Turiba University

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SUMMARY OF THE DOCTORAL THESIS

RIGHT TO A FAIR TRIAL IN CIVIL PROCEEDINGS

The studies program: Law science

**The doctoral thesis has been made to apply for Ph.D.
in Law Science, sub-sector Civil Law**

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Under the scientific guidance of Dr. **Inga Kudeikina**

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The dissertation and its summary can be obtained from the library of Turiba University, Riga, Graudu street, 68.

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_____ Secretary of the Doctorate Council:
Dr. ___: ***(name, surname)***

INTRODUCTION

The author has developed the doctoral thesis "RIGHT TO A FAIR COURT IN CIVIL PROCEEDINGS", which is dedicated to the improvement of the norm of civil procedure in Latvia, promotion of the efficiency of the process, full and successful realization of substantial and procedural rights of persons, identifying the existing fundamental problems, their causes, external manifestations, and impact on the course of the process, including, speed, quality, and the ability of persons to exercise procedural rights for the protection of their violated or contested civil rights. Conducting the research, the author uses the explanations of the Constitutional Court of the Republic of Latvia regarding the content of Section 92 of the constitution of the Republic of Latvia, which guarantees the right of persons to a fair court, including the fact that Constitutional Court has emphasized that a due process is part of the right to a fair trial. For instance, the Constitutional Court in the judgment of 21 October 2013 in the case No 2013-02-01[1] indicates: „*(..) A fair trial as a due process of a law-based state involves several elements: interrelated rights. These include, for example, the right of access to a court, the principle of equality of arms, the adversarial principle, the right to be heard, the right to a reasoned judgment, and the right to appeal (see judgment of 5 November 2008 by the Constitutional Court in the case No 2008-04-01 paragraph 8.2. and judgment of 17 May 2010 in the case No 2009-93-01 paragraph 8.3)(..).* The Constitutional Court identically points out in its judgment of 24 November 2010 in the case No 2010-08-01[2], which decides on the compliance of the relevant parts of Paragraph 396 and Paragraph 397 of the Civil Procedure Law with Section 92 of the Constitution, but former Judge of the Constitutional Court Dr.iur. I. Čepāne has said: „*(..)The right to a fair trial is one of the most important fundamental rights of a person. The degree of development of these rights is to a large extent a precondition for a person to be able to realize other rights provided for in the constitution or law (..)".*[3] R.Cipeliuss indicates:*"(..)The whole system of representative democracy in a state governed by the rule of law serves only to find a legal solution supported by a sense of justice for the majority of the people..(..)*".[4] In order to provide a comprehensive insight and to emphasize the guidelines, the author takes an insight into the right to a fair trial as a part of human rights and

[1] Latvijas Republikas Satversmes tiesas 2013.gada 21.oktobra Spriedums lietā Nr. 2013-02-01, Iegūts: 24.05.2020 No: https://www.satv.tiesa.gov.lv/cases/?search[number]=2013-02-01

[2] Latvijas Republikas Satversmes tiesas 2010. gada 17.maija Spriedums lietā Nr. 2010-08-01, Iegūts: 24.05.2020. No: http://www.satv.tiesa.gov.lv/cases/?search[number]=2010-08-01,

[3] Čepāne, I., (2005). Tiesības uz taisnīgu tiesu kā personas pamattiesības. *Jurista Vārds*, 27.09.2005. Nr.36 (391), 1 lpp.

[4] Cipeliuss, R. (2001). *Tiesību būtība.* Rīga: Latvijas Universitāte, 123.lpp.

the historical development and understanding of this right.. Judgments of the Constitutional Court undoubtedly have an impact on the development of the procedural norm, as J. Pleps points out:"(..) *in a democratic state governed by the rule of law, the content of the principles and norms of the constitution is determined by the case-law of the constitutional court; they cannot be interpreted and applied contrary to the decision of the Constitutional Court.(..)"*[5], thus the author studies the tendencies based on the judgments of the Constitutional Court for a longer period of time, emphasizing the changes and the content of the constitutional complaints of persons submitted to the Constitutional Court regarding the norms of the Civil Procedure Law.

Given that the end result of the trial is a fair judgment, i.e. ensuring justice and a fair result, the author focuses on the study of the category of justice, as well as its manifestations in the course of the exercise of the rights provided for in the procedural norm. On the meaning and content of justice in a democratic state based on the rule of law, expressing separate opinions at the Constitutional Court judgment of November 2, 2017, in the case No. 2016-14-01[6], expressed Judge of the Constitutional Court D. Rezevska, indicating: *„(..)the ultimate goal of the legal system of a democratic state governed by the rule of law is justice, its provision.(..)".* Wildberg J.H. and Messershmit K. explain justice and a sense of justice: *„(..) As the sense of justice responds to violations of the law, it affects the process and procedural rights.(..) First of all, there were and are procedural norms, only then did substantive law arise and exist... (..)".*[7] The author emphasizes the importance of the expression of justice in procedural norms, as well as the fact that procedural rights must be practicable, as recognized not only by the explanations of the Constitutional Court of the Republic of Latvia, but as emphasized by the Council of Europe, indicating that: *"(..) Access to justice is both a process and an objective, and it is extremely important for those who wish to benefit from other procedural and substantive rights..(..)*"[8], European Court of Human Rights, indicating that the right of access to justice must be "practical and effective"[9]as well as law scholars, for instance, V.Rijavec, in the study on the efficiency and fairness of civil proceedings: *„(..) there is a close*

[5] Pleps, J. (2012). *Satversmes iztulkošana.*Rīga: Latvijas Vēstnesis, 43lpp.

[6]. Latvijas Republikas Satversmes tiesas 2017.gada 02.novembra spriedums lietā Nr. 2016-14-01 Iegūts: 29.02.2020. No: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/07/2016-14-01_atseviskas_domas_Rezevska-1.pdf#search= ;

[7] Vildbergs, J.H., Messeršmits, K.(2004). *Pilsonis tiesiskā valstī. Vācu konstitucionālo administratīvo tiesību pamati*. Rīga: EuroFaculty, 15.lpp.

[8] Rokasgrāmata par Eiropas tiesībām saistībā ar tiesu iestāžu pieejamību.(2016), Luksemburga: Eiropas Savienības publikāciju birojs, 16.lpp.

[9] European Court of Human rights. *Guide on Article 6 of the European Convention on Human Rights. Right of a fair trial (civil lamb)*, Updated of 31 August 2021, 27lpp. Iegūts: 12.02.22. No: https://www.echr.coe.int/documents/guide_art_6_eng.pdf

and inevitable link between substantive and procedural rules, so procedural regulation (system) must find a compromise between fairness between the parties and procedural efficiency.(..) substantive law is valid to the extent that procedural rules are capable of its enforcing (..).”[10] In the interests of procedural fairness, Mr Hefe emphasized the clarity of the proceedings, pointing out:*„(..) Legal decisions require clear procedures(..).”*[11] The explanation of the content, meaning, and manifestations of justice in relation to the course of Latvian civil proceedings and in this connection also the changes in the norm regulating the proceedings has been contradictory and different, the author examines in detail these tendencies, the existence and development of which the author infers from the works of legal scholars, judgments of the Constitutional Court and opinions expressed by persons and bodies summoned to cases, reports and opinions of working groups organized by the Council of Justice and the Ministry of Justice. In connection with the development trends of civil procedure, the author identifies that the amendments introduced by the legislator to the norm of civil procedure in many cases are aimed at increasing punitive sanctions, and restricting or excluding procedural rights, which is justified by the need to promote speed of the process, led by the concept that the litigants are mostly dishonest, because, as prof. K.Torgans indicates: that the legislator's aim was to take action against litigants who were *a priori* accepted as *mostly unfair.*[12] The author doubts that amendments to the procedural norm of a punitive nature promote the efficiency, quality, and fairness of the proceedings. The author offers to analyse the causes of problems and the preconditions for their existence, and their development over time, thus deducting what should be changed. The author emphasizes that the efficiency of the process can be increased by focusing on the improvement of the preparation stage of civil cases. The author, conducting a study on the importance of the preparatory stage of civil cases and the positive experience of other countries, analysed by legal scholars, suggests promoting the efficiency of the process by changing the vision of the preparatory stage and the role of the judge. Constitutional Court has indicated: „*(..) it is the duty of the legislator to create the conditions (rules) for efficient and fair proceedings so that disputes are settled at first instance (..)*”.[13] The author emphasizes the significant impact of this procedural stage on the efficiency,

[10] Rijavec, V. (2012). Efficiency versus Fairness in Civil procedure in Slovenia. Van Rhee, C.H., Uzelac, A.(red.). *Truth and Efficiency in Civil Litigation.Fundamental aspects of Fact-fiding and Evidence-taking in a Comperative Context*. pp. 283. Cambridge-Antwerp-Portland, Intersentia, ISBN 978-1-78068-133-7.
[11] Hefe, O., (2009). *Taisnīgums. Filosofiskais ievads.* Rīga : Zvaigzne ABC, 45.lpp.
[12] Torgāns, K.. (2017). *Civilprocess: attīstībā ar nebeidzamiem papildinājumiem. Jurista Vārds,07.11.2017./Nr.46 (1000),* 100.-101.lpp.
[13] *Satversmes tiesas judikatūra. Latvijas Republikas Satversmes 92.pants. Tiesības uz taisnīgu tiesu (2020). Apkopojums*. Rīga : Tiesu namu aģentūra, 27.lpp.

quality, and quality of the process. The author examines the criticism expressed by foreign legal researchers about the stages of Latvian civil proceedings and the vaguely defined boundaries for the preparation of a civil case for the beginning and end stages of the procedural stage. The author identifies that in order to improve the mentioned procedural stage, it is necessary to balance the influence of the adversarial principle on this procedural stage. The author also identifies the disharmony of the procedural norm, i.e., the absence of regulatory enactments, internal contradictions, and/or contradictions with other regulatory enactments, in which the provided rights are to be exercised in civil proceedings by applying to a court. In this regard, the author studies the causes of these problems, including the impact of the change of case law on the amendments of the legislator to the norm regulating civil proceedings, the amendments of the legislator which are made without coordinating the changes so as to ensure the realization of all the procedural rights affected by the introduced amendments.

The scientific novelty of the research, socioeconomic significance, practical application

In connection with the scientific novelty of the author's doctoral thesis and its significance, it should be mentioned that the issues of efficiency and harmonization of the Civil Procedure Law with other norms have not been studied in complexity. The author identifies the causes of the problems and shows how exactly they affect the full realization of the procedural and substantive rights of persons. The problems identified by the author persist for a long time but have not been solved. The aspects of impact identified in the paper in relation to the problems of successful exercise of procedural rights exist together or separately, or in various combinations thereof, which in most cases have immediate negative consequences for any person entering the relevant stage of the proceedings. The aspects of impact identified in the paper in relation to the problems of successful exercise of procedural rights exist together or separately, or in various combinations thereof, which in most cases have immediate negative consequences for any person entering the relevant stage of the proceedings. The evaluation of the problems identified by the author and their causes provides an opportunity to eliminate them by making the necessary amendments to the regulatory framework, as well as to ensure that the development of identified problems significantly decreases or disappears, but the author identifies those aspects of the impact that showing its causes and emphasizing the need for extensive and in-depth research. Work has a socio-economic significance, as improving the quality of the rules governing civil proceedings has an immediate positive effect, as individuals

see practical ways of expressing procedural justice that promote confidence, and quality thus increasing trust in the judiciary and the law. The economic significance is that the problems identified in the work regarding the improvement of the case preparation stage would save time and resources, as in the case preparation stage litigants would have to submit all procedural requests to be decided, as well as the court should decide what allows planning time and deadlines. This is also important in the sense that, at this stage, a court-settled settlement can result in the termination of the proceedings without wasting court time and resources. The author's work has a practical application because the author proposes to make amendments to the Civil Procedure Law, which would ensure immediate elimination of the identified problems.

The aim of the research, tasks, and methods

The aim of the dissertation is to identify the shortcomings of the legal regulation and problems of application, their causes and to provide scientifically substantiated proposals for the solution of the identified problems by conducting research on the norms regulating civil proceedings in connection with the opinions of legal scholars, explanations of the Constitutional Court on the importance of realization of procedural rights. To achieve the goal of the dissertation, the author has set the following tasks:

1) To study and analyse the process of civil procedure as a socially important institution in ensuring justice in a sense of the term „due process".
2) To study and analyse the impact of the principles of the adversarial, dispositive, and procedural economy on the preparation of a civil case for consideration at the procedural stage.
3) To study and analyse the harmonization of the Civil Procedure Law with other norms, their impact on the effective realization of rights, internal (regulatory) contradictions of the norms of the Civil Procedure Law, and their impact on the realization of procedural and substantive rights.
4) To study and analyse the impact of case law on the possibilities of realization of procedural and substantive rights of persons in court.

The author has raised the following research question: **What aspects affect the efficiency of civil proceedings and the full exercise of procedural rights in court?**

In order to realize the tasks, set in the dissertation and achieve the goal, the author relies on appropriately selected scientific research methods and their application in research work. The following scientific research methods have been used for the research:

- **Historical method** – Given that the issue of the efficiency of civil proceedings is considered in the scope of the category of "due process" and justice, as well as in the scope of civil procedural law as a socially important right, the historical method is used to mark the development of philosophical thoughts on justice and historical development of civil procedure norms and principles. This method has also been used to gain insight into human rights, including the origins and development of the right to a fair trial today. Also, to study the motivation of the judgment of the Constitutional Court of the Republic of Latvia in matters regarding the compliance of civil procedural norms with Article 92 of the Satversme of the Republic of Latvia for a period of ten to fifteen years.
- **Descriptive method** – used to describe the research problems related to the research and development of tools promoting the efficiency of civil procedure, as well as to describe the existing, identified problems, their causes, and consequences, as well as problems related to individual civil procedure institutes, their impact on the process as a whole, legal interpretation of norms contained in court judgments, as well as in the scientific literature. The descriptive method is used to study and describe the regulation of civil procedural norms in the procedural norms of other countries, which the author studies within the framework of this work, as well as to present the aspects of the practical application and influence of the findings expressed in the judgments of the Constitutional Court on the development trends and improvement of the norm.
- **Dialectical method** – used to study the development trends of the process, and compare different points of view, to find solutions for the improvement of rights (procedural rights). In connection with the application of the dialectical method to the research of norms of civil procedure, it is indicated: *„(..) In the research of civil procedural law, dialectical analysis is a universal scientific research method. With its help, the norms of civil procedure are examined in motion and the contradictions of the development trends of the process are taken into account. Dialectics make it possible to correctly identify a problem and find solutions.(..)*"[14]
- **Comparative method** – used to study and analyse the norms of civil procedure in the Republic of Latvia and abroad, inferring the common and different, as well as considering

[14] Малешин, Д.Я. (2010). *Методология гражданского процессуального права*. Москва : Статут, 16-17.lpp.

the issues of regulatory efficiency in the civil procedural norms of the Republic of Lithuania, the Republic of Estonia, the Slovak Republic, the Czech Republic, the Slovak Republic, the Italian Republic, and other countries. The comparative method is used to evaluate and compare the work of national and foreign legal scholars on the importance, essence, and development of norms in civil proceedings, in connection with the explanations found in the case law, as well as the explanations of the Constitutional Court and the recommendations of the European Community for the promotion of efficiency in civil proceedings, including an examination of the role and significance of the judge in the preparatory phase of a civil case.

- **Analytical method** – used to identify the most significant issues in civil proceedings related to the mutual coherence (harmonization) of civil procedure norms and other regulatory enactments, the interaction of proceedings, the possibilities of exercising procedural rights, including access to justice, as well as the examination of procedural instruments that are important for increasing the efficiency of the proceedings and are not of a punitive nature. This method is used to crystallize the scientific literature and/or the results of arguments, conclusions or findings expressed in court rulings, their practical impact on problem-solving, or possible further development.
- **Aspect analysis method** – is used to study case law and the arguments and justifications mentioned in rulings, to confirm and/or deny the existence and/or absence of certain procedural rights of a person, and to determine the consequences of the absence of procedural instruments.
- **Problem analysis method** – is used to study the causes, causes, and consequences of problems in matters concerning procedural rights, and obligations, as well as the objective to be achieved as a result of the process itself and the actual possibilities to achieve it.
- **Critical analysis method**– is used to evaluate the views and explanations expressed in scientific doctrine and explanatory and/or scientific literature regarding the improvement of civil procedure norms, amendments, achievable results, the impact of the prevailing and guiding principles in the process, etc. aspects that play a role in the process and promoting it efficiency.
- **Methods of interpretation of legal norms** – 1) the grammatical (philological) method is used to clarify the verbal meaning of a legal norm from the point of view of language; 2) the historical translation method in order to clarify the meaning of a rule of law, taking into account the circumstances which led to the creation of the rule of law or its

amendment during the relevant period; 3) the systemic method is used to clarify the meaning of the researched legal norm from the point of view of the interconnection of legal norms in order to determine the legal content of the norm; 4) the teleological (meaning and purpose) translation method is used to clarify the legal purpose, basic principles and social purpose of a legal norm.

Scope of the work, structure, and summary of the content

The total volume of the author's paper is 150 pages. The paper consists of three chapters, with subchapters. At the end of the paper, based on the research of the author's problems, the author offers concrete proposals based on the research, comparison, and comprehensive analysis of theoretical and practical material.

In the first chapter, the author focuses on the explanation and content of the term "appropriate process", as well as the practical expression of this process in the development of procedural norms and development trends. This chapter also contains an insight into the evaluation of the principles regulating civil proceedings, and the examination of their positive and negative aspects, to find a constructive solution so that the principles determining the process do not deviate from the goal to be achieved as a result of the process. To the extent necessary, the author touches on the historical development of civil procedure and its existing principles to outline the main tendencies, the social function of law, its meaning, and the law as a basic element of the rule of law. Justice is the purpose of the proceedings and is a necessary category for the exercise of procedural rights. In the subchapters of the first chapter the author studies and analyses the explanations and findings included in the judgments of the Constitutional Court made in cases regarding the compliance of the norms of the Civil Procedure Law with Article 92 of the Constitution, as well as the opinions of the summoned persons and the opinions of the submitters of the constitutional complaints, from which the persons' understanding of justice and the essence and content of the term "due process" are deduced, as well as the opinions of specialists in the field, their substantiation to be analysed in connection with. Based on the explanations and findings found in the judgments of the Constitutional Court, the author draws conclusions about their practical impact on the development tendencies and directions of the procedural norm. At the end of the first chapter, the author touches on the question of the role of the cassation instance in achieving justice as a procedural goal, as well as identifies problems related to the exercise of procedural rights in the cassation instance. Taking into account Section 6, Paragraph 5 of the Civil Procedure Law,

the author examines and analyses the impact of the decisions of the Senate of the Supreme Court on the course of civil proceedings and the possibilities of realization of procedural and substantive rights of persons, as well as identifies problems related to change of case law. The author studies case law, including the nature, meaning, and impact of changing case law, identifies negative aspects and cites specific examples, for instance, on December 17, 2019, the Senate of the Supreme Court made a judgment in the case SKC-259/2019[15] and Decision of 29 April 2020 in the case No.SKC-97/2020[16]. The author identifies negative aspects in relation to changing case law, as well as its practical application, such as the inability to predict when case law will change, how it will change, and its immediate application, which may have a direct negative impact on litigants (pending), as well as the absence of safeguard mechanisms. The author points out that in-depth research on this topic is necessary, which is not carried out in the framework of this work due to the limitation of volume.

In the second chapter, the author focuses on the analysis and evaluation of issues related to the mutual harmonization of the Civil Procedure Law and other regulatory enactments, as well as the internal contradictory regulation of the Civil Procedure Law itself in relation to some special categories of cases. The author identifies the absence of procedural regulation, which does not allow to fully use of the rights provided for in Section 4 of Paragraph 458 of the Civil Procedure Law. The author identifies the causes of the problem, i.e. that the lack of regulation arose as a result of the amendments introduced by the legislator and contradicts the explanations provided by the Constitutional Court of the Republic of Latvia in its judgment of 20 November 2008 in the case Nr. 2008-07-01.[17] The author emphasizes that the identified problem exists for a period of six years, and there is no solution. The author investigates whether and what procedural possibilities are available to plaintiffs who act on the basis of the law but in the interests of other persons, i.e. minority shareholders, exercising the rights provided for in Paragraph 172 of the Commercial Law. The author identifies the procedural problems faced by the claimants concerned and identifies the causes of the problems when the legislator is making amendments to Section 1, Paragraph 43, Clause 5) of the Civil Procedure Law. The author emphasizes that the mutual harmonization of regulatory enactments

[15] Latvijas Republikas Augstākas tiesas Senāta 2019. gada 17. decembra Spriedums lietā SKC-259/2019. Iegūts: 30.12.2021. No: https://www.at.gov.lv downloadlawfile lejupielādes

[16] Latvijas Republikas Augstākās tiesas Senāta 2020.gada 29.aprīļa lēmums lietā Nr.SKC-97/2020. Iegūts : 27.12.2021. No: https://www.at.gov.lv/lv/jaunumi/par-tiesu-lietam/ar-pretapelacijas-sudzibu-var-parsudzet-spriedumu-ari-dala-kura-nav-parsudzeta-ar-apelacijas-sudzibu-10056?

[17] Latvijas Republikas Satversmes tiesas 2008.gada 20.novembra spriedums lietā Nr. 2008-07-01. Iegūts : 26.05.2020. No : https://likumi.lv/ta/id/184081-par-civilprocesa-likuma-458-panta-pirmas-un-ceturtas-dalas-atbilstibu-latvijas-republikas-satversmes-91-un-92-pantam

is of great importance in order to talk about the efficient course of civil proceedings and the possibilities of persons to fully exercise the rights provided for them in other laws within the framework of civil proceedings. In its turn, in the section on mutually contradictory (mutually exclusive) regulations and shortcomings of the Rules of Civil Procedure, the author addresses the issues of voluntary auctions of real estate and the special procedures (Chapter 49 of the Civil Procedure Law) for the examination of applications, including practical aspects of observance and execution of the requirements of Paragraph 2089 of the Civil Law and contradictions with the regulation of Chapter 73 of the Civil Procedure Law. The author analyses the practical examples, concluding that the contradiction of the internal regulation of the Civil Procedure Law makes it impossible to exercise the rights, the necessity of observance and application of which is specifically indicated in Chapter 49 of the Civil Procedure Law.

In the third section of the paper, the author focuses on the evaluation of the principles and criteria that have an impact on the course of civil proceedings, and the need for their balance in relation to the stage of preparation for civil proceedings. The author conducts a comprehensive study of the importance of the stage of preparation of a civil case for the promotion of procedural efficiency and quality, as well as the improvement of procedural tools that would play a role in promoting the efficiency of the preparation of a civil case, balancing the rights of persons in the proceedings, with a reasonable period of the proceedings and the purpose of the proceedings - to ensure justice. The author reviews and analyses the process stage of the case preparation stage and the related procedural tools – tasks of the stage of preparation of a civil case, the role of a judge in it, and the activities provided for by law in the preparation of a civil case, including the significance and impact of the preparatory hearing on the proceedings. The author makes an extensive comparison of this procedural stage with the research of foreign authors on the positive experience related to the improvement of the stage of preparation of a case for examination and the promotion of the role of a judge in it. The author also reviews and evaluates the significance of the preparation stage of a civil case in connection with the examination of cases in written proceedings, the related restrictions of procedural rights, and the overall impact on the course and outcome of the examination of the case. The author focuses on the research and role of the procedural instrument "false defendant" in promoting procedural efficiency so that the process achieves its purpose and resolves disputes on their merits. In conclusion, the author devotes a chapter to the comparative analysis of the application of the procedural instrument “false defendant” in other countries, including in the civil proceedings of the Baltic States in order to find out the problems related to the development and application of this procedural instrument, as well as the practical significance

and peculiarities of application. The author presents and analyses examples of practice that show that the introduction of the relevant procedural instrument in Latvian civil proceedings would be advisable.

Approbation of the work results

Scientific articles published by the author on the topic of the dissertation

1) The principles of civil procedures and instruments for the efficiency of the case hearing. The procedural sanctions***. 5th International Multidisciplinary scientific conference on social science & arts SGEM 2018,*** *Volume 18, issue 1.1., Austria, Vienna 19 – 21 March 2018. Pp.371–380*, ISBN 978-619-7408-30-0; ISSN 2367-5659. https://www.sgemsocial.org/index.php/elibrary?view=publication&task=show&id=1496;
2) Ārpustiesas procesa nozīme kopīpašnieku tiesību nodrošināšanā un ietekme uz procesu tiesā. *Biznesa augstskolas Turība konferences rakstu krājums.* ***XIX International Scientific conference April 19, 2018*** *"Latvia 100: expectations, achievements, and challenges",* 19.04.2018. Rīga: Biznesa augstskola Turība, 154 – 162 lpp. ISSN 1691-6069. https://www.turiba.lv/storage/files/2018-xix-conference.pdf
3) Sagatavošanas tiesas sēdes nozīme civilprocesa efektivitātei. *Biznesa augstskolas Turība konferences rakstu krājums.* ***XX International Scientific conference, April 26, 2019*** *"Human values in the digital age"*. 26.04.2019. Rīga: Biznesa augstskola Turība, 109-123.lpp. ISSN 1691-6069 https://www.turiba.lv/storage/files/2019-conference-xx.pdf
4) Replacement of the ineligible respondent - the procedural tool for efficiency and justice of civil litigation. Comparative analysis of civil procedure regulations in the Baltic States and Russian Federation. ***6th International Scientific Conference "Social changes in the global world", September 5-6, 2019, North Macedonia.*** *Goce Delcev University in Stip, Faculty of Law*; pp. 383-397; ISBN 978-608-244-647-9; http://js.ugd.edu.mk/index.php/scgw/issue/view/172;
5) The importance of efficiency of civil litigation and some problematic aspects between the Commercial Law and the Civil procedural law regulation in the Republic of Latvia. ***11th International Scientific Conference, November 8, 2019*** *"Law in the business of*

selected member states of the European Union". University of Economics, Prague; pp.123-129, ISBN: 978-80-88055-08-2; https://kpep.vse.cz/wp-content/uploads/page/1940/KPEP_Sborn%C3%ADk-2019_fv.pdf

6) Labprātīga izsoles tiesas ceļā procesuālās īpatnības, Civillikuma 2089.panta piemērošana un Satversmes tiesas skaidrojumi. *Biznesa augstskolas Turība konferences rakstu krājums.* ***XXI International Scientific Conference, April 21, 2020, "Sustainable Economy. The Latvian story",*** 21.04.2020. Rīga: Biznesa augstskola Turība, 51.-62.lpp. ISSN 1691-6069; https://www.turiba.lv/storage/files/konference-2020.pdf

7) The accessibility of the Cassation Court and its role to provide fairness. The Cassation court procedure in the Republic of Latvia, problematic issues, and conclusions of the Constitutional court of the Republic of Latvia. ***7th International Conference "Social Changes in the Global World". September 3, 2020, North Macedonia.*** *Goce Delcev University in Stip, Faculty of Law*, pp.139.-158., ISBN 978-608-244-767-4. The electronic version of the Proceedings: file:///C:/Users/User/Downloads/Zbornik%20na%20trudovi_Mladi%20istrazuvaci%20(1).pdf

8) Considerations about the importance of a case preparatory stage in civil litigation in the scope of the Covid-19 pandemic situation. ***8th International Conference "Social Changes in the Global World". September 2, 2021, North Macedonia.*** *Goce Delcev University in Stip, Faculty of Law*, pp.113-124., ISBN 978-608-244-838-1; Electronical version of the Proceedings: file:///C:/Users/User/Downloads/Mladi%20istrazuvaci%20final%202021.pdf

Speeches at international scientific conferences.

1) Considerations about the importance of a case preparatory stage in civil litigation in the scope of the Covid-19 pandemic situation. ***8th International Conference "Social Changes in the Global World". September 2, 2021, North Macedonia.*** *Goce Delcev University in Stip, Faculty of Law*.
2) The accessibility of the Cassation Court and its role to provide fairness. The Cassation court procedure in the Republic of Latvia, problematic issues, and conclusions of the Constitutional court of the Republic of Latvia. ***7th International Conference "Social***

Changes in the Global World". September 3, 2020, North Macedonia. *Goce Delcev University in Stip, Faculty of Law;*

3) Labprātīgas izsoles tiesas ceļā procesuālās īpatnības, Civillikuma 2089.panta piemērošana un Satversmes tiesas skaidrojumi. ***XXI International Scientific Conference, April 21, 2020, "Sustainable Economy. The Latvian story";***
4) The importance of efficiency of civil litigation and some problematic aspects between the Commercial Law and the Civil procedural law regulation in the Republic of Latvia. ***11th International Scientific Conference, November 8, 2019*** *"Law in the business of selected member states of the European Union". University of Economics, Pague;*
5) Sagatavošanas tiesas sēdes nozīme civilprocesa efektivitātei. ***XX International Scientific conference, April 26, 2019*** *"Human values in the digital age". Riga, „Turiba" University;*
6) Ārpustiesas procesa nozīme kopīpašnieku tiesību nodrošināšanā un ietekme uz procesu tiesā. ***XIX International Scientific conference April 19, 2018*** *"Latvia 100: expectations, achievements, and challenges", Riga, „Turiba" University.*

The main sources of scientific literature used in the work

The author has used research and findings of Latvian and foreign legal scholars and practitioners in her work, incl. monographs, scientific articles in international conferences, scientific-research works on the problems of civil procedure, doctoral theses, scientific-explanatory, and/or study literature. The author has used the works of well-known legal scholars in Latvia, such as prof. V.Bukovska, prof. K.Čakste, prof. K.Torgana, Dr. iur. D. Iljanova, Dr.iur. D.Ose, Dr. iur. J. Pleps, R.Balodis, J.Rozenfelds, as well as scientific articles and separate thoughts of former and current judges of the Constitutional Court, such as I. Čepane, S.Osipova, D.Rezevska, A.Lavins, J.Neimanis. The author uses works of such foreign authors as C.H. Van Rhee, A.Uzelac, N.Andrews, L.Evro, A. Nylund, V.Rijavec, A.T.Bonners, D.Maleshin, L.V. Tumanova, M.K. Treušņikovs.

Conclusions and suggestions

During the research, the author has concluded that the efficiency of civil proceedings and the full realization of procedural and substantive rights of persons in court are influenced by the following aspects:

1) Contradictions, shortcomings, or absence of regulation of a procedural norm.
2) Disharmony in the regulation of a procedural norm with other norms in which the provided rights are to be exercised in accordance with the procedures specified in the Civil Procedure Law.
3) Unbalanced impact of certain principles governing civil proceedings.
4) Case law and its variability.

All the mentioned aspects, both individually and together, negatively affect the possibilities of realization of procedural and/or substantive rights of persons at different procedural stages. In the cases studied in the author's work, they exist in various combinations, causing problems identified by the author, which have an immediate negative impact on the realization of procedural and/or substantive rights of persons, as well as the efficiency of the process. **The practical solutions proposed by the author for amendments to the regulatory framework, eliminate the identified problems and improve the quality of the process**, procedural fairness is increasing, which is expected to ensure the achievement of the purpose of the proceedings - a fair settlement of the dispute. Accuracy and clarity of procedural norms (absence of contradictions and disharmony), increase persons' trust in court and court proceedings.

The author's conclusions and suggestions are as follows:

1. Conclusion: Section 1 of Paragraph 149 of the Civil Procedure Law determines when the stage of preparation of a civil case for consideration begins but does not clearly identify when this stage ends, which contributes to problems related to the efficiency of the preparation of the case, incl. submission of evidence and procedural requests.

Suggestion:

1.1. The author proposes to supplement Paragraph 147 of the Civil Procedure Law with a new part ($1.^1$) **in the following wording**: *The stage of preparation of the case for trial begins after the defendant provides explanations for the claim or the term of the deadline expires according to law, and explanations have not been submitted, and continues until the final date as set by the judge has expired. The judge determines the period of preparation of the*

case and it's depending on the complexity level of the case and the number of participants participating in the case, and the place of residence of the participants (in the Republic of Latvia or abroad). The court notifies the parties of the beginning of the stage of preparation of the case, indicating that all procedural applications must be submitted within the established period, and additional documentary and other evidence must be submitted in accordance with Part Three of Paragraph 149 of the Civil Procedure Law.

In connection with the proposed amendment to Paragraph 147 of the Civil Procedure Law, the author proposes the <u>following concomitant amendments</u>:

1.2. In Part Two of Paragraph 93 of the Civil Procedure Law, *formulating this as follows: Evidence that has been not presented in the preparation of a case for valid reasons of delay shall be presented by the parties and other participants in accordance with the procedure and time frame specified in Part Three of Paragraph 93 of the Civil Procedure Law.*

1.3. In Part three of Paragraph 93 of the Civil Procedure Law, *formulating this as follows: Additional evidence that was not presented to the court at the stage of preparation of the case shall be presented to the court no later than 14 days before the trial unless the judge sets a different time frame for presenting the evidence and together with the written explanations about the cause of delay. This period is not covered by the second sentence of part four of article 48 of this law. The judge decides on additional evidence and its inclusion in the case in accordance with the provisions of part 3.[1] and part 3.[2] of this Paragraph of the Civil Procedure Law.*

2. **Conclusion:** The existing dominance of the adversarial principle has a negative effect on the efficiency of the proceedings at the stage of preparation of a civil case for consideration.

Suggestion:

2.1. The author proposes amendments to <u>Paragraph 149 of the Civil Procedure Law, adding a sentence to Chapter 6</u>: *Preparatory court hearings must be held: in labour disputes, divorce cases where maintenance claims have been made for children and/or the spouse, division of the spouses' joint property, custody and/or access rights;* in cases of custody and access rights.

In connection with the proposed amendment to Chapter 6, Paragraph 149 of the Civil Procedure Law, <u>the author proposes the following connected amendments:</u>

2.2. To add a sentence to Section 1, Chapter 29, Paragraph 239 of the Civil Procedure Law following wording: *To prepare the case for consideration, the court shall hold a preparatory court hearing in accordance with Section 6, Paragraph 149 of the CPL.*

2.3. To add a new chapter to Paragraph 244^{9}, Chapter $29.^{1}$ ($2.^{1}$) in the following wording: *The court shall act for the preparation of the case in accordance with Paragraphs 147 and 149 of the Civil Procedure Law, taking into account the provisions of Sections 1 and 2 of this Paragraph and shall hold a preparatory hearing.*

3. Conclusion: In the written process, without applying the stage of preparation of the case for examination, the exercise of the procedural rights of persons is not fully ensured.

Suggestion:

3.1. The author proposes amendments to Paragraph 149 of the Civil Procedure Law, adding a new part ($1.^{1}$), in the following wording: *In cases which are heard in a written proceeding, the judge shall, in accordance with Paragraph one of this Section, notify the parties of the commencement of the proceedings of preparation of the case, determine the term for submission of requests and the term for examination of the submitted requests. Requests and decisions submitted shall be notified to the parties.*

4. Conclusion: The rights provided for in Section 4, Paragraph 458 of the Civil Procedure Law cannot be used in practice because the Civil Procedure Law does not contain procedural regulations for deciding a request submitted in accordance with Section 4, Paragraph 458 of the CPL. It prevents persons from fully exercising the procedural rights provided by law and denies access to court by discriminating because of the income level status of the person.

Suggestion:

4.1. The author proposes amendments to Paragraph 459 of the Civil Procedure Law, adding a new part ($1.^{1}$), in the following wording: *If a request is made in the cassation complaint in accordance with the second sentence of Section 4, Paragraph 458 of the Civil Procedure Law, the judge shall leave the cassation complaint without progress until the decision on the applied request is decided.*

In connection with the proposed amendment to Paragraph 459 of the Civil Procedure Law, the author proposes the following related amendments:

4.2. To express Section 4, Paragraph 453 of the Civil Procedure Law, in the following wording: *A document certifying the payment of a security deposit shall be attached to the cassation*

complaint unless the person has applied for a request in accordance with the second sentence of Section 4, Paragraph 458 of the Civil Procedure Law.

4.3. To make editorial changes in Clause 1), Chapter 6, Paragraph 453 of the Civil Procedure Law**:** *the cassation complaint is not accompanied by a document certifying the payment of the security deposit, and a procedural request has not been filed in accordance with the second sentence of Section 4, Paragraph 458 of the Civil Procedure Law.*

5. Conclusion: The Civil Procedure Law does not contain a regulation - in what way minority shareholders as representatives authorized by law (Section 6, Paragraph 172 of the Commercial Law) to bring an action in court on behalf of a legal person are reimbursed the state fee in case of full or partial satisfaction of the claim**.** Section 1, Paragraph 43, Clause 5) of the Civil Procedure Law is not applicable due to 03.12.2015. amendments introduced by the legislator.

Suggestion:

5.1. The author proposes to add a new subsection to Section 1, Paragraph 43 of the Civil Procedure Law 18), in the following wording: *plaintiffs - minority shareholders who bring an action in accordance with Sections 2 and 6, Paragraph 172 of the Commercial Law.*

6. Conclusion: To increase the efficiency and procedural economy of civil proceedings, a procedural instrument "Replacement of a False Defendant" shall be introduced. The need for the tool is demonstrated by both case law and the findings of legal scholars.

Suggestion:

6.1. The author proposes to introduce a new paragraph 77.1 "Replacement of a fake defendant" in Chapter 10 of the Civil Procedure Law, in the following wording:

(1) *If during the preparation of the case for an examination or prior to the commencement of its substantive proceedings in the court of the first instance, it is established that the action has been brought against the false defendant (or one of several defendants), the claimant may ask the court to decide to replace the false defendant. The claimant shall, upon request, provide the court with written information about the data of the defendant to replace the false defendant and amendments to the application, together with the documents attached thereto.*

(2) *The court examines the request without holding a court hearing. The decision shall be sent to the claimant, the false defendant, and the person replacing the false defendant. The decision states that the proceedings against the false defendant will be closed. The decision of the court is not subject to appeal. A person who has been replaced by a court decision acquires the status*

of a defendant from the date of the court decision. The court shall send the application, setting a time limit for the submission of explanations (Paragraph 148 of the Civil Procedure Law).

7. Conclusion: Internal contradictions in the regulation of the Civil Procedure Law (Chapter 49 and Chapter 73 of the Civil Procedure Law) create obstacles to the full exercise of procedural and substantive rights in cases concerning voluntary auctions of real estate through the court, their course and application of specific requirements.

Suggestion:

7.1. The author proposes to supplement the Section 3 of Paragraph 396 in Chapter 49 of the Civil Procedure Law "Voluntary Sale of Real Estate by Auction"(*regarding the information to be indicated in the conditions of sale*) with new points;

1) *an indication that the procedure specified in paragraph 2089 of the Civil Law is applied if the auctioneer delays payment.*
2) *an indication that paragraph 2090 of the Civil Law is applicable to the purchase.*
3) *an indication that the property consists of agricultural land, its total area, and that the purchaser must provide proof of the right to acquire agricultural land.*

7.2. The author proposes to make amendments to Section 3 of Paragraph 396, Clause 4) of the Civil Procedure Law in the following wording: *4) indications as to whether and within what term it will be decided on the acceptance of the highest bid price in accordance with paragraph 2084 of the Civil Law, the type, procedure, and term for payment of the highest bid price in accordance with paragraph 2087 of the Civil Law.*

In order to preclude internal contradictions in the regulation of the Civil Procedure Law:

7.3. The author proposes to make amendments in Chapter 73 of the Civil Procedure Law „Recovery directed to the real estate", by supplementing paragraph 600 with a new section (1.[1])in the following wording: *If a court decision submitted for enforcement has been made in accordance with the procedure of Chapter 49 of Civil Procedure, the general procedure for enforcement of court judgments shall be applied insofar as it does not contradict the procedure specified in the conditions of sale and the special requirements of paragraph 398 of the Civil Procedure Law.*

7.4. To add a new (5) section to Paragraph 611 of the Civil Procedure Law in the following wording: *If a voluntary auction has been held and the auctioneer has not paid in due time, the bailiff shall request notification in writing whether the seller will exercise the rights specified in Paragraph 2089 of the Civil Law. The answer must be provided within the term specified by the bailiff. If the seller does not respond within the time limit or refuses, the bailiff will continue the proceedings according to the general procedure. If the seller exercises the rights specified*

in Paragraph 2089 of the Civil Law, the bailiff shall inform the auctioneer regarding the application of Paragraph 2089 of the Civil Law, the auction costs, and determine the term for payment. The auction is held in accordance with the terms of sale.

7.5. **To add a new sentence to Paragraph 611, Section4 (at the end of the Paragraph) of the Civil Procedure Law** in the following wording: *In the case of a voluntary auction (Chapter 49 of the Civil Procedure Law), this Section shall apply if the Section 5 of Paragraph 611 does not apply. In the case of a voluntary auction (Chapter 49 of the Civil Procedure Law), this Section shall apply if the Section 5 of Paragraph 611 does not apply.*

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