any dispute in this regard.

According to the same considerations, it is unnecessary to make a general discussion about the principle of private autonomy and its scope, when the court uses a specific norm for the refusal of a contract. The text of this norm conveys that the legislator does not consider the principle of private autonomy to be limitless.

Of course, I do not underestimate the importance of general principles. It may be necessary to apply them when explaining or comparing a specific norm. However, in time of such need, it is better to start with a specific norm and then invoke general principles within the legal argumentation. The abstract introduction only creates the impression that the court is trying to raise the qualifications of an inexperienced reader, which prompts the qualified reader to "skip" the text.

6. Decision style

I will focus on several important issues related to decision-making style:

In German decisions, we meet the full name of the plaintiff and the defendant only in the introductory part. Then the court refers to them only as "plaintiff" and "defendant", which makes the decision very short and easy to read. I think it would be good to implement this in the Georgian court practice. Currently, in Georgian decisions the part is mentioned as according to its role ("plaintiff" or "defendant"), as well as by its full name ("Batumkhidmsheni", joint-stock company).

I also consider appropriate the common method for contracts, when the author determines how he will refer to this or that person or object later. If a particular person, who is not a part to the dispute but is frequently met in the decision, it is pertinent to indicate in parentheses how we refer to him/her later.

Example: There was an agreement between the plaintiff and the insurance company "New Georgian Insurance" LTD (next time as "the insurer") on the insurance of the vehicle owned by the plaintiff.

The same technique can be used for other names. For example, if the only insurance contract is mentioned in the case, it would be better if the contract is referred to only once, in the beginning, in legal name and with the date.

In Georgian judicial practice, it is widespread to clearly separate the evidence which the court relied on. It is accepted that the description of a circumstance should be followed by the text in the way of skipping a line:

"The court relies on the following evidence:

- a claim
- statement of defense
- Order of June 1, 2018
- explanations of the parts"

The judge often indicates the relevant volume and sheet of the case. The obligation to refer to the evidence is stipulated by Article 249.

As for the volume and style of this reference, I think that these references should be formulated in the way not to be interrupted. First of all, it would be good if we could replace the standard introduction “the court relies on the following evidence” with a simple “see”. Alternatively, a comma can be used instead of giving a new line for each argument. All this reference can be visually separated from the main text by using a smaller font size. It would be ideal to move the references to a footnote.

In Georgian judicial practice the full rendering of the name of the law is accepted. Abbreviations are usually used in German decisions (BGB, ZPO, StGB). If the law is not very widely known, the courts use the full name at the first mention and add the abbreviation in parentheses, then apply only the abbreviation (for example: Gesetz zur Sicherung der Sozialkassen im Baugewerbe vom 24.05.2017 (im Nexten: SokaSiG)). Such abbreviations, I think, should be introduced in Georgian practice for those laws that have a particularly long name. Of course, this does not concern the Constitution of Georgia. The abbreviation can be inappropriate and less effective from the perspective of text economy.

It is accepted practice to list the norms by which the court was guided after the conclusion in the motivational part. This might be due to the fact that Article 249 of the Civil Code literally instructs the judge to note these norms however, I doubt that the legislator meant such a list. In any case, the list has less practical value.

The court should indicate the same norms in the appropriate place in the next text of the motivational part, so, even without this list it is clear to the reader which norms the court was guided by. The probability that the reader will first “revise” the listed norms and then continue reading, is very small.

In Georgian court decisions, we often come across the sentences which express a judicial opinion.

Example: “Based on the legal assessment of the established factual circumstances, the court believes that the claim of the plaintiff Ministry of Economy and Sustainable Development of Georgia should not be satisfied.”

Such phrases are relatively rare in German decisions. As a rule, courts use such an introduction when the evaluation of the evidence is based on a complex and multifaceted analysis or when it is about a very controversial legal issue.

The author of the entire decision is the court. Therefore, the reader knows that those parts of the text, which the court does not present as an explanation or opinion of any part, express the opinion of the court. Thus, in the sentence quoted above, it was not necessary to indicate that the said is a judicial opinion.

Of course, there are situations where pointing at the court as a source of the opinion is appropriate. Especially when the legal issue is complex and the positions of parts are well-argued, such an emphasis shows reasonable skepticism about one's position and respect for the parties.

This note also applies to other similar introductory phrases, such as “the court indicates that” and “the court notes that”.

In addition, the sentence quoted above is the best example of unnecessary volubility. In particular, it was not necessary to indicate that the court came to the conclusion "on the basis of the legal assessment of the established factual circumstances". It was already clear what basis the decision is made on. Also, it was not in need to indicate the full name of the plaintiff and emphasize that the claim was of the plaintiff. In the end, only the last four words of the entire sentence were necessary: "The claim should not be satisfied."

It is appreciable that unlike the German practice, courts in Georgia use a numerical structure (1., 1.1, 1.1.1, etc.) for designing the decision. The descriptive part of the German decisions is not divided into subsections at all, which makes it impossible to directly refer to the descriptive part in the motivational part (for example, "see 1.1.2"). In the motivational part, mixed numbering is used in German decisions (I. A. 1. a. etc.), and only the last indicator of the structure is indicated before each subsection (for example, a.). The drawback of such a practice is that it is not obvious at first glance which subsection the text belongs to.

Finally, I want to point out that it would be good if the names in the published decisions were anonymized with only one hyphen (for example, "m-s"). Currently, anonymization seems to use as many hyphens as there are letters in the name ("m---------------------s"). This defeats the purpose of anonymization and makes reading difficult.

In summary, we can say that there are some essential differences in the structure and content of the decision in German and Georgian law. Nevertheless, the basic principles are similar, and in order to improve transparency and readability, it is appropriate to take into account the German judicial practice in certain aspects.

7. Conclusion

In summary, we can say that there are some essential differences in the structure and content of the decision in German and Georgian law. Nevertheless, the basic principles are the same, and in order to improve transparency and readability, it is appropriate to take into consideration the German judicial practice in certain aspects.

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