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Overcoming Legal Uncertainty for Justice Effectiveness Improvement

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Abstract

The article examines the impact of legal certainty of civil procedural legislation and the practice of its application on the appropriate conditions creation for the justice effective implementation. It is emphasized that the lack of legal certainty, namely, its opposite - legal 'uncertainty', creates both legislative conflicts, and, even more significant, law enforcement problems that significantly reduce the availability of justice for persons in need of judicial protection. Courts heterogeneously use established procedural rules, applying a formalistic approach, jeopardizing the issuance of a lawful and justified judicial act. In order to overcome the state of legal uncertainty and, as a result, increase the efficiency of legal proceedings, it is necessary to use such legal techniques that do not entail the appearance of casuistic legal norms. The model of the most general norms can be applied to any emerging procedural situation, taking into account the systemic and targeted methods of interpretation. Such an approach of building a legislation system, coupled with the subsequent application of norms based on internal conviction and judicial discretion that will ensure the unity of judicial practice.

Keywords*: civil proceedings, efficiency of justice, legal certainty, justice accessibility, jurisdiction*

I. Introduction

At the initial study stage, the authors mention that today's Russia is undergoing a stage of judicial reform [1]. Reforms are permanent, society is evolving, and the judicial system is developing as well. Therefore, here the questions arises what is the purpose of judicial reforms, their meaning and significance. The answer is to increase the justice effectiveness. However, the truth depends on the subject giving it; it might be the legislator, the law enforcer or other participants in the process. We are often talking about simplifying the order of activity and the form of legal proceedings. Reform cannot be the cause of every social process; it is not a 'patch' like thing.

The purpose of the ongoing procedural and judicial changes depends on the subject of legal activity in its broad sense. Ultimately, it is only the protection of a person's, whose subjective rights and interests protected by law are violated. Improving the effectiveness of justice is a follow-up to the latter category.

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Chechina N.A. reasonably noted the problems of the civil procedural law, its individual institutions, judicial practice in civil cases is the second (after ensuring the rule of law in this category of court cases) main direction of civil procedural law science development [2, p. 30].

One can start a rather lengthy, but, unfortunately, scholastic discussion about the definition of effectiveness. In any case, it must be carried out, but this is not an end. Therefore, Russian legal scholars call the system being 'effective' only if it guarantees the achievement of a result that was previously conceived as a goal and the solution of the tasks set by the system [3, p. 12]. Larin A.M. understood the effectiveness of legal proceedings as 'the quality of the activity and its productive nature' [4, p. 107].

In many ways, every person understands whether justice is effective or not. It is worth asking any passerby and many will answer positively or negatively, but they will express a judgment. The formula does not plays the prevailing role in this context, but the real state of affairs when deciding to apply to the judicial authority. The fewer the appeals, the more likely the tasks of civil litigation are fulfilled. One way or another, 'the implementation of measures to improve the quality of justice, improve legal proceedings and its constant adaptation to the needs of the state and society is an integral part of the ongoing democratic process in Russia' [5].

The above circumstances determine the purpose of this study, which consists in the development of mechanisms to assess the effectiveness of the courts in the consideration and resolution of civil cases from the real goal achievement point of view, which is expressed in the restoration of violated subjective rights and the interests of individuals protected by law, taking into account time, material and other costs.

This mechanism is of particular importance, since it can be the basis of legislative activity in terms of modifying the procedural and judicial legislation, and can be used by the law enforcer in the implementation of judicial discretion. When deciding a particular petition, application or performing one or another procedural action, as well as determining the direction of the proceedings, the court may take into account the developed criteria so that the final judicial act is not only legal and reasonable, but also provides protection of interests that correlates its content subjects of civil turnover.

The theses are as follows:

- ensuring efficiency should be considered as one of the requirements for judicial acts;
- to evaluate the effectiveness of the key role is to achieve the tasks of civil proceedings.

Questions of justice effectiveness became the research subject of Manyak N.I., Prikhodko A.I., Sklyarenko M.V. Shakaryan M.S., however, one of the main works is he work by Tsikhtsky A.

At the same time, in modern works especially devoted to the problems of the judiciary, the question of its effectiveness over the past three decades has not been devoted to a single independent chapter, not a single independent paragraph [6, p. 704].

In the context of a dynamically transforming civil turnover, the rule of law and society, there is an urgent need to rethink theoretical and applied approaches to justice efficiency. As Melnikov A. noted, 'the relevance of the scientific development of criteria for the effectiveness of the civil procedural legislation application is indisputable, which makes it possible to determine the effectiveness of judicial protection of rights and interests protected by law' [7].

In the context of a dynamically transforming civil turnover, there is an urgent need to rethink theoretical and applied approaches to the category of justice efficiency. As Melnikov A. noted, 'the scientific development relevance of effectiveness criteria of civil procedural laws application is indisputable, which makes it possible to determine the effectiveness of judicial protection of rights and interests protected by law'. Legal certainty as a scientific and practical category has never been an independent object of monographic and dissertation research both in the field of legal theory and in the field of civil procedural law, its genesis, history of form education and essence. Certain aspects of legal certainty as a principle of law were studied by pre-revolutionary scholars of the civil process by Pokrovsky I.A., Vaskovsky E.V., Ryazanovsky V.A. In the Soviet period, public principles prevailed in the civil process, priority was given to the principle of legality of judicial acts as opposed to their stability and certainty, therefore, issues of legal certainty were not the object of study. At the present stage of civil procedural law development with the expansion of dispositive elements and the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, some scientific works have appeared that address some aspects of legal certainty, however, as applied only to certain blocks of civil process problems there are ways to appeal the judicial acts (by Borisova E .A., Terekhova L.A.); accessibility of justice and the right to a fair trial (by Afanasyev S.F., Degtyarev S.L., Prikhodko I.A.); international civil process (by Neshataeva T.N., Yurova N.M., Shak H.). Some issues of ensuring legal certainty in Russian legislation are raised in the publications of Wildhaber L., Vitruka N.V., Sultanova A.R., Tumanova L.V., Yarkova V.V., etc.

II. Methods

The work was based on a systemic - structural approach. To write the article, the formal legal method, the logical method, the method of comparative law, hermeneutics, synergetics, and the dialectic method were used.

A trial assessment took place in the course of this study, which began with some examples of judiciary activities. Then the scientific work involved the modeling of speculative situations of how the same cases could be considered, so that legal proceedings could be regarded as effective ones. In addition, based on certain criteria, some methods were worked out to increase the justice effectiveness in specific cases.

III. Results

One of the cases, which was initiated by the Troitsky District Court of Altai Territory, and which is currently in the proceedings of the Avtozavodsky District Court of the city of Togliatti, has been under consideration for more than eight months. Such a long period is not a remarkable record for Russian courts, although it exceeds the time limit established by the Article 154 of the Civil Procedure Code of the Russian Federation. Meanwhile, talking about procedural actions, the implementation of subjective rights and other procedural categories, we should not forget about the disputed property, i.e. a vehicle that has been on the street for almost a year and has not been used. Solving such conflicts, the legislator seeks to introduce changes in the procedural legislation, which are prospectively directed. Unfortunately, this is not always the case. Increasing the competitiveness of participants, or rather, the discretion of the court, which will ensure the desired competitiveness and this, is the key to improving efficiency. Striving for formalism, it is forgotten that the proof burden rests on the parties due to the Article 56 of the Code of Civil Procedure of the Russian Federation. If one of the parties disclosed all evidences, then submitted it to the court and took part in their investigation, and if the second party did not present any evidence for eight months, the case can already be resolved due to the Article 2 of the Code of Civil Procedure of the Russian Federation. The resolution of the case lies in the evidence assessment in compliance with procedural law, but not in the court's attempt to establish objective truth.

Despite the dynamic nature of the legal proceedings noted above, the current period is characterized by the ongoing reform of both the court system and the procedural legislation as a whole. The judicial community proposes some changes. So, a number of draft federal laws on amendments to certain legislative acts subsequently introduced to the State Duma of the Federal Assembly of the Russian Federation are formalized by resolutions of the Plenum of the Supreme Court of the Russian Federation (or the Plenum of the Russian Federation).

Many changes, of course, are associated with the optimization of civil proceedings, aimed at simplifying the procedural form. In particular, Terekhin V.A. and Zakharov V.V. write about this. [8]. Such a task, of course, has a right to exist. Moreover, new types of conciliation procedures appear in the current procedural legislation, which can affect the number of cases considered, if these innovations, coupled with the task of civil litigation, the formation of partnership business relations, will contribute to the settlement of many disputes even before applying to the judicial authorities.

However, simplification of the procedural form should not entail 'complication' of the procedure for applying for judicial protection. Often, to ensure the effectiveness of justice, it is enough to implement the norms of procedural law correctly, allowing subjects to seek consideration of a civil case as soon as possible. In its turn, the formalist approach not only leads to a delay in the time of applying to the judicial authorities, but also jeopardizes the issuance of a lawful and justified judicial act due to non-consolidation by administrative acts of information on facts and other reasons associated with a temporary separation from events that gave rise to a conflict situation.

Legal certainty as one of the regime elements implies stability. Stability is expressed in an identical approach to the application of procedural law. Res Judicata should be a kind of 'core' that holds the fusion of legislation and the practice of its application during the transformation of the judicial system and procedural form. Meanwhile, practice shows that courts use the procedural rules that have already been established at this point rather heterogeneously, thereby creating new nuances of ensuring access to justice. Justice can and should be 'certain', however, any modernization will be accompanied by a decrease in the effectiveness of justice if the number of pending cases is reduced for reasons beyond the control of those who wish to seek judicial protection, which, incidentally, is required in many cases.

Analytical calculations regarding the justice effectiveness will not be diminished if a approach to understanding the 'justice' category is used. So, if the latter is considered as the activity of the courts, starting from the moment the petition is filed with the court until the final act is issued, which ends the proceedings, the essential link that does not allow the value of the efficiency index to reflect the real situation is missed. It should be noted that there is a coefficient indicating the number of cases for which proceedings have not begun. Meanwhile, its subjects really need judicial protection of violated or contested subjective rights.

Thus, legal uncertainty threatens the achievement of civil proceedings tasks, in particular the correct and timely case consideration, which in fact in the abstract formula for calculating the effectiveness of justice multiplies the quotient by a factor equal to zero.

Uncertainty in terms of ensuring the justice accessibility is observed in the following situations when real rights protection and disputed legitimate interests was not possible.

The magistrate of judicial section #1 of the Pervomaisky district of the Altai Territory ruled to leave the application without movement. Then it was pointed out that the attached 'printouts of the correspondence from the WhatsApp messenger' were not properly executed, namely, the 'protocol for inspecting the relevant pages at the notary's

office was not completed, the lawsuit did not indicate that the plaintiff in the court session would provide an opportunity to investigate the correspondence from mobile devices'.

In the case described, there is obviously a lack of effect of the Res Judicata principle in the procedural law application. It is potentially reasonable to talk about the refusal to exercise the right to judicial protection. Of course, the definition of legal uncertainty can be considered in various guises [9, p. 53]. However, if the denial of justice can be understood as a situation in which the court does not consider the merits of the application without sufficient legal grounds, it can be argued that the restoration of the rule of law did not take place.

Treushnikov M.K. indicates that 'procedural actions that indicate evidence, and not according to their actual presentation, are provided as a requirement for the statement of claim's form [10]. It is unlikely that non-admission of evidence is a formal basis for leaving the statement without motion. Despite the mention of the term 'must' in article 56 of the Civil Procedure Code of the Russian Federation, proof in itself is a right, and not an obligation, of persons participating in a case [11]. The prerequisites for the right to sue and the conditions for its implementation, which were formally fixed in Articles 134, 135 of the Code of Civil Procedure of the Russian Federation, were fulfilled by the plaintiff. The procedural law does not fix the obligation to present properly certified copies of documents at the hearing.

When making a ruling, the judge could indicate the need to submit certain documents to the court. The plaintiff had the opportunity to collect the necessary information during the stage of preparing the case for trial, as well as the court itself. Moreover, they had the opportunity to act passively; the court would have had grounds to refuse to satisfy the requirements, but not to leave the application without motion.

In addition, they evaluated the evidence, which is allowed only at the trial stage. At the previous stages, only the subject of evidence is usually determined.

Meanwhile, the court actually went beyond the resolution of those issues that are related specifically to the stage of initiating proceedings. Thus, the rules were ignored that the court is entitled to request the evidence necessary for resolving the case only when it is prepared for the hearing (Articles 148, 149 of the Code of Civil Procedure of the Russian Federation), and when considering a claim on the merits, it is only entitled to invite the parties to submit new (additional) evidence (part 1 article 57 Code of Civil Procedure of the Russian Federation). For judicial practice, the formal clarification remains valid, i.e. 'It is unacceptable to refuse to institute civil proceedings on the grounds of unproven claim, missing the statute of limitations and other grounds not provided by law' [12, p. 5].

Ease is often effective. Simplicity, consisting in the optimality and rationality of the actions taken. Leaving the application without a motion, the judge did not reduce the load, because it will be filed again, which, one-way or another, will determine the decision to accept the application and prepare the case for trial. On the contrary, the commission of optional procedural actions reduced the effectiveness of justice because of the associated costs of the judicial authority. The assistant judge preparing the draft also suffered temporary losses that could potentially negatively affect other pending cases. The desired optimality in this case lies in the correct interpretation, namely, clarification of the rules of procedural law, which was not found in the case under consideration. This is a key factor in determining the outcome of the effectiveness of justice.

A similar situation was observed when the Zheleznodorozhny District Court of the city of Barnaul [13] issued a ruling on the return of the claim. The basis for the commission of such a procedural action, according to the court, was

the fact that the price of the claim did not exceed fifty thousand rubles. This fact would have seemed logical, if not the fact that the plaintiff, among other things, claimed a compensation for non-pecuniary damage. In this regard, the selected judicial position raises certain doubts, since part 1 of article 23 of the Code of Civil Procedure of the Russian Federation with the reservation stipulated in part 2 of article 23 of the Code of Civil Procedure of the Russian Federation secures the formally exhaustive competence of peace justices, limiting the possibility of considering compensation cases for non-pecuniary damage. As if ignoring this circumstance, the court also refused to exercise the right to judicial protection.

An even greater question is the justice effectiveness, taking into account the fact that the plaintiff was advised to turn to the magistrate of the relevant judicial section. The latter, clearly interpreting and guided by Article 23 of the Code of Civil Procedure of the Russian Federation, committed the highly anticipated procedural action to return the statement of claim. The plaintiff found themselves in a procedural 'dead end'. The reason for the described situation, which reduces the possibility of achieving civil litigation tasks to a minimum and increases time and money costs, as well as human resources, again lies not just in the absence of legal certainty, but in the impossibility of ensuring the operation of this regime to norms that have been functioning for a rather long period and have, seemingly sustainable application practices.

One of the factors influencing the unstable application of peremptory norms is the position formed by the Supreme Court of the Russian Federation. So, 'when considering cases of compensation for moral or physical suffering caused, it must be borne in mind that non-pecuniary damage is recognized by the law as non-pecuniary damage, despite the fact that it is compensated in monetary or other material form' [14]. The court has the right to consider such a claim as an independent one, since, by virtue of the current legislation, liability for moral damage is not directly dependent on the existence of property damage and can be applied both along with property liability and independently.

On the other hand, there are others, including those that have found some support among law enforcement, positions, however, which have a certain discussion component. So, a statement of claim for compensation for non-pecuniary damage is submitted either to the magistrate if, simultaneously with the demand for property in the amount of not more than 50,000 rubles, a derivative claim for compensation for moral damage is declared from it [15].

At this stage, it is not so important to resolve the issue of jurisdiction and analyze all the positive and negative sides of the corresponding conclusion. How important it is to establish common criteria for resolving the issue on the described situation, for the magistrate after returning the statement of claim by the district did not begin to consider the latter. In this, there is a certain inconsistency in the interpretation of long-existing rules of law, entailing non-compliance with the principle of legal certainty and affecting the justice effectiveness.

A reasonable question is whether such a situation has arisen again. Is the tendency natural or is it a speech about single errors? The situation, indeed, is not new, and it is hardly a matter of simply making mistakes, since the above examples are quite common in judicial practice, being just one of many.

The fact is that the justice effectiveness is not only reduced in specific cases, but can be minimized if the current reform of the procedural legislation is built on a 'weak foundation'. Unfortunately, such uncertainty 'launches' a complex flywheel of negative social consequences. Subjects are deprived of the opportunity to restore their subjective rights and obtain protection of legitimate interests, which leads to subsequent inertia in civil circulation participation.

IV. Conclusion

In order to overcome the state of legal uncertainty and, as a result, increase the efficiency of legal proceedings, it is necessary to use such legal techniques that do not entail the appearance of casuistic legal norms. Unfortunately, this path is completely unproductive. Deactualization processes will occur instantly with the development of the procedural form itself, which will entail only the need for new changes. In addition, the possibility of a broad and systemic interpretation in this case is objectively reduced.

On the contrary, the model of the most general norms can be applied to any emerging procedural situation, taking into account the systemic and targeted methods of interpretation. It is this approach to building a system of legislation, coupled with the subsequent application of norms based on internal conviction and judicial discretion that will ensure the unity of judicial practice. The use of general norms does not constitute a violation of subjective rights. The examples considered above indicate the opposite, i.e. even the presence of unambiguous rules of behavior does not entail error-free actions. However, with the ability to ensure variability in behavior, the judiciary makes the most effective use of the basic principles and ideas of civil proceedings.

Radaeva S.V. argues that legal practice can only be effective when the activity is carried out in a certain order, in compliance with the necessary rules and techniques. Unfortunately, this is not always the case. The form of activity as a kind of 'shell' cannot predetermine the content. Otherwise, many legal problems would be resolved quite simply. On the contrary, often deviations from the procedural form (in the case where it is not just legal activity, but specifically judicial) when implementing judicial discretion would make it possible to increase such a significant factor as justice effectiveness.

There is an opinion that the key categories that form the basis for evaluating the performance of courts should include the purpose, means and results of this activity [16, p. 13].

Among the tasks of civil proceedings is called not only the correct and timely consideration and resolution of cases, but the listed tasks are in no case unacceptable to consider as optional. In addition to its main function (no matter how paradoxical it sounds), task functions become a catalyst that shows how effective justice is these days.

Shakaryan M.S. also linked the effectiveness of justice with the achievement of judicial protection goal and the tasks of justice [17, p. 61]. They make it possible to judge the number of appeals to the courts, the number and quality agreements; whether the judicial activity can prevent an offense, and whether the establishment and development of partnership business relations followed by minimizing the number of appeals with a particular protection tool of violated rights; as it can be seen in this paper.

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