



How to Write a Judgement

A) Function of a Judgement:

Being the final result of a legal procedure a judgement shall provide a balanced conflict solution. An ideal judgement enables both conflict parties to live in peace together.

For that purpose it is necessary to deliver a clear **execution order** giving precise instructions to both parties who has to do what.

Furthermore a judgement must be convincing if it shall fulfill its peacemaking function well.

To achieve this purpose it is also necessary that the judgement includes a **reasoning** which shows both parties that their positions have been considered. They must be shown in detail that the **facts** and **legal views** given by them have been taken into account and have been weighed properly.

Finally the judgement must show exactly what **law articles** have been applied to the facts of the case. This is important to enable the parties to understand the law and learn from the judgement how to behave correctly according to the law. Furthermore it gives them a chance to examine the judgement for mistakes like negligence or misunderstanding of facts or legal errors to prepare a potential appeal based on these mistakes.

The judge who writes the judgement must always consider that the text s/he produces is read by **various recipients**. Taking this into consideration the text must be **written to be understood by all of these recipients** and must contain the information that is necessary for them:

- The **parties** themselves who are not jurists need a **simple to read instruction** about what the law says and what the law requires them to do. The parties also need to see that their position has been attentively heard by the judge.
- The **lawyers** of the parties need to know exactly on what legal grounds the judgement is based. This requires the judge to **quote exactly the law articles** s/he has applied on the case. To explain the legal reasoning the judge can include **technical legal terms** because the lawyers as trained jurists then can easily understand the reasons.
- The **higher instance courts** who have to scrutinize the judgement in case the parties file an appeal need to know if all facts have been collected properly and if all the evidence has been collected according to the law. Furthermore the judgement also should include a short **summary of the legal proceedings** or should be accompanied by an attached minute of the proceedings.



B) Basic Legal Requirements of a Judgement:

I) Time, Publication, Reasons:

Article 14 ICCPR which enshrines the basic principles of a fair trial requires that a judgement must:

- be delivered in **due time** after the end of the trial (Article 14 III c ICCPR)
- be **publicly** pronounced (Article 14 I 3 ICCPR)
- show the underlying **reasons** of the decision to ensure an effective right to appeal (Article 14 V ICCPR)

II) Legal Requirements to the Content of a Judgement:

Some legal provisions describe what minimum contents must be included in a judgement.

Article 143 Criminal Proceedings Code:

All judgements shall consist of two parts: the record of proceedings before judgement and the judgement itself.

I) The record of proceedings which is written on the top of the judgement shall consist of: surname, name, profession, domicile and the role of the parties, the surname and first name of the lawyer or the defender, the charge and the request of the parties, if any, the reminder of the procedure with indication of the principal acts and different incidents the court has already decided. This record of proceedings shall also contain the questions and the answers from the hearing.

II) The judgement itself shall be sub-divided into two parts: the grounds and the enacting term of judgement.

- a) The grounds of judgement are the reasons on which the decision of the court was determined.
- b) The enacting terms of judgement express the measures taken or the sentence pronounced by the court.



Article 144 Criminal Proceedings Code:

All judgements shall be grounded on each of the counts of accusations as well as on each of the parties' requests. The grounds of the decision shall be precise; that means expressing unequivocally and without contradiction the thought of the judge.

The enacting terms, which are the essential part of the judgement, shall also be as precise as the grounds. In the enacting terms of the judgement, there shall be references to all legal texts on which the decision is based.

Article 26 I 1 UNTAC-Criminal Code:

All criminal judgements must indicate the acts held against the accused and the witnesses or evidence on which the judge relies, as well as the explicit grounds of the conviction.

Article 189 of the Draft Civil Proceedings Code as well as Article 38 of the Prakas on the Arbitration Council (for Collective Labour Disputes) provide minimum standards for the contents of a judgement or an arbitral award:

Article 189 Draft Civil Proceedings Code:

- I) A written judgement shall include the following matters:
- a) the court
 - b) the date on which oral argument was concluded
 - c) the names and addresses of the parties and of their representatives.
 - d) the facts and the matters in dispute
 - e) the grounds for the decision and
 - f) the main and conclusive text of the judgement.
- II) The statement of the facts and the matters in dispute shall be based on and include a summary of the statements of the parties.
- III) The written judgement shall be signed by the judge or judges that issued the judgement.
- IV) If circumstances prevent judges belonging to a panel of judges from signing the written judgement, other judges(s) shall sign the judgement and indicate the reason for the absence of each such judge's signature on the judgement.



Article 38 Prakas on Arbitration Council:

Arbitral awards shall contain:

- a) the names of the three arbitrators
- b) the name, domicile and seat or actual residence of the parties
- c) a summary of the procedure
- d) a description of the claim and a description of the counterclaim, if any
- e) the reasons for the decision given in the award with , where applicable reference to relevant provisions in the Labor Law; it's implementing regulations or collective bargaining agreements or individual labor contracts
- f) the decisions of the arbitration panel
- g) the date on which the award is made.

C) The Basic Structure of a Written Judgement:

The Arbitration Council that was established in Cambodia to settle Collective Labor Disputes has developed a very useful format for writing an arbitration award. As an award is more or less the same like a judgement this award form can be a useful tool for anyone who has to write a judgement or wants to see what the minimum contents of a judgement looks like. The homepage of the Arbitration Council⁴⁷ provides a lot of texts of diligently reasoned and written arbitration awards in Khmer and English that can serve as a model for writing a judgement.

Essential parts of a judgement:

- **heading of a case**
- **execution order**
- **summary of party statements**
- **findings of facts**
- **reason for the decision**
- **information about right to appeal**

I) Heading of a Case:

This part at the top of the judgement includes the details about the parties, their lawyers and the topic of the claim. It further includes the file number, the name of the deciding judge or of the deciding chamber of the court and the line: “In the Name of the Khmer People – Judgement”.

⁴⁷ www.arbitrationcouncil.org



Example:

File Number: ...

**In the Name of the Khmer People
- Judgement -**

In the case of

Party **A**

-Plaintiff-

(Name, Address, etc)

represented by:

Lawyer **X**

(Name, Address)

against

Party **B**

- Defendant -

(Name, Address, etc)

represented by:

Lawyer **Y**

(Name, Address)

concerning a claim of compensation for damages

Judge: ... (Name) of the Municipal Court ... (Name) has decided as follows:

II) Execution Order:

This part of the judgement formulates the decision the judge has made. It informs the parties exactly about what the court orders them to do and how the decision shall be executed. The given order must be enforceable, this means it has to be very **precise, naming exactly the parties, their duties, the deadlines, the amounts of money, the interest rates to be paid**, etc. It must be clear for the enforcing court or the enforcement agents (like judicial police officers) without any further discussion what obligations the parties have to fulfill according to the decision. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution and the contents of the decision.

Example:

“The defending party is ordered to pay an amount of 1.000.000 Riel to the plaintiff including 10 % interest rate on the said amount since 3rd February 2003 within 10 days after the official reception of the judgement.

The defending party furthermore has to bear the costs of the court proceedings including the costs of the plaintiff’s lawyer”.

Such a text leaves no doubt about what to do exactly whereas the following example of a court order is too unclear and not enforceable:

“Party A has to pay sufficient compensation to Party B for the damages caused by A as soon as Party A can afford it”.

This leaves many questions open: What is “sufficient” compensation? What “damages” are covered by this order? At what time exactly must party A pay?



III) Facts:

A judgement is the result of an application of the law to the facts. The judge collects the facts from both sides in a fair trial. At the beginning of the judgement there must be a **summary of the case as presented by the parties**.

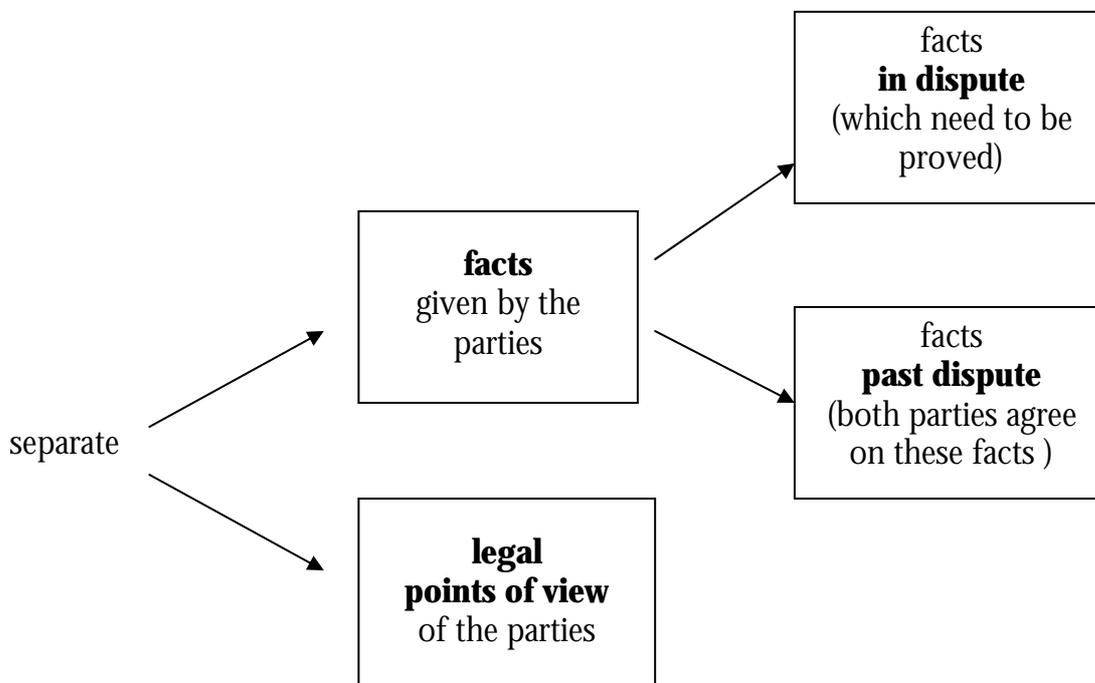
If there are disputed facts the judge has to raise evidence and to determine which facts s/he sees as proved by this evidence and which not. This part of the judgement is called the **findings of the facts**. It also includes a selection of those facts which the court thinks are necessary to base the decision on.

Finally the judge applies the text of the pertinent law step by step on these facts examining carefully if the given facts fulfill the legal conditions set up by this law.

1) Summary of the Case as Presented by the Parties:

In the judgement the judge must clearly point out on what facts the decision is based on because **“it is not enough that justice is done but justice must be seen to be done”**. This means the parties of a dispute must perceive the judgement as a just and fair solution of their dispute. They will only accept the judgement if they can really see that the judge has attentively noticed all their statements.

So there must be a short summary of the parties’ statements that shows the **facts**, the **evidence** and the **legal points of view** given by the parties. To keep the text clearly there should be a distinction between facts that both parties agree upon and those that are disputed. Finally the summary should also state exactly the **claim** of each party.



Making these distinctions provides a clear structure and overview. It makes it easier to see at once where the problems and conflicts are located in the given case.



Example:

1. Facts agreed upon by both parties:

Plaintiff A is the owner of House Nr. ... in Defendant B has rent this house based on a rent contract with A dated The house was given to B on Both parties agree that it was in good shape at that date. The contract expired on B returned the house to A after this contract.

2. Position of Party A:

a) Allegations of facts by A:

A alleges that B did return the house in a bad shape because B has caused damages by negligence letting the bathtub overflow in his absence on ... (Date). A says it costs 500 \$ to repair the damages.

b) Legal point of view of A:

A thinks he has a right according to Article ...of the Civil Law to get compensation paid by B for negligently damaging his property.

3. A's Claim:

A claims,

a court judgement ordering B to pay 500 \$ to A within 10 days after receipt of the judgement including 10 % interest rate since date....and ordering B to bear all the costs of the court proceeding including the costs of A's lawyer.

4. B's Counter Claim:

B claims,

that the court fully rejects A's claim and orders A to bear all court proceedings costs including the costs of B's lawyer.

5. Position of Party B:

a) Allegations of facts by B:

B concedes that the house is damaged. But B says that he is not responsible for this damage because on the said day he was absent and did not use the bath tub but a heavy rainfall flooded the whole house. Furthermore he says that the damage at the house can be easily repaired for only 150 \$.

b) Legal point of view of B:

B thinks that A has no right to claim 500 \$ from him because the law does not allow A to hold him responsible for damage caused by superior force, in this case by a rainfall flooding.

2) Findings of Facts:

This part of the judgement must show the facts the judge bases his/her decision upon. It also must give a short reason why disputed facts are regarded to be proved by the judge due to his/her weighing of the relevant evidence.

Example:

The water damage at the house was caused by B but the repair only costs 150 \$.

The court gathers this from questioning the neighbours of B who testified as witnesses that during the rent period there were no heavy rain falls at that place at all. There is no reason not to believe these neighbours. They testified the same facts independently of each other and did neither show sympathy nor a negative attitude towards B.



Furthermore the public meteorological report corroborates these testimonies. Additionally the court inspected the house of A and of his neighbours finding that the neighbours' houses did not show any signs of heavy rainfall flooding damage although they are situated just next to the house of A and would have been damaged too in case of flooding. Finally the water traces were clean like from running tap water and not dirty like from outside dirt water flooding the house. As the house did not have any damages at the time of renting it to B but had damages when he moved out all this indicates clearly that the damage was caused by B letting the bathtub overflow. But the questioning of a plumbing expert and two different repair offers presented by B show that it costs only 150 \$ to repair the damage.

IV) Reason For The Decision:

Every party has a **right to** receive a **judgement which shows the reasons**. A judgement without a reason would make it impossible to file a well founded appeal against the judgement. So the right to appeal (Article 14 V ICCPR) includes the right to know the reasons of a judgement. The duty to give a reason for the judgement also makes it more difficult for a judge to hide his/her true motivation for making the judgement which may have been not so much influenced by the law and the facts but more by payments of one party or by the sheer lack of the judge's legal knowledge.

The reasoning of a judgement must convince the parties that their position has been fully considered. It must show why some facts given by the party are regarded to be important and others are regarded not to be important. Furthermore the reasoning of a judgement must show the application of the relevant law provisions step by step, article by article and law term by law term.

**Notice: It is not a sufficient reasoning just to use the phrase
“having seen all facts and the law the court decides...”.**

The reasoning of a judgement must go into detail and must enable the recipients to follow each thought of the judge's conclusion:

Examples:

- “The defendant has to pay damages to the plaintiff. According to Article ... of the Civil Code someone who negligently violates the property of some other person in an unlawful way and thus causes damage is obliged to pay for the compensation of this damage.
In the given case the defendant B has rented A's house in good shape but returned it to A with water damages. These damages were caused by B negligently letting overflow the bathtub. The water damages were neither caused by heavy rainfall nor flooding but were caused by the action of B who is obliged to use A's property respectfully. As a result of B's negligent treatment A's house had to be repaired for 150 \$.”
- “The defendant has to pay damages to the plaintiff. According to Article ... of the Civil Code someone who negligently violates the property of some other person in an unlawful way and thus causes damage is obliged to pay for the compensation of this damage.
In the given case the defendant has driven his car too fast. He violated the speed limit as regulated by Article ...of the Traffic Law. Doing so he was not able to stop the car in



time and unwillingly hit the plaintiff when crossing the street. This happened unlawfully as none of the reasons mentioned in Article ... Civil Code are given that could otherwise justify the behaviour of the defendant. As a result of the accident the plaintiff had to be treated for two days in a hospital and had to recover at home for two more days. So the defendant negligently caused a financial damage that amounts to a sum worth the income of 4 workdays plus the necessary medical costs. Pursuant to Article ... Civil Code the damages that have to be paid by the perpetrator do not only include the costs of the restoration of physical health but also all financial loss that is directly caused by the damaging act”.

V) Information About The Right To Appeal:

As the right to appeal would be worthless if the conflict parties do not know about this right a judgement should – for fairness reasons – also include an information about when, how and where parties can submit an appeal against this judgement. At least parties who are not legally represented by a lawyer need to be informed about their right to appeal. This information must say exactly where an appeal has to be submitted, what formalities have to be regarded and what deadlines have to be kept.

So it is recommended to attach short information like the following text at the end of each judgement:

Example:

“Both parties have a right to submit an appeal against this judgement within 14 days after they have received the written text of this judgement in an officially confirmed way. The appeal claim must be in writing and can be sent either to the court that has delivered the judgement or directly to the Appeal Court. The appeal shall name the reasons for the objection of the judgement”.



Study Question 33

Case:

Party **A** claims \$ 100 USD from Party **B** before the court. A says that he granted a loan of this amount to B.

B rejects the claim and says that this money was never given to him.

A produces a loan document to the court which B had signed.

It is not clear whether this document is true or a falsification. The judge therefore calls witness **C** to get more information of the circumstances of the loan.

The judge rejects A's claim.

Please shortly formulate the reasons of his/her judgment!



Study Question 34

A fair judgment needs to give reasons.

What has the reasoning to cover to sufficiently explain the judgment?