STORY-TELLING IN JUDICIAL DISCOURSE

Terezie SMEJKALOVÁ, Mgr. Bc.
Institute of Law and Technology, Department of Legal Theory, Masaryk University, Brno, Czech Republic
Jugoslávská 64, 613 00 Brno, Czech Republic
smejkalova@mail.muni.cz

Abstract: Judicial discourse and the style of written judicial decisions has been the subject of numerous analyses. Judicial discourse comprises different elements from formal and structural ones to various modes of argumentation used. Narrative – when approached as a form or a structure – may be helpful in thorough analyses of judicial discourse, in particular the texts of judgements. This paper analyzes one judgement of a Czech court by means of narrative analysis and tackles the issues of narrative differentiation, narrative structure and narrative coherence in relation to judicial decision-making. Furthermore, it addresses the issue of story-telling and its importance within judicial discourse.

NARATIV V DISKURSU SOUDNÍHO ROZHODOVÁNÍ

Abstract in your native language: Diskurs soudního rozhodování je předmětem početných analýz a diskuzí. Soudní diskurs zahrnuje nejrůznější prvky – od těch formálních a strukturálních až po prvky obsahové a argumentační. Pokud budeme k narativu přistupovat jako k určité formě či struktuře, může být jeho rozkrytí velice užitečným krokem při detailních rozborech textu soudních rozhodnutí. Tento článek se zaměřuje na diskusi vhodných kritérií pro analýzu narativu – vyprávění – v rozsudku jednoho z českých soudů. Zabývá se rozlišováním mezi různými druhy narativů, struktury vyprávění a narativní koherencí ve vztahu k soudnímu rozhodování. Dále se také otázky důležitosti vyprávění pro diskurs soudního rozhodování.

Introduction

This paper is a part of the author's larger project discussing legitimacy of judicial decision-making. As some of the factors underlying this notion, language-related issues such as rhetoric and narrative coherence are discussed. This paper addresses the issues of narrativity and narrative coherence in judicial decisions.

It has been claimed that human experience is in fact a narrative experience. For the purpose of this paper, a narrative will be understood as 'a verbal representation of events and facts, with a temporal connection between them' (Almog 2001, 475). Narrative imagination – a story – is said to be the elementary tool of thinking (Turner 2005, 13). As Berger (2009, 262-263) writes, narrative structure and expression shape our perceptions and reasoning processes, often unconsciously; and we consciously use them to frame arguments and agreements. 'Narrative [is] essential, and unavoidable, for

persuasion and understanding' (Berger 2009, 263). It should come as no surprise to approach the judicial decision-making process via the means of narrative, or in other words, story-telling. The physical and discursive space of the court and its decision-making process is all wrapped around a story; it is a particular event or a sequence of events that brings the claimants to the court in the first place. They need to communicate their claim to the judges: the courts access the events only (as MacCormick 2009, 221 claims) or mainly (if we exclude real evidence from the narrative) through narrative. Thus, the judicial process can be readily described as a clash of different narratives: personal accounts (embedded in the claim, defence, witness statements…) and the judge's re-telling of the story for the purpose of the courtroom record;[27] all these individual stories lead into one official final account of this story, the judgement.

As several scholars (see for example Delgado 1988-1989 and similarly White 1996) have pointed out, reality is nothing fixed or given. We tend to construct reality through conversations, through the exchange of narrative accounts. If the narratives were to be considered as forms or structures, it must have been concluded that they can be viewed as 'moral chameleon[s] that can be used to support the worse as well as the better cause' (Brooks 2002, 2); by emphasising certain events and giving them slightly different interpretations, different picture can be made (Delgado1988-1989, 2422). Story-telling in judicial and legal discourse definitely entails a manipulative element: one aspect of the discussed matter is stressed, another dimmed (Almog 2001, 488) and because of this strategy the story told acquires a unique shape.

'Unlike literary stories, the power of legal stores is normative. The narrative in a judgement does not expose the reality or reveal it; rather *it declares that a particular occurrence is reality*... Every judicial narrative is a *claim of knowledge*, and a *claim to absolute authority*' (Almog 2001, 488; first emphasis added).

The recognition of the narratives present in a particular judgement may be helpful in thorough analyses of judicial decisions. This approach of analyzing judicial decisions by means of literary (or linguistic) theories is still more typical of the common law rather than civil law systems. The discourse of judicial decisions in common law countries is far more personalized and literarily oriented than the decisions of civil law based courts (compare Kühn 2001, 8). The long discursive narratives of the common law decisions seem to be a direct antithesis to the short magisterial continental decisions. I am using this stark opposition only to illustrate the apparent reason of the lack of narrative analysis of the continental decisions, not to propose or emphasise that

[27] For the role of the courtroom record in Czech judiciary see below.

the styles of judicial decisions of these two legal systems are that different.[28] I would like to claim that narratives and their elements can be traced (and therefore analyzed) even in terms of continental 'syllogism machines' (Lasser 1997-1998, 695-696) and that the importance of narrative is reflected in court proceedings rules.

The legal language of continental courts can be described as unimaginative. Continental legal discourse has a historically-conditioned tendency towards dry, magisterial style, copying and making use of the language of statutes. Yet, even within this dry, magisterial style, there is an essential core (and requirement) of narrative structure and narrative coherence. The recognition of the narrative form is the first step towards a deeper analysis of narratives in legal discourse and towards the understanding of how different narratives operate in judicial (or legal) life.

This paper analyzes the narrative and its elements in a selected Czech judicial decision. In the first part of this paper, the criteria chosen for the analysis are outlined and explained. In the second part, these criteria are used in the analysis of a text of a criminal judgement.

Differentiation of Narratives

For the purpose of the subsequent analysis, the following differentiation of narratives as proposed by Almog (2001) will be used:

(i) form of narrative
(ii) mode of narrative

In respect to the **form**, Almog differentiates between the
a. internal and external judicial narrative; and
b. between free and bound narratives.

A (a) The narrative form present in judicial decisions has two dimensions: **internal** and **external.** An **internal** narrative depends on the judge's personality and culture grounding: she cannot change her internal narratives by her free choice. An **external** narrative is a final story told in the judgement and, therefore, it is carefully controlled and constructed. This careful construction results in a reasoned support of the chosen result of the trial. As opposed to the internal narrative, the external narrative expressed in the judgement can be further judged, assessed, interpreted and criticized. Furthermore, the external narrative is usually to a certain extent reflected by the rules of trial procedure.

[28] For thorough comparative analysis of various legal systems see e.g. Mitchel Lasser's comparative analyses of the French, US and EU judiciaries.

Ad (b) The differentiation between **free** and **bound** narratives reflects the strictness and punctuality of the rules of procedure: Does the law assert exactly what kinds of facts and in which order they are to be included in the opinion? Does the law contain rules for evaluating the evidence? Is there a strict form and extent into which the judge is supposed to fit in her opinion? There are strong pros and cons in case of both forms of narratives. In general, it has been claimed that 'the law does implicitly, almost pre-consciously, recognize the power of storytelling' and therefore intents 'to formalize the conditions of telling' the stories (Brooks 2002, 6).

In respect to the **modes,** the judicial narrative can be either **blank** or **interpretive**. A **blank** narrative uses 'as minimalist and neutral a description as possible of the facts necessary for understanding the matter' (Almog 2001, 495). An **interpretive** narrative is 'richer and denser description of events, where signs of the various choices and value judgements of its author can be easily discerned' (Almog 2001, 496). The preference in the use of these two modes is typical of the common law and civil law systems distinction. The opinions in common law judgements reject formalism and prefer value and policy arguments (Lasser 1997-1998); the choice of interpretive narratives only supports this preference. Moreover, common law narratives tend to be more literary-like; the rhetoric, the word-choice and the arguments used are often stylized to appeal to personal emotions (the individual internal narratives) of every reader. In some of the civil law countries, the prevailing opinion asserts that the external narrative (i.e. the official opinion of the court) should be preferably blank and uniform, minimalist and neutral in style (Almog 2001, 496). This approach in an almost pure form can be observed in France, especially in the decisions of *Cour de cassation*. The decisions in their entirety usually do not exceed one page and are formulated as a 'single-sentence syllogism, rendered in an incredibly short, impersonal and unsigned collegial form with no concurrences or dissents, little if any factual presentation…' (Lasser 2003, 7-8). This is not to say that *Cour de cassation* decisions are completely free of narrative; the narrative is extremely condensed, trimmed of all the unnecessary circumstances and stating solely those facts that are required by law to be ascertained in order to reach a decision.[29]

Another possible distinction of narratives can be made with respect to the number of judges involved in formulating the opinion and therefore the authors of the narrative: **unified** narrative (one narrative told in the judgement on behalf of all the judges) and **personal** narrative (every judge – or a group of judges – shapes and writes her – their – own relevant story) (compare Almog 2001, 498). In civil law countries, it is more usual to encounter the unified type of narrative. Nevertheless, in decisions of

[29] See for example the decision of *Cour de cassation* Arrêt n° 1908 du 31 mars 2009 (08-88.226).

some of the supreme courts or the constitutional courts where the legal rules allow for concurring or dissenting opinions, a step towards a more personal account of the case may be observed. In common law countries (in case of the US Supreme Court and the UK Supreme Court) the decision taken by a panel of judges is based on individual opinions and individual conclusions of the case. Such individual narratives may be illustrative of the 'chameleon' nature of narratives: although following the same set of temporally consecutive events, the choice of facts to be included in the decision and the choice of particular words and emphases support different resolutions. As an illustration let me repeat the same example as Almog (2001, 484) because of its great predicative ability although similar observations can be made with respect to other judicial decisions as well:[30]

Table 1. McNeely v. State

Judge Cooper	***Judge Mayfield***
The appellant was convicted in a jury trial of possession of a controlled substance and possession of drug paraphernalia. He was sentenced to one year in the county jail and fined 200.00 and was sentenced to six years in the Arkansas department of Correction and fined 5,000.00respectively. On appeal, the appellant agrees that the trial court erred in denying his motion to suppress without conducting and evidentiary hearing on the motion.	The appellant, who has been paralyzed and confined to a wheelchair for ten years as the result of an injury suffered when he broke his neck diving into water to save a friend, is thirty years old; libed with his mother; and smokes a little marijuana to help him live during the day and relax enough to sleep during the night. One day, while he was visiting in the apartment of his girl friend, four police officers burst into the apartment, with weapons drawn, arrested the appleant, and seized the ounce and one-half of marijuana and some drug paraphernalia he had in a bag lying beside his wheelchair.
McNeeley v. State, 925 S.W.2d 177, 178 (1996)	Mayfield dissenting, 178.

The inclusion/exclusion of certain facts changes the final narrative. This particular example shows the distinction between the blank and interpretive narrative. It is reasonable to agree with Almog's claim that even blank narratives are 'a form of interpretation and manipulation' (2001, 496). The omission of certain facts supports the decision taken and helps to fit the story nicely into the legal frame. The inclusion of

[30] The judgement in question is the decision of the Arkansas Court of Appeals McNeely v. State, 925 S. W.2d 177 (1996).

certain other facts helps to support the dissenting opinion by mitigating the appellant's deed by other circumstances. In both cases, the reader is seduced by the narrative: in Judge Cooper's case it is the dry and logical account of the events; in Judge Mayfield's case it is the inclusion of important circumstances.

The purpose of judicial opinion is to reason in favour of the decision taken and to persuade the reader that the result is right. The strategies of how to do that differ depending on the legal system or legal tradition in question. Because the narrative – story – is such a deeply embedded structure of thought, it is natural those opinions that make (better) use of it gain in their persuasive power.

Narrative Coherence – Why narratives matter

Apart from their persuasive power, stories' importance for the judicial decisions is reflected in the notion of narrative coherence. In every trial, it is necessary to establish an account of past events. Therefore, the story told in the judgement has to comply with a certain conception of coherence in order to justify decisions on points of law. As MacCormick (2009, 214-215) writes, the narrative coherence is comparable to the notion of normative coherence which is necessary to justify decisions on points of law. 'Coherence stipulates that the course of events within the story should not merely contradict each other, but should also hang together purposively' (MacCormick 2009, 230). In essence, the problem tackled here is a problem of proof. The process of proof is based on different narratives of witnesses, the account of events constructed by the prosecutor etc. all to reach and support the verdict. The judge aims at assessing the truth – or probable truth – and the narrative coherence provides a test as to this truth contained in individual accounts. For the definition of the notion of coherence it is possible to accept MacCormick's approach saying that coherence means that there are no inexplicable logical inconsistencies between any of its factual elements, and that any inconsistencies to be expected are only due to human memory and perception (2009, 226).

The law formulates different requirements for the 'degree' of coherence needed to be established in the judgement in order to provide justification of the decision taken. These degrees of coherence usually depend on the area of law in question: in criminal disputes, the matter of fact has to be established 'beyond all reasonable doubt,' whereas in civil disputes the facts to be proven 'on the balance of probabilities' are deemed sufficient. Law also contains and makes use of numerous rules of procedure and evidence, rigid structures of legal doctrines and legal documentation – these can be perceived as tools with story-spoiling or story-deconstructing functions (Almog 2001, 473) as well as frames for bound narrative required in the judgement. The legal rules govern legal relevance and admissibility of evidence. Although every account of the events (every story told) is by nature selective, it is tied by a form imposed by law.

Narratives and Rules of Procedure

How are stories/narratives recognized by Czech trial procedure rules?
As has been mentioned, the notion of narrative coherence can be seen as underlining the two legal requirements – standards – of proof. Furthermore, the law recognizes the importance of narratives in trial procedure rules. The Czech Criminal Order explicitely mentions the following:

(i) First of all, the stories told in the course of interrogation (of the accused and witnesses) must be established as complete, free of ambiguities and discrepancies (Czech Criminal Order §92/3).[31]
(ii) The accused and the witnesses are required to tell their stories consistently/coherently. The Czech criminal procedure rules state that 'Obviněnému musí být dána možnost se k obvinění podrobně vyjádřit, zejména souvisle vylíčit skutečnosti, které jsou předmětem obvinění, uvést okolnosti, které obvinění zeslabují nebo vyvracejí…' [the accused must be enabled to comment on his accusation in detail, especially to *coherently* describe all the matters of fact that are subject of trial, to state the circumstances that mitigate or refute the accusation…] (Czech Criminal Order §92/2, 3).
(iii) The law also requires the story-tellers of the trial to offer counterstories, if there are any (see clash of narratives below)

The narratives, in order to be recognized by the court and therefore to gain legal relevance, are restricted by special forms imposed on them by the legal system's rules of procedure. The first step of telling a story in court may fall under the term of 'free' narrative: a person (witness, accused…) is enabled to tell what happened in his or her own words. Only when they end their own account of events is the judge, the prosecutor and the defendant's counsel allowed to pose additional questions. These legal requirements and courtroom practices result in the fact that all the narratives meeting in the space of the judicial discourse are fragmented, disrupted and therefore often incomplete (compare Luyster 2002, 598).

The trial can be described as a 'complex storytelling forum' (Luyster 2002, 598). In the space provided by the trial and its legal procedures, different narratives meet and clash. Some of these clashes are reflected by legal rules.

The most obvious clash of narratives is naturally the clash of the two principal competing ones: the claimant's vs. the defendant's; the prosecutor's vs. the accused's. The Czech legal system recognizes a controlled direct confrontation of the witness's narrative accounts (§ 104a Czech Criminal Order) in order to clarify possible discrepancies. Also the reconstruction of the events (§ 104d Czech Criminal Order) may

[31] Act No. 141/1961 Sb., Criminal Order, as amended.

not only be understood as a means of evidence supporting one of the stories but also as competing narratives of their own right – especially when they prove different events than those claimed in the personal accounts of the disputants.

In the Czech legal system, all the stories told in the course of interrogation have to be written down in the courtroom record / court file. This is either done by the judge herself of by the courtroom recorder. Essentially, the free narrative provided by e.g. the accused is retold by the judge: this retelling usually changes the fluency of the narrative, adjusts some of the grammatical elements (such as corrections of colloquial expressions and suffixes); moreover, the judge partially 'translates' the plain-language testimony into a legal-language account. The judge carefully picks up such facts of the story that are related to the legal norm that is to be applied in the case; as Šejvl (2003, 186) puts it, the judge picks up the words that should be translated into the language of law. At the end of the interrogation, the judge reads out (or dictates) his 'translation' which is then authorized by the interrogated person.[32] It is possible that despite this authorization, slight shifts in the story might occur. Therefore, it may be claimed that the judge's translation is another example of the clash of narratives.

Narrative Analysis

With regard to what has been discussed above, it can be claimed that the legal rules provide a frame for the process of story-telling in court. Every story needs characters and a plot. As to the plot and its organization, the narrative in judgement will be analyzed by two sets of criteria:

(i) Those related to the prototypical Labovian narrative; and
(ii) Burkian five elements of dramatism (this approach encompasses the analysis of characters as well)

Ad (i)

The prototypical Labovian narrative is that of personal experience (Lee-Goldman 2005, 1): the stories of the accused, the victim and the witnesses are all personal experiences related to a set of events in question. As Lee-Goldman emphasises while quoting Labov (1981, 225), the core element of this type of narrative is its temporal organization, 'and in particular the juxtaposition of two events that cannot be reversed while preserving the coherence of the story (a temporal junction).' Furthermore, the Labovian narrative follows a four-point structure:

- Abstract/orientation (who is doing what)

[32] Via the means of the courtroom record /court file, even the real evidence is translated into a language account that has to be coherent with the overall narrative told in the judgement.

- Complicating action
- Resolution
- Coda

Ad (ii)

Kenneth Burke's five key terms of dramatism may be thought of as the five key elements of a narrative. By assessing the emphases placed on them and the relationships among them, a narrative can be analyzed. These elements are: '*Act* (what happened), *Scene* (the background of the act), *Agent* (the kind of person who performed the act), *Agency* (means or instruments used to perform the act) and *Purpose*' (Burke 1945, xv). By shifting emphasis from one to another, the storyteller sets the scene, establishes a time frame to 'tap into listener's understanding and identification with the characters and their plights' (Berger 2009, 268).

In respect to the above mentioned example of the Arkansas Court of Appeal judgement, the shift between Judge Cooper's and Judge Mayfield's narrative is noticeable on several levels:

Scene: the second account adds a scene description, which is lacking in the first one; the appellant's background is added.

Agent: the appellant, though the same person is described in different terms

Agency: while in the first case the appellant was caught in possession of a 'controlled substance', in the second case, it was only 'little marijuana'.

Most importantly there is a change in *Purpose*: while the first opinion simply describes the appellant as a person caught in possession of a drug, the second opinion tells a story of a paralyzed person who needs marijuana in order to sleep.

A Case Study

The above discussed theoretical approaches will be used in the analysis of a Czech judgement. A criminal law case has been chosen, especially because of the personal element present in the narratives but a similar analysis would be possible with civil, administrative or constitutional judicial decisions as well.

With regard to the fact that the following account of events may be considered a narrative of its own right, let me briefly re-tell the case 92 T 86/2009[33] as told by the court. Because of the rules of anonymization in the Czech legal system, cover names for all the protagonists are used.

The accused is a legal counsel who specializes in asylum cases. When providing legal advice to two Mongolian women (sisters Sara and Tala) whose visa

[33] Decision of Městský soud v Brně, 18. 2. 2010; 92 T 86/2009.

documents expired, he offered them an illegal means of help in exchange for approximately 5000 Euro. He offered to provide a man who would officially claim fatherhood of Sara's son (who had no father name filled in his birth certificate) and thus allow the women when asking for a right for permanent residence to claim the advantage of the family unification principle. This man (Peter) was later provided and his name added to the son's birth certificate. For further action, another Peter's signature was needed. It was agreed that a person would meet the two women with the document required bearing Peter's signature. This happened to be the turning point of the story because the sisters thought the document looked unreliable and refused to take it and to pay the money required.

The actual story is more complicated – it was simplified a little but some of the remaining details will be added in due course of the analysis.

The above described events can be read in different ways. From the point of view of the accused (as reported in his account of the events), it is the story of a counsel who helped two women to obtain a right of residence in the Czech Republic and asked for a certain amount of money in return – a lawyer's fee. As to the fatherhood claim, the accused cannot know whether Peter is the father of Sara's son or not.

The events may be also read as a story of the two sisters. Their testimonies contain an account of their arrival to the Czech Republic and other events that preceded the meeting of the accused. They confided in the accused with their story (p. 6 of the judgement) and entrusted him with helping them. Their visa expires and they rely on their counsel who provides advice (and the man to claim the fatherhood of Sara's son). When these actions begin to look suspicious to them, Sara and Tala break their contact with him and apply for asylum.

There is also a story of Peter who claims that he remembers signing blank papers but he has never made any official fatherhood claim. Moreover, he had never met either of the sisters. He only knows that he had intended to help a woman to stay in the Czech Republic.

The judgement contains accounts of the testimonies of other people involved that either confirm or refute these two versions (Peter, the accused's secretaries…) but for the purpose of this paper, they will be left out.

What is being assessed and analyzed here is the *external* narrative as it appears in the text of the written judgement. It must be emphasised that although in the trial individual stories were told by the protagonists themselves, the written judgement has only one story-teller – the judge. The narrative is also *bound* to rather high extent: by the rules of procedure and also by Czech customs of judgement writing. The story – the account of events – is repeated in the judgement several times:

1) In the court's account of the state of events (in the verdict of guilty);
2) In the 'translation' of this state of events into the wording of legal conditions for the particular criminal offence in question (in the verdict of guilty);
3) In the individual accounts of the accused and the witnesses (in the opinion).

As a continental decision, the narrative tends to be predominantly *blank* but signs of *interpretivity* can be traced, especially in evaluative statements. See Examples 1, 2, 3 below.

Example 1. (page 8)

> 'Dále z výslechu je pak zjevné, že některé na otázky svědek neodpovídá hned, nastávalo velmi dlouhé mlčené, kdy na konci svědek uvedl, že byl překvapen tím, k čemu má vypovídat.'
> [It is obvious from the interrogation that the witness does not answer some of the questions right away; there have been long silences; in the end he said he was surprised by the topic of his interrogation.]

Example 2. (page 12)

> '…obhajoba spočívá v tom…'
> [the accused's defence rests in…]

Example 3. (page 13)

> '…soud tyto svědkyně považuje za zcela věrohodné'
> […the court considers these witnesses completely trustworthy]

Labovian narrative

In these two stories, the characters (the main protagonists: the accused, Sara, Tala, Peter) and the plo can be clearly recognized. The Labovian narrative structure as indicated above is easily traced:

Table 2. Labovian narrative structure

	Accused's story	***Sara and Tala's story***
Abstract/orientation	- who is he and what he does	- who they are - arrival to the Czech Republic - for whom they worked
Complicating action	- he meets the two sisters and offers them help in exchange for a counsel's fee	- visa documents expired; their employer informs them that further action must be made by a lawyer's office; they pay and wait; a month later, they realize nothing has been done and that the city authorities issued an order for them to leave; they ask

		for help another lawyer – the accused who offers help; at first they trust him but later realize there may be problems
Resolution	- accused of a criminal offence under § 171d/1 of Act No. 140/1961 Sb.	- they apply for asylum instead
Coda	- found guilty	- what happened afterwards, the trial

Both stories are Labovian narratives in the indicated sense but they differ mainly in the information included. Furthermore, there is a difference in the word choice used in these stories by the court when retelling the stories. This element, however, is neither as significant nor as evident as in the common law judgement example used above. In general, the vocabulary is unified and embraced in legal formulas and expressions. Yet, the story favoured by the court (the story of Sara and Tala) is marked rather inconspicuously by language in the court's various comments and evaluation of proofs. See Example 4 below.

Example 4. (page 14)
'…této výpovědi soud neuvěřil…'
[the court did not believe this testimony]

Burkian elements of dramatism

A further difference between these two competing narratives may be recognized in terms of the relations between their key elements, as recognized by Burke. In the following table (Table 3.) it can be seen that the recurrent point of focus here is the evaluation: the (il)legality of the accused's action. The *Act* is what the court has tried to establish as the near truth: Who did what? Was there a man to claim the fatherhood of Sara's son? Had the accused any knowledge about this? Did he ask for any money in return for his (supposedly illegal) actions? The focus in the *Scene* shifts from the business-like accused who was only ever interested in his job as a legal counsel to the problematic background of the two immigrants who happened to be in a tight situation, without legal work and without valid visa documents. The *Agent* here (the accused) is described in different terms: in one version of the story he is an honest lawyer, using legal means to help immigrants in need, in the other he is a calculating fraud, asking money for illegal actions. The *Agency* differs yet again in the evaluation of the means of help used. The *Purpose* of the accused's actions in Sara and Tala's story is to gain profit illegally, while in the accused's story the profit gained is presented as a justly earned fee for his legal services.

Table 3. Five elements of dramatism (Burke)

	Accused's version	***Sara and Tala's version***
Act	- he has acted within the legal framework	- what happened was an illegal deed
Scene	- straightforward, business-like act	- inclusion of other details questioning the accused's actions
Agent	- the honest lawyer	- the calculating fraud
Agency	- every means he used was legal	- use of suspicious-looking means of help
Purpose	- provision of standard legal services	- illegal ways of obtaining the documents needed

Requirement of narrative coherence reflected in the judgement

Coherence in narrative may be reflected in two perspectives: the temporary junction and the fact consistency. As to the fact consistency, the text of the judgement contains numerous references to the requirement of coherence and consistency as shown in the following examples:

Example 5. (page 5)

> 'K těmto svědeckým výpovědím je je nutné podotknout, že jsou velmi podrobné, netrpí vnitřními ani vnějšími rozpory, navzájem spolu korespondují a jsou dale podporovány dalšími svědeckými výpověďmi a listinnými důkazy…'
> [It must be noted that these testimonies are very detailed, they do not contain internal or external contradictions, are mutually correspondent and are supported by other testimonies and documentary evidence…]

Example 6. (page 13)

> '…je tato jeho obhajoba zcela vyvrácena a ze svého trestného jednání je obžalovaný zcela usvědčován zejména výpověďmi [Sary a Taly], které netrpí žádnými vnitřními ani vnějšími rozpory, vzájemně spolu korespondují a … korespondují i s informacemi, které obě uvedly již v žádosti o udělení mezinárodní ochrany. Jejich výpověď pak navíc koresponduje i s výpověďmi dalších svědků…a s listinnými důkazy.'
> […this accusation has been completely disproved and the accused has been convicted especially because of Sara and Tala's testimonies, which do not contain internal or external contradictions and … are in accordance with further information they have stated in their application for asylum. Furthermore, their testimonies are in accordance with testimonies of other witnesses and documentary evidence…]

Example 7. (page 14)

> '…celá výpověď svědka [Petera]…zcela zapadá [do informací získaných z výpovědí dalších svědků]…'

> […the whole testimony of the witness [Peter]…fits completely in the testimonies given by other witnesses]

The temporary organization (also typical of the Labovian narrative) is indispensable for any judgement: it must be proved beyond all reasonable doubt (in case of a criminal case) that the events have happened in a certain order. At one point of the written judgement, the judge re-tells the story by dividing it into 'nine consecutive steps' (page 13 and following of the judgement):

1. Sara and Tala meet the accused
2. the accused offered his help (family reuniting)
3. the accused asked Sara and Tala to provide the birth certificate of Sara's son and to pay the fee stipulated
4. the accused provides a man to claim fatherhood – Peter
5. Sara signs Peter's fatherhood claim
6. it has never been Peter's intent to become a father of Sara's son
7. the interpreter involved applies for a visa for Sara's son
8. another Peter's signature is needed – Sara meets an unknown woman who is supposed to give her the document
9. Sara and Tala stop trying to get residence permit and apply for asylum

Conclusion

It has been established that even a civil-law court judgement may be analyzed in terms of its narrative structure. Why is it important? As has been pointed out by many scholars, stories are structural units of human thought: the use of narrative (whether blank – as in the French *Cour de cassation* decisions – or interpretive – as in the common law decisions) is a potent means of persuasion. It has also been shown that the notion of narrative coherence is embedded in legal rules of procedure and therefore inherent to any judgement written.

Legitimacy of judicial decision making is a complex notion influenced and based on different social, legal and factual factors. One of the factors influencing the legitimacy of a particular decision is its persuasiveness – and narrative coherence. Moreover, it is not only the people who have their stories; law itself has stories – the cases, statutes, doctrines and principles have stories of their own, stories that do their narrative work beneath the surface of routine law talk (Edwards 2010, 1). The role of narratives (with respect to the prevailingly operating narratives in the society e.g. some of the Lyotard's grand narratives) in law and legal thinking is much more complicated and yet another topic for discussion.

Bibliography

Almog, Shulamit. 2001. As I read, I weep – In Praise of Judicial Narrative. *Oklahoma City University Law Review* Vol. 26, No. 2, 471-501.

Burke, Kenneth. 1945. *A Grammar of Motives*. New York: Prentice-Hall, Inc.

Berger, Linda L. 2009. How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody disputes. *Southern California Interdisciplinary Law Journal* 18: 259- 308. Available at http://ssrn.com/abstract=1231584.

Brooks, Peter. 2002. Narrativity of the Law. *Law and Literature* 14: 1-10.

Delgado, Richard. 1988-1989. Storytelling for Oppositionists and Others: A Plea for Narrative. *Mich. L. Rev. 87*: 2411-2441.

Edwards, Linda H. 2010. Once Upon a Time in Law: Myth, Metaphor, and Authority. *UNLV William S. Boyd School of Law Legal Studies Research Paper No. 10-02*. Available at SSRN: http://ssrn.com/abstract=1462570.

Kühn, Zdeněk. Srovnani stylu soudniho rozhodnuti v České republice, zapadni Evropě a USA, *Soudce* 1/2001, 8.

Lee-Goldman, Russel. 2005. *Aspects of Legal Narrative*. www.icsi.berkeley.edu/~rleegold/ling/narrativeinbriefs.pdf.

Luyster, Deborah B. 2002. English Law Courts and the Novel. *Law and Literature* 14: 595-605.

Lasser, Mitchel de S. O.-l'E. 2003. *Anticipating Three Models of Judicial Control, Debate and Legitimacy: The European Court of Justice, the Cour de cassation and the United States Supreme Court.* Jean Monnet Working Paper 1/03. New York: New York University School of Law.

Lasser, Mitchel de S. O.-l'E. 1997-1998. Lit. Theory put to the Test: A Comparative Literary Analysis of American Judicial Tests and French Judicial Discourse. *Harv. L. Rev.* 111: 689- 770.

MacComick, Neil. 2009. *Rhetoric and the Rule of Law: A Theory of Legal Reasoning*. Oxford: Oxford University Press.

Šejvl, Michal. 2003. Jak udělat spravedlnost slovy. In *Problémy interpretace a argumentace v soudobé právní teorii a právní praxi*, 183-194. Praha: Eurolex Bohemia..

Turner, Mark. 2005. *Literární mysl: o původu myšlení a jazyka* [transl.: Olga Trávníčková]. Brno: Host.

White, James Boyd. 1996. Imagining the Law. In *The Rhetoric of Law*. Ann Arbor: The University of Michigan Press.