The Principle of Procedural Economy in the Estonian Civil Procedure

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1. Introduction

In recent years, more and more attention has been paid in the European Union to making procedure simpler, faster and more efficient.

In his report at the XIII plenary meeting of judges on 14 February 2014 in Tartu, Chief Justice of the Supreme Court Priit Pikamäe aptly pointed out that "One ghost wanders around the post-modern legal culture space – the ghost of efficiency. As the progressiveness of different court procedures is more and more assessed by their efficiency, i.e. effectiveness, the court system of the post-modern age as a whole must first and foremost be efficient. This means that in terms of the public resource allocated for it, the court system must be able to provide an even greater number of resolved court cases using as little procedural time as possible. As a rule, court administration strategy documents do not focus on the ways to achieve a just decision, but on increasing the efficiency of the court system during hearings. Obviously, this poses a separate interesting and intriguing public law question of why out of all the state authority branches efficient operation is expected first and foremost from the judicial authority, while in case of enforcement and legislative authorities this category is not emphasised to at least a similar extent."[1]

Additional monetary resources are allocated for the court system in order to increase the efficiency of procedures, the speed of making court decisions and completing enforcement documents. In civil procedure, the principle of procedural economy has obtained a significant meaning, while this principle is not separately highlighted in civil procedural law. This article presents an overview of the substance, goal and meaning of the principle of procedural economy. However, as there are many other important civil procedure principles, other than procedural economy, which aim to ensure the fair and just administration of justice, the author considered it necessary to discuss them as well.

2. Impact of European Union Law on the Civil Procedure of the Member States

There have been a number of discussions regarding the place and significance of civil procedural law among legal professionals. The object of the debate has been the question of whether procedural law is a science at all, what the relations between substantive law and procedural law are, and what the aim of procedural law is.

Civil procedural law as an independent science is a relatively young branch of science, and it is considered to have been born in the second half of the 19th century. Before that civil procedure was a part of civil law. Civil procedure is not just resolving a dispute – it consists of a set of actions taking place in a predetermined order between the parties and the court; a procedural legal relationship emerges with the aim of settling substantive legal disputes. Civil procedural law as a social phenomenon has been addressed from the procedural, philosophical (the question of law and justice) and legal policy standpoint.

Estonian civil procedural law has been influenced by Roman law, as well as by development of civil procedure in other states, such as Germany, Italy, France and Russia, and also by the European Union law due to the accession to the European Union.[2]

Uno Lõhmus, a former judge of the European Court of Justice, has expressed an opinion that the formation of the court system (institutional autonomy) and establishment of procedural rules (procedural autonomy) belongs to the competence of the Member States, however, the established rules cannot be less beneficial than the rules used for resolution of equivalent internal situations, and they cannot make it impossible or harder to use the rights provided by the European Union law.[3] Formation of the procedural autonomy principle belongs to the Member States of the European Union, however, counter-arguments have also been voiced with respect to this issue.[4]

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[1] Report of Chief Justice of the Supreme Court Priit Pikamäe at the XIII plenary meeting of judges on

14 February 2014 in Tartu. Law and Development of the Court System. Internet: http:// www. riigikohus.ee

(04.04.2016)

[2] M. Merimaa. Menetluse põhimõtted ja tõendamine tsiviilkohtumenetluses. Akadeemia Nord. Tallinn 2008, p. 16.

[3] U. Lõhmus. Kuidas liikmesriigi kohtusüsteem tagab Euroopa Liidu õiguse tõhusa toime? Juridica 3, 2007, p 143-154

[4] B. Hofstötter. Non-Compliance of National Court. Remedies in European Community Law and Beyond. T.M.S. Asser Press, The Hague 2006 (referred: U. Lõhmus. Kuidas liikmesriigi kohtusüsteem tagab Euroopa Liidu õiguse tõhusa toime? Juridica, 3 ,2007, pp. 143-154)

The presence of a limitation to the procedural autonomy has been analysed by Risto Eerola, Tuomas Mylly and Püvi Saarinen, who stated that the principles of court and administrative procedure effective in the Community law limit the procedural autonomy of the Member States.[5]

In her previous research, the author of the present article has analysed recommendations of the Council of Ministers of the European Union that included individual instructions concerning the principles which a European Union Member State must be guided by in civil court procedures, including in appeal procedures[6], and came to the conclusion that European Union Member States do not have complete procedural autonomy.[7]

Subsequent development of European Union law has reaffirmed this. Namely, during recent years the European Union has adopted numerous legal acts with the aim of accelerating and simplifying the procedure in civil cases, as well as promoting the conclusion of compromises, and increasing the efficiency of cooperation between the Member States in the legal field.[8]

Nowadays the number of civil disputes with a cross-border effect, whose central issue is the establishment of international jurisdiction and the application of correct substantive law, has increased. Adoption of legal instruments that concern the designation of jurisdiction and the establishment of procedure for the recognition of court decisions in civil cases between persons located (residing) in the Member States belongs to the competence of the European Union.[9] It is emphasised in paragraph (6) of the preamble of Regulation (EU) No 1215/2012 of the European Parliament and of the Council that in order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.[10] The author considers it to be the right approach that with the entry into force of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on 10 January 2015 a court decision made in one Member State will be recognised in another Member State without a special procedure and that the procedure for the declaration of enforceability was abolished, which makes reaching a final result in cross-border litigation less time-consuming and costly.[11]

However, designation of the correct jurisdiction may cause legal disputes also in the future, which is proven by court practice, according to which questions have been addressed to the European Court of Justice through the preliminary ruling procedure in order to receive its clarifications.

3. Principle of Civil Procedure

Two questions that significant to civil procedure are: what principles are the basis for administering justice and what is the role of a judge in the procedure? There are two main approaches:

1. procedures are performed on the basis of the principle of investigation, in which case the role of the judge is active in ascertaining the circumstances and evidence;
2. adversarial procedure, in which the party must be active, including in the submission and collection of evidence.

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[5] R. Eerola, R. Mylly, P.Saarinen. Euroopa Liidu õigus, Tartu 2001, p.107.

[6] Recommendation No R (95) 5 of The Committee of Ministers to Member States Concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures in Civil and Commercial Cases. http://www.impresaitalia.info (10.03.2016)

[7] M. Merimaa. Menetluse põhimõtted ja tõendamine tsiviilkohtumenetluses. Akadeemia Nord. Tallinn 2008, p. 55

[8] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.-OJ L 199, 31.07.2007, pp. 1-22

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.- OJ L 399,30.12.2006, pp. 1-32

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.- OJ L 143,30.04.2004, pp. 15-39

[9] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.- OJ L 12, 16.01.2001, pp. 1-23

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.-OJ L 7,10.01.2009, pp. 1-79

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.-OJ L 338, 23.12.2007

[10] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.- OJ L 351,20.12.2012, pp. 1-32

[11] M.Torga. Brüssel I (uuesti sõnastatud) määrus: kas põhjalik muutus Eesti rahvusvahelises tsiviilkohtumenetluses. Juridica IV/2014, pp. 304-312

The so-called mixed or combined procedure is also known. There have been significant changes in the civil procedure of the Republic of Estonia. While the initial Code of Civil Procedure,[12] adopted and entered into force on 15 September 1993 as a part of the court reform, established the adversarial principle for the procedure concerning civil cases. In subsequent procedural legal norms, i.e. the Code of Civil Procedure, judges were given a more active role in ascertaining circumstances and collecting evidence.[13] The Civil Chamber of the Supreme Court has directed court practice towards the fulfilment of the court's duty to give explanations, i.e. to ascertain the object of action and basis of action, which also follows the aims of pre-trial proceedings stated in Article 392 of the Code of Civil Procedure. The aim of the duty to give explanations is to abide by the principle of procedural economy, which enables to set limits for the disputes and direct attention to the submission of relevant evidence already at the pre-trial proceedings, which eventually helps to resolve the case within a reasonable time.

In the German theory of law, it has been emphasised that a decision must not be a surprising one. The Civil Chamber of the Supreme Court has also referred to the same principle in its decisions. Judge Indrek Soots[14] has noted that the prohibition of the so-called surprising decision in the German theory of law is based on three grounds: ensuring the right to be heard in court, the right to a fair court procedure, and acceleration and concentration of the court procedure.[15] The author agrees with the abovementioned position that a decision must not be a surprising one for a party. If the court fulfils the duty to give explanations according to the legal requirements, it is possible for a party to the proceedings to use the rights provided by law in a timely manner. In the court of the first instance (i.e. in the county court) and in the court of appeal (i.e. in the circuit court), a party to a proceeding does not have to have a contractual representative. Due to changes in substantive and procedural norms, the procedure concerning civil cases has become relatively complex, and for parties of the procedure that do not possess legal knowledge it is difficult to defend their lawful interests and rights in a court without legal help. Therefore, the provision of Article 351 (1) of the Code of Civil Procedure that obliges the court to discuss the disputed facts and relationships with the participants to the proceeding to the necessary extent from both the factual and legal point of view is completely justified. In this respect, it is important that the court observes the principles of the civil procedure, including the principle of equal treatment of parties, and does not become an advisor of a party to the proceeding. From this the following legal question arises: where are the limits of implementing the duty to give explanations that may not be exceeded?

Based on a general rule of civil procedure, during the course of a procedure it is necessary to follow a number of principles that are applicable at all court instances. The principles are conditionally divided into two large groups:

1. organisational and functional principles, which include both court administration and the procedure itself,
2. functional principles, which include procedural acts between the court and the persons taking part in the process.

Views have been expressed that such a division is not justified, as the principles are connected to each other.[16]

The Estonian legal system is based on the example of German law. In Germany, the following principles are emphasised in civil procedure:

1. Principle of disposition, meaning a person's right to decide whether he or she wants to go to court at all, what legal remedy he or she wishes to use, and what evidence he or she wishes to submit.

2. Principle of deliberation, meaning submission by the parties of required factual circumstances, which is the opposite of the principle of investigation, where the court must be active in ascertaining the circumstances. This also includes the fulfilment of the court's duty to give explanations.

When parties go to court, they have an obligation to submit factual circumstances, which is reflected in the historical legal principle ***da mihi facta, dabo tibi ius*** (give me the facts and I shall give you the law). Based on this principle, the submission of factual circumstances is the duty of the participants of the proceedings, and having knowledge of the law is the duty of the judge ***(iura novit curia)***.

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[12] Code of Civil Procedure. RT I 1993, 31/32 ,538.

[13] Code of Civil Procedure. RT I 1998, 43-45, 666.

Code of Civil Procedure. RT I 2005, 26, 197

[14] I. Soots. Kohtu selgitamiskohustus hagimenetluses. Juridica V/2011, p. 324

[15] M. Koch. Die richterliche Prozessförderungspflicht nach dem ZPO –Reformgesetz, Hamburg 2003, p. 53 (referred: I. Soots. Kohtu selgitamiskohustus hagimenetluses. Juridica V/2011, p. 324).

[16] В.М.Савитский. Проблемы судебного права. Москва 1983

3. Principle of oral proceedings. Oral procedure enables the judge to get a direct impression of the parties and the dispute because of the immediacy. It is also important for the implementation of the principle of public court procedure.

With regard to this principle, it is important that it does not exist in a so-called pure form, as a number of procedural acts during court procedure are performed in writing.

The European Union has issued recommendations for implementing a written procedure in case of small monetary amounts, for example, in case of the order for payment procedure. In Estonia, simplified procedures (Articles 403-406 of the Code of Civil Procedure) can also be performed in the form of a written procedure. An appeal against a ruling is generally adjudicated in a circuit court by way of a written procedure (Article 667 (3) of the Code of Civil Procedure).

4. Principle of directness. This principle is directly related to the principle of oral proceedings.

5. Principle of public proceedings. A court proceeding is open to both the general public and to the parties, which gives the parties a stronger right to receive information.

6. Principle of uniformity of an oral hearing, or principle of concentration, meaning that all hearings (preliminary hearing, main hearing) are equally important and have equal significance for the purpose of making of a decision.

7. Principle of strictness of formal requirements and good faith

Procedural law is strictly formalised, which is important from the position of equal treatment of the parties. Rules of court procedure must be uniform and they must be followed. Disregarding procedural legal norms leads to legally negative consequences for the relevant party to the proceedings. Parties to the proceedings must use their rights in good faith and they may not abuse their rights, which is important from the position of preventing delays in the procedure.[17]

8. Principle of fairness of the court procedure

This principle is applied first and foremost to a judge, and it came to Germany mainly through common law and its requirements of fair trial and due process of law. This principle includes such notions as justice, impartiality, honesty, delivery of a court decision within a reasonable time, and the requirement to ensure being heard before a court.[18]

In Germany, the prevalent opinion is that it is not enough if the parties are provided with an opportunity to express their opinion, but that the court also has to acknowledge what was presented by the parties and take it into account during its deliberations. If the court makes a decision on the basis of a legal norm, the significance of which for deciding the case was not previously explained, it is considered a breach of the right to be heard before a court.[19]

From the position of fairness of the procedure, it is important to provide parties with equal opportunities, including what concerns the submission of evidence. This is especially important nowadays, as substantive law becomes more complex, since a legal position may fail due to a failure to prove it.

Estonian civil procedure uses principles similar to the principles contained in the German civil procedural law, however, a few other principles can be added, such as the **principle of lawfulness**. This means that a procedural act in a civil matter is performed pursuant to the law in force at the time an act was performed (Article 6 of the Code of Civil Procedure), and the conduct of procedures concerning a case is based on the Estonian law of civil procedure, as well as the principle that in the absence of a provision of law regulating a procedural relationship, it is necessary to apply a provision that regulates a relationship similar to the relationship under dispute. If, however, there is no provision of law regulating a relationship similar to the relationship under dispute, it is necessary to apply analogy (Article 8 of the Code of Civil Procedure).

Principle of equal treatment of persons, which is also a constitutional right, meaning that the parties and other persons are equal before the law and the court (Article 7 of the Code of Civil Procedure).

Principle of the language of the court, according to which court procedure and court administration is performed in the Estonian language (Article 34 (1) of the Code of Civil Procedure). Persons that are not proficient in the Estonian language must be provided the possibility to use an interpreter.

The principles of the civil procedure that were listed above have seen an addition of the **principle of procedural economy**, which in recent years has gained significant importance.

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[17] Christoph G.Paulus. Tsiviilprotsessiõigus. Kohtuotsuse tegemise menetlus ja sundtäitmine.

Juura, Õigusteabe AS, Tallinn 2002, pp. 97-99

[18] Same, p. 99 (reference 17)

[19] Same, p. 99-100 (reference 17)

4. The Principle of Procedural Economy

4.1. Substance and of the principle of procedural economy and its meaning in the civil procedure

Former Chief Justice of the Supreme Court Märt Rask noted in his 2012 presentation in Riigikogu that "A state is obliged to ensure that the administration of justice is performed without obstacles. During the last five years the time length of procedures in both civil and criminal procedures has decreased, and only in administrative courts a small increase in the time of a procedure is visible.[20] An ambitious legal policy aim established by the coalition Government, stating that a court procedure must not last longer than 100 days at any court instance,[21] has not been statistically achieved in any of the court instances:

in the general procedure it takes on average three times more time (346 days) to make a decision in a criminal case, a dispute between legal persons in private law on average takes 164 days to resolve, and disputes against the state in an administrative court on average last for 142 days. Without any doubt acceleration of procedures is a worthy goal, and achieving an average procedural duration of one hundred days is a bold aim. Acceleration of court procedures is completely justified, as long as it does not have a negative impact on the quality of the court procedure."[22]

It is the authors' opinion that excessive acceleration of procedure may lead to mistakes in the course of making a correct and high quality court decision, i.e. a decision corresponding to requirements of law.

According to Article 4 of the Constitution of the Republic of Estonia, the activities of the courts shall be organised based on the principle of the separation and balance of powers.[23] On 9 February 2007 at the plenary session of judges, principles regarding the development of the court system were adopted, according to which the court system must ensure the fair and objective administration of justice, free access of persons to the administration of justice and the protection of their rights, and the resolution of court cases within a reasonable time period.[24]

The legal basis for adopting the abovementioned development is Article 15 of the Constitution of the Republic of Estonia, according to which everyone whose rights and freedoms are violated has the right of recourse to the courts, and Article 6 of the European Convention on Human Rights, establishing the right to a fair public hearing before a tribunal.[25]

No legal definition of the principle of procedural economy has been adopted. Justice of the Supreme Court Eerik Kergandberg has stated that according to a common understanding and at least at first sight procedural economy should not mean anything other than the fastest possible resolution of court cases".[26] The author agrees with Eerik Kergandberg that according to a common understanding procedural economy can also be understood in this way, however, procedural economy as a principle has a wider legal meaning and substance. According to the dictionary of foreign words, the definition of "economy" (other than economy as management of economics) is frugality, economy, saving.[27]

In the author's opinion the meaning and substance of the principle of procedural economy derives from Article 2 of the Code of Civil Procedure.

According to Article 2 of the Code of Civil Procedure, the purpose of civil procedure is to guarantee adjudication of civil matters by the court

1. correctly,
2. within a reasonable period of time,
3. at the minimum possible cost.

The abovementioned Article assigns to the court the duty to ensure the implementation of the principle of procedural economy, whereas the three basic principles have an equal role and they ensure the just resolution of a case.[28]

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[20] Procedural statistics of the I and II instances for 2011 were published on the Internet page www.kohus.ee, the data describing the work of the Supreme Court was published on the website of the Court www.riigikohus.ee/?id=79 (06.04.2016)

[21] Section 16b of subdivision "Competitive Economic Environment" and Section 61 of subdivision "Safe Estonia" of the programme of the governing coalition of Isamaa ja Res Publica Liit and Eesti Reformierakond parties. On the Internet: http://valitsus.ee/UserFiles/valitsus/et/uudised/taustamaterjalid/Valitsusliit%20I.pdf (06.04.2016)

[22] Report of Chief Justice of the Supreme Court Märt Rask at spring session of Riigikogu of 2012 on 7 June 2012. Overview concerning court administration, administration of justice and uniform application of laws. On the Internet: http:// www. riigikohus.ee (04 April 2016)

[23] Constitution of the Republic of Estonia. RI 1992, 26, 349

[24] The Principles of Development of the Court System. Decision of the Plenary Session of Judges of 9 February 2007. On the Internet: http:// www. riigikohus.ee/?id=749 (02.04.2016)

[25] European Convention for the Protection of Human Rights and Fundamental Freedoms. RT II 1996, 11/12,34

[26] E.Kergandberg. Menetlusökonoomia: teema piiritlemine, taustsüsteem ja spetsiifilised probleemid süüteomenetluses. On the Internet: http://www.iuridicum.ee/public/files/32teesid/32Kergandberg.pdf (10 March 2016):

[27] E.Vääri, R.Kleis, J. Silvet. Võõrsõnade leksikon. Kirjastus Valgus 2006, p 1163

[28] Regulation of the Civil Chamber of the Supreme Court No 3-2-1-138 -07

The necessity of a just procedure has also been discussed by the Consultative Council of European Judges (CCJE), which is of the opinion that the goal of procedural law is to develop a procedure, if possible, in a way that ensures the correct result by just means.[29]

In the previous edition of the Code of Civil Procedure that was in force until 1 January 2006, the wording of the purpose of civil procedure was different. More specifically, according to Article 3 of the Code of Civil Procedure that was in force until 31 December 2005 the purpose of civil procedure was to review and resolve a civil case correctly and as quickly as possible.[30] Therefore, previously the economy of costs of a procedure was not stated as a goal, and the principle of procedural economy was laid down more clearly in procedural law in the Code of Civil Procedure effective from 1 January 2006.

4.2. Correct hearing of a civil case

Correct hearing of a civil case includes two aspects:

1. application of the correct substantive legal norm
2. observation of a procedural legal norm.

A court must resolve a substantive legal dispute by applying the correct law *(iura novit curia)*, while at the same time observing procedural legal norms. Both aspects have equal importance. A decision that is lawful and justified with regard to substantive law cannot exist if during the procedure the rights of a party were disregarded.

Decisions of the Civil Chamber of the Supreme Court show that decisions of circuit courts have been annulled both due to the incorrect application of norms of substantive law and due to a breach of a procedural legal norm. This is also supported by the analysis of the Supreme Court, which was analysed the period from 1 September 2014 until 31 December 2014. During this period, the Civil Chamber of the Supreme Court made reasoned decisions in 71 civil cases, including decisions made by the full body of the Chamber in 2 civil cases. A court decision was annulled and the case was sent for review to a court of first instance on 12 occasions. A district court decision was annulled and the decision of the court of first instance was brought into force on 4 occasions. A decision was annulled due to the incorrect application of a procedural legal norm on 17 occasions, and due to the incorrect application of substantive law and of a procedural legal norm on 17 occasions.[31]

One reason for the incorrect application of a procedural legal norm is the ambiguity of the legal norm and the resulting possibility for different interpretations. Having worked as a judge for over 29 years, I have questioned the constant changing of procedural legal norms, especially as I have not seen reasoned arguments as to why it is necessary. The author believes that such changes lead to a negative consequence, which is one of the factors hindering the formation of a stable court practice in Estonia. A stable court practice is a valuable factor for a procedure, which should not be underestimated. The author considers that the CCEJ in its opinion on the quality of a court decision has justifiably found that excessively frequent changes of laws do not benefit quality, and that legal acts, also including procedural norms, must be clear and easily[32] applicable.

The Estonian Code of Civil Procedure is overregulated, and judges have repeatedly drawn the attention of the executive power to this flaw.

During the preparation of a draft law, it is necessary to analyse possible legal consequences. Unfortunately, the need for this has been underestimated. One of the reasons for that has also been the goal of accelerating a procedure. The absence of a preliminary analysis before the amendment of a law has resulted in the declaration of a procedural norm being contrary to the Constitution with respect to Article 174 (8) of the Code of Civil Procedure[33].

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[29] Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement. On the Internet: http:// www.nc.ee/vfs/490/CCJE%282004%29op6.pdf(02.04.2016)

[30] RT I 1998,43,666

[31] M.Aavik, K. Krillo, K. Mölder. Riigikohtu praktika tsiviilasjades. September-detsember 2014.Aktuaalse praktika ülevaade. Tartu 2015. On the Internet: http://www.riigikohus.ee (03 April 2016)

During the given period, the Supreme Court received 414 applications for procedure concerning civil cases, of which 225 were appeals in cassation, 176 were appeals against court ruling and 13 were applications for review. During the given period, the Civil Chamber of the Supreme Court reviewed 335 applications for procedure, of which 192 were appeals in cassation, 125 were appeals against court ruling, and 8 were applications for review. The leave to appeal was granted in case of 84 applications, i.e. 25% of the applications.

[32] Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE) on the quality of judicial decisions. Strasbourg, 18 December 2008.). On the Internet: http:// %20nr%2011.pdfwww.nc.ee/vfs/802/CCJE%20%282008%29op6.pdf (02.04.2016)

[33] RT I, 03.07.2014, 39

By decision of the general assembly of the Supreme Court of 4 February 2014, No 3-4-1-29- 13 Article 125[1] (2) of the Courts Act and Article 174 (8) of the Code of Civil Procedure, according to which the determination of procedural expenses may also be done by a judicial clerk, were declared to be contrary to the Constitution and invalid. Article 125[1] (2) of the Courts Act states[34] that a judicial clerk is also competent to perform acts and make judgements, which an assistant judge or another court official is competent to perform or make pursuant to the law on court procedure. According to the opinion of the general assembly, in this case the legal problem is whether, according to the first sentence of Article 146 and to Article 147 of the Constitution, it is permissible that in a county court the determination of procedural expenses on the basis of the Code of Civil Procedure in force is made by a judicial clerk, and whether the determination of procedural expenses in a county court on the basis of the Code of Civil Procedure presently in force can be considered as administration of justice within the meaning of the first sentence of Article 146 of the Constitution (Section 43 of the decision). According to Section 43.2 of the decision, the ECHR has stated that a procedure for the determination of legal costs that is separate from the main case must be considered as a continuation of the main case; therefore, it is considered as a determination of a person's civil rights and obligations within the meaning of Article 6 (1) of the European Convention on Human Rights (ECHR decision of 5 September 2013 in case No 9815/10: Cepek *vs.* The Czech Republic, section 43).

The general assembly reached the decision that the determination of procedural expenses in a county court on the basis of the Code of Civil Procedure is considered as administration of justice within the meaning of the first sentence of Article 146 of the Constitution. According to section 44.6 of the decision, in a court justice can be administered within the meaning of the first sentence of Article 146 of the Constitution only by a judge within the meaning of Articles 147, 150 and 153 of the Constitution, as a judge is appointed to the position, and the guarantees and limitations stated in Articles 147 and 153 of the Constitution are applicable to the judge, and, presumably a judge corresponds to the requirements of independence and impartiality arising from Article 15 of the Constitution. A judicial clerk is not a judge within the meaning of Articles 147, 150 or 153 of the Constitution. Determination of procedural expenses in a county court on the basis of the Code of Civil Procedure must be considered as administration of justice within the meaning of the first sentence of Article 146 of the Constitution.

Based on the considerations stated above, it was the position of the general assembly that the disputed provision, to the extent to which it gives judicial clerks the competence to make a ruling regarding the determination of procedural expenses in a county court on the basis of the Code of Civil Procedure, is contrary to the first sentence of Article 146 of the Constitution, therefore, it must be declared invalid.[35]

The court decision presented above demonstrates that while in pursuit of reducing a judge's workload by providing a judicial clerk with the competence to determine procedural expenses, it was not taken into account that a court ruling constitutes the administration of justice.

Chief Justice of the Supreme Court Märt Rask has also pointed this out in his report at the 2014 spring session of Riigikogu, noting that "Although with this decision the Supreme Court did not give a general or all-encompassing assessment of what particular tasks are to be construed as administration of justice, and whether or on what conditions a court can transfer them to the competence of an official who is not a judge, it is still possible to make more general conclusions with the help of this case. For instance, it unequivocally follows from the ruling of the general assembly of the Supreme Court that according to the Constitution the workload of courts cannot be reduced nor the speed of procedure increased in a manner that involves permitting court officers, for example judicial clerks, to perform the duties that constitute the administration of justice within its substantive meaning". [36]

Another constitutional problem in civil procedure has emerged in relation to the rates of state fees. The right to go to court must be ensured in practice. The absence of legal help and excessive legal costs must not be an obstacle.[37] During the economic crisis, possibilities for additional income for the budget were searched for, and starting from 1 January 2009 the rates of state fees were increased multi-fold. The letter of explanation to the draft act for the amendment of the State Fees Act No 206 includes a table that shows that the rates of the state fees in Estonia effective before 1 July 2012 were several times higher than the rates of state fees in other European Union Member States.[38] For example, for a civil case with the value of 575 204.83 euros in Estonia it would have been necessary to pay a state fee of 17 895.26 euros, while in other European Union Member States the average rate of the state fee would have been 3484.86 euros. Therefore, in this case the cost of the state fee in Estonia would have been 413.51% higher. As a comparison, I would like to note that in England the state fee in a case with the same value would have been 1774.80 euros, and in Italy it would have been 1100 euros during the same period.[39]

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[34] RT I, 10.03.2015,15

[35] Decision of the general assembly of the Supreme Court of 4 February 2014 No 3-4-1-29-13

[36] P. Pikamäe. Report of the Supreme Court at spring session of Riigikogu of 2014 on 5 June 2014. Overview concerning court administration, administration of justice and uniform application of laws. On the Internet: http://www.riigikohus.ee (03 April 2016)

[37] U. Lõhmus. Inimõigused ja nende kaitse Euroopas. Õigus õiglasele kohtulikule arutamisele. Tartu, SA.Iuridicum 2003, p. 149.

[38] Letter of explanation to the draft act No 206 for amendment of the State Fees Act and other acts related to it. On the Internet: http://www.riigikogu.ee (03 April 2016)

[39] On the Internet: http://www.riigikohus.ee/vfs/1121/Riigiloivud.pdf (3 April 2016)

During the period from 1 January 2009 until 1 December 2014, the Supreme Court declared the rates of the state fees as unconstitutional on 62 occasions [40], which demonstrates that the rates of the state fees were increased without taking their constitutionality into consideration. The increase in the rates of state fees resulted in additional work for the court in relation to the review of applications for procedural help from the state, decisions on the reimbursement of a state fee, and the review of constitutionality. Therefore, increasing the rates of state fees did not correspond to the principle of procedural economy.

4.3. Reasonable time of a procedure

The right to administration of justice within a reasonable time period is an important principle of a democratic state based on the rule of law. The principle of a reasonable duration of procedures is established in international law, European Union law and in Estonian domestic law.

Article 6 (1) of the European Convention on Human Rights establishes every person's right to a fair hearing before a tribunal, one of the conditions of which is hearing a case within a reasonable time.[41] Article 47 of the Charter of Fundamental Rights of the European Union establishes the right to a fair hearing by a tribunal within a reasonable procedural time. [42]

In the Constitution of the Republic of Estonia, the principle of a reasonable duration of procedures can be derived from Articles 13, 14, and 15.[43] According to Article 2 of the Code of Civil Procedure, one of the goals of civil procedure is the adjudication of a case within a reasonable period of time.[44]

With regard to the question of what is a fair court procedure, Uno Lõhmus has stated that "the term 'just court procedure' does not have a clear definition that is uniformly understood. It is not an individual right, but a general term that includes different aspects, principles and rights of a procedure, the catalogue of which is open."[45]

There is no legal definition for a reasonable duration of a procedure. Establishing criteria for limits of a reasonable duration of a procedure is problematic, as the circumstances of civil cases differ, and the length of a procedure depends on different objective and subjective circumstances.

The question arising with respect to a reasonable duration of a procedure is: from what time must one calculate the length of a procedure, and what period should be considered as "reasonable"?

The ECHR has made several decisions with regard to the breach of Article 6 (1) of the European Convention on Human Rights and has given some guidelines for the determination of reasonableness of the duration of a procedure and optimisation of the length of a procedure. The ECHR has adopted the position that delay at some court instance is tolerable, provided that the total duration of the court case is reasonable.[46] The ECHR has also issued a number of decisions concerning the Estonian civil procedure, in which it stated that the procedure in question was unreasonably long and contrary to Article 6 (1) of the European Convention on Human Rights.[47]

Katri Öövel analysed decisions of the ECHR in her Master's thesis and came to the conclusion that "Positions of the ECHR with regard to assessing the reasonableness of the duration of a procedure show that it is not possible to develop a specific standard with respect to reasonableness, and in case of every court case it is necessary to determine the reasonableness of the length of a procedure according to the circumstances of a specific case."[48]

The ECHR has adopted four criteria on the basis of which it assesses the reasonableness of the duration of a procedure: complexity of the case, behaviour of the plaintiff and the public authority, and legal interests of the plaintiff that are the subject of the dispute.[49]

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[40] Review of constitutionality of the rates of the state fees. Overview of practice and pending case procedures of the Supreme Court. On the Internet: http:// www. Riigikohus.ee/vfs/1829/%DClevaade RLS asjadest kodulehel 2014-01-12 pdf (05 April 2016)

[41] RT II 1996,11/12,34

[42] OJ C 303,14,12.2007

[43] RT 1992, 26, 349; 2007 ,33, 210.

[44] RT I 2005,26,197

[45] U. Lõhmus. Põhiõigused kriminaalmenetluses. Kirjastus Juura 2014, lk 36.

[46] ECHR 4 February 2010 No 13791/06, Gromzig vs.Germany

[47] ECHR 2 December 2013, Treial vs Estonia, application No 48129/99; ECHR 29 January 2009, Missenjov vs Estonia, application No 43276/06

[48] Katri Öövel. Mõistlik menetlusaeg tsiviilkohtumenetluses. Master's thesis. Supervisor M. Merimaa- Akadeemia Nord. Tallinn 2010, p. 67.

[49] J .Laffranque. A.Sarapuu. Mõistlik aeg ning selle tagamine tsiviil- ja halduskohtumenetluses. Juridica X/2013, p. 728

Civil disputes can become very complex due to complexity of the circumstances or the legal issues involved. In order to prove circumstances, it is necessary to gather evidence, which may require time. For example, in case of an expert examination it may take a few months to obtain results. If evidence must be collected in another state, then this will undoubtedly influence the length of a procedure.

Ambiguity of a legal norm can result in legal disputes, where it is desirable to get the Supreme Court's interpretation of the issue, resulting in the submission of appeals, which in turn extends the duration of the entire procedure.

Another separate problem is the delivery of procedural documents if the person's place of residence or location is not known. Many natural persons have left Estonia to work abroad. If an action is filed against them, then the question arises as to where their place of residence is and whether the civil case belongs to the competence of an Estonian court. The search for the place of residence or location of a party to a procedure for the purpose of delivering procedural documents is an everyday problem of courts.[50]

When legal norms are being changed, it is necessary to consider what impact it will have on the duration of a procedure. Unfortunately, this is not always done, for example, with respect to the procedure for the determination of procedural expenses. Subsequently, the author considers it necessary to clarify the changes that took place with respect to the abovementioned determination of procedural expenses. Until 1 January 2006 Article 60 (1) of the Code of Civil Procedure was in force, according to which the court orders, on the basis of a petition by a party in favour of which the decision was made, the payment of necessary and justified legal costs to such party by the other party.[51]

On 1 January 2006 a new procedure entered into force, according to which the determination of procedural expenses formed a separate procedure after the entry into force of a court decision. In particular, according to Article 174 (1) of the Code of Civil Procedure a participant in a proceeding has the right to demand, within 30 days after the court decision concerning the division of costs enters into force, that the court of first instance that adjudicated the matter determine the procedural financial expenses based on the division of expenses provided in the decision[52]. Disputes concerning the amount of procedural expenses could last for years and reach the Supreme Court, which cannot be considered as a reasonable way to deal with this issue.

In addition to that, Article 174 (8) of the Code of Civil Procedure caused a constitutional problem. The general assembly of the Supreme Court declared Article 1251 (2) of the Courts Act and Article 174 (8) of the Code of Civil Procedure, according to which procedural expenses in civil procedure can be determined by a judicial clerk, as contrary to the Constitution and invalid. This in turn may lead to new disputes about the lawfulness of court decisions that have already entered into force. [53]

On 1 January 2015, the procedure for the determination of procedural expenses that was in force before 1 January 2006 was restored. According to Article 174 (1) of the Code of Civil Procedure, the extent of necessary and justified procedural financial expenses are determined by the court adjudicating the case, in the same case in relation to which the expenses emerged.[54]

The amendment to Article 174 (1) of the Code of Civil Procedure that entered into force on 1 January 2015 can be considered reasonable and justified, allowing for economy both in the duration of a procedure and expenses of parties to a procedure. In court practice, during the procedure for ordering payment of procedural expenses a party to a procedure used legal help for which the party had to pay. If the dispute reached the Supreme Court, the total amount payable for the contractual representative by the party to the procedure may not have been a small one.

I agree with Uno Lõhmus that one of the main goals of the principle of a reasonable duration of procedures is to resolve an uncertain situation and ensure the achievement of legal certainty. In order for the administration of justice to be effective and reliable, it must be performed without delays, and only judicious speed corresponds to the principle of a reasonable length of time.[55]

Justice of the Supreme Court Villu Kõve has justifiably noted that over the past decades both in Estonia and elsewhere in Europe there has been a tendency of looking for possibilities to increase the speed and efficiency of civil procedure, which in turn leads some people to the understanding that with respect to the adjudication of cases there are no assessment criteria other than speed. It is important to ensure the quality of a procedure, i.e. how parties to a procedure are treated in

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[50] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 establishes minimum standards for delivery of procedural documents in another Member State. On the Internet: http://eur-lex.europa.eu (02 April 2016)

[51] RT I 1998, 43, 666

[52] RT I 2005, 26, 197

[53] RT I, 06.02.2014, 13 – entered into force on 4 February 2014 -

[54] RI I 2005, 26, 197; RT I 30.12.2014,. 665.

[55] U. Lõhmus. Inimõigused ja nende kaitse Euroopas. Tartu: Sihtasutus Iuridicum, 2003. Õigus õiglasele kohtulikule arutamisele, p. 165.

the course of the procedure, whether the court respects their rights and is able to manage the procedure, how competent the judge is in the procedural and substantive law, and whether the judge is able to justify his or her positions in a high-quality court decision.[56]

It is correct if the reasoning of the court provides a party to the procedure with an understanding of why the court reached such a position and why such a decision was made. As a motto for their book, Jyrki Virolainen and Petri Martikainen chose an idea by Professor Aulis Aarnio, who said that the obligation to substantiate his/her decisions is the duty of a judge[57], which is an idea that one must agree with.

In discussing what a right is, Ronald Dworkin has concluded that how judges make decisions in court cases is important for people. "With an unjust court decision the society causes its member moral sufferings, as such a decision leaves the member of the society to some extent or in some way without the protection of the right"[58] ."[59]

The quality of the administration of justice – from a reasonable duration of a procedure and fair procedure to a lawful and justified decision – to a large extent depends on the degree of a state's possibilities to contribute to the performance of the court system.

The Committee of Ministers of the European Union has found that each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges to work efficiently. According to Section 30 of the Recommendation, the efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 of the European Convention on Human Rights, legal certainty and public confidence in the rule of law. According to Section 39, alternative dispute resolution mechanisms should be promoted.[60]

Alternative extrajudicial possibilities for the resolution of disputes have been searched for in Estonia and implemented in connection with arbitration procedure, conciliation procedure, as well as the resolution of disputes in extrajudicial bodies, such as labour disputes in the labour dispute committee, lease disputes in the lease committee, third party liability motor insurance disputes in the insurance disputes committee.[61] Without any doubt the extrajudicial resolution of disputes reduces the workload of courts.

The author believes that the duration of a procedure can also be reduced through the work organisation of courts, reducing the workload of judges by hiring qualified supporting personnel and using possibilities of information technology. In 2013 a new reform of the Estonian court system was started that gave courts the new positions of judicial clerks, which required higher qualification requirements compared to consultants, who are gradually being made redundant. For this purpose, the Courts Act was supplemented with Article 125^1, which regulates the status and activities of judicial clerks. The executive power indicated a problem in the letter of explanation to the draft act for the amendment of the Courts Act, stating that "At the moment a reasonable duration of a procedure is not ensured for the person filing a claim, however, at the same time there are problems with the quality of the administration of justice. All this is mainly caused by insufficient funding of the court system, which has not allowed developing a motivated supporting structure that is necessary for the proper administration of justice. The current salary of a consultant is not competitive among lawyers, which is the reason why lawyers of a high standard do not take court positions or leave them at the first opportunity. Creating the institution of the judicial clerk helps increase the qualification of court officers, who assist a judge in the preparation of a court case, and, respectively, the work quality and efficiency of court procedures".[62]

There have also been attempts to accelerate and simplify procedure in the Estonian court system by using informational and technological possibilities, such as utilising the e-file system and electronic delivery of procedural documents. Without a doubt these are positive steps, however, it is necessary to further develop the system also with the goal of unifying court decisions for simplifying the search of court decisions by using keywords.

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[56] Villu Kõve. Tsiviilkohtumenetluse kiirendamise võimalused ja nendega seotud ohud. Juridica IX/2012, pp. 659-661 .

[57] Jyrki Virolainen. Petri Martikainen. Pro&contra. Tuomion perustelemisen keskeisiä kysymyksiä. Talentum. Helsinki. 2003

[59] R. Dworkin. Õiguse impeerium. Kirjastus Valgus 2015, p.23-24.

[60] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. On the Internet:http:// coe.ee (10 March 2016)

[61] I. Nurmela, P.-M. Põlvere. Vaidluste efektiivne kohtuväline lahendamine. Juridica I/2014, pp.-6,

P.-M. Põldvere. Kaheksa aastat mudelseadust. kas Eesti vahekohtumenetlus vastab mudelile? Juridica I/2014, pp. 17-33

K. Valma, L. Surva, H. Hääl. Lepitusmenetlus perevaidlustes, Juridica I/2014, pp. 86-103

C. Ginter, M. Pihlak. Lepitusmenetlus kui võimalus ärivaidluste lahendamiseks. Juridica I/2014, pp. 49-59 A.Pohla. Vahekohtu kokkuleppe tähtsus vahekohtumenetluses. Juridica I/2014, pp. 86-103, pp. 34-48 A.Maltmäe, M.Merila, M. Jesse. Kindlustusorgan kui erasektori initsiatiivil loodud võimalus lahendada kindlustusvaidlusi kohtuväliselt. Juridica I/2014, pp. 86-103, pp. 70-85

[62] The draft and letter of explanation of the Courts Act are available on the website of Riigikogu: http:// www.riigikogu.ee (3 April 2016)

Opinions have been expressed in the media that the Estonian court system is slow and procedures are long. These opinions made the author wonder what they were based on, as statistical data proves the opposite.

On 9 March 2015, the European Commission published a table with statistics regarding the administration of justice, including an overview of the quality, independence and efficiency of court systems of the Member States, which demonstrates that the statistical results concerning the speed of the Estonian court procedure were good.[63]

According to the data of the Ministry of Justice, the average speed of a court procedure in Estonia is characterised by the following data:[64]

Court	Estimated length of a procedure 2014	Change (%)	Estimated length of a procedure 2013	Estimated length of a procedure 2012
Civil cases	145	-13,7%	168	197
Harju County Court	132	-17,5%	160	201
Pärnu County Court	186	-7,0%	200	206
Tartu County Court	154	-9,9%	171	180
Viru County Court	152	-7,9%	165	195

According to the data of the Ministry of Justice, in the CEPEJ report concerning the court systems of 45 member states of the Council of Europe, the average time of a procedure of Estonian courts of first instance in civil cases was very good compared to other member states of the Council of Europe.[65] While the average duration of a procedure of the member states of the Council of Europe was 246 days, in Estonia the average duration of a procedure was 167 days, and, for example, in Finland this indicator was 325 days and in Italy 590 days. [66]

Nevertheless, specific procedures can still be longer, depending on a number of reasons.

4.4. Resolution of a civil case with minimal procedural expenses

As a rule, in a civil procedure the parties to a procedure have to bear procedural expenses.

Chapter 18 of the Code of Civil Procedure establishes that procedural expenses are the legal costs and extra-judicial costs incurred by a participant in a proceeding. Legal costs are the state fee, caution money and the costs connected to the proceeding (Article 138 (2) of the Code of Civil Procedure). The amount of the costs depends on the specific procedural act and the cost of a civil case. Extra-judicial costs are: the costs related to the representatives of the participants in a proceeding and other similar costs incurred in connection with the proceeding mentioned in Article 144 of the Code of Civil Procedure. Based on my experience working as a judge, I can assert that in civil cases the most significant procedural expenses are the state fee and the contractual representative's fee, the amount of which causes the most disputes in practice. The length of a procedure and repeated postponement of court hearings increase the amount of a contractual representative's fee payable

[63] On the Internet: http.//ec.europa.eu/justice/effektive-justice/files/justice_scoreboard_2015_ en.pdf The 2015 EU Justice Scoreboard. COM (2015) 166 final.

[64] On the Internet: http://www.kohus.ee/et/print/kohtute-tohusus (6 April 2016)

[65] On the Internet: http://www.coe.int/t/dghl/cooperation/cepej/evalution/2014/Rapport__2014_en.pdf CEPEJ. Report on „ European judicial systems-Edition 2014 (2012 data) efficiency and quality of justice" (10 April 2016).

[66] On the Internet: http://www.kohus.ee/et/print/kohtute-tohusus (6 April 2016)

by a party to a procedure. The legislative power has searched for different possibilities to accelerate a procedure and, therefore, save procedural expenses:

1. simplification of procedure,

2. promotion of compromises.

In order to accelerate procedure in the European Union, a number of regulations have been adopted for the adjudication of smaller claims, such as the European small claims procedure and order for payment procedure.[67] Estonia has simplified the procedure concerning small monetary claims in domestic procedural law.

According to Article 405 (1) of the Code of Civil Procedure, the court adjudicates an action by way of simplified procedure at the discretion of the court, only taking account of the general procedural principles provided by this Code if the action concerns a proprietary claim and the value of the action does not exceed an amount which corresponds to 2,000 euros on the main claim and to 4,000 euros together with collateral claims.[68] Although the provision enables the simplification of the procedure in case of the abovementioned value of an action and thereby save expenses and accelerate the procedure, the court must follow the principles of equal treatment of parties to the procedure and fair conduct of the procedure. Norms of a simplified procedure were established taking into account the principle of procedural economy, which cannot be a goal in and of itself, cannot be in an advantageous position compared to the principle of effective judicial protection of a person's rights, or an important goal of the court procedure, which is the correct adjudication of a civil case. The Supreme Court has emphasised that a possibility to adjudicate cases according to its fair discretion in a simplified procedure does not release the court from its duty to correctly apply substantive law, with which one can only agree.[69]

In its analysis of the application of Article 405 of the Code of Civil Procedure, the Supreme Court has found that there have been mistakes in the simplified procedure in relation to the application of both substantive and procedural legal norms, including with respect to the procedure concerning evidence. The selective assessment of evidence is not in conformity with the principle of simplified procedure, and simplification of provision of evidence cannot change the burden of proof. Court practice is not clear on the issue of whether observation of the principle of investigation and collection of evidence at its own initiative in the simplified procedure is the right or obligation of a county court. [70]

The value of a civil case as such does not mean that the case at issue is a simple one. Court practice demonstrates that disputes concerning small values of actions can become complex, and that their duration may not be short.

The value of a civil case as such does not mean that the case at issue is a simple one. Court practice demonstrates that disputes concerning small values of actions can become complex, and that their duration may not be short.

In order to accelerate a procedure and make it less costly, a possibility of expedited procedure in matters of payment order in proceedings on petition is established (Articles 481-497 of the Code of Civil Procedure)[71]. According to Article 481 (22) of the Code of Civil Procedure, expedited procedure in matters of payment order is not applied to claims with the value of over 6400 euros. This amount includes both the main and collateral claims. The expedited procedure in matters of payment order is conducted as a written procedure, and an application is submitted in electronic form. The state fee for the expedited procedure in matters of payment order cases according to Article 59 (6)[72] of the State Fees Act is 45 euros, irrespective of the amount of a claim, which is less costly than filing a claim as an action.[73] A debtor has the right to submit an objection to the payment proposal, in which case the payment order is not issued and the procedure continues as an action.

Court statistics show that the expedited order for payment procedure has justified itself, and in 2014 it was possible to obtain an enforcement document in the form of a payment order on average within 73 days. During 2014 a total of 37 542 applications for the expedited order for payment procedure were reviewed. During the same year in county courts, a total of 28 094 civil cases were adjudicated, including in the form of an action and proceedings for petition. These numbers lead to a conclusion that there were more decisions made with respect to applications for the expedited order for payment

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[67] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure – OJ L 199, 31 July 2007, pp. 1-22.

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure - OJ L 399, 30 December 2006, pp. 1-32

[68] RT I 2005,26,197

[69] RKTKo No 3-2-1-33-11

[70] Riigikohus. Tsiviilasja lahendamine lihtmenetluses tsiviilkohtumenetluse seadustiku § 405 kohaselt. Kohtupraktika analüüs. Tartu, oktoober 2012. On the Internet: http://www.riigikohus.ee (05 April 2016)

[71] RT I 2005,26,197

[72] RT I,23.03.2015,31.

[73] For example, in case of an action, in case of the value of an action of 6400 euros it is necessary to pay the state fee of 450 euros, while in case of an expedited order for payment procedure the rate of the state fee is 10 times lower (Annex 1 to the State Fees Act, reference 58).

procedure. The institution specialising in the expedited order for payment procedure is the Haapsalu Court House of the Pärnu County Court, and this procedure is simpler and less expensive (Article 108 of the Code of Civil Procedure).

One of the possibilities to accelerate a procedure and make it cost less is to promote reaching compromises. In this respect, a positive aspect of a compromise solution is achieving legal certainty between disputing parties.

A judicial compromise reached in a civil procedure ensures the fulfilment of the principle of procedural economy and efficiency of the procedure.

Justice of the Supreme Court Villu Kõve has expressed the thought that "At least from the position of legal certainty, a bad compromise is better than a good decision that is completely justified from a legal point of view." According to Villu Kõve's opinion, the conciliation procedure has a lot of potential, first and foremost, for the adjudication of disputes between neighbours, including those related to access roads and borders, as well as for the adjudication of disputes arising from joint ownership and its termination. Conciliation procedure also has a firm position in the adjudication of family matters, such as the division of joint property or the determination of the right of custody over children.[74] The author agrees with the abovementioned considerations and finds that there should be more cases of termination of the civil procedure due to achieving a compromise solution, especially in case of disputes concerning the right of custody over children and disputes between joint owners. Article 4 (4) of the Code of Civil Procedure imposes on a court the duty to take all possible measures during the entire procedure to settle a matter or a part of it through a compromise or in another manner by agreement of the parties if this is reasonable in the opinion of the court.

Statistical data shows that in 2013 compromises in a county court were reached in 2682 civil cases, which constitutes 9.2% of the total number of cases adjudicated in 2013, including 1384 civil cases in the Harju County Court (8.9% of the total number of adjudicated cases), 342 in the Pärnu County Court (10.3%), 532 in the Tartu County Court (8.9%) and 424 in the Viru County Court (9.7%). Analyst of the Legislative Drafting and Development Service of the Ministry of Justice Külli Luha noted that "The proportion of compromises compared to the data for 2010 has remained at the same level, i.e. in the compared year compromises were reached in 9.1% of the total number of adjudicated civil cases. In addition, reaching compromises does not differ depending on the court involved".[75] Therefore, the proportion of compromises in Estonian civil procedure is relatively modest.

In my previous research, I came to the conclusion that the conditions for a compromise are:

1. clarity of a substantive legal norm, which allows a party to a procedure and its representative to understand the reasonableness of reaching a compromise and not to look for court practice for the interpretation of a substantive legal norm;

2. existence of experience for conducting negotiations with parties;

3. optimisation of a judge's workload;

3. readiness of parties and representatives to reach a compromise;

4. increasing the number of assistants for a judge in the organisation of work;

5. increasing the level of the parties' legal knowledge.[76]

I still support this position. There are visible tendencies that certain measures have been taken to promote compromises. With this respect it is necessary to note that the training department of the Supreme Court in its additional training programme has provided for lectures for judges both in the area of negotiation and in the area of psychology. The executive power is dealing with the optimisation of the judges' workload, and courts are given positions of judicial clerks that enable a judge to prepare a case in more detail and to think of different compromise solutions. The Government of the Republic of Estonia considered it necessary to dedicate part V of the direction of the legal policy until 2018 to improving knowledge of law, noting that systematic attention must be paid to legal awareness.[77] A problem of clarity in relation to some substantive

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[74] Kõve, V. Tsiviilkohtumenetluse kiirendamise võimalused. Juridica IX/2012 p. 673. On the Internet: https://www.juridica.ee/juridica_et.php?document=et/articles/2012/9/219256.SUM.php (10March2016):

[75] Luha, K. I ja II astme kohtute 2013.a tsiviilasjade menetlusstatistika. Kohtute Aastaraamat 2013. p. 95. On the Internet: https://wwwkohus.rik.ee/sites/www.kohus.ee/files/elfinder/dokumendid/kohtute_aastaraamat _2013.pdf (28.03.2016).

[76] M.Merimaa. Menetluse põhimõtted ja tõendamine tsiviilkohtumenetluses.Akadeemia Nord. Tallinn 2008, p.55

[77] RT III,07.03.2011,1

and procedural legal norms still exists. To sum up, the conditions for increasing the number of compromises have been created, thereby also creating conditions for the implementation of the principle of procedural economy.

In order to promote compromise solutions to cases, the legislative power has considered it necessary to ensure that half of the paid state fee is refunded if a compromise is reached at the court instance where the compromise is reached (Article 150 (2) 1) and (3) of the Code of Civil Procedure). In this respect, it could be debated whether the amount of the refund should be bigger. In the opinion of the author, it should amount to 70%. Reaching a compromise saves money not only for the participants in the procedure, but also for the state in relation to further possible procedural acts.

With respect to bearing expenses, Article 168 (1) of the Code of Civil Procedure also promotes reaching a compromise, stating that when parties reach a compromise they bear their own legal expenses themselves, unless they have agreed otherwise. This article is surely justified for the purpose of reaching legal certainty. The author believes that it is necessary to look for further possibilities to increase the number of compromises.

5. Conclusion

Accession of the Republic of Estonia to the European Union means that it is necessary to observe the law and guidelines of the European Union, which also concern civil procedural law. Over the last years there has been a trend to make civil procedure simpler, cheaper and faster, which corresponds to the principle of procedural economy. There is no legal definition of the principle of procedural economy, its substance and aim are based on the task of civil procedure that is stated in Article 2 of the Code of Civil Procedure, according to which a procedure must be conducted within a reasonable period of time and at the minimum possible cost. In this respect, it is also necessary to consider the obligation to adjudicate a civil case in the correct manner, which is stated in Article 2 of the Code of Civil Procedure.

The principle of procedural economy has a positive aspect that allows parties to a procedure to get a court decision fast. At the same time, the excessive acceleration of a procedure may result in a negative effect on the principle of fair administration of justice and on the basic rights of parties to a proceeding, which should not be permitted.

The executive power has undertaken concrete steps in order to ensure the principle of procedural economy, by allocating funds to courts for filling the positions of judicial clerks. Without any doubt this will also help a judge to get additional time to prepare for hearings of civil cases and making high-quality court decisions. At the same time, it is necessary to also consider other legal, informational and technological possibilities that can increase the efficiency of a procedure. The author believes that such possibilities include providing support to reach compromises, using alternative possibilities for the adjudication of disputes, conducting analyses prior to amending laws for the purpose of identifying possible legal and economic consequences, and improving information technology. Another equally important aspect is the clarity of a legal norm that would preclude meaningless court disputes concerning the interpretation of the law.