



Social Context of Civil Process for Sustainable Development

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Abstract

A democratic society develops the concept of a social state, expressed in ensuring equal conditions for the participation of vulnerable persons in civil turnover. At the same time, humanity has agreed on a sustainable development plan, in which social sustainability is set as one of the main goals. Modern civil procedure law is mainly based on the codification of the 19th century, which in turn originates from the "Roman law" created precisely for the citizens of Rome. But since then, public relations have changed and modern technologies are constantly developing. The concept of a digital judge, smart contracts, and a blockchain system has already been developed. Therefore, it is necessary to update the civil procedure legislation to find out how it provides an equal platform for the participation of vulnerable persons in civil disputes. The purpose of this article is to discuss procedures for regulating civil disputes in a social context. As a result of identifying existing gaps, specific recommendations have been developed that will bring civil dispute resolution closer to sustainable development plans and ensure the participation of vulnerable persons in civil disputes on equal terms.

Keywords: Civil process, sustainable development, vulnerable person

Introduction

Civil relations are constantly changing, although their governing rules remain largely the same. The civil procedure legal framework was created after the end of feudalism and during the formation of a new

economic formation in society. It is widely known that civil law created by Napoleon is focused on the bourgeoisie, and German civil law is focused on businessmen. Accordingly, the recipients of civil law are wealthy persons, since civil codes mainly provide guarantees of their economic freedom. (Zweigert, K. & Kötz, H., 2000) In ancient Rome, people could not imagine communication via the Internet, while there is currently an active discussion about granting legal subjectivity to artificial intelligence. (Eidenmüller, H. & Wagner, G., 2021). The concept of a legal and social state has already been developed, and its main leitmotif is the equal protection of all members of society. In this regard, increasing attention is being paid to the rights of vulnerable persons and their implementation mechanisms.

It should be noted that the tendency to consider all members of society in civil rotation is observed not only in law but also in economic science. The doctrine of "laissez-faire" is no longer popular as it implies a policy of minimal government interference in the economic affairs of individuals and society. Today, the theory of pluralism gradually rotates, implying the coexistence of many diverse qualities and interests. According to economists, "Adam Smith's principle of the" invisible hand "can be successfully replaced by the equilibrium theory of John Forbes Nash (Author of Nash's equilibrium and game theory, Nobel laureate): the best strategy for society is an approach that implies that every member of society takes into account not only personal interests but also the interests of others.". (Kharitonashvili, J., 2021) Since law and economy define each other, the mentioned economic doctrine demands the corresponding legal approach considering the interests of all members of society. Social and economic formation has a decisive impact on a form of civil procedure. Capitalist-mercantile society is constructed on obvious inequality and favors being financially exclusive. However, it is undoubtedly true that pure capitalism isn't relevant anymore. In this situation the existence of mechanisms of protection of public concerns in civil process is crucial.

Civil process, as a form of implementation of civil justice, has its main purpose: the court has delegated state power from the people, and the civil process should be for people and not for the "doctrine" (in Europe) or "grammar of law" (common law). (Holland, T., 1968). Looking broadly, decisions about matters of public interest affect not only the psychology of the individual but also the whole society. Often this influence can be hidden, (Clermont K. M., 2016) because any procedural detail or tool, which at first glance may seem completely insignificant, fundamentally changes the fate of the dispute itself. Concerning the Code of Civil Procedure, there is a historical context in which the dogma that civil procedure is an exclusive prerogative of the State's jurisdictions. Thought Recent years have shown, in multiple legal systems, an increased tendency to "privatize" civil

proceedings. (Fabbi, A. (2013). Procedural norms do not change and are the same for all types of disputes (Guarnieri, C., Pederzoli P. & Thomas Ch. A., (2002/1) as it is that it is public law and contains the rules about unwaivable procedural rights. That is why the Code of Civil Procedure provides such mechanisms that cannot be negotiated since they are aimed at protecting weak parties. However, for example, a fragmented reception that took place in Georgia gave the possibility of procedural agreement on several unwaivable procedural rights, which put the issue of protection of weak subjects on the agenda.

Society expressed interest in the rights of vulnerable persons, including the disabled and children, in the 20th century, as the idea of social sustainability matured in society. In the technological era, UN established 17 goals and 169 tasks of sustainable development.(UN, 2015) Chief among the various goals is the pursuit of social, and gender equality by creating equal opportunities for people of all ages and abilities. These goals will always remain stated goals unless each country's legislation creates the necessary mechanisms to implement it, including civil process. If a state is focused on sustainable development, it cannot be achieved without the creation of appropriate legislation. One of the goals of sustainable development is to focus on the welfare of society. The goodness of society means that each of its members is equally protected and that all members of society have equal opportunities to protect their rights. Currently, countries are striving to become a social state. Therefore, if society seeks to create social states, it must also make the civil process social. Therefore, it is especially important to create a platform for vulnerable persons to participate in civil disputes since civil procedure law is an instrument for the implementation of civil rights.

Based on the above, the paper discusses the problems of the social context of civil disputes, just for the equal participation of vulnerable persons in civil relations and an even closer approach of humanity to social sustainability.

1. Capacity reform in Georgia

In Georgia in the 11th century during the reign of David The Builder (Nephew of Mariam Bagration Doukas, Queen of Byzantium) great attention was paid to the protection of vulnerable, disabled people, and the king even opened special treatment houses for them. (Javakhishvili, I,1908). It is also worth noting that the high development of procedural culture in Georgia has historically been confirmed. From the monument of the XI century "Deed of Opiz" the following stages of the process can be seen: "Before the trial took place, the king received the disputing parties, listened to them, and appointed the trial of the case, for which he summoned the proper persons."

(Chkonia Z., 2014). The independent culture of Georgian law was stopped by the Russian occupation. After joining the Soviet Union, Soviet legislation became widespread in Georgia. There was no private property, and the civil process was uniquely inquisitorial, where the court was searching for objective truth. After the collapse of the Soviet Union, Georgia created its own legislation, mainly on the basis of reception. The observation proved that such legal institutions which are taken from different cultures without adaptation of Georgian culture, are ineffective.

On December 26, 2013, the Parliament of Georgia ratified the UN Convention on the Rights of Persons with Disabilities by declaration on Article 12. Despite the declaration of equal rights of legal personality, the parliament of Georgia has undertaken a fundamental reform of the institution of the capability on the basis of the N2/4/532,533/08.10.2015 decision of the constitutional court of Georgia. The norms about capacity in the civil code and other laws were acknowledged as unconstitutional. The Parliament of Georgia had six months to determine the complex modification of capabilities and bring the legislation in compliance with the court decision. As a result, the innovative regulation of capacity came into force on April 1, 2015.

In the old model, the Civil Code of Georgia restricted individuals due to “Spiritual Illness” the freedom to obtain civil rights and obligations by their own free will. A person found incapacitated was not entitled to be involved in relations with third parties; he was unable to make deals as his will was invalid. On his behalf, the guardian provided transactions. It prohibited the marriage of an incapable person without taking into account his individual mental abilities, etc.

The new capacity model fundamentally replaced the old approach. According to the new model, all persons are capable and capacity is a right that may be restricted by the law only in exceptional cases. In all other cases, persons with psychosocial needs may be provided by a supporter rather than a substitute for their rights. According to the support model the individuals have the ability to apply their rights, but they may need assistance at some point. Participation in civil turnover of persons with psychosocial needs is ensured on the basis of court decisions. A supporter is appointed by the court and has only the rights which are directly indicated by the court decision.

Three main authorities are involved in obtaining the status of support receiver and the implementation of the capacity system: 1. The Multidisciplinary group of the Bureau of Expertise studies the possibilities of persons with psychosocial needs to exercise various rights. The main function of the multidisciplinary group is the individual assessment of persons. 2. A judiciary system, that makes a final decision and relies on the reports of the multidisciplinary group. 3. The Agency of the Ministry of

Health, which is responsible for the execution and monitoring of the process. During this process, the involvement in civil proceedings of persons with psychosocial needs is also an important factor that the old model completely excluded.

The status of a special applicant was also established. According to article 5.2 of the Civil Procedure Code of Georgia, for the purposes of participation on an equal basis with others in the administration of justice, parties and participants with disabilities enjoy the rights and opportunities granted under the Georgian Law on the Rights of Persons with Disabilities, including participation as a special plaintiff.

The conception of special plaintiff is defined by the Law on the “Rights of Persons with Disabilities, [Article 18] which provides that organizations with the status of special plaintiffs are authorized to conduct administrative and civil disputes, as well as to apply to the relevant agencies if the case concerns the elimination of discrimination against persons with disabilities and/or is essential in this area, for the development of legal practice.

According to the law, a special plaintiff protects disabled persons without their legal representation but In such a case, a power of attorney for representation is required. However, the issue is problematic, since the power of attorney should be certified by the notary who checks the will of PWD. The case remains unresolved for individuals who have psychosocial needs, cannot express their will, and have no support. The concept of special plaintiff created a new status of civil dispute participant the purpose of which will be to protect the rights of weak persons since the participation of the prosecutor in the civil process in Georgia has long been canceled, which in French and Italian law during specific proceedings is considered as a successful defender of the public interest. The specified burden has been transferred to the judge, although in a rather small amount. However, in some cases, due to the adversarial principle, this is insufficient and it is necessary to involve other bodies that can defend the public interest.

2. Children's procedural rights in Georgia

The need to protect the interests of children in civil proceedings arose in connection with civil disputes involving children. Law provides for the mandatory participation of guardianship authorities in disputes related to children, although the civil process does not recognize the procedural status corresponding to their participation. The mentioned problem was solved by the courts with the recommendation that determined that these bodies may be involved in the proceedings as third parties without an independent claim. However, the interests of such third parties and the interests of these

authorities are completely different. Accordingly, the issue of protection of the interests of children and vulnerable persons is relevant.

In the post-Soviet period, along with the formation of a market economy and private property, the concept of adversarial civil proceedings became a symbol of freedom. However, the legislator gave priority to the balanced use of the two basic procedural principles: the adversarial principle in accordance with the inquisitorial principle. (Liluashvili T., Liluashvili G. & Khrustali V.) This balance is especially expressed towards the rules about family disputes due to their specificity. Article 354 of the civil procedure code allows the court to determine the circumstances of the case at the initiative of the court only for consideration of family cases. This solution turned out to be particularly far-sighted today because the court is using this article by analogy in family disputes related to children. However, the use of this principle in disputes where a child is involved, but the case is not of a family nature, is not established. Based on the Convention on the Rights of Children, the Code of Children's Rights was adopted in 2019. Recently, the state has defined a framework for intervention in the rights of the child. According to Article 81 of the Civil Procedure Code of Georgia, a minor has the right to apply to the court to protect his/her rights and legally protected interests. For the claim filed by the child, a simplified form of claim was developed. Article 51 of the Civil Procedure Code of Georgia requires the specialization of persons involved in the process related to the protection of the rights of minors. The process related to the protection of minors involves a judge, a lawyer, a social worker, and/or another appropriate invited expert based on the needs of minors who are specialized in the methodology of the relationship with minors and other related matters. In addition, it was determined that when making a decision by the competent authority, a high standard of justification must be taken into account when issuing any legal document, which will necessarily indicate the best interests of the child. According to article 251¹ of the Civil Procedural Code of Georgia when making and substantiating the judgment with regard to a case related to the minors' rights, the court shall give priority to the best interests of a minor. In order for the best interests of a minor to be given priority, the court judgment must be substantiated according to the appropriate basic criteria defined by Article 81(3) of the Code of Children's Rights. This is also a kind of paradox because in the absence of a public interest defender, the legislation directly obliges the judge to give preference to one side on the basis of age. This solution instead of solving the problem, takes it deeper because instead of ensuring equality of parties, it puts one side in an advantageous position.

It is especially noteworthy that articles 183 and 186 of the Civil Code require that immovable property and movable property worth more than 1,000 GEL belonging to a child can be disposed of by the parent only in

accordance with the best interests of the child, with permission of the court. The need for mandatory judicial control is caused by regrettable examples in the judicial practice of parents violating the property rights of children. This means that a new type of civil dispute has been established, but the Civil Procedure Code of Georgia still does not contain any rules regarding these disputes. The code does not specify the form of the application to be submitted to the court, the form of proceedings, the form of court's consent, the decision enforcement mechanisms, or the way of monitoring. The most important is that the procedural legislation does not determine by which principle must be used - inquisitorial or adversarial. It is clear that due to the high public interest and the obligations imposed by international conventions the inquisitorial principle should be applied in relation to these disputes. In addition, it should be noted that there is a different approach towards parents and guardians. Such transactions **by** guardians are subject to administrative control - the consent of the guardianship agency is required, instead of the consent of the court for the parents, which creates an unequal situation. Therefore, it is necessary to regulate the above-mentioned issues with the norms of the Civil Procedure Code.

3. Participation of vulnerable persons in civil disputes as a necessary condition for social sustainability

The meaning of vulnerable person does not mean only persons with disabilities, since vulnerability is usually closely related to socio-economic status (assuming that this includes race, gender, age, etc.). (Wisner, Blaikie, Cannon & Davis. (2003). "Quality of life" is a subjective characteristic that is difficult to define precisely. The constitutional concept of the social state is becoming more and more important. Accordingly, in this context, the social function of the civil process becomes more relevant. In the opinion of the author of the Austrian Civil Procedure Code of 1895, Franz Klein. (Oberhammer P. & Domej T., 2005) civil proceedings should be based on the basic truth, instead of the truth presented by the parties. Franz Klein's fundamental idea was directed against the civilian process as "war without red lines" (Klein, F. Pro Futuro (1891), when the judge is a passive observer of the litigants who destroy reality in favor of their own goals. (Van Rhee C.H., Uzelac A. (2012) It is worth noting that after 100 years, the disputes held with the participation of vulnerable persons confirm the correctness of this opinion. The tendency of such an approach is slowly emerging in modern European countries. For example, according to the opinion procedural civilise of continental law – M arcel Storme: "A competitive process without effective control is like promoting the competition of different cultures, which is generated in an environment where the litigation process is perceived as a battlefield without rules." (Storme M.,2005)

However, it should be noted that this control is not similar of the Soviet definition of the "objective truth". It should be used strictly in relation to the principle of disposition so that the court does not go beyond the autonomous will of the parties. In this regard, the most balanced approach is expressed in the ALI/UNIDROIT principles, which put forward the principle of equality of parties, which is based on the provision of equal status to participants and interventionist judicial discretion. (ALI/UNIDROIT, 2005).

The latest European approach, which has not yet been reflected in national legislation, creates a wider mechanism for the participation of vulnerable persons in the civil process by the principle of proportionality emphasized by Eli/Unidroit. according to rule 5.,(1) The court must ensure that the dispute resolution process is proportionate. (2) In determining whether a process is proportionate the court must take account of the nature, importance, and complexity of the particular case and of the need to give effect to its general management duty in all proceedings with due regard for the proper administration of justice. (ELI/UNIDROIT, 2021).

For the social sustainability of modern social relations, there is a need for a procedural concept focused on the interests of all members of society, ensuring a common goal of law and justice in general - justice and equality. Therefore, it is advisable to introduce civil procedures with social content. The social principle involves the creation of equal opportunities for vulnerable persons to protect their rights under equal conditions with others, which does not necessarily mean the victory of the strong. The introduction and development of this concept may become the starting point of justice.

It should be noted that social sustainability is considered one of the areas of sustainable development, which is defined as follows: "Social sustainability derives from actions in the main thematic areas, which include the social sphere of individuals and societies, the development of capabilities and skills." In this sense, social sustainability integrates traditional social policy areas and principles such as equity and participation in health-related issues, needs, social capital, economy, environment, and concepts of happiness, well-being and quality of life.(OISD).

In order to make civil dispute resolutions more social, the time frames must be set for civil disputes involving vulnerable individuals. There are no exceptions when discussing vulnerable cases in court. It is advisable to solve these cases promptly, within a month 1 established in paragraph 2 of Article 59 of the Civil Procedure Code of Georgia. Another important step towards accessibility would be the removal of the obligation of payment of state duty for the aforementioned disputes.

Another important issue is the distribution of free legal aid to ongoing civil disputes involving vulnerable persons.

Due to the social role of the civil process, the introduction of the amicus curiae brief in civil proceedings would be a step forward. It should be noted that the existence of an amicus curiae brief in civil proceedings is recommended by the 13th principle of the ALI/UNIDROIT model "Principles of International Civil Procedure". Although the Code of Civil Procedure of Georgia does not provide for amicus curiae brief, in Georgian judicial practice it is already used by the Supreme Court, which can be considered as a positive precedent. The introduction of an amicus curiae brief in civil proceedings would be appropriate because it would lead to the certainty of the procedural status and legal basis of the participants, and, most importantly, would emphasize the importance of social interest in civil proceedings. It would be especially effective for disputes related to the rights of persons with disabilities to submit to the court the opinion of "amicus."

Conclusion

The purpose of this paper was to discuss the role of civil dispute resolution procedures in achieving social sustainable development goals. As the study showed, there are factors in civil procedure approaches that impede these goals. Accordingly, the following recommendations were made for the legislative framework for participating of vulnerable persons in civil processes in terms of social sustainability and ensuring the equality of participation: reduce the state fee in civil disputes, reduce the timing set for the consideration of the case, reduce the time frame set for the consideration of the case, implement amicus curiae brief in civil disputes for ensuring the interests of society before the court and extend free legal assistance.

Based on the above mentioned, it can be concluded that the civil process should be perceived from a social point of view and develop a social approach to disputes with public importance or related to vulnerable persons. This may provide a forecast for the development of the social civil process in the future, which will be useful both for society in general, and for its individual members and will ultimately contribute to the achievement of sustainable development purposes.

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