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GOALS OF CIVIL LITIGATION: FINDING OF A COMMON UNDERSTANDING TO ENSURE LITIGATION EFFICIENCY

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Abstract: Legal reforms that are regularly carried out in many countries of the world have put on the agenda the problems of efficiency of all types of legal activities. An important place among them is occupied by issues of efficiency of civil litigation. It is known that efficiency characterizes the implementation of the goals of civil proceedings. However, there is no single answer to the question of what the goals of the civil process are today. Researchers have expressed a variety of positions on this issue. The article presents an analysis of existing views on the goals of civil proceedings, including based on methods of Law and economics; an attempt is made to synthesize a common understanding of the goals of civil litigation, which allows to give an objective assessment of its effectiveness. The main goal of civil litigation is considered the effective protection of the rights and legitimate interests of participants in legal relations, correlated with the actual results achieved and the costs of court proceedings.

Keywords: efficiency, goals, results, costs, justice, civil litigation, civil process.

Local and large-scale legal reforms, regularly carried out in many countries, have put on the agenda the issues of legal provisions efficiency as well as the effectiveness of all types of legal activity. This is particularly true in the area of civil justice. In many countries, all aspects of judicial activity are subjected to critical analysis with a tenacity that deserves better application. In absence of a common understanding of civil litigation goals, as well as the category of judicial efficiency derived from them, many researchers and practitioners, however, actively use

them. It has become common to talk about the 'low efficiency' of civil litigation, to suggest procedural legislation changes that should solve all the problems of such 'inefficiency' at once.

The growing interest in the problems of efficiency of justice and its procedural form – civil litigation is due to the change of the civil procedure paradigm that occurred in the middle of the XX century. According to Vadim Abolonin, the modern civil process has appeared due to changes in the concept of law that occurred after the World War II, when natural law and human rights have been given a meaning that they never had before. ... The old paradigm of civil procedure aimed at protecting a subjective civil right no longer meets the requirements of the time, as well as the role of the court as a defender of this subjective right is changing before our eyes. Applying to the court for protection becomes one of the basic human and civil rights, which must be guaranteed by the State for all comers.[1] A natural result of expanding access to justice has been an increase of lawsuits' quantity. "Not ready for such changes, the judicial systems based on the model of traditional civil procedure faced an influx of civil cases, which they were obliged to consider and resolve in accordance with new human rights standards, including within a 'reasonable time'. This could not but cause a chain reaction in the form of increasing budget expenditures on the judicial system and raising questions about the effectiveness of the courts. Thus, the efficiency of the judicial system in the new paradigm has become key".[2]

Similar trends one can observe in Russia at the early 90s of the XX century. Therefore, according to prof. Yarkov, the withdrawal of almost all restrictions on jurisdiction led to a large-scale increase of the court caseload, because the judicial system was not able to 'digest' the huge number of cases that crumble on it. Therefore, one of the new trends of the Russian justice development since the mid-90s of the XX century has been its 'deritualization', a departure from the classic model of case resolution in civil and administrative proceedings.[3] The demand to resolve a multiplying number of cases in a limited courts resource obviously results the simplification of civil procedure. Has this made civil justice effective?

Efficiency characterizes the actual achievement of the goals of civil litigation. We shall go further, it is the goal that becomes the starting point in evaluating the effectiveness of any system, the goal unites many elements with a single meaning.

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[1] *Abolonin V.* On the development of civil procedure through a change in the basic paradigm, 12, Arbitration and civil procedure, 43, (2012). [*Аболонин В. О.* О развитии гражданского процесса через смену основной парадигмы, 12 // Арбитражный и гражданский процесс, 43 (2012).]

[2] *Ibid.* At 44.

[3] *Yarkov V,* Project of procedural reform: quo vadis? 12, Arbitration and Civil Procedure, 10, (2017). [*Ярков В. В.* Проект процессуальной реформы: quo vadis? 12 // Арбитражный и гражданский процесс, 10 (2017).]

Systemic interaction must result in some goal or final state to be reached or some equilibrium point being approached.[1] Relations between the elements of the procedural system that generate a new systemic quality of integrity are aimed at achieving the goal. Efficiency is usually understood as a measure of the completeness and quality of the solution of the task set before the system, the fulfillment of its purpose.[2] Achieving a specific goal is the content and measure of performance in general and management in particular.[3] It is obvious that approaches to assessing civil litigation effectiveness will differ depending on the understanding of its goals. At the same time, modern legal science does not demonstrate unity of views on the goals of legal proceedings, justice, civil and arbitral procedure.[4] What are the goals of civil litigation today? This question may seem old and hackneyed at first glance, but the answer is not obvious at all.

Civil litigation is a procedural form of civil justice. The goals of civil litigation are derived from the general goals of justice. Let's say more, it is the implementation of justice that is the goal of civil litigation. Civil justice is a special type of social government, the imperious implementation of legal provisions by courts in the procedural form of civil cases resolution. While dispensation of justice, the court transforms legal prescriptions into actual statuses, protects rights and freedoms guaranteed by the State. The Constitutional Court of Russia indicated: "It is by resolving the case and rendering a judgment in accordance with the Law that the court administers justice in the proper way, which is the purpose of civil litigation, and thereby ensures rights and freedoms as directly applicable".[5]

Effective civil justice is a great value and a serious task for the modern society. The Supreme Court of the Russian Federation increasingly discusses the issue of the existence of the goal of effective justice.[6] Its achievement is not limited to the legal sphere; it covers many socially significant areas of human activity and requires the

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[1] Lars Skyttner, General Systems Theory: Problems, Perspectives, Practice 53 (*World Scientific Publishing Co.* Ltd, 2nd ed. 2005).

[2] *Mogilevsky V.*, Methodology of Systems 91 (Moscow 1999). [*Могилевский В.Д.* Методология систем, 91 (Moscow, 1999).]

[3] *Mirzoev R. G.*, *Kharchenko A. F.* Basic procedures for systems research 6 (Saint Petersburg 2000). [*Мирзоев Р.Г.*, *Харченко А.Ф.* Основные процедуры системных исследований, 6 (Saint Petersburg, 2000).]

[4] A detailed analysis of scientific views on the goals of civil proceedings is presented in the paper: *Малешин Д.Я.* Гражданская процессуальная система России. A Doctoral Thesis in Law, Moscow, Pp. 157–186.

[5] Постановление Конституционного Суда РФ от 30 ноября 2012 г. № 29-П.

[6] Определение Верховного Суда РФ от 30 декабря 2019 г. по делу № А40-308982/2018; определение Верховного Суда РФ от 23 мая 2019 г. по делу № А10-775/2017; определение Судебной коллегии по экономическим спорам Верховного Суда РФ от 17 октября 2019 г. по делу № А40-212163/2018; и др.

use of the whole palette of social research methods. A similar situation is observed abroad. The Supreme Court of the UK, for instance, defines the efficiency as one of the most important value of its activities.[1]

The reference point in evaluating the efficiency of justice is its purpose. Gennady Zhilin suggests that the ability of the court as a public authority to ensure the implementation of civil procedure goals, which express its social purpose, should be considered the effectiveness of justice.[2] Targets exist objectively as public needs and interests in the most optimal judicial procedure; they are usually expressed in legislation. Accordingly, only when comparing the result of case resolution with the procedural goals enshrined in the law can the effectiveness of civil procedure be assessed.[3] Similar conclusions can be found in the books of other Russian researchers. By some estimations, the qualitative characteristic of civil justice is its effectiveness, the ability to ensure, under certain conditions, the achievement of socially significant goals, characterized by the ratio of the actually achieved result of consideration of a civil dispute and the legislatively fixed level of protection of the rights and interests of civil relations participants.[4] Certainly, the system's ability to achieve socially significant goals reflects the social role of civil justice. However, the proposed idea of the effectiveness of justice is significantly narrowed. The ratio of the result achieved in the consideration of a particular case and the level of protection of the rights and interests of participants in civil legal relations established by law is the effectiveness of justice for parties, such effectiveness does not take into account all aspects of legal impact.

These circumstances determine the importance of correct setting the goals of justice and, as a result, selecting the optimal means to achieve them. Igor Petrukhin noted that the correct definition of the goals of justice, their separation from the goals of other systems of the State mechanism – a necessary condition for finding reliable criteria for assessing the quality of justice. Goals of justice defined too broadly make difficult to determine its effectiveness, since they involve not only the judiciary, but also other State bodies.[5]

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[1] The Supreme Court Annual Report and Accounts 2018–2019, 16 (Crown Copyright, 2019).

[2] *Zhilin G.* Justice in civil cases: topical issues 121 (Moscow, 2010). [*Жилин Г.А.* Правосудие по гражданским делам: актуальные вопросы, 121 (Moscow, 2010).]

[3] Ibid. P. 110.

[4] Effectiveness of Civil Procedure in Russia: Institutional Analysis and Institutional Design 55 (Moscow, 2005). [Эффективность гражданского судопроизводства в России: институциональный анализ и институциональное проектирование, 55 (Moscow, 2005).]

[5] *Petrukhin I., Baturov G., Morshchakova T.* Theoretical foundations of the effectiveness of justice 48 (Moscow 1979). [*Петрухин И.Л., Батуров Г.П., Морщакова Т.Г.* Теоретические основы эффективности правосудия, 48 (Moscow, 1979).]

In Russia, it is considered that the content of justice is law enforcement. Soviet legal science of the XX century mid-80's was marked by a discussion about whether law enforcement has its own goals that differ from the goals of the applicable rules of law. Some researchers believed that such own goals exist, and their achievement becomes a measure of the effectiveness of whole law enforcement, while other authors categorically denied setting goals for the law enforcement that differ from the goals of the applicable rules.[1] Undoubtedly, law enforcement activities are aimed at the implementation of legal norms. However, evaluating the effectiveness of such activities through the achievement of general regulatory goals often gives only a vague idea of law enforcement efficiency. The content of justice is broader than law enforcement; it has its own goals, which implementation is valuable to the State and society.

Prof. Bonner divided the challenges facing the justice system into two categories. The first group (which prof. Bonner conditionally called private tasks of justice) is formed by tasks that the court's activities are aimed at when resolving specific civil or criminal cases. The second group consists of the tasks facing the judicial system as a whole (or general tasks of justice). The tasks facing the court when considering civil and criminal cases are primarily to resolve them correctly and quickly. In this way, other private tasks of civil litigation are also carried out. This is the protection of legal rights and interests of citizens and other participants in specific civil and criminal cases, the elimination of violations of Law and the provision of pedagogical influence on citizens.[2] Prof. Bonner usually identifies the goals and tasks of justice, which allows to apply the cited theses in the analysis of the goals of civil litigation. Undoubtedly, the correct and rapid resolution of civil cases is the key to the effectiveness of the procedural form of justice, civil litigation, both in a particular case and in general.

The goals of civil litigation as a procedural form of civil justice are determined by the role that it plays in modern society. Today we can talk about two main concepts that reflect its place in the system of public relations. In the first, justice is seen as a service rendered by the State to the parties. As Elena Streltsova notes, justice (in the sense that developed by the mid – late XX century) within the framework of the *workfare state* concept ceases to be a function of the State. It becomes a service that the State can provide itself or delegate to any person.[3]

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[1] About this discussion: *Глазырин В. В.*, *Никитинский В. И.* Эффективность правоприменительных актов // Советское государство и право. 1984. № 2. С. 11 и далее.

[2] *Bonner A. T.* Justice as a type of state activity, Selected Works 175 (Moscow, 2017). [*Боннер А. Т.* Правосудие как вид государственной деятельности. Избранные труды, 175 (Moscow, 2017).]

[3] *Streltsova E. G.* Privatization of Justice, 42 (Moscow, 2019). [*Стрельцова Е. Г.* Приватизация правосудия, 42 (Moscow, 2019).]

In Russia, this approach is reflected in the Concept of judicial reform of the RSFSR, where par. 13 sec. IV stated: "Judicial reform in the field of civil procedure should lead to a radical change in the view of its purpose. Having ceased to play the role of an instrument for the protection of 'national' property and the socialist system, it should become a service rendered by the State to the parties. Only in some cases (protection of honor and dignity, labor disputes, etc.) civil process should play the traditional role of defender of human rights and freedoms and legal entities by force of State coercion".[1] The consolidation of the cited provisions in the Concept had a serious impact on changing views on the purpose of civil litigation and justice in general.

According to Prof. Yarkov, the main idea of the Concept of judicial was that civil litigation "should become a service rendered by the State to the parties»; it was most likely found to be erroneous.[2] Not all researchers, however, agree with such a categorical assertion. So, prof. Lazarev and prof. Fursov is convinced that the potential of the concept that the administration of justice is a form of service delivery should be fully realized. ... There is a need for courts within the framework of the law to be given the power to resolve specific cases taking into account the interests of the disputing parties, weighing their interests, specifying the framework rules.[3] The resolution of specific cases, taking into account the interests of the disputing parties – is a serious bid to change the entire concept of civil justice. It should be noted that the court's resolution of cases in the interests of the parties allows us to think about the efficiency of judicial activity first for them, and then about the effectiveness of the courts as State bodies.

Regardless of the recognition by individual researchers of the fallacy of the concept under consideration, it continues to develop and apply. Civil justice is often placed on the same level with ADR. In doing so, researchers inevitably qualify civil justice as a service rendered by the State to the parties, as one of the possible ways to achieve the goal. Even more pragmatic in their decisions are participants in civil turnover, who vote not for the ritual, but for the result. It is not surprising that the concept of civil justice as a service has spread among economists, who

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[1] Постановление Верховного Совета РСФСР от 24 октября 1991 г. № 1801-1 «О Концепции судебной реформы в РСФСР» // Ведомости СНД и ВС РСФСР. 31.10.1991. № 44. Ст. 1435.

[2] *Yarkov V. V.* Project of procedural reform: quo vadis? 12, Arbitration and Civil Procedure, 10, (2017). [*Ярков В. В.* Проект процессуальной реформы: quo vadis? 12 // Арбитражный и гражданский процесс, 10 (2017).]

[3] *Lazarev V. V., Fursov D. A.* Justice in the life of society 3, Bulletin of civil procedure, 16 (2019). [*Лазарев В. В., Фурсов Д. А.* Правосудие в жизни общества, 3 // Вестник гражданского процесса, 16 (2019).]

see it as "one of the discrete institutional alternatives created by society to resolve private conflicts arising over the use of certain resources".[1]

Of course, the thesis about justice as a service has cognitive value. Thus, the consideration of civil litigation from this point of view allows us to compare different ways to achieve the overriding objective – protection of rights, realization of legitimate interests, both in terms of the result and the cost of achieving it. It becomes possible to analyze justice in civil cases using tools designed to study economic concentration and monopolistic activity. Another aspect is the noted by prof. Lazarev and prof. Fursov possibility of resolving specific cases in the interests of the disputing parties. Civil litigation cannot be effective if it is effective only for the State. Private individuals have the right for effective civil procedure, and the State is the entity that ensures this right.

However, the simple model of justice as a service cannot be used as the basis for judicial activity. Justice protects not only private, but also public interests. "The public courts and judiciary may not be a public service like health or transport systems, but the judicial system serves the public and the rule of law in a way that transcends private interests".[2] The second concept, which develops the ideas of Franz Klein, is more promising. It was Klein's understanding that civil procedure realizes a "social function" (*Sozialfunktion*). Settling specific disputes is, therefore, not the sole purpose of civil procedure, it rather also serves (and fosters) welfare (*Wohlfahrtsfinktion*).[3] Civil justice is considered as the most important social function of Law, a form of achieving social harmony. This role of justice and its procedural form (civil litigation) in public system is deeply rooted in Russian and European legal doctrine, shared by many classics and modern researchers.[4] The goals of justice understood in this way are to ensure the protection of the rights and freedoms guaranteed by the State, they are implemented by the imperious application of legal norms by courts, by the transformation of legal prescriptions into actual statuses. The efficiency of justice as a social function is determined by

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[1] The effectiveness of civil proceedings in Russia. At 7. [Эффективность гражданского судопроизводства в России. At 7.]

[2] *Genn H.* What is justice for? Reform, ADR, and Access to Justice // Yale Journal of Law and Humanities. Winter, 2012. P. 399.

[3] Christian Koller, *Austrian National Report (including additional information on Germany)*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 136, 137 (Statut, 2012).

[4] This position is shared by: *Рязановский В. А.* Единство процесса. М., 2005. С. 36; *Фурсов Д. А., Харламова И. В.* Теория правосудия в кратком трехтомном изложении по гражданским делам. М., 2009. Т. 1. С. 114; *Амосов С. М.* К вопросу о целях правосудия // Российский ежегодник гражданского и арбитражного процесса. 2001. № 1 / под ред. В. В. Яркова. М., 2002. С. 10; и др.

the effectiveness of the protection of rights and freedoms in the procedural form of civil litigation. It is the goals of justice that should determine the goals of modern civil litigation.

Franz Klein's concepts are more than a century old, but researchers in many countries continue to rethink the place of civil justice in the social system. For example, in England, not only academics and practitioners but the whole society reflects about the role if civil procedure. "The formal promotion of mediation as a central element in the new civil justice system trivialised civil disputes that involve legal rights and entitlements and redefined judicial determination as a failure of the justice system rather than as its heart and essential purpose".[1] What are the goals of civil litigation today?

In Russia, in accordance with the Civil Procedure Code (art. 2), the purpose of civil justice is to protect violated or disputed rights, freedoms and legitimate interests of citizens, organizations, rights and interests of the Russian Federation, Federation entities, municipalities, and other subjects of civil, labor or other legal relations.[2] Fair public litigation, ensuring the necessary balance of procedural rights and obligations of the parties,[3] strengthening legality and legal order, preventing offenses, forming a respectful attitude to the Law and the Court, and peaceful settlement of disputes are also considered as tasks (which are often identified with the goals) of civil procedure. The goals (objectives) of the procedure in commercial ('arbitrazh') courts are also to ensure the access to justice in the sphere of business and other economic activities; fair public litigation within a reasonable time by an independent and impartial court; strengthening the lawfulness and preventing offenses at the sphere of business and other economic activities; forming a respectful attitude to the Law and the Court; promoting the establishment and development of business partnerships, peaceful settlement of disputes, and the formation of business customs and ethics. In addition, when analyzing goals, along with tasks, Russian courts often use the somewhat vague term 'meaning of litigation'.[4]

Researchers have noted that in the civil procedure system, the goal belongs to a group of elements related to the doctrine. The goal is formulated only on the

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[1] See more information: *Genn H. Op.* cit. P. 410.

[2] Определение Конституционного Суда РФ от 13 мая 2014 г. № 998-О.

[3] Обзор судебной практики Верховного Суда РФ № 1 / утв. Президиумом Верховного Суда РФ 24 апреля 2019 г. (п. 12); постановление Пленума Верховного Суда РФ от 21 января 2016 г. № 1 «О некоторых вопросах применения законодательства о возмещении издержек, связанных с рассмотрением дела» (п. 11); и др.

[4] Обзор судебной практики Верховного Суда РФ № 2 (2017), утв. Президиумом Верховного Суда РФ 26 апреля 2017 г. (п. 15); Обзор судебной практики Верховного Суда РФ № 4 (2015), утв. Президиумом Верховного Суда РФ 23 декабря 2015 г. (п. 4); и др.

basis of scientific ideas on this problem.[1] Following the Legislator, most Russian researchers are convinced that the purpose of civil litigation is to protect violated or disputed rights, freedoms and legitimate interests of citizens, organizations, rights and interests of the Russian Federation, Federation entities, municipalities, and other subjects of civil, labor or other legal relations. Thus, according to Gennady Zhilin, the main final goal of civil litigation is to protect violated or unlawfully disputed rights, freedoms and legitimate interests of persons whose dispute is subject to resolution by the court.[2] According to Dmitry Maleshin, along with the general goal of civil procedure, namely the protection of violated rights, there are two intermediate goals: the resolution of the dispute and the actual recovery of the right.[3]

However, such an idea about the purpose of civil litigation is subject to fair criticism. Only real rights, freedoms and legitimate interests can be protected by court. Valeri Protasov noted, due to the fact that a protective relationship really might not be and that to establish the truth in relation to this circumstance also requires procedure the purpose of civil procedure is primarily to ascertain the presence or absence of a protective civil relationship, and then, in the case of a positive decision of this question, comes the implementation of a protective relationship.[4]

Another group of researchers considers the purpose of civil litigation the elimination of legal conflicts in society, abnormal manifestations of social relations. Thus, according to Elena Lukyanova, the 'material' goal of the procedural legal block, i.e. the result that the Legislator seeks when setting procedural norms, is to resolve and eliminate abnormal manifestations of public relations, protect social order, rights, freedoms and legitimate interests of citizens and organizations.[5] In many aspects, the third group of opinions is similar, based on the recognition that the purpose of civil litigation is to maintain legality and legal order, the implementation of protective relations. Valentin Ryazanovsky noted that the implementation of material civil rights is an end in itself only from the point of view of individuals, while for the State it serves as a means of maintaining legality and legal order. And, therefore, when organizing the process, not only the interests of individuals and the properties of their civil

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1 *Малешин Д. Я.* Гражданская процессуальная система России. At 160.

2 *Жилин Г. А.*, Ibid. At 55.

3 *Малешин Д. Я.* Методология гражданского процессуального права, 45–46 (Moscow, 2010).

4 *Протасов В. Н.* Гражданский процесс с позиций системного подхода (методологический аспект): автореф. дис. ... канд. юрид. наук. Саратов, 1979. С. 14.

5 *Лукьянова Е. Г.* Теория процессуального права, 109–110 (Moscow, 2003).

rights should be taken into account, but also the interests of legality and legal order, public interests.[1]

The fourth group of views is based on the recognition of the purpose of civil litigation as the solution of a legal case, the resolution of a dispute. For instance, Elena Slepchenko is convinced that the purpose of judicial proceedings is to resolve the case on its merits.[2] Increasingly, the settlement of disputes is defined as the main goal of judicial activity. Thus, it is for the implementation of such a task of legal proceedings as the peaceful settlement of disputes that judicial reconciliation is used today.[3] According to Prof. Nekrosius the hierarchy of goals of court proceedings, the goal of reconciliation of the parties generally occupies a leading position, and the resolution of the case on the merits and decision-making should be interpreted as secondary goals and applied only when it is no longer possible to reconcile the parties.[4]

Speaking about the purposes of the procedural activities of commercial courts as expressions of social challenges facing them, Malkhaz Pacacia offers to distinguish a universal goal, binding the courts of all instances, the overall goals of the appeal system and private objectives of a particular court instance. In his opinion, the universal goal of procedural activity is the protection of violated or disputed rights and legitimate interests, accessibility of procedural activity, its fairness and timeliness.[5] Some modern Russian authors have proposed an additional goal that reflects the effectiveness of the procedural activity itself, regardless of the protection of subjective substantive law. It is proposed to consider 'effective judicial communication' as such a goal.[6] A positive answer to the question whether it makes sense to evaluate the efficiency of civil litigation beside the protection of subjective right, and whether vague 'judicial communication' should be considered such a goal, is not obvious.

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[1] *Ryazanovsky V. A.*, Ibid. At 36.

[2] *Слепченко Е. В.* Гражданское судопроизводство: проблемы единства и дифференциации. A Summary of a Doctoral Thesis in Law. Saint Petersburg, 2011. At 14.

[3] Регламент проведения судебного примирения, утв. постановлением Пленума Верховного Суда РФ от 31 октября 2019 г. № 41.

[4] *Некрошюс В.* Цель гражданского процесса: установление правды или примирение сторон? // Российский ежегодник гражданского и арбитражного процесса. 2005. № 4 / под ред. В. В. Яркова. СПб., 2006. С. 12.

[5] *Пацация М. Ш.*, Эффективность процессуальной деятельности проверочных инстанций арбитражного суда. A Summary of a Doctoral Thesis in Law. Moscow, 2010. At 12–13.

[6] *Сухорукова О. А.* Эффективность гражданского судопроизводства: коммуникативный аспект. A Summary of a PhD Thesis in Law. Yekaterinburg, 2017. At 10, 17.

We can continue to itemize the views of Russian scientists on the goals of civil litigation. In other countries, researchers are also far from a common understanding of the goals. Obviously, approaches to evaluating the effectiveness of judicial activity will differ up to the understanding of its goals. The diversity of goals forces judges to think about the means and instruments to achieve them. If the purpose of civil procedure is a doctrinal product, then practitioners and legislators need the consent of scientific schools in its understanding.

A serious attempt to update the doctrinal goals of civil litigation was made during the IAPL World Conference on Civil Procedure "Civil Procedure in Cross-cultural Dialogue: Eurasia Context", held in Moscow in 2012. For instance, prof. Remco van Ree mentions that within the circles of Dutch lawyers and legal scholars usually at least three goals are distinguished: a) the authoritative determination of rights recognized by private law and the provision of enforceable titles (judgments) (i.e. "deciding disputes"); b) demonstrating the effectiveness of private law; c) the development of private law and guaranteeing its uniform application.[1] Prof. Fu Yulin summarizes 'tasks' of civil procedure, mentioned at Chinese Civil Procedure Law, into two main goals of civil justice: (1) to protect parties' rights; and (2) to maintain social order…. The courts, however, mainly focus on maintaining "social order" (instead of "legal order").[2] "The goal of civil justice in Brazil is, according to most Brazilian legal writers (academics), to solve conflicts or disputes between A and B in accordance with the law. … But in fact on many occasions civil justice has the goal of solving problems generated by inappropriate activity of the government".[3]

Analyzing different approaches to determining the goals of civil procedure, Dmitry Maleshin notes: "given the priority of public interests over private ones, dispute resolution in collectivist societies is carried out only in accordance with public interests. ... The purpose of civil procedure under such conditions is not only to resolve the dispute between the parties, but also to protect public interests. In individualistic societies, on the contrary, priority is given not to public but to private interests. ... The purpose of civil procedure in this case is only to resolve

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[1] Remco van Ree, *Dutch National Report (with some additional information on Belgium and France)*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 196, 196-197 (Statut, 2012).

[2] Fu Yulin, *Chinese National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 164, 165 (Statut, 2012).

[3] Teresa Arruda Alvim Wambier, *Brazilian National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 157, 157 (Statut, 2012).

disputes between the parties and protect their rights".[1] Identifying the goals of procedure may be more challenging in some ways in the Common law world than in the Civil law world because, as is true in many ways, the procedure of the Common law world (like its substantive law) evolved organically and without any "founding principles". … Procedure also is measured importantly as it overlaps with or furthers the goals of substantive law; in this context, one may speak of the overall purpose of civil justice as depending on the effectiveness of compensation and the other features of any civil justice system.[2] The lack of a clear understanding of the goals of civil litigation makes it difficult, but not impossible, to assess its efficiency. A comprehensive analysis of the effectiveness of legal regulations through their application by courts allows us to make a step forward to assess the efficiency of legal proceedings, to abandon the practice of judicial organizations' mechanistic appraisal.

Italy demonstrates another uneasy approach in defining civil procedure goals. According to Elisabetta Silvestri, in reality a more accurate analysis of the constant amendments to the rules governing adjudications show that the Lawmaker deliberately refrains from enforcing a specific concept of the goals civil justice is expected to attain.[3] Perhaps this circumstance is the cause of the phenomena that allow Italian researchers (including Ms. Silvestri herself) to speak about the unbearable level of inefficiency of the Italian judicial process and its slowness.

The variety of approaches in determining the goals of civil litigation requires their systematization for evaluating efficiency usage. Prof. Uzelac says that two main goals of civil justice may be in the broadest sense defined as: (1) resolution of individual disputes by the system of state courts; and (2) implementation of social goals, functions and policies.[4] Achieving these goals should ideally be a measure of the effectiveness of civil litigation. Prof. Nekrosius is sure that discussions about the goals of the civil process formed two or three main view: 1) material subject theory of right's protection (where the main purpose of civil litigation is to protect right); 2) theory of protection of actual right (according to which the purpose of

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[1] Maleshin D, *Civil procedural system of Russia*. A Doctoral Thesis in Law. At 161. [*Малешин Д. Я.* Гражданская процессуальная система России. A Doctoral Thesis in Law. At 161.]

[2] Richard Marcus, *American National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 227, 227 (Statut, 2012).

[3] Elisabetta Silvestri, *Italian National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 187,189 (Statut, 2012).

[4] Alan Uzelac, *General report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 111, 114 (Statut, 2012).

civil litigation is to ensure the appropriate application and validity of substantive right); 3) the theory of conflict resolution (where the purpose of civil litigation is to remove a dispute that has arisen between individuals).[1] Right's protection, ensuring the application and operation of substantive right, resolving disputes of individuals – which of these alternatives should the judge choose when considering a particular case? The question looks rhetorical.

Can such ambitious goals become the basis for practical evaluation of the efficiency of, for instance, a particular civil case? Obviously, no, because individual disputes resolution by the courts is the function of the entire system as an institution, and the implementation of broadly formulated social goals, functions and strategies is its external effect. Evaluating the effectiveness of civil litigation requires to specify its universal goals. Prof. Uzelac proposed alternatives that reflect marginal approaches in goal setting: (1) Protection of individual rights *v.* Protection of the public interest. (2) Establishing the facts of the case correctly *v.* The need to provide effective protection of rights within an appropriate amount of time. (3) Proportionality between case and procedure. (4) Equitable results *v.* Strict formalism. (5) Problem solving *v.* Case processing. (6) Freely available public service *v.* Quasi-commercial source of revenue for the public budget.[2] European countries persist in demonstrating examples of practical implementation of such different approaches. It is truly surprising that the European Commission for Efficiency of Justice is able to compare the efficiency of European judicial systems designed with different goals. In our opinion, the choice of the optimal ratio of the proposed approaches determines the efficiency of civil litigation. Perhaps the ideal combination can not be achieved by legislative fixing of goals (in the clause of the procedural code). Namely it is the judge who, when resolving specific cases, can come as close as possible to the ideal of justice, find the *golden ratio* between these alternatives. In this case, the task of the Legislator is to rationalize the choice, to optimize the level of achievement of mentioned goals when considering cases by the courts. Here, in our opinion, there are broad prospects for the application of *Law and Economics*.

The diversity of views is evidence that while the law preserves the tasks of civil litigation, society sets new goals for the courts. Classic adversarial rules are supplemented by new forms aimed at achieving both strategic goals and solving tactical problems of court proceedings. There is not at least doubt that the civil litigation system today is not single-purpose or even dual-purpose. Civil procedure is a complex multi-purpose system, and its effectiveness cannot be a function of achieving one, even the most important goal.

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[1] *V. Nekroshius.* The purpose of the civil procedure. P. 8. [*Некрошюс В.* Цель гражданского процесса. С. 8.]

[2] See more information: Alan Uzelac, Ibid. At 114 ff.

Anatoly Tsikhotsky is convinced that the goals of justice are consistent, they have a systemic property, which is manifested in the fact that the achievement of one of them ensures the achievement of all the others.[1] The proposed pattern is an ideal model rather than a realistic perception of reality. The goals of justice do not contradict each other, but the achievement of one of them does not always ensure the achievement of others.

Philosophers have debated whether a goal is an objective or subjective category. As noted by Dzhangir Kerimov, arising under the influence of certain conditions of objective reality, the goal is necessarily always realized in one or another material or spiritually tangible form, which in the end is the result of the realization of the need. ... Being the product of concrete conditions of social existence and ultimately determined by them, the goal is an ideal image of the results of the individual's actions, for which these actions are performed by him.[2] Legal proceedings are aimed to achieve the goal that is an ideal image of the results of such activities – effective protection of rights and freedoms.

Many researchers in the analysis of the goals of civil litigation pay all attention to the general goals, deduced from the conditions of social existence and determined by it. The implementation of such goals becomes the only measure of the effectiveness of civil procedure. Meanwhile, it is the private goals of parties that force them to apply to the court for protection of their rights. The ideal image of the future results of procedural actions is formed not in the law, but in the minds of persons applying for judicial protection. The private goals of the parties determine their actions and become the basis for evaluating the subjective efficiency of court proceedings.

From the standpoint of welfare economics, the efficient result (holding certain other factors equal) would be a system that minimized the sum of two costs – the costs of erroneous results (inaccuracy), on the one hand, and the costs of the applicable procedures, on the other.[3] The main purpose of court proceedings is to protect the right, which is achieved by resolving the parties' dispute, eliminating legal uncertainty and compelling the obligated person. Civil litigation ensure this goal to be achieved with minimal risk of errors and optimal costs. Creating a set

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[1] Tsikhotskiy A, Regulatory significance of the goals of justice in civil cases, Legal problems of strengthening Russian statehood, 241 (Tomsk, 2001). [*Цихоцкий А. В.* Регулятивное значение целей правосудия по гражданским делам // Правовые проблемы укрепления российской государственности, 241 (Tomsk, 2001).]

[2] Kerimov D, Methodology of law: subject, functions, problems of philosophy of law, 272 (Moscow, 2003). [*Керимов Д. А.* Методология права: предмет, функции, проблемы философии права, 272 (Moscow, 2003).]

[3] Geoffrey P. Miller, *The Legal-Economic Analysis of Comparative Civil Procedure*, 45 Am. J. Comp. L. 905, 906 (1997).

of formal rules that structure the individual behavior (i.e., creating an economic institution) allowed this task to be solved. According to Prof. Maleshin, the goal determines the amount of financial costs for both the parties to the dispute and the State.[1] There is not at least doubt that the goal determines the acceptable costs of erroneous decisions, costs of the proceedings, as well as their ratio. In this context, the purpose of civil litigation defines the optimal level of costs that are taken into account when evaluating the efficiency of court proceedings.

Formal recognition of a right often has no real consequences in itself. A pathetic thesis about 'the protection of rights', without taking into account its economic component, regardless to the costs of such protection, stated as the purpose of civil litigation, is not a reliable basis for building a trial model. For parties, the right is inseparable from the good that is assigned to them by this right. As a consequence, the result of judicial protection is determined by the welfare increase of persons who have applied for such protection, and its tangible effect. The "wealth" in "wealth maximization" refers to the sum of all tangible and intangible goods and services, weighted by prices of two sorts: offer prices (what people are willing to pay for goods they do not already own); and asking prices (what people demand to sell what they do own).[2] The growth of total welfare becomes possible when goods are redistributed to those who use them effectively; both private and social benefits are compared, and intangible satisfaction of parties is taken into account.

Welfare is not just the sum of material goods. In theory, welfare is considered as the satisfaction degree of human needs, as in principle everything that has a subjective value for the individual.[3] Satisfaction with judicial protection of rights, freedoms and legally protected interests is an important component of welfare, valuable not only for the individual, but also for the society. Academics use the category of welfare as «a set of economic goods available to people, i.e. goods that are not just of value to individuals, but are limited in volume (quantity) in comparison with their needs, as a result of which they become the object of turnover and acquire a certain exchange value (monetary value)».[4] The important thing to remember is that the list of economic goods is very wide today and includes many intangible values. The growth of so widely understood welfare determines the efficiency of judicial protection.

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[1] Maleshin D.Ya., Civil procedural system of Russia. A Doctoral Thesis in Law. At 160. [*Малешин Д. Я.* Гражданская процессуальная система России. A Doctoral Thesis in Law. At 160.]

[2] Richard Posner, The Problems of Jurisprudence 356 (Harvard University Press, 1993).

[3] *Karapetov A.* Economic Analysis of Law 118 (Moscow, 2010). [*Карапетов А. Г.* Экономический анализ права, 118 (Moscow, 2010).]

[4] Ibid. At. 118.

Hereby, civil litigation have several goals, which achievement determines its effectiveness. The main purpose of civil litigation should be considered not just protection, but effective protection of the rights and legitimate interests of parties. Effective judicial protection is the application of appropriate legal norms to the parties' relations, correlated with the actual results achieved and the costs of court proceedings.

Effective judicial protection is not the only result of effective legal proceedings, just as ensuring the effective distribution of economic benefits is not the only economic task of dispute resolution. In theory, effective third-party enforcement is best realized by creating a set of rules that than make a variety of informal constraint effective. Nevertheless, the problems of achieving third-party enforcement of agreements via an effective judicial system that applies, however imperfectly, the rules are only very imperfectly understood and are a major dilemma in the study of institutional evolution.[1]

Litigation is a *zero-sum game* from the parties' perspective. Its by-products, however, have value for society. The clarification of ambiguous laws, the interpretive coverage of omissions, and the resolution of contradictions between laws are undeniably desirable.[2] In Russia, the above-mentioned results of the trial are not evaluated as 'side' or 'inadvertent' effects. On the contrary, the Legislator has defined the strengthening of legality and legal order, the prevention of offenses, and the formation of respect for the Law and the court as the tasks of civil procedure or proceedings in commercial courts (Commercial Procedure Code, art. 2). This circumstance should be taken into account when evaluating the effectiveness of the courts and modifying civil litigation using institutional design methods. Court goals in civil proceedings can be described as multi-vector, but unidirectional.

The worth of effective judicial protection cannot be reduced to resolving a specific dispute and clarifying the meaning of legal provisions. Real possibility to apply to the court is a powerful incentive to comply with legal requirements for legal relations participants, as well as to make a rational choice of lawful, but not opportunistic behavior. As Richard Posner has pointed out, the higher the likelihood of a lawsuit, the greater the deterrent effect of a particular legal rule that will be invoked as a result of this process, and the less likely it is that potential defendants will engage in the wrongful conduct that creates the right to file a lawsuit.[3] Note that in this situation, the Legislator is faced with a dilemma – to make the action to the

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[1] *Douglass C.* North, Institutions, Institutional Change and Economic Performance 35 (Cambridge University Press, 1990).

[2] *Nicholas L.* Georgakopoulos, Principles and methods of law and economics: basic tools for normative reasoning 105 (Cambridge University Press, 2005).

[3] *Posner R.* Economic analysis of law. P. 767. [*Познер Р.* Экономический анализ права. С. 767.]

courts simple and inexpensive, but to avoid abuse of the right to file a lawsuit and to maintain incentives for settlement. We are convinced that the found proportion cannot be universal for all categories of cases and should not become a freeze rule.

Economic analysis of law, which is very popular today, allows us to look at the civil procedure from a different angle. When should an aggrieved party be encouraged to use the *ex post* protection mechanism instead of taking additional (often excessive) *ex ante* precautions? The factor of applying to court with a claim is always discounted by the probability of such action, while taking excessive precautions can have the effect of a barrage rule. The need to regulate, rather than prohibit, process-related forms of activity generally determines the use of incentives to apply to court after a violation of a right or legitimate interest. We emphasize that the procedural form of court proceedings should not make the appeal to the court ineffective through unreasonable deadlines and excessive costs.

The analysis of courts' role in interpreting legal provisions and ensuring their uniform application is an important area of civil litigation effectiveness research. It is generally assumed that because every law leaves openings for interpretation, one of the services that litigation provides is interpretation. Laws can be interpreted consistently so that similar disputes obtain the same outcome. Otherwise, laws can be interpreted arbitrarily and similar disputes lead to dissimilar outcomes. Naturally, consistency is preferable but for consistency to exist, the legal system must provide some means for interpretation not to change, that is, for interpretation to solidify[1]. Unified understanding of legal provisions meaning is necessary condition for their uniform application by courts dealing with civil cases. Consistency and coherence in application of rules established by the Legislator allows parties to predict the consequences of their actions, minimize their risks and refrain from opportunistic behavior. A predictable outcome of a trial is always a positive factor that becomes an important condition for the growth of both social and individual welfare. It is obvious that the task of the judicial system as an institution is not only to resolve private disputes, but also to ensure uniform interpretation and application of legal provisions. Prof. Lazarev noted that objectively, regardless of whether the subject of the application of law sought to do so or not, the law enforcement act contains provisions that are universal in nature and which, for this reason, cannot be ignored together with statutes in subsequent legal practice[2].

What procedural tools and rules help to solve this problem? Primarily, this is the entire complex of control proceedings – appeal, cassation and revision, as well

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[1] *Nicholas L.* Georgakopoulos, Ibid. At 105.

[2] *Lazarev V. V.*, Law enforcement acts and their effectiveness in a developed socialist society (theoretical research). [*Лазарев В. В.* Правоприменительные акты и их эффективность в условиях развитого социалистического общества (теоретическое исследование).]

as *exequatur* proceedings. The State and society set before the courts the task of ensuring uniform application of rules of law by non-governmental jurisdiction bodies, as well as protecting *ordre public* from possible distortions by foreign judgments and arbitral awards. In many countries, the primary role in solving this problem is assigned to the requirements of fixing the court's conclusions on the merits in the judgment. According to researchers, without written opinions, consistency of interpretation may be impossible. Consistency also requires repetition of prior interpretations.[1] In this context, the justifying part of a court judgment becomes not a prologue to the resolution on the merits, but an independent result of the trial, the benefits of which are received by the whole society. As noted by Valery Lazarev, the legal significance of the law enforcement act is not limited to its effect in relation to the addressees of legal norms that pass as subjects in this particular case. It covers everything that actually takes place and all possible effects of the act on the legal order.[2] Clarification of the legal provision and its application to the facts of the case established by the court is the most important element, which absence produce low efficiency of the legal impact. An attempt to cancel court obligation to make the justifying part of the judgment in favor of the notorious 'judicial load decrease' will increase such load in future. The lack of transparency of the court's conclusions on the merits of the dispute creates incentives for the parties to file new claims in an effort to update the established rule of law.

Who is responsible for achieving the goals of civil litigation? According to Gennady Zhilin, the effectiveness of such a social phenomenon as legal proceedings cannot be considered in isolation from the purposeful activities of the court and the activities of other subjects of the process controlled by it. The direction of their activities is determined by the goal-oriented principles of legal proceedings, which exist objectively as public needs and interests in the most optimal judicial procedure, expressed in legislation.[3] Who is responsible for the effectiveness of civil litigation? Having studied the goals of civil justice from the position that they are determined by the State, Olga Shemeneva comes to the conclusion that these are always public goals, which the court must first strive to achieve. In her opinion, individual goals of parties may differ significantly from them.[4] It is difficult to accept this reasoning. A party is, first of all, an active participant in court proceedings, who is empowered by Law and who is provided with procedural means to achieve

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[1] *Nicholas L.* Georgakopoulos, Ibid. At 106.

[2] *Лазарев В. В.* Ibid. At 15.

[3] *Жилин Г. А.* Ibid. At 110.

[4] A Summary of a Doctoral Thesis in Law. Voronezh, 2017. At 17. [*Шеменева О. Н.* Роль процессуальных соглашений в гражданском судопроизводстве.]

a certain goal in legal proceedings, to satisfy a certain interest.[1] Civil procedure unites purposeful activities. The legal status of each participant in the process and the provision of procedural means are determined in order for the joint procedural activity to be successful and for the common goal to be achieved. The parties can also pursue their own interests.

The challenge is to design a litigation system that reduces parties' litigation expenses and, ideally, eliminates them, while maintaining or increasing the benefits that society obtains from litigation.[2] The use of modern digital technologies that have proven themselves in many areas of human activity is considered promising. The widespread use of "electronic justice", modern systems of data transmission and storage, as well as the public posting of judgments will significantly reduce the trial costs of the parties, increasing the benefits that society receives from imperious implementation of legal provisions by the courts.

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[2] *Nicholas L*. Georgakopoulos, Ibid. At 108.

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