

Alan Uzelac *Editor*

Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems

Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems

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Preface

Comparative research on civil procedure usually starts with the presupposition that the key notions of the discipline such as ‘procedure’, ‘court’ and ‘civil justice’ are generally similar and comparable. What is different, and what can be compared, are the technical elements, such as the rights and duties of the main actors in the process, the effects of their procedural activities and the legal institutions which define them. In a globalising world, one can expect convergence and harmonisation, simply because of the more intense communications and general effects of the globalisation of the economy. But contemporary development of national systems of civil justice demonstrates that simple explanations and solutions do not work. The reason why national judiciaries continue to show persistence in opposing the harmonisation and unification processes, so that even the fundamental notions of procedure like *res iudicata* or ‘fair trial’ are understood and accepted in a dramatically different way, lies beneath the surface: it is in the different fundamental attitudes regarding the goals and aims of civil procedure and the civil justice system in general.

Recognising the importance of the topic, the International Association of Procedural Law (IAPL) decided to devote a part of the 2012 Moscow Conference to the topic Goals of Civil Justice. Two main questions that had to be addressed were How do the goals of civil procedure differ from country to country? and What is the role of civil justice in the contemporary world? The following chapters are mainly derived from the reports presented at this conference. For the purpose of publication in this book they have been thoroughly revised, extended and updated to reflect the situation in September 2013. The ten conference contributions are expanded by an additional text, which fitted neatly the profile of this book and was based on a report from a separate conference held in Vilnius.

I hope that the readers will find that this book is much more than a mechanical collection of national reports which were summarised in one general paper. The intention of the editor was not to cover all jurisdictions, but to find excellent writers who are at the same time knowledgeable experts in comparative law, and motivate them to produce inspired papers that, when read together, cover a representative selection of all major legal traditions and systems. A journey through the chapters of this book reveals a great number of fundamental dilemmas that determine

contemporary development of civil justice systems and shed a different light on the judicial reforms that happen around the globe. In the mosaic of contrasts and oppositions, special place is devoted to the continuing battle between the individualistic/liberal approach, and the collectivist/paternalistic approach (the battle in which, seemingly, paternalistic tendencies regain momentum in a number of justice systems). But other topical issues are discussed as well, like the attempts to ensure effective but still fair and accurate adjudication, differences between ‘bureaucratic’ judiciaries that process large numbers of routine cases, and ‘policy-making’ judiciaries that shape important decisions in representative or collective litigations that affect social and economic policies, as well as the pressures to reduce the expenses of justice systems, and demands to make them chiefly responsible to their users.

My gratitude goes to all contributors to this volume who showed a remarkable patience when dealing with my continuing requests to improve, update and clarify their contributions. I am in particular debt to Randolph W. Davidson who – once again – did a remarkable job improving and fine-tuning the language of this book, and to my research assistant Marko Bratković who provided valuable technical assistance in revising and formatting the contributions.

Zagreb, Croatia
September 2013

Alan Uzelac

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Part I
General Synthesis

Chapter 1

Goals of Civil Justice and Civil Procedure in the Contemporary World

Global Developments – Towards Harmonisation (and Back)

Alan Uzelac

Abstract Some of the most thrilling topics of civil procedure are those that revisit its very roots. What are the goals of civil justice? This question seems to be simple only on the surface, viewed from the closed perspective of national law and jurisprudence. However, the moment when we embark on a comparative journey, the adventure starts. How do the goals of civil justice differ from country to country? Are they compatible? Is it possible at all to speak of the universal tasks of civil justice in the contemporary world? And, if not, are we making a mistake when we consider that ‘judges’ and ‘courts’ have the same meaning and same importance in all cultures? In this chapter, the author presents a synthetic study on these issues, based on the reports that present a particular approach to the goals of civil justice and civil procedure from the angle of a representative set of different contemporary legal traditions and systems.

1.1 Introduction

What is the goal of courts and judges in civil matters in the contemporary world? It would be easy to state the obvious and repeat that in all justice systems of the world the role of civil justice is to apply the applicable substantive law to the established facts in an impartial manner, and pronounce fair and accurate judgments. The devil is, as always, in the details. What is the perception of an American judge about his or her social role and function, and does it correspond to the perception of the judge in the People’s Republic of China? What are the prevailing opinions on the goals of civil justice in doctrine and case law of Russia and Brazil? Do courts in

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