SOME IMPORTANT FEATURES OF LITHUANIAN CIVIL PROCEDURE

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Summary: – 1. Introduction. – 2.Electronification of civil justice. – 3. Preparatory stage of civil proceedings. – 4. Possibilities of group action in Lithuanian civil procedure. – 5. Concluding remarks

Abstract: As in all Eastern and Central European countries, legal system in Lithuania, including civil justice, has undergone many reforms since 1990. In 2003 new Lithuanian Code of Civil Procedure came into force and finally traditions of Western Europe (mainly German and Austrian ones) were systematically introduced into civil litigation in Lithuania. The aim of this article is to present some distinct aspects of Lithuanian civil procedure. It has been chosen to present electronification of civil proceedings because if it's broadly known success throughout Europe. Preparatory stage is described because this stage of civil proceedings was reformed drastically in 2003. Group action is discussed as one of examples of unsuccessful reforms of Lithuanian civil justice.

Keywords: Lithuania, civil procedure, electronification, preparatory stage, group action, access to justice

1. INTRODUCTION

New Lithuanian Code of Civil Procedure (CCP) was adopted on the 28th of February 2002 and came into force on the 1st of January 2003. After this date it has been amended several times according to the legal doctrine of Lithuanian Constitutional Court and Lithuanian Supreme Court, also regarding fast changing technologies and their impact on civil justice. EU law has not been a huge factor for amendments of CCP until now.

A court system of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction. Special jurisdiction nowadays relates only to administrative courts. Courts of general jurisdiction, which deal with civil and criminal matters consist of the Supreme Court of Lithuania, the Court of Appeal, five regional courts and 12 district courts (and their chambers in different smaller towns).[1] Regional courts are first instance courts for civil cases assigned to its jurisdiction by law, and appeal instance for judgments, decisions of district courts. The Court of Appeal is appeal instance for cases heard by regional courts as courts of first instance. It also hears requests for the recognition of decisions of foreign or international courts and foreign or international arbitration awards and their enforcement in Lithuania. The Supreme Court of Lithuania is the only court of cassation instance for reviewing effective judgements, rulings of the courts of general jurisdiction and is responsible for developing a uniform court practice in the interpretation and application of laws and other legal acts.

Most civil cases in first instance are heard by one judge. Although there is a possibility that a chairman of the court, considering the complexity of the civil case, can form a judicial board of three judges. Usually civil cases are heard and the judgments are passed quite quickly in Lithuania. According to statistics of the EU Justice Scoreboard[2] and according to the Lithuanian National Courts Administration on average judgments in civil cases in the first instance are adopted within 100 days after the filing the claim in the court. This is the second best result in the whole of EU.

In general 196 439 civil cases were heard in Lithuania in 2017. That is about 5 per cent fewer than in 2016. Around 44 000 of these civil cases were court (payment) order cases.[3]

In this article some important features of Lithuanian civil procedure, such as electronification, preparatory stage and possibilities of group action will be described and discussed. Such description will hopefully be useful for legal scholars and practitioners in other Eastern European countries.

2. ELECTRONIFICATION OF CIVIL JUSTICE

Modern technologies can be used in civil justice at three levels:
– Personal (judges, their assistants, court clerks, administrative staff, etc.);
– institutional (individual courts and the whole system of courts);
– inter-institutional (relations of courts with other participants in proceedings, state registers and information systems).[4]

1 For more information about the courts in Lithuania, see: <http://www.teismai.lt/en/courts/judicial-system/650> accessed 12 February 2019.

2 For more information, see: <https://ec.europa.eu/info/publications/2018-eu-justice-scoreboard_lt> accessed 12 February 2019.

3 More statistics can be found here: < www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/statistika/4641> accessed 12 February 2019.

4 The European Commission for the Efficiency of Justice (CEPEJ), *Use of information technologies in European courts* (CEPEJ Studies No 24 2016).

The same report stresses that Estonia and Lithuania have a 100 % equipment rate and have fully deployed informational tools already, not only in civil and commercial law, but also for criminal and administrative cases.

A quality leap in the development of information and communication technologies in Lithuanian courts took place between 2004 and 2005 when the unified information system of Lithuanian courts, LITEKO was launched. Another major shift towards increasing the efficiency of technologies in civil justice and accelerating the development of available technologies took place when the Lithuanian parliament adopted a package of amendments to the Law on Courts and the CCP in year 2011.[5]

It was laid down in Article 37^1 of the Law on Courts that the electronic data related to judicial and enforcement proceedings shall be managed, registered and stored using information and communication technologies. It legitimised the digitalisation of 'paper' files and procedural documents. Article $175^1(9)$ of the CCP stipulated that attorneys at law, assistants of attorneys at law, bailiffs, assistant bailiffs, notaries, state and municipal enterprises, institutions and organisations as well as financial and insurance undertakings must ensure the submission of procedural documents by electronic means. Later bankruptcy and restructuring administrators were included in the list. According to the latest statistics more than 70 % of civil cases are electronic in Lithuania.[6]

Also electronic management of judicial mediation procedures has been launched. If both parties agree judicial mediation can take place only online via electronic means. Enforcement procedure can also take place electronically. Parties to the dispute are able to submit applications to the bailiff and receive enforceable instruments electronically. Auctions of debtor's property have been taking place only electronically since year 2011. Electronic system of the bailiffs has been integrated with LITEKO system.

From the year 2014 there is an obligation to audio record all court hearings. This completely eliminated the use of 'paper' records as it was established that an audio recording is considered to constitute the record of the hearing and is an integral part of the proceedings. From the 1st March 2013, Article 175^2 of the CCP came into force and legitimised the use of information and communication technologies (video conferencing, teleconferencing, etc.) in questioning witnesses, experts, persons involved in the proceedings and other parties to the proceedings, as well as during site surveys and collection of evidence. The law notes that the procedure and technologies applied have to guarantee the objectivity of evidence capturing and presentation as well as enable a reliable identification of the persons involved in the proceedings.

It can be also mentioned that all civil cases are allocated to the judges or to the judicial panels via special IT programme. Such programme must ensure that the

5 Law Amending and Supplementing the Code of Civil Procedure of the Republic of Lithuania [2011]Official Gazette 85-4126; Law Amending Articles 36, 37, 93, 94, 120 of the Law on Courts of the Republic of Lithuania and Supplementing the Law with Article 371 [2011] Official Gazette 85-4128.

6 More statistics can be found here: <http://www.teismai.lt/data/public/uploads/2018/04/d2_galutine-ataskaita-10.pdf> accessed 12 February 2019.

civil cases are allocated to the judges and judicial panels of judges taking into account the specialisation of judges, even distribution of work load, complexity of cases, the rotation of judicial panels. The chairman of the court is still capable to change the allocation of civil cases if the circumstances of dismissal of judges or their opting out, temporary incapacity of a judge for work occur.

3. PREPARATORY STAGE OF CIVIL PROCEEDINGS

After the new CCP has been adopted, the main hearing model of civil procedure has been introduced and the goals of preparatory stage have been set according to this model. The main idea is to organize preparation in such manner that it would be possible to hear the civil case in the main single oral hearing. Legal doctrine in Lithuania usually states that the goals of preparatory stage are.[7]
– to guarantee that the parties would indicate all their claims, arguments, evidence;
– to formulate finally the claims and counterclaims of the parties;
– to inform all the necessary participants to the proceedings about the civil case;
– to try to reconcile the parties to the dispute.

Pre-action phase is not really relevant up till now in Lithuania. There is no obligation for parties to the dispute to disclose evidence or to go through mandatory mediation before filling a statement of claim to the court. From year 2020 mandatory mediation will be introduced for most of family disputes. Until now there is an obligation for some specific civil disputes to go throuh prior court obligatory extrajudicial dispute resolution. Such obligation must be prescribed in special laws. Otherwise it is not possible to file a statement of claim to court for such civil claims. Such obligation has been established for all labour disputes; also for some specific civil disputes as defamation or refutation or disputes concerning some energy or public procurement laws.

In most civil cases a preparatory stage is obligatory. However, in year 2011 it was allowed that the judge can decide not to organize preparatory stage. Having received the response from the defendant the judge can instantly decide that further procedural actions for preparation the case for the civil hearing are not necessary and the ruling to hear the case can be passed at the main hearing. Also in small claims disputes (up to 2000 Euros) a preparatory stage is not obligatory.

Preparatory stage can be written or oral in Lithuania and it is not possible to mix it and to arrange a written and oral preparation stage in the same civil case. There were attempts to allow courts to mix both forms of preparation several years ago, but consensus was not found between legals cholars, judges and Ministry of Justice and it was agreed that it was not the right time to amend preparatory stage.

If court believes that a peaceful settlement can be achieved in the civil case or when the law sets the obligation for the court to take measures to take judicial settlement

7 A Driukas, V Valančius, *Civilinis procesas: teorija ir praktika* (Teisinės informacijos centras 2007) 193.

efforts (for instance family or labour cases) or when this is a way for better and more comprehensive preparation for the hearing in the court then preparatory court hearing must be organised. Under the CCP, one preparatory court hearing should be enough to prepare the case hearing in the court, but in exceptional instances or believing that the case may be ended in a settlement, the court is entitled to assign the date of the second preparatory court hearing that may not be later than thirty days afterwards. There cannot be more than two preparatory court hearings, but unfortunately in practice this rule is quite often infringed.

If both parties are represented by attorneys at law or assistants of attorneys at law; or parties are legal entities which have legal counsellors or it is obvious for the court that both parties understand legal side of the dispute good and are able to express themselves well in the form of documents, preparatory stage is organised in written form without a hearing. Such form of preparation is applied always in disputes regarding public procurement. The court cannot allow to prepare case in written form if there are possibilities to reach settlement or there is an obligation for the court to try to reconcile parties to the dispute.

If the civil case is prepared in written form, plaintiff must submit a *duplicatio* (plaintiff's replication to the plea submitted by the defendant) and the defendant must submit a *triplicatio* (defendant's replication to the *duplicatio*).

The closing of preparatory stage is usually ended by a ruling of the court. Such ruling in Lithuania has a function to consolidate all the actions performed in preparatory stage and it should be quite difficult to change something regarding the essence of the civil case after passing this ruling.[8] It should be allowed only in exceptional cases to change the grounds or subject of the claim, increase claim requirements, submit a counterclaim or present more evidence. In practice civil cases can be found where a plaintiff or defendant is allowed to change his legal position quite easily during the main hearing and in such way civil proceedings are delayed. It is allowed not to pass such ruling in civil cases when during the preparatory hearing it turns out that additional actions of preparation are not necessary and the court decides to start oral hearing and resolve the case on the merits right after the preparatory court session.

Preparatory stage is designed to collect all necessary evidence for the civil case in order to hear the case later in one of the court hearings and to pass a judgment within a reasonable time. The duty of the parties to bring matters to the court in an appropriate time is also a component of the cooperation principles[9]. It is important that Article 181 (2) of CCP stresses that a court is entitled to disallow acceptance of evidence if it could have been presented earlier and later presentation thereof will delay the proceedings. Nevertheless, application of this legal norm is quite problematic and parties to the dispute often still try to present evidence later and courts allow it so far.

8 Driukas, Valančius (n 7) 204.

9 V Nekrošius, *Civilinis procesas: koncentruotumo principas ir jo įgyvendinimo galimybės* (Justitia 2002) 78.

4. POSSIBILITIES OF GROUP ACTION IN LITHUANIAN CIVIL PROCEDURE

Lithuanian CPC establishes rules on certain case categories which enable to hear cases in different ways and, consequently, help parties to the disputes and the court to accelerate civil proceedings and to differentiate hearing of civil cases according to the nature of the claim and other important circumstances. The most popular kind of such tools is court (payment) order. Likewise, for instance, documentary or small claims procedure can be applied if all requirements are met.

The beginning of year 2015 was important for the Lithuanian civil procedure because the new amendments to the CCP entered into force and group action (or so called class action) was introduced. Unfortunately, this possibility is not really effective hitherto and successful civil case according to the rules group action still cannot be found.

The institute of group action is developed as an organisational and administrative response to challenges of individual civil procedure. Group actions are special as they aim at aggregating identical or similar claims held by a large group of individuals into one hearing on account that all claims originate from the same legal infringement violated on a massive scale.[10]

In Lithuanian so called opt-in system of group actions has been introduced. It means that each member of a group must express a wish to participate in civil proceedings. It is said that in the opted-in systems, concentration of all potential plaintiffs into single proceedings has more complex obstacles to overcome.[11] Even when all the available modern information communication tools (such as internet, mass media of all kinds, etc.) are used, information about a class being formed may not reach all potential members. According to Article 441[3] of CCP no less than twenty natural or legal persons can lodge group claim and representation of the attorney at law is necessary. After a group is formed, it must elect one member from within it – the so-called representative of the group – who acts on the group's behalf. In some cases, the representative may be an organization – for instance, an association or a trade union.

CCP also provides that a group action may be applied provided that the court established the group action procedure as a more reasonable, effective and appropriate procedure to resolve a specific dispute than an individual dispute resolution. Therefore, when assessing the issue of admissibility of a group action the court has to verify whether the group action procedure would ensure a more reasonable, effective and appropriate dispute resolution in the case of a specific dispute. We believe that such rule makes it really difficult to apply such procedure in Lithuania. The court, if it wishes, can always somehow argue that individual dispute resolution would be more effective and reasonable. On the other hand, in

10 A Brazdeikis,V Nekrošius, R Simaitis, V Vėbraitė, 'Grupės ieškinys kaip civilinio proceso spartinimo priemonė'(2016) 98 Teisė 17.

11 J Blackhaus, A Cassone, G B. Ramello (eds), *The Law and Economics of Class Actions in Europe. Lessons from America* (Edward Elgar 2012) 70.

the absence of case-law, it is a bit premature only to criticize such rule. Hopefully, courts are going to use their discretion properly as they should.

CPC sets three types of court judgments in group action lawsuits. The court could adopt a general court judgment, mandatory for all the members of the group. However, in civil cases where it is impossible to adopt one judgment because separate members of the group have different individual requests, the court first passes an intermediate judgment on the factual background common to the group and then subsequently rules on individual requests, without needing to re-establish the facts, which were already established in the intermediate judgment.

It could be asked what the differences are between the institute of optional joinder in civil procedure and the group action. In smaller civil cases to answer this questions is quite difficult. It should be remembered that the scope of group actions is a massive legal infringement.[12] Not just any type of infringements, but rather the ones which, due to a potential number of co-plaintiffs and individual lawsuits, might raise serious organisational, administrative, technical and economic problems to courts and other parties to the civil proceedings.

5. CONCLUDING REMARKS

System of civil justice in Lithuanian cannot be assessed only as positive and homologous. It was aimed in this article to describe one of the most successful aspects of Lithuanian justice system – its electrification. Furthermore, it was wished to characterize one of the least successful institutes in Lithuanian civil procedure – group action. We believe that not only wrong legal regulation, but also the absence of legal culture of group litigation in Lithuania destines that group action does not function and the goals of this institute are not achieved. The importance of preparatory stage in civil proceedings is already understood well in Lithuania, although some problems connected with applying of the rules are still arising.

12 Blackhaus, Cassone, Ramello (n11) 65.