

**Alan Uzelac (ed.), GOALS OF CIVIL JUSTICE AND CIVIL
PROCEDURE IN CONTEMPORARY JUDICIAL SYSTEMS,
Ius Gentium: Comparative Perspectives on Law and Justice 34,
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In order to find the right path, one must first know where one is headed.

Demands of contemporary lifestyle, fraught with many changes, leave little time for rethinking one's own goals. In this respect, civil justice and civil procedure are no exception. Civil justice systems around the world are troubled with the same efficiency problem – how to balance thoroughness with timeliness and low costs. Frequent law changes bring into question their appropriateness. Moreover, the haphazard solutions hardly ever contribute to efficiency in coping with growing caseloads and quality demands. Along these lines, Alan Uzelac, the editor of the recently published book *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems*, makes the following remark: “A thorough discussion or even a full reconceptualization of the goals of civil justice may be a precondition for successful procedural reforms – especially if it is desired that such reforms be deep, far-reaching and effective.”¹ The book at hand offers convincing lines of reasoning in that regard.

The structure of the book may be described as biaxial. The lines of reasoning follow two axes – the geographical and the topical. While the geographical axis connects a well chosen array of major legal traditions ranging from civil to common-law jurisdictions, from Europe and Asia to the North and South Americas, the topical axis is slightly more complex and addresses a set of fundamental questions about the goals of civil justice. Geographical, cultural and ideological diversity along the geographical axis could be an obstacle to dis-

¹ Uzelac, A., *Goals of Civil Justice and Civil Procedure in the Contemporary World. Global Developments – Towards Harmonisation (and Back)*, in Uzelac, A. (ed.), *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems*, Springer, 2014, p. 5 sq.

cerning the goals of civil justice and civil procedure. Nevertheless, the book is rather successful in that respect owing to the deftly drawn up questionnaire on goals of civil justice previously distributed to the authors by the editor. The topical axis, therefore, follows the structure of the questionnaire for the most part. The diverging goals in various justice systems are found at the junctions of the two axes. In addressing the goals of civil justice, thirteen knowledgeable authors (chiefly scholars) – prompted by the questionnaire – outline the functioning and efficiency of their respective civil justice systems. The scope of the book is thus not limited to the closed perspective of national law and doctrine. It covers Germanic and Romance countries, Scandinavia, Russia, North and South America, China and ex-Socialist countries.

The book, in fact, represents volume 34 of Springer's series *Ius Gentium: Comparative Perspectives on Law and Justice*. Formally, the book is divided into two parts – *General Synthesis* and *National Perspectives*. The first part consists of the editor's very coherent synthetic study on the main ideas of the book entitled *Goals of Civil Justice and Civil Procedure in the Contemporary World. Global Developments – Towards Harmonisation (and Back)*. The second part is organised into eleven chapters containing national reports on the goals of civil justice and civil procedure based on the said questionnaire. Thirteen authors (two chapters are co-authored) have rather diverse approaches to the flagged issues and questions. However, the similarities and contrasts between them are insightfully highlighted in the editor's introductory study.

The book's geographical axis represents an array of different contemporary legal traditions and systems. Here is a brief overview of this diversity. "The traditions on which the Austrian and German civil justice systems are based have successfully stood the test of time. They are, however, facing new challenges (...)." ² The role of the heritage of Franz Klein in Austrian-German tradition is presented by the Austrian author Christian Koller at the beginning of the second part of the book. In addition, under the title *Civil Justice in Pursuit of Efficiency* C. H. van Rhee from Maastricht University explains the goals of civil justice in the Netherlands with some reflections on France and Belgium – "(...) albeit after a long period of gestation – the Netherlands has introduced fundamental reforms in the civil justice system. (...) However, new austerity measures cannot be excluded, and therefore the current Dutch successes in

² Koller, Ch., *Civil Justice in Austrian-German Tradition. The Franz Klein Heritage and Beyond*, in Uzelac (ed.) (n. 1), p. 56.

civil litigation cannot be considered to be secure.”³ According to the report by Inge Lorange Backer, Norwegian civil justice seems ready for a pragmatic reform in accordance with “(...) the pragmatic approach that is a characteristic of Nordic law and legal policy, which often seeks to find practical solutions to problems instead of developing solutions on the basis of a discussion and deduction from general principles.”⁴

While discussing the goals of civil justice in a dysfunctional system, the Italian author Elisabetta Silvestri maintains: “For those who are in charge of a justice system faced with a longstanding ‘identity crisis’, known worldwide for the unbearable length of its judicial proceedings and constantly in a state of emergency, the search for ‘exit strategies’ seems to be an absolute priority, one that overshadows the importance of a clear vision of the goals civil justice is intended to pursue.”⁵ The author concludes her paper with a witty remark: “(...) in this climate of general dissatisfaction the system stands still, *En attendant Godot*. Let us hope that sooner rather than later Mr. Godot shows up and works some magic.”⁶

“American procedure is exceptional because American procedural goals are exceptional”⁷, states Richard Marcus arguing firmly that “(...) American procedure seeks to enable litigants in this country to go further, by enforcing public norms through private initiative, a major reason why it puts fewer obstacles in the way of prospective plaintiffs.”⁸ The piling up of cases and systemic judicial inactivity used to plague the Hong Kong civil justice system. The Civil Justice Reform (CJR), modelled after the English Woolf Reforms, was undertaken in 2009, transforming the litigation landscape in Hong Kong. The authors of the pertinent paper Peter C. H. Chan and David Chan conclude: “(...) Hong Kong’s system demonstrates a strong orientation towards the users and their rights of access to justice. By comparison, given the social circumstances, institutional goals take precedence in Mainland China where courts are much more

³ van Rhee, C. H., *Civil Justice in Pursuit of Efficiency. The Netherlands (with Some Reflections on France and Belgium)*, in Uzelac (ed.) (n. 1), p. 76 sq.

⁴ Backer, I. L., *Goals of Civil Justice in Norway: Readiness for a Pragmatic Reform*, in Uzelac (ed.) (n. 1), p. 107.

⁵ Silvestri, E., *Goals of Civil Justice When Nothing Works: The Case of Italy*, in Uzelac (ed.) (n. 1), p. 79.

⁶ *Ibid.*, p. 101.

⁷ Marcus, R., ‘American Exceptionalism’ in *Goals for Civil Litigation*, in Uzelac (ed.) (n. 1), p. 139.

⁸ *Ibid.*, p. 123.

inclined to serve policy objectives as a priority over the needs of individual litigants.”⁹ Mainland China seems to be facing the problem of high efficiency coupled with low legitimacy within the civil justice system. The title of Fu Yulin’s paper *Social Harmony at the Cost of Trust Crisis* illustrates this paradox.

In the Russian civil justice system, as reported by Dmitry Heroldovich Nokhrin, resurrected Soviet concepts are interwoven with borrowings from the West. “Final success is, however, far from certain. The only certain conclusion that can be provided so far is that the struggle for democratic, transparent and equitable justice in Russia is far from over, and many structural deficiencies are yet to be overcome in reaching this goal.”¹⁰ According to Miklós Kengyel and Gergely Czoboly, ‘oscillating history – from liberal to socialist concept of procedural goals (and back)’ characterizes the Hungarian civil procedure, as well. In his paper on Slovenia, Aleš Galič sets forth the ongoing debate in his country on (in)compatibility of procedural preclusions with the goals of civil justice following the latest reforms of civil procedural law. “What is strived for is finding the most efficient distribution of the responsibilities and burdens of all participants in proceedings in order to find the optimal balance between the goal of comprehensive substantive examination of the merits of the case, on one hand, and speed and efficiency in reaching this decision, on the other.”¹¹ The last chapter of the book is devoted to judicial activism within Brazilian civil justice presented by Teresa Arruda Alvim Wambier. “We cannot deny that there are some characteristics of Brazilian civil justice which are visibly oriented towards solving the problems of the system itself. The goals of civil justice in Brazil are to a large extent oriented or defined by the needs of the system itself and its professional actors, the courts, judges and lawyers.”¹²

Despite the academic tone of the book’s title, the issues presented along the topical axis are not only theoretically challenging, but have a considerable practical significance, as well. There are several points along this axis that warrant consideration in that regard.

“The most successful procedural reforms of the past, from Franz Klein’s

⁹ Chan, P. C. H.; Chan, D., *Civil Justice with Multiple Objectives. The Unique Path of Hong Kong’s Civil Justice Reform*, in Uzelac (ed.) (n. 1), p. 163.

¹⁰ Nokhrin, D. H., *Civil Litigation in Russia: ‘Guided Justice’ and Revival of Public Interest*, in Uzelac (ed.) (n. 1), p. 201.

¹¹ Galič, A., *(In)compatibility of Procedural Preclusions with the Goals of Civil Justice: An Ongoing Debate in Slovenia*, in Uzelac (ed.) (n. 1), p. 242.

¹² Wambier, T. A. A., *Judicial Activism as Goals Setting – Civil Justice in Brazil*, in Uzelac (ed.) (n. 1), p. 245.

reforms in the 1890s to the Lord Woolf reforms in the 1990s, were rooted in the profound perception of the procedural goals – social function (Klein), or overriding objective (Woolf) – of civil justice.”¹³ At the present time, in the editor’s opinion, the goals of civil justice around the world are somewhere between two extremes: the conflict-resolution goal (resolution of individual disputes by the system of state courts) and policy-implementation goal (implementation of social goals, functions and policies). The (im)balance of different aspects and combinations of both of those archetypes are represented in the civil justice systems presented in this book. While the conflict-resolution goal is often phrased as authoritative determination of rights by provision of enforceable judgments, the expression of the policy-implementation goals varies from maintaining social order to demonstrating the effectiveness of private law, and the development and uniform application of private law. The civil justice systems described in this book diverge significantly in respect of the use of courts for essentially non-judicial purposes, such as issuing extracts from land registries, appointment of guardians, or stamping of payment orders while collecting uncontested debt. In many countries more and more ‘externalities’ are being ‘pushed’ by the legislator onto the courts.

Along the topical axis of the book, issues, such as proportionality between case and procedure and case management aimed at the balance between accurate fact-finding (‘material truth’) and the right to a fair trial within a reasonable time, are also discussed. In some civil justice systems accuracy in establishing the facts of a case is of great importance. Judges are thus entitled to actively encourage the parties to state the facts and produce evidence, or even take evidence *ex officio*. In other civil justice systems the need to provide effective protection of rights within an appropriate time prevails over the need for correctly established facts. As regards attempts to ensure effective yet fair and accurate adjudication, differences between ‘bureaucratic’ judiciaries which are able to process large numbers of routine cases and ‘policy-making’ judiciaries that shape important decisions in representative or collective litigations are also presented. Most civil law systems are inclined towards the resolution of a large number of average and small cases, rather than towards dealing with individual cases of public importance. Case filtering mechanisms are, however, rather diverse. Amongst specific procedures “(T)he Austrian example of order for payment proceedings (*Mahnverfahren*) may serve as a model example of a system that corresponds to the goal of fast and cost-effective mass processing

¹³ Uzelac (n. 1), p. 6.

of cases and fast filtering of uncontested claims.”¹⁴ Unlike in America, specific procedures regarding the courts’ processing of group interests in Europe are not (yet) a reality, but there is a continuing interest for regulation in this field despite some scepticism and critical attitudes.

Further, even in the countries which are traditionally model examples of the social state, it seems that civil justice no longer functions as a freely available public service. It is slowly but surely being commercialized. Despite that, most user satisfaction surveys, so popular nowadays, indicate at least an average level of satisfaction by users. Moreover, they describe their national civil justice systems as user-friendly.

In general, particular systemic advantages and drawbacks of particular civil justice systems are distinguishable only through the prism of a representative set of different contemporary legal traditions and systems. As previously mentioned, the approaches of different authors to the same questions vary greatly depending on the authors’ perspectives. Nevertheless, it could be said that the editor’s intention to present typical and representative insights from major legal traditions has, in general, attained its goal.

To conclude, we can only agree with the editor that “(C)ivil justice should serve the interests of the society of the twenty-first century, and the new social context imposes the need for significant changes. These changes require clear starting points. Without clearly stated goals, it is hard to make solid and consistent plans, produce indicators of their success and maintain the momentum of the reforms.”¹⁵ In that respect, the book at hand is a small, but notable contribution.

Marko Bratković, mag. iur.

¹⁴ *Ibid.*, p. 28.

¹⁵ *Ibid.*