

Danguolė BUBLIENĖ  
Salvija KAVALNĖ  
Eglė ZEMLYTĖ  
Law Institute of Lithuania

## **Analysis of Factors Influencing Effectiveness of Civil Justice: Analysis of Particular Amendments to the CCP**

### **SUMMARY**

Considering the context of the initiative to analyze the factors influencing effectiveness of civil justice the purpose of the research is to identify the influence or potential influence of the amendments to the Code of Civil Procedure of the Republic of Lithuania (hereinafter – the CCP) on the effectiveness of civil justice.

For the purpose of the research the following tasks were determined:

- 1) to identify the criteria based on which the effectiveness of civil justice can be assessed taking into account the results of the research on effectiveness of civil justice performed by OECD, CEPEJ, ENCJ, CCJE and other international or national organizations;
- 2) to perform systematic analysis of the amendments to the CCP adopted after the CCP came into force, also identify and assess their inter-connection, consistency, purposefulness and *exposé des motifs*;
- 3) to identify which of the amendments and to what extent has or might have potential influence on the parameters (criteria) of the effectiveness of civil justice and to determine the most important ones;
- 4) to analyze and assess the influence of few carefully chosen amendments to the CCP on effectiveness of civil justice according to the parameters (criteria) of effectiveness of civil justice by taking into account the purpose and aim of the particular area of the law of civil procedure which was amended;
- 5) to identify future endeavors to help to improve evaluation of effectiveness of civil justice.

The research paper consists of three parts.

The first part is dedicated to the concept of effectiveness of civil justice itself. Based on research performed by another institutions and organizations (e. g. OECD, CEPEJ, etc.), the parameters and criteria defining effectiveness of civil justice are identified and analyzed. Further, these parameters and criteria are systemized, and the system of parameters and criteria is created (based on these criteria the effectiveness of civil justice in Lithuania should then be assessed).

The second part of the research focuses on the analysis of the amendments to the CCP. As result of the thorough analysis of the amendments, 12 areas of civil procedure which are considered as the ones that might have the biggest impact on the effectiveness of civil justice, were selected and three areas (i.e. court fees, appeal and public procurement proceedings) were chosen for further analysis.

The third part of the research lists conclusions and recommendations.

It was determined that the assessment of effectiveness of civil justice had gradually evolved from relying exceptionally on quantitative parameters (i. e. the use of the term “efficiency”) to relying on both quantitative and qualitative parameters (i.e. the use of the term “effectiveness”) and looking for a right balance between the efficiency and quality of justice. In Europe, currently the three-fold criteria concept

prevails according to which the effectiveness of civil justice is determined based on three criteria: independence, efficiency and quality.

It was established that in order to assess civil justice reforms which had a purpose to improve effectiveness of civil justice it is necessary to collect objective, reliable and comparable data which must be systematically and periodically analyzed. In Lithuania, although some data is collected, i.e. data related to examination of cases, public procurement – there is no system for collection, monitoring and evaluation of necessary data created. Hence, evaluation of effectiveness of civil justice in Lithuania so far remains fragmentary, random and rather inconsistent. The authors of the research came to the conclusion that in Lithuania it is necessary to establish a system for monitoring and evaluating the effectiveness of civil justice (including aspects of public access and the publication of this data) and methodology (including not only lawyers but also sociologists, mathematicians and economists): i.e. to identify the data to be collected and methods for collecting it (questionnaires, case examination data, macroeconomic indicators), principles of elimination of external factors, etc. It is also recommended that responsible institutions need to be established in order to carry out the functions involved. Monitoring and evaluation of civil justice should include not only the monitoring and evaluation of court activities, but also the activities of other entities involved in civil justice. Creating a system and methodology would ensure that amendments to the CCP are not unnecessary or chaotic, as well as that the proper assessment not only of the amendments to the CCP, but also the effectiveness of the CCP is made. The aforementioned action would also ensure that problems related to effectiveness of civil justice are properly and more easily identified. This in turn would allow to find better solutions as well as to assess whether these solutions have proved to be successful.

As regards assessment of the amendments to the CCP regarding the court fees, the authors of the research made the following conclusions and recommendations.

Firstly, due to the lack of data it was not possible to determine whether the changes in court fees had positive or negative effect on the effectiveness of civil justice. It is more likely that increase in court fees had positive effect on the quality (in the sense that larger amounts of money were collected which contributed to the budgeted expenses dedicated to the court system), since average court fees per one case tripled as of 2003. However, it remains undetermined whether such positive effect was not achieved due to the access to justice institute, because the general caseload, which was growing until 2011, started to decrease. The latter, considering the fact that court fees per one case continued to increase, might be an indicator of the fact that there is more litigation in disputes which are subject to higher court fees.

Secondly, after analysis of separate case categories (in which the data was available to a certain degree), it was concluded that increase of court fees did not cause negative consequences as no correlation between the number of cases and increase of court fees exists.

Thirdly, the analysis of available data recommendations on how data should be collected was provided in the research paper (basically, it was suggested to collect data in each case category regarding the number of cases commenced, number of the claims dismissed / satisfied, appeals submitted, appeals dismissed / satisfied, and amount of court fees collected).

As regards assessment of the amendments to the CCP regarding examination of public procurement cases the following conclusions and recommendations were made.

Firstly, after having conducted analysis of the legal regulation of public procurement cases, it was determined that the purpose of the amendments was to make the process of public procurement cases more efficient, i.e. to achieve that all cases are examined in a certain statutory time limits. The legislator did not try to decrease the number of public procurement cases. And the analysis revealed that the

efficiency of examination of public procurement cases was indeed improved. In other words, it was concluded that the newly introduced regulation had significant impact on the effectiveness of civil justice in terms of efficiency. However, the courts did not manage to follow the time limits prescribed by the law in all cases. On the other hand, it was established that it is hardly possible to increase the ratio of cases which the courts managed to solve in statutory time limits. The attempts to shorten the procedural deadlines in public procurement cases may jeopardize the quality of examination of public procurement cases.

Secondly, amendments to the CCP did not affect the effectiveness of civil justice in terms of quality. However, there are certain risks that could jeopardize the quality of examination of public procurement cases. Therefore, all further efforts should focus not on the expediency of the public procurement cases, but on the quality of the handling of these cases.

As regards assessment of the amendments to the CCP regarding appeal the following conclusions and recommendations were made.

Firstly, the amendment to the CCP introducing written proceedings in the appellate court (considering the extremely positive impact of this amendment on the efficiency and the existing safeguards established by law and court practice which are intended to minimize or completely limit the negative impact on the quality criterion), is considered as having a positive impact on the effectiveness of civil justice. However, in order to carry out a more detailed assessment, it would be necessary to collect data on how many requests for oral proceedings were filed by parties, how many of them were satisfied and how many were refused.

Secondly, in order to assess from the point of efficiency and quality, the impact of the amendment to the CCP regarding examination of certain cases (with the amount of the dispute up to EUR 2,000) by a single judge, it is necessary to collect and systematize data indicating which part of such cases was transferred to the panel of three judges due to their complexity. In the absence of such data, it is currently not possible to assess whether the adoption of this amendment to the CCP ensured a balance between efficiency and quality.

Thirdly, in order to assess in detail whether the amendments to the CCP regarding the mandatory participation of an attorney-at-law in the appeal court ensure a balance between efficiency and quality, we need to carry out a thorough investigation on the availability of urgent and proper secondary legal aid guaranteed by the state to those who are in need in Lithuania, i.e. whether secondary legal aid complies with the requirements of effectiveness in international and EU law jurisdictions and whether this assistance is in fact available to all of those who are now required to bring an appeal to an attorney-at-law and who, due to their financial situation, are not capable of recruiting him / her. It should also be noted that such an investigation had to be carried out before the adoption of amendments to the CCP since, only in the case of effective secondary legal aid, this amendment could be considered compatible with the principle of access to justice. There is also a need for CPP amendments, which would clearly state that separate appeals need not to be signed by the attorney-at-law (i.e., the participation of an attorney-at-law should not be mandatory).