



Move Analysis of Legal Justifications in Constitutional Tribunal Judgments in Poland: What They Share and What They Do Not

Stanislaw Gozdz-Roszkowski¹

Published online: 6 May 2020
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Abstract

It appears that we know surprisingly little about how judges frame linguistically the rationale behind their decisions and how such texts are structured. Using the concept of rhetorical moves (Swales in *Genre analysis: English in academic and research settings*, Cambridge University Press, Cambridge, 1990; Bhatia in *Analyzing genre-language use in professional settings*, Longman, London, 1993, *Worlds of written discourse. A genre-based view*, Continuum, London, 2004), this paper adopts a genre-based approach to examine the rhetorical structure of legal justifications provided in the decisions of the Polish Constitutional Court (*Trybunał Konstytucyjny*). The goal of the study is to verify the claim that the way justifications are drafted is becoming more and more uniform and conventional. The results show that there is a common core of rhetorical structure realized by means of recurrent functional segments of text. This paper proposes a prototypical move structure of a Constitutional Tribunal justification and it argues that that the way justifications are drafted are subject to very concrete, even if not explicitly stated constraints.

Keywords Judicial discourse · Legal justification · Move analysis · Constitutional Tribunal · Genre analysis

1 Introduction

The past 50 years or so have seen the proliferation of studies describing different types or varieties of legal language. The term ‘legal language’ has been used as a convenient shortcut to refer to an extremely complex and multifaceted set of related discourses: judicial discourse, courtroom discourse, legislative discourse, etc. [8, 22]. Kopaczyk [12] notes that law as a social construct responds to specific

✉ Stanislaw Gozdz-Roszkowski
stanislaw.gozdz@uni.lodz.pl

¹ Department of Specialized Languages and Intercultural Communication, University of Łódź, Pomorska 171/173, 90-236 Lodz, Poland

situational requirements and it has evolved specific discourse patterns over the course of its long tradition. The register and genre perspectives on legal discourse have become particularly influential in linguistic research due to the rigorously empirical basis of this approach and its emphasis on the link between form and function [3, 6]. Although conceptualized in different ways, the socio-cultural construct of genre has proved particularly useful to reference the basic category of legal composition defined not only by its linguistic features or conventional structure, but also in terms of its communicative purposes recognizable for members of the professional community in which they are typically used [1].

This study argues that the study of legal justification can be approached from the genre perspective because legal justification, understood as the reasons and rationale given by courts in rendering their decisions [5], reflects the disciplinary and organizational culture of a given justice system. The institutional framework and the corresponding legal form in which legal justifications are embedded may vary depending on the legal system, jurisdiction, type of court (e.g. appellate), etc. At the same time, this instance of judicial discourse is ubiquitous in professional court practice due to the virtually universal requirement that judges justify their particular disposition of a case. However, it appears that we know surprisingly little about how judges frame linguistically the rationale and reasons for their decisions and how such texts are structured. The genre view of professional discourse prioritizes conventions as central to any type of generic description [1]. This study seeks to determine how the overarching goal of justifying the outcome of judicial decision-making process gives linguistic expression in a conventionalized communicative setting of a legal case. The difficulty of studying legal justifications is compounded by the fact that they are usually perceived as an integral part of a judgment. This perception is reinforced by the practice of publishing written justifications along with court rulings as one textual instrument. In other words, it is easy to assume that legal justifications are simply part of a judgment. Under the law on the Constitutional Tribunal (Pol. *Trybunał Konstytucyjny*), written justifications can be provided within a month of giving the ruling. Arguably, the judgment and its justification are both legally and linguistically two different instruments. Additionally, while judgments, as a whole tend to have a fixed textual structure, where certain sections (e.g. headnote, procedural history, ruling or holding) are usually prepared by a court clerk [4, 14], justifications reflect judicial reasoning and their language is inevitably less formulaic and more likely to show idiosyncratic variation. Thus, it appears that judgments and their justifications should be expected to differ in terms of conventionality and standardization, with legal justification being somewhat amorphous and elusive in form.

Each legal justification is undoubtedly as unique as the judge who drafts it because judges rely on their individual writing style, various argumentation and reasoning skills to justify the outcome of very different cases. This seems to be particularly true for constitutional court judgments where judges set out to scrutinize the constitutionality of a wide range of legislative instruments. Given the power of judges who write them, some judicial opinions may display substantial freedom in tone and in form [22, p. 140]. Apparently, it is not uncommon to come across puns, humour, metaphoric expressions and some literary flourishes in at least the common-law tradition of judicial writing. Whether civil law judges exercise the same

level of stylistic freedom under a system which favours a collective judgment cast in stylized, impersonal language is another matter [cf. 11]. However, it seems that even within the civil law tradition, one might expect a varying degree of latitude judges can exercise when drafting their justifications.

Using the concept of rhetorical moves [1, 2, 20], this paper adopts a genre-based approach to examine the rhetorical structure of legal justifications provided in the decisions of the Polish Constitutional Court (*Trybunał Konstytucyjny*). The direct inspiration for this contribution comes from a claim made by a Polish judge working for the office of the Constitutional Tribunal in Poland, who insists that the way justifications are drafted is becoming more and more uniform and conventional. He identifies several, what he calls, ‘elements’ characteristic of legal justifications, irrespective of any potential idiosyncratic variation [13, p. 427]. This paper aims to verify this claim by investigating whether the proposed elements are indeed present in contemporary judicial justifications given by the Polish constitutional court and if so, whether there is any fixed, recognizable sequence in which they are found. In addition, the study is intended to ascertain whether there are any other recurring elements that contribute to the overall rhetorical organization of legal justification. It is expected that the present investigation should establish the area of overlap shared by justifications and determine whether the language of justifications is indeed evolving towards more formulaic and conventional forms. One issue inherent in the study of legal justification or judicial discourse in general is that it is closely bound up with a particular legal system and the judiciary. Even if providing reasons for a judicial decision appears to be a universal feature of any decision-making process, its legal form and the actual linguistic manifestations may differ radically. For this reason, this study focuses on written justifications provided by judges adjudicating within the institutional framework of the Constitutional Tribunal in Poland. Only majority opinions have been considered based on the assumption that separate opinions represent a different type of judicial expression, which accordingly merits a separate treatment [9] (see also Goźdz-Roszkowski forth.¹).

2 Legal Justification: Its Importance and Functions

The Act on Constitutional Tribunal in Poland of 2016 allows for two types of justification: oral and written. The former is announced in the courtroom as soon as the judgment has been pronounced. Its goal is to provide only the main reasons behind a judicial decision. It describes the constitutional issue and then it addresses the charges separately presenting arguments that led the court to decide the case in a given manner. Under art. 71 section 3 of the Act, the Court is obligated to prepare a written and detailed justification within a month of handing down its judgment.

¹ Goźdz-Roszkowski Stanisław (forth. 2020) Communicating dissent in judicial opinions: A comparative, genre-based analysis, *International Journal for the Semiotic of Law*. Special issue “Linguistic and Translational Insights into Legal Issues”.

It is truism to point out that justifications are important as they reveal the motives and the reasoning of those judges who have provided the disposition of a particular case. Królikowski [13, p. 429] provides three main functions of legal justification. First and foremost, it serves the persuasive function by convincing the reader that a given decision was rational and correct. Seen from this perspective, justifications should be based on clear and logical argumentation indicating all relevant premises and circumstances that the Court took into account in the process of examining the constitutionality of a normative act. Unlike the ruling which is universally binding, the justification is not, but it may provide a much needed interpretation of the decision. The Tribunal in its own earlier decisions pointed out that certain fragments of a justification may constitute *ratio decidendi* closely bound up with the ruling and the justification to some extent may indeed complement it. The persuasive function may also be associated with the court's broader legitimacy concerns [18].

Second, justifying a judicial decision also serves an educational function. It is the oral justification that seems particularly important in this respect because cases heard by the Constitutional Tribunal are communicated to the general public through mass media. There is a general consensus that a given judicial decision must be presented in a clear and accessible manner to raise the citizens' constitutional awareness. There are different types of audiences interested in the judiciary, going beyond legal counsel representing litigants in a particular case. A logical and clear line of argumentation contained in the written justification may help improve the quality of constitutional complaints lodged in future.

Third, justifications perform a reporting function in the course of proceedings before the Constitutional Tribunal. They present different stages in the proceedings, list any relevant documents, orders etc. In order to appreciate the role and place of justification in the overall institutional framework, it is necessary to delve into the institutional space of the Constitutional Tribunal by taking a look at its competences, types of cases it hears and the textual structure of its standard judgment.

3 The Constitutional Tribunal: Its Origin, Competence and Instruments

Poland's court system is a complex four-level hierarchy with regional, district, appellate and the highest court. The Constitutional Tribunal (Pol. *Trybunał Konstytucyjny*), founded in 1982, stands apart from this hierarchy resolving disputes related to the constitutionality of actions undertaken by public institutions and its main task is to ensure the compliance of statutory law with the Constitution of the Republic of Poland. The other superior courts in Poland are the Supreme Court and the High Administrative Court, each exercising independent jurisdiction within its area of competence. The Polish system of judicial review rests on three basic procedures: abstract review, legal questions referred by ordinary or administrative judges deciding individual cases, and constitutional complaints that are lodged with the Tribunal once appellate procedures have been exhausted [7]. The Constitution (April 2, 1997) provides that the Constitutional Tribunal is vested with the competence to review ordinary statutes and other legal regulations and to annul them in case of

unconstitutionality or nonconformity with the international instruments to which Poland is a party. Such decisions of the Tribunal have an *erga omnes* effect and are final and universally binding, that is, also binding on all other courts, the Supreme Court included. More specifically, the Constitutional Tribunal can adjudicate in cases related to the following:

- compliance of statutes and international agreements with the Constitution;
- compliance of legal provisions issued by central government agencies and bodies with the Constitution and the ratified international agreements;
- compliance of purposes or activities of political parties with the Constitution;
- constitutional complaints.

In addition, on motion of the Speaker (who presides over *Sejm*, the lower house of the Polish parliament), the Constitutional Tribunal can decide whether or not there exists an impediment to the exercise of the office by the President of the Republic. Finally, the Constitutional Tribunal is empowered to resolve competence disputes between central government agencies. In general, cases are initiated by filing a petition, a legal question or a constitutional complaint. Central to the adjudication of the Constitutional Tribunal is 'constitutional complaint' (Pol. *skarga konstytucyjna*) which enables any individual, whose constitutional rights or freedoms have been infringed, to petition the court. There are specific legal provisions regulating the way in which the complaint should be filed.² Similarly, a petition to commence the procedure for the review of the constitutionality of legal provisions is a legal remedy by which a petitioner in proceedings before the Constitutional Tribunal challenges the compliance of laws with the Constitution. For ease of reference, the term *application* is used in the general sense when a formal written request is made to the Constitutional Tribunal and *applicant* refers to any individual or entity that files an application. Cases before the Constitutional Tribunal are heard before the full bench of 15 judges or before panels of 3 or 5 judges, depending on the type of case. For example, competence disputes between the central government agencies and bodies are resolved before the full bench.

As already mentioned above, the way in which the Tribunal's decisions are published may create the impression that the judgment and its justification constitute a single legal instrument. Since 2016, all the decisions (judgments and orders) handed down by the Tribunal have been published in electronic form and made freely available online.³ As can be seen in Fig. 1, justifications are embedded within the overall structure of the Constitutional Tribunal judgment. As textual units, the judgment is organized into hierarchically structured sections.

A standard judgment opens with a headnote (Pol. *komparycja*), which specifies the type of case and its number, the names of judges on the bench (adjudication panel), the date when the decision is given, etc. The next part, (Pol. *tenor*), which

² More information (in Polish) can be found at the following website: <https://trybunal.gov.pl/podstawowe-informacje/skarga-konstytucyjna>. Accessed 8 April 2020.

³ <https://ipo.trybunal.gov.pl>. Accessed 10 April 2020.

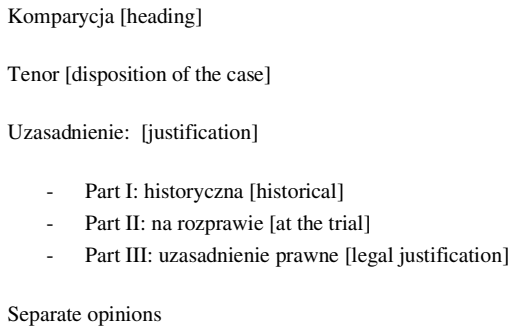


Fig. 1 The structure of a Constitutional Tribunal judgment and its justification as published in the official on-line database

corresponds to the ruling or holding in common law jurisdictions, contains the disposition of a case. This part is invariably signalled by means of the performative verbs *orzeka i postanawia* (Eng. *the court adjudicates and decrees*). This is then followed by the justification of a court's decision.

Justifications of the Constitutional Tribunal's judgments consist of three parts marked with Roman numerals. First, there is a part called 'historical' because it refers to all the documents deemed relevant to the case and which have been filed at different stages of the proceedings. Basically, in this part, the nature of the petition or complaint is presented in conjunction with its justification and the legal grounds on which it was filed. Moreover, this part also provides the details of a charge or complaint, and the arguments advanced by each of the interactants (parties to the proceedings). If the case concerns the non-compliance of a statutory act with the Constitution, this part of the justification describes the legal situation which led to the filing of a complaint or petition. In linguistic terms, this part uses 'reporting' and 'descriptive' language because its main function is to describe the history of the case and then, set against such background, the current legal situation. The second part called 'at the trial' (Pol. *na rozprawie*) reports all material circumstances which occurred between the first court hearing and the final verdict. Therefore, the designation 'at the trial' is somewhat confusing and it is often placed in inverted commas. It is only the third part, referred to as *uzasadnienie prawne* (legal justification), that contains the court's reasoning and can be regarded as justification *sensu stricto*. The first two parts combined seem to correspond to what is known as 'procedural history' in common law jurisdictions. This dual model of legal justification reflects Polish court practice which distinguishes between two major elements: the historical and the legal [17]. The distinction is important because it shows that the justification performs different functions and, consequently, its language should also be expected to vary from the reporting and descriptive to the argumentative and persuasive. It seems that the historical parts tend to display some degree of restriction in terms of their form because their contents are, to some extent, determined by the documents

and the circumstances of the case, etc. In contrast, in the legal justification (Part III) judges could be expected to have more latitude in selecting and adopting various discursive and argumentative strategies of presenting the propositional content. Thus, in the remainder of the study, the analysis focuses on Part III of the justification with a view to uncovering and exploring consistent regularities in its structural and discursive form.

4 Data and Method

The analyses carried out in this study are based on a dataset containing twenty justifications (totalling 242,487 words) randomly sampled from the period between 2017 and 2019. It should be noted that the data comes only from Part III, the legal justifications.

As mentioned in the introduction, the goal of the analysis is to identify and describe the structure of legal justification in terms of individual segments with perceived rhetorical or communicative purpose(s). This type of investigation is located within the rhetorical move structure analysis (from now on *move analysis*) [1, 2, 20]. The aim of such analysis is to “identify the rhetorical moves of a text, or the parts of a text that carry out distinct rhetorical functions” [21, p. 168]. A move is thus a structural segment that has a specific communicative function and purpose [20]. Move analysis is essentially a qualitative methodology whereby a collection of complete texts is analyzed and subsequently divided into segments or sections, each of which is assessed as “performing[ing] a distinct and clearly describable rhetorical function” [19, pp. 228–229] that contributes to the broader communicative goals of the entire text [10]. It should be pointed out that moves are described in terms of their perceived rhetorical form rather than in terms of linguistic regularities, i.e. recurrent lexicogrammatical patterns. However, there is now general agreement that move analysis should be also viewed in pragmatic terms, which allows for the conventional nature of many, especially institutional and specialized genres. Conventional forms are useful in “mark[ing] out aspects of their rhetorical organization” [10, p. 208]. In consequence, move analysis may become somewhat eclectic and rely on a wide range of features which include lexicogrammatical features but also visual signals provided by specific textual layout, orthography (e.g. capitalization) in order to identify move boundaries [21]. The findings reported here followed this eclectic approach.

This study differs from typical move analysis [15] in that it started with a defined set of functional elements proposed in [13, pp. 433–438]. This approach has the advantage of starting with a framework identified by a legal practitioner who is well versed in judicial professional practice. These elements were treated initially as ‘candidate moves’ which required subsequent verification, and possibly modification or expansion. This means that the first step of the analysis involved checking which of these elements appear in recent justifications. Królikowski [13, p. 433] claims that the following three elements are found in *all* justifications: descriptions of the object of the constitutional review, descriptions of the standard of constitutional review (Pol. *wzorzec kontroli*) and the evaluation of a complaint (or petition) filed by an

applicant. The other three elements may appear depending on the circumstances of a case. For example, the Constitutional Tribunal could assess the admissibility of an application by examining the legal grounds on which it was filed. In addition, the Tribunal could set out to define the effect(s) of its ruling. In sum, the analysis first focused on determining the extent to which the six elements are indeed present in the recent justifications:

- (a) evaluation of the admissibility of an application;
- (b) description of an object of the constitutional review and the constitutional issue;
- (c) description of the standard of constitutional review;
- (d) description of material circumstances relevant in light of the evaluation whether an application is legitimate;
- (e) evaluation of the legitimacy of a charge;
- (f) evaluation of the effect of a ruling

Put differently, the first analysis focused on the frequency of occurrence of individual elements and their distribution across the dataset. The presence of these six elements was verified by scrutinizing each text for the occurrence of specific keywords, e.g. ‘przedmiot kontroli’ [object of constitutional review] and analysing its use in the immediate co-texts as well in the context of the entire text. Cognitive judgments were also employed to check for possible shifts in propositional content and the implicit linguistic cues signalling the presence of a given functional element. In the second stage of the analysis, a qualitative analysis (close reading) of each text in the dataset was then repeated to ascertain whether there were any other recurring elements not taken into account in the original typology or whether there are alternative ways of referring to these elements.

This type of analysis involved checking for possible form-function links within moves in an attempt to detect whether the rhetorical functions were expressed by means of specific linguistic choices. Finally, the analysis led to proposing a modified and expanded list of rhetorical moves identified in the current study and summarized in Table 2.

5 Results and Discussion

A summary of analysis is provided in Table 1, which presents the breakdown of each of the proposed elements across twenty different documents. As can be seen in the first column ‘case no’, each case is marked with specific letter symbols to indicate the type of issue raised in an application to the Constitutional Tribunal. Marked with *K* are applications to the Tribunal for its decision regarding the compliance of parliamentary statutes or ratified international agreements with the Constitution and the compliance of statutes with those international agreements that required a prior consent for its ratification expressed in the statute. Marked as *Kp* are applications initiated by the President of the Republic of Poland to obtain a Tribunal’s decision regarding the constitutionality of a parliamentary statute

Table 1 Breakdown of candidate moves across twenty justifications

Case no.	Admissibility of application	Object of constitutional review	Standard of constitutional review	Material circumstances	Evaluation of legitimacy of application	Evaluation of the effect of a ruling
SK 37/15	x	x	x	x	x	x
P 7/16	x	x	x	x	x	x
K 16/16	x	x	x	x	x	
P 12/17	x	x	x	x	x	
SK 10/17	x	x	x	x	x	
P 133/15	x	x	x	x	x	x
SK 25/16	x	x	x	x	x	
K 6/17		x	x	x	x	x
K 34/16	x	x	x	x	x	
SK 6/16	x	x	x	x	x	
SK 27/14	x	x	x	x	x	
K 1/18	x	x	x			
P 13/18	x	x	x	x	x	x
P 19/17	x	x	x	x	x	
K 18/17	x	x	x	x	x	x
P 20/16	x	x	x	x	x	x
SK 13/16	x	x	x	x	x	
K 12/18		x	x	x	x	x
SK 21/17	x	x	x	x	x	x
K 14/17	x	x	x	x	x	

Table 2 List of rhetorical moves identified in the corpus of the Constitutional Tribunal justifications

Move 1 Object of constitutional review and constitutional issue

Steps:

Reference to challenged provision or act and its normative context

Describing a related legal concept or institution

Move 2 Evaluating the admissibility of application**Steps:**

Determining the scope of admissibility based on pre-established criteria

(partial) discontinuance of an action

Move 3 Reconstructing standards of review**Steps:**

Reference to Tribunal's prior precedential cases

Indicating constitutional rules as standards

Move 4 Evaluating the (non)compliance of a normative act with the Constitution**Steps:**

Determining the legitimacy and relevance of a petition

Describing any relevant legislative context for evaluating the legitimacy of challenging a normative act

Move 5 Evaluating the effect of ruling**Steps:**

Indicating legal implications

before signing it into law or the constitutionality of an international agreement before its ratification. Applications for deciding a competence dispute are designated as *Kpt.* Legal questions concerning the compliance of a normative act with the Constitution are designated with *P.* The last two types include constitutional complaints (*SK*) and petitions for determining whether legal provisions given by state authorities comply with the Constitution, ratified international treaties and parliamentary statutes (*U*). This means that the analyses were carried out on justifications that concerned a wide range of different judgments.

First and foremost, the findings confirm the relevance of the six functional elements proposed in [13], which can be regarded as 'moves'. The presence of a particular move is marked with 'x' indicating in which justification it occurs. It becomes evident that two moves are not obligatory: the evaluation of the effect of a ruling is not found in all the texts. Similarly, but to a lesser extent, admissibility of application could be omitted in a justification. In terms of their layout (formal textual organization), it turns out that all the justifications are organized into sections but only half of them include headings. In the remainder of the cases, texts are structured into sections and subsections marked only with Arabic numerals. These textual segments correspond, to a varying degree, to the actual rhetorical moves. Further, this study shows that there is a sequence (albeit with considerable variation) in which the moves recur in the texts of legal justification. The organization of legal justification should be perceived on the 'macro-level' rhetorical functions of the moves and not in terms of particular linguistic choices. With the

exception of the two formulas, provided below, which mark the beginning and the end of legal justification, there are no other formulaic expressions:

Legal justifications commence as follows:

Trybunał Konstytucyjny zważył co następuje [Constitutional Tribunal has considered as follows]

and they end with the equally formulaic:

Z tych względów Trybunał Konstytucyjny orzekł jak w sentencji [For the foregoing reasons, the Constitutional Tribunal has ruled as in the sentence].

The analysis reveals that there is a varied level of explicitness with which the presence of the moves is signaled in the texts. Table 1 shows which moves are signaled directly in the headings (unshaded boxes). For example, the object of constitutional review tends to be presented under a heading which is worded in exactly the same manner. In contrast, the evaluation of the legitimacy of an application is hardly ever signaled by means of a distinct heading. In addition, even if some justifications contain internal headings, these may include references to elements other than the six originally proposed in [13]. This means that in a large proportion of cases (shaded boxes) a close reading of the text was required to establish the rhetorical function of a given textual segment because it was not overtly communicated. For example, in the SK 37/15 justification, the evaluation of the legitimacy of a complaint is addressed in the following way (emphasis added):

- (1) Wziąwszy powyższe pod uwagę oraz uwzględnivszy okoliczności faktyczne i prawne w sprawie toczącej się przed pytającym sądem, Trybunał stwierdził, że *pytanie prawne Sądu Okręgowego spełnia przesłankę funkcjonalną*. [Having considered the foregoing and after taking into account the factual and legal circumstances (premises) in the case heard before the applicant court (lit. the asking court), the Tribunal found that the *legal question* posed by the Circuit Court fulfils the *functional criterion*.]

This confirms that moves are defined on the basis of their rhetorical function and not their surface form, i.e. any recurrent lexicogrammatical patterns. In consequence, the different rhetorical functions can be construed linguistically in various ways.

In some cases, it is necessary to interpret the contents of a given text segment against the knowledge of the procedures put in place before the Constitutional Tribunal in order to arrive at its function. In the following sections, each of the moves is described in greater detail.

5.1 Admissibility of Application

The admissibility of application move has been attested in almost all texts (except for two). It turns out and it is often explicitly referenced in the body of the text

of justification, even if it is not overtly signaled in a heading. In only one case (P19/17), there is a heading which is explicitly formulated as:

- (2) Dopuszczalność merytorycznego rozpoznania pytania [the admissibility of hearing a case on the merits]

It should be pointed out that the decision whether or not admit an application can be made at earlier stages of the proceedings before the evaluation of the merits of a case. The following example regarding the mode of proceedings comes from Part II ('at the trial') of the justification:

- (3) Stosownie do art. 92 ust. 1 pkt 1 otp TK Trybunał może rozpoznać wnioszek, pytanie prawne albo skargę konstytucyjną na posiedzeniu niejawnym, jeżeli pisemne stanowiska wszystkich uczestników postępowania oraz pozostałe dowody zgromadzone w sprawie stanowią wystarczającą podstawę do wydania orzeczenia. *Trybunał uznał, że w niniejszej sprawie przesłanka ta została spełniona.*

[Subject to Art. 92 section 1, Point 1 of the Law on the Constitutional Tribunal, the Tribunal may hear a petition, a legal question or a constitutional complaint during an *in camera* session, if the litigants' positions expressed in writing and other evidence provide adequate grounds for handing down a decision. *The Tribunal finds that this criterion has been fulfilled in the present case.*

The last sentence (in italics) contains the crucial finding provided by the Tribunal but in fact the entire excerpt above has been found to occur in identical form in several cases to the extent that it could be considered as formulaic. However, the full issue of formally accepting a case for the constitutional review is properly dealt with in Part III. As Example 3 above suggests, cases before the Tribunal are initiated by means of an application, a legal question or a constitutional complaint. The scope of evaluation of their admissibility depends on how a case is initiated, i.e. the circumstances of specific proceedings. For example in the case of a legal question posed usually by a lower court, the so-called 'petitioning' or 'applicant' court (Pol. *sąd pytający*), the Constitutional Tribunal examines whether any of the three premises or criteria (subjective, objective and functional) are fulfilled in order to meet the requirement of admissibility. Our analysis shows that Tribunal tends to provide an overt evaluation of whether this requirement has indeed been met as illustrated by the following example:

- (4) Wziąwszy powyższe pod uwagę oraz uwzględnwszy okoliczności faktyczne i prawne w sprawie toczącej się przed pytającym sądem, *Trybunał stwierdził, że pytanie prawne Sądu Okręgowego spełnia przesłankę funkcjonalną* (P7/16)
[Having taken into account and considered the factual and legal premises in the case before the petitioning court, *the Tribunal finds that the Circuit Court's* (Pol. *Sąd Okręgowy*) *legal question has fulfilled the functional criterion*].

However, the admissibility of the case may be expressed differently by invoking constitutional and statutory requirements:

- (5) Trybunał Konstytucyjny stwierdził, że pytanie prawne spełniło wymagania konstytucyjne i ustawowe warunkujące jego merytoryczne rozpatrzenie (P133/15) [The Constitutional Tribunal finds that the legal question complies with the constitutional and statutory requirements for its admission.]

The Tribunal may also rule that a given question or complaint does not comply with all or some of the admissibility criteria. In the case of partial fulfilment of the criteria, the Tribunal tends to limit the scope of admissibility. This is reflected in some headings or subheadings inserted in those justifications that signal the scope of adjudication and/or discontinuance of an action regarding those parts that have been found inadmissible:

- (6) Zakres dopuszczalnego orzekania merytorycznego [the scope of adjudicating on the merits]
 (7) Umorzenie postępowania [discontinuance of an action] (K 1/18)

or its variant:

- (8) Częściowe umorzenie [partial discontinuance of an action]

The justification part refers to a relevant provision citing it as legal basis for such a step in the proceedings along with its interpretation in light of recent judicature and the circumstances of a specific case. In sum, this element of justification serves the purpose of formulating the legal basis for adjudication. In fact, the analysis has also retrieved three cases with the heading *podstawy prawne orzekania* [legal basis or grounds for adjudication] to emphasize that a check needs to be carried out to ensure that all formalities have been complied with and the Tribunal is competent to address a given question or complaint.

5.2 Object of Review

This move is invariably found in all justifications, where, in most cases, it is marked explicitly by means of a separate heading. Its aim is to describe a normative provision that the Tribunal has been petitioned to examine. The object of review is presented by citing the contents of the challenged legal provision. Depending on the type of provision, the Tribunal in its justification may present it against a wider normative background tracing its development over time in order to establish its purpose and impact on other provisions. If amended provisions are challenged, then the Court describes changes resulting from introducing these provisions and it assesses the importance of such a change. In a few cases, a subheading has been identified signaling that the provision is examined in its wider normative context:

- (9) Treść zaskarżonej regulacji i jej otoczenie normatywne (133/15)
[The contents of the challenged provisions and its normative context]

In fact, in more than half of the analyzed texts, an entire legal institution behind the challenged provision is described after being signaled in a heading, as in the following examples:

- (10) Kara łączna w wyroku łącznym – uwagi ogólne [joint punishment in a joint sentence – general comments]
(11) Instytucja kary łącznej była znana w polskim prawie już od okresu międzywojennego [the institution of joint punishment in Polish law has been known since the interwar period]

In addition, this study supports Królikowski's [13] assertion that the Tribunal now tends to reformulate the constitutional problem raised by an applicant. In earlier cases, the court merely repeated the contents of an application, already described in Part I (historical) of the justification. Now, the Tribunal sets out to 'translate' the problem raised in an application into the constitutional language. The present analysis has failed to retrieve a single instance of reiterating the position of an applicant, which, apparently used to be common practice in the Tribunal's judicature [13, p. 435]. Regarding the formal text organization, it should be noted that only the phrase 'object of review' without 'constitutional problem' is found in headings and in the body of text. This might carry some implications for (semi)automatic text processing and legal information retrieval. As mentioned above, the admissibility of an application may be found after the description of an object of review. It is sometimes attached to the next element devoted to the description of standards of constitutional review.

5.3 Standards of Review

This element of justification occurs either on its own or it is merged with another element. It is, in most cases, easily identified thanks to overtly-worded headings. In addition, the phrase 'wzorce kontroli' [standards of review] is commonly used in the body of texts of justifications thus facilitating the task of retrieving relevant sections of the justification. In case when a statutory provision or any normative act other than the constitution is the standard of review, this part of the justification may be combined with the 'object of review' as shown in the following example:

- (12) Przedmiot zaskarżenia i wzorce kontroli. [Object of complaint and standards of review]

However, whenever the Constitution itself becomes the standard of review, the Tribunal tends to refer to it separately and describe the standard by referring to its own earlier cases which dealt with the same or closely related constitutional issue:

- (13) W świetle dotychczasowego orzecznictwa Trybunału Konstytucyjnego, art. 32 ust. 1 Konstytucji może być samodzielnym wzorcem kontroli w sprawach zainicjowanych wnioskiem Rzecznika Praw Obywatelskich (por. np. wyroki zakończone stwierdzeniem niezgodności badanych przepisów z tym wzorcem kontroli z: 18 grudnia 2000 r., sygn. K 10/00, OTK ZU nr 8/2000, poz. 298; 16 grudnia 2009 r., sygn. K 49/07, OTK ZU nr 11/A/2009, poz. 169 i 20 czerwca 2017 r., sygn. K 16/15, OTK ZU A/2017, poz. 49).
[In light of the Constitutional Tribunal's current judicature, art. 32, section 1 of the Constitution may be an independent standard of review in all cases initiated by the Ombudsman (see judgments where provisions were ruled incompatible with this standard of review...) (K 16/16)]

Just as in the case of describing the object of review, the Constitutional Tribunal now tends to refrain from citing the constitutional provisions and providing its 'wholesale' interpretation. Instead, the justification focuses on the outcome of the Tribunal's decisions regarding the same or similar constitutional issue. In other words, the recent judicature shows that there is a clear trend towards relying on the precedential value of the Tribunal's decisions which are 'translated' to address the needs of a new case. In a few cases, this practice has been reflected in the way a heading is formulated, as in the following example, where the Tribunal points to those principles that have been adopted as standards:

- (14) Zasady konstytucyjne będące wzorcami kontroli w niniejszej sprawie.
[Constitutional rules as review standard in this case].

This inferential and derivative approach to the analysis of review standards has found its expression in headings which refer to the 'reconstruction' of review standards (*rekonstrukcja wzorców kontroli*). Such headings signal that the Tribunal furnishes more detailed and formal analysis of constitutional review standards in response to the applicant's issues and arguments.

5.4 Evaluation of the Legitimacy of an Application

This element has been found in virtually all justifications except for only one case, initiated by the President. The examination of the texts shows that this part of justification is signaled using different linguistic realizations. This is accomplished by referring to the evaluation of the constitutionality of a given provision as illustrated by the following three examples:

- (15) Ocena konstytucyjności badanej regulacji.
[The evaluation of the constitutionality of the provision under examination.]
- (16) Badanie zgodności art. 9 ust. 2b zdanie trzecie p.w.KRS z art. 64 ust. 1 w związku z art. 31 ust. 3 Konstytucji.
[The examination of compliance of art. 9 section 2b the third sentence KRS with art. 64, section 1 in relation to art. 31 section 3 of the Constitution.]

- (17) Ocena zgodności zaskarżonej regulacji z art. 45 ust. 1 w związku z art. 31 ust. 3 Konstytucji.
[The evaluation of whether the challenged regulation complies with art. 45 section 1 in connection with art. 31 section 3 of the Constitution.]

The ‘legitimatory’ aspect is usually found in the body of a text, as in this example:

- (18) Następnie Trybunał Konstytucyjny rozważył zasadność wątpliwości pytającego sądu w zakresie dotyczącym art. 64 ust. 1 Konstytucji.
[Then, the Constitutional Tribunal considered the legitimacy of the doubt brought up by the petitioning court in as much as it concerns Art. 64 section 1 of the Constitution.]

The way such evaluation is expressed depends on how the Tribunal determines the disposition of a given case, based on the examination of the challenged provisions. Predictably, if the Tribunal does not find for the applicant, it focuses on demonstrating that the application is groundless and unjustified. The Tribunal may also indicate that the legal issue indicated in the application does not exist or there is no real danger of violating the Constitution. It is this part of the justification that is most argumentative and dialogic, which means that the Tribunal engages with the argumentation of the litigants and other legal actors and it provides its own line of argumentation for the (un)constitutionality of a challenged provision.

5.5 Circumstances Relevant from the Perspective of Evaluating the Legitimacy of an Application

Królikowski [13, p. 436] notes that in many cases, the Constitutional Tribunal provides the description of circumstances which are crucial to evaluating the legitimacy of an application through a separate section. Such circumstances depend on the nature of a challenged provision and the contents of the application. This element of justification has proved to be particularly problematic in terms of its identification. The analysis of data in this study has not returned a single instance of justification that would contain a section designating such element explicitly. Rather, any such circumstances would be subsumed under a section devoted to the evaluation of the legitimacy of an application. Assuming that this element aims to examine the intended function of the challenged normative act and its effect on the legal system, such circumstances could be found in the previous section, where the object of review is described in conjunction with its normative context.

5.6 Assessing the Effect of Judgment

The final move is found only in judgments where the Constitutional Tribunal has found a challenged provision unconstitutional. In as many as five cases, the justifications contain a separate section with a clear heading signaling to the reader that it was necessary to address issues arising with the ruling. The purpose of this element

in a legal justification is to address potential ambiguities arising in the aftermath of a Tribunal's decision. Increasingly, the Tribunal takes into account the complex situation faced by the petitioning court and it refers to such situations as the admissibility of relying on the challenged normative act during adjournment period or the effect for cases adjudicated earlier or what changes the judgment triggers in the legislative sphere. Excerpts below illustrate this point:

- (19) Skutki wyroku. Skutkiem niniejszego wyroku nie jest utrata mocy obowiązującej przez art. 3 § 2 pkt 2 p.p.s.a., a tylko wyeliminowanie znaczenia tego przepisu
[Effect of judgment. The effect of this judgment does not lie in the loss of legal force of art. 3 § 2 point 2 p.p.s.a., but in removing the importance of this provision.]
- (20) Na podstawie niniejszego wyroku ustawodawca powinien podjąć działania zmierzające do (...); [Based on this judgment, legislator should take the following steps in order to (...)]

5.7 Move Sequence for Legal Justifications

Table 2 below provides a list of moves and steps identified in the corpus of Constitutional Tribunal justifications, which represents a verified and a more fine-grained version of the initial candidate moves listed in Table 1. It is proposed that legal justification consists of five major moves which are found in the following sequence: OBJECT OF CONSTITUTIONAL REVIEW AND CONSTITUTIONAL ISSUE > EVALUATING THE ADMISSIBILITY OF APPLICATION > RECONSTRUCTING STANDARDS OF REVIEW > EVALUATING THE (NON)COMPLIANCE OF A NORMATIVE ACT WITH THE CONSTITUTION > EVALUATING THE EFFECT OF RULING

In addition, Table 2 provides steps for each move, which indicate the way(s) in which the rhetorical function of a given move is realized. Thus, the first move aims at presenting the object of the constitutional review by referring to the challenged normative act or its provision. This is achieved through its direct citation along with the description of the normative context, i.e. its place in the legal system. In most cases, this move is completed in the second step which involves describing an entire legal institution. The language of this part is largely descriptive. In the second move, the Tribunal evaluates whether an application may be admitted and in doing so, it determines the extent to which the Tribunal finds that permissible. This step is based on criteria related to the type of application, i.e. whether it is a complaint or legal question and the step usually ends with the Tribunal's narrowing down the scope of an application and the decision that the case is discontinued with respect to its certain part or parts. The third move focuses on specifying standards against which the constitutionality of a challenged act is examined. This move involves two steps. In the first, the Tribunal infers constitutional principles based on its own previous decisions which have been deemed relevant to a particular case. In the second, these principles are stated and their choice justified. The fourth move has been proposed based on the overwhelming evidence pointing towards the Tribunal's drafting

practice to insert headings which explicitly signal that this part of the justification deals with the compliance (or its absence) of a normative act with the Constitution. This is realized by determining the legitimacy and relevance of an application. In most cases, the Tribunal focuses on demonstrating that the arguments advanced by an applicant are groundless. This move tends to be preceded by describing any relevant legislative context for evaluating the legitimacy of challenging a normative act. Finally, this analysis shows that the Tribunal tends to evaluate the effect of its ruling (decision) by addressing issues related to its impact on past and future cases. The language of this part is dialogic reflecting the Tribunal's concern for the complex legal situation of the petitioning court as well as other institutional entities involved in remedying a given constitutional problem.

6 Summary and Conclusions

While genres are defined in terms of convention and stability, they are also constantly in a state of flux. This apparent paradox noticed in [10] may depend on a type of genre and its evolutionary state. Justifications in decisions of the Constitutional Tribunal represent a relatively recent phenomenon as the court started adjudicating in less than 50 years ago. It can be assumed that just like any other institutional genres, justifications are also undergoing the constant process of change and modification. By means of a move analysis of the justification genre, an attempt has been made to address this issue. The study has provided much needed empirical evidence for the occurrence of recurrent patterns in the expression of legal justification. It has been evidenced that there is a shared core of rhetorical structure realized by means of five major moves, each with a distinct function. Additionally, the moves have been found to occur in a specific sequence. At the same time, the paper demonstrates that there is considerable variation in the way moves can be signaled across the internal structure of the texts. The variation occurs at the level of individual texts with some elements marked explicitly in the headings, some being introduced under different headings and still some requiring a close reading for their identification. One clear case, not mentioned in the initial proposal [13], concerns the evaluation of a challenged normative act in terms of its compliance with the Constitution. It is in this move that one finds the Tribunal's argumentation regarding the legitimacy of an application. Such variation may be attributed to judges working without explicit guidance or legal codification and being forced to resort to strategic acts of innovation. The findings provide evidence that there has been some change in the way the Tribunal constructs its justification regarding the object of review and the constitutional standards. In both cases, the justifications have become more 'creative'. In the former, rather than citing it verbatim, the Tribunal reformulates the issue or question from the petition in constitutional terms. In the latter, it has replaced lengthy citations of constitutional provisions with a principle or principles inferred from the Tribunal's past decisions. However, more work is needed to trace the development between the early justifications and those handed down more recently. Future research could also be extended by exploring the correlations between the type of a

given (as indicated in the case number) case heard before the Tribunal and the presence of recurrent elements in their justifications.

It is hoped that this study has made a convincing case for the application of move analysis to the examination of the rhetorical structure of legal justification. The underlying theoretical assumption is that understanding rhetorical moves contributes substantially to our understanding of a given genre because we can learn which elements are used to craft a given textual instantiation of the genre. As Paltridge points out such knowledge can provide access to “socially powerful forms of language” [16, p. 85]. In a similar vein, Bhatia [2] argues that the knowledge about the functional characteristics of a move and the entire structural pattern of a text facilitates the understanding of a given genre.

The results of the study offer useful implications for further work on judicial discourse, and especially the language of legal justification. It appears that the way justifications are drafted are subject to very concrete, even if not explicitly stated constraints. Irrespective of a given judge’s stylistic and drafting preferences, certain elements must be present in order for the justification to be accepted as a valid representative of the generic category. Yet, the generic integrity [1] of justification does not seem to be manifested by making specific lexicogrammatical choices. Rather, it is concerned with representing the extra-linguistic reality of law by means of functionally-oriented rhetorical units.

Acknowledgements Acknowledgments of people, grants, funds, etc. should be placed in a separate section on the title page. The names of funding organizations should be written in full. I acknowledge that the study reported in this paper has been funded by Poland’s National Research Centre. Grant No. UMO-2018/31/B/HS2/03093

Funding This study was funded by Narodowe Centrum Nauki Polska (National Science Centre) Poland. Grant No. UMO-2018/31/B/HS2/03093.

Compliance with Ethical Standards

Conflict of interest The authors declare that they have no conflict of interest.

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