Summary

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The Role of Procedural Ethics in Accelerating Legal Proceedings

Legal proceedings are a complex phenomenon, with elements that are independent and often contradictory. To resolve such a complex issue, the system as a whole must be understood. In this interactive system, autonomous agents operate within a predefined framework. In legal proceedings, these agents are the judge and the parties to the proceedings, while the framework is the procedural law. This article focuses on one specific aspect of the framework, i.e., procedural ethics, which complements legislation.

To underscore the importance of procedural ethics, in 2016, guidelines for promoting best practices in legal proceedings were developed in Estonia in collaboration with legal practitioners. In creating these guidelines, judges, lawyers, and prosecutors debated their procedural interests, roles, and acceptable methods, ultimately agreeing on a balanced approach to legal proceedings. On the one hand, the autonomy of the parties involved in the proceedings was preserved, while on the other hand, an agreement was reached on when the court should begin to enforce its authority through coercive means (e.g., in matters related to timeliness).

In this article, the authors have made a subjective selection of procedural issues and their ethical solutions. The article examines issues such as the growing number and length of procedural documents, and the passive nature of proceedings. Both of these issues most clearly manifest in the general slowness and costliness of legal proceedings.

Andra Pärsimägi

Resolving Civil Disputes: Can It Be Improved, and If So, How? From the Mirror of Claims to Legislative Change

The question of whether there are current problems in civil procedure that require resolution can be answered both affirmatively and negatively. In the author's view, there is no pressing issue requiring immediate intervention. However, it is time to define the goals for what the procedural system should look like in five to ten years. There are numerous smaller concerns where the procedure could be better organised. The question arises: whose interests should take precedence when identifying and resolving these problems? Among the considerations are public trust in the resolution of private disputes and the justice system as a whole, the satisfaction of parties and their representatives, judges' workload, the state budget, and more.

It would be disingenuous to claim that an optimal solution could equally protect the interests of all. One must honestly acknowledge that in the coming years, 'money will talk', meaning that any plan to change the judicial process and -procedure can only be realised if it is accompanied by savings. However, the foregoing does not preclude dreaming or prevent discussions on the level of ideas.

In this article, the author maps out the goals and tasks of civil procedure, provides an overview of the proposed changes, discusses what aspects of the procedure are problematic, and, finally, presents ideas for potential reforms.

Karl Joonas Kendla

Robot Assistant – a Judge's Tool or a *de facto* Judge?

Although countries are increasingly being encouraged to use artificial intelligence (AI) in the judiciary, the Estonian justice system is far from being at the forefront of the use of AI. At the same time, increasingly powerful AI is infiltrating the day-to-day work of lawyers, and it may not be long before judges have robot assistants working alongside (or even instead of) court officers helping the judges administer justice. At the end of the day, judges are also human beings who must have the opportunity to use technological tools to facilitate their work.

On the one hand, the use of AI in the judiciary can make legal remedies less expensive, expedite court proceedings and unify judicial practice. On the other hand, robot assistants that propose solutions to cases can have a significant impact on the decision-making process of the judge. Given the efficiency and robustness of AI, it may not be easy for judges to critically evaluate the recommendation of a robot assistant. The use of robot assistants therefore raises the question of whether a robot assistant remains a mere tool, or whether it will become an unobtrusive "judge" behind the scenes. This is in turn a question of the independence of the judge, this time not from the executive branch or the parties to the proceedings, but from the computer.

Considering the above, the purpose of this article is to examine the extent to which the use of robot assistants in civil proceedings is compatible with the principle of the independence of the judge, which is to be regarded as one of the fundamental principles of the judiciary. The author makes recommendations on how to safeguard the independence of the judges when using robot assistants.

Maris Kuurberg

The Impact of Civil Cases Decided Under Simplified Procedure on the Workload of Circuit Courts of Appeal

In legal circles, there is an ongoing discussion about whether and to what extent the workload of courts in Estonia could be reduced by improving legal proceedings, either through changes in legislation or practice, while still safeguarding the constitutional right of every individual to seek judicial protection and appeal decisions from lower courts.

One of the topics that has been debated is whether the broader use of the simplified procedure in civil proceedings could contribute to a more economical handling of cases. Although the examination of civil matters under simplified rules is only possible in first-instance courts, the court of appeal has the authority, under certain conditions, to refuse to accept an appeal in such cases. The aim of this article is to address the handling of the simplified procedure cases in circuit courts of appeal and to assess whether, and to what extent, the existing regulation could be interpreted more broadly or amended in such a way as to help reduce the workload of appellate courts without compromising the right to appeal.

The article firstly discusses when courts may apply the simplified procedure regulations. Secondly, it examines the obligations arising from the European Convention on Human Rights and Fundamental Freedoms that are relevant to simplified procedure. Thirdly, the article analyses the rights of circuit courts of appeal to refuse to accept an appeal in simplified procedure cases, including evaluating the grounds for such refusals and how the refusal must be formalised. Finally, the article briefly addresses the substantive examination of simplified procedure cases in circuit courts of appeal.

Allar Nisu, Marek Soomaa

The Most Time-Critical Stage of Pre-Trial Criminal Proceedings: Realisation. A Technical Task or a Legal Gauntlet?

The term *realisation* is not used within the Code of Criminal Procedure. It is not a legal term per se. According to the Estonian spelling dictionary, *realisation* refers to the execution, implementation, or fulfilment of something. Despite not being a formal legal term, the concept of *realisation* is commonly used in criminal proceedings.

As a term used within criminal proceedings, *realisation* encompasses a wide range of legal institutions relating to pre-trial procedures. It is an umbrella term that summarises a series of planned actions taking place within the pre-trial stage, which either follow one another in quick succession or run concurrently. Realisation typically begins with the detention of an individual as a suspect, followed by the presentation of their rights. This is often followed by the execution of a search and the seizure and storage of any evidence discovered during that search. The questioning of key witnesses during the detention of the suspect is also included within realisation. The specific plan and tactics of realisation are determined by the particulars of the individual criminal case.

In practice, there is a noticeable trend where the procedures carried out during realisation are not always clearly defined. Those conducting pre-trial investigations often encounter, and rightfully so, questions on how to execute particular actions in a manner that ensures their legitimacy.

This article thoroughly analyses the key institutions associated with realisation: detention of a suspect, the presentation of rights (including the declaration of rights), search procedures, and the right to meet and communicate with criminal defence counsel during detention and searches.

Laura Aiaots

Are Large Data Sets a Goldmine of Evidence or the Downfall of Criminal Proceedings?

The identification of factors hindering the effectiveness of criminal proceedings and the development of more efficient regulations has been at the centre of discussions for several years. As a result, a draft amendment to the Code of Criminal Procedure has been prepared, aiming to make court proceedings more flexible, and ensure faster and more rational resolution of criminal cases. At the 38th Estonian Lawyers' Days that took place in the autumn of 2024, discussions were held on the factors influencing the duration of criminal proceedings, with a particular focus on the impact of large data sets on the length of criminal proceedings.

The Code of Criminal Procedure does not contain separate provisions for the examination of data stored in computer systems or its use as evidence. In the case-law of the Supreme Court, the analysis of data in computer systems and the extraction of significant evidential information has been treated as an observation. The following inevitable questions arise: Does observation even suffice for actions involving large data sets? What other possibilities does the Code of Criminal Procedure offer, and how do the planned amendments to the Code of Criminal Procedure contribute to the better handling of large data sets? To address these questions, this article analyses the procedural acts through which information from computer systems may reach investigators, the extent to which computer systems may be searched, the challenges associated with understanding observation protocols, and at what stage of the proceedings conclusions and explanations on the information in the observation protocol may be presented.

Meris Sillaots

The Role of Criminal Defence Counsel in Pre-Trial Criminal Proceedings

A criminal defence counsel is obliged to use all legally permissible means and methods to defend the interests of the person they represent during pre-trial proceedings. The duties of the criminal defence counsel in pre-trial criminal proceedings are regulated in the Code of Criminal Procedure, though in relatively concise terms. In addition to the Code of Criminal Procedure, the criminal defence counsel must adhere to the provisions of the Bar Association Act and the Code of Ethics of the Estonian Bar Association in their professional activities. Several questions relating to the role of the criminal defence counsel remain unanswered both in practice and theory.

This article examines the principles and requirements of the actions of criminal defence counsel in pre-trial proceedings. It particularly addresses the question of how the criminal defence counsel should exercise their rights during the pre-trial proceedings. Attention is also given to the obligations of the criminal defence counsel. Furthermore, the article clarifies the general boundaries of the legal advice that the criminal defence counsel may provide to the person they represent.

Gea Lepik

The Collection of Documents and Information with Court Assistance in Intellectual Property Infringement Cases. An Illusory or Real Possibility?

In intellectual property infringement cases, the rights holder often requires information and documents, which are in the possession of the opposing party or a third party and to which the rights holder does not have access. This is essential for identifying potential infringers, effectively terminating the infringements, and making financial claims. To ensure that rights are not left unprotected, the Code of Civil Procedure provides for various mechanisms for obtaining court assistance in collecting evidence and information. Moreover, Directive 2004/48/EC of the European Parliament and Council on the enforcement of intellectual property rights sets out specific rules for the collection of evidence and information in intellectual property infringement cases, which must be considered in the application of Estonian law.

Prompted by the 9 June 2021 Order of the Supreme Court in civil case 2-17-7899, this article examines the real possibilities available to rights holders for obtaining documents and information with court assistance in intellectual property infringement cases. The author's objective is to determine whether these procedural rights are genuinely and sufficiently secured for rights holders in Estonia or whether, due to various restrictions and exclusions, their existence is merely an illusion. To this end, the author explores the conditions set for obtaining documents and information from the opposing party or a third party, critiquing certain views expressed by the Supreme Court in civil case 2-17-7899. Additionally, the article examines the grounds for refusing to provide information and documents, as well as the consequences of non-compliance with court orders, as these significantly affect the effectiveness of the procedural measures in question. Throughout the analysis, the article also evaluates the alignment of Estonian legislation and case-law with Directive 2004/48/EC and the established case-law of the Court of Justice.

Tambet Tampuu

The Case-Law of the Supreme Court in Cases Concerning the Review of Judicial Dispositions that Have Entered into Effect in the Context of Default Judgments

This article analyses the case-law of the Supreme Court concerning the review of default judgments in civil proceedings since 1 January 2006, when the Code of Civil Procedure entered into force.

In accordance with subsection 702 (1) of the Code of Civil Procedure, where new facts have come to light, the judicial disposition that has entered into effect in the case may be reconsidered on petition of a principal party in action-by-claim proceedings in accordance with the rules for review of judicial dispositions that have entered into effect. In action-by-petition proceedings, the review of judicial dispositions that have entered into effect will take place on petition of a party to the proceedings or another person who should have been added to the proceedings by the court when dealing with the case. In subsection 702 (2) of the Code of Civil Procedure, there is a list of the grounds for review of judicial dispositions that have entered into effect, of which the Supreme Court has only assessed the applicability of clauses 702 (2) 2) and 3) in cases of reviewing default judgments. In clause 702 (2) 2) of the Code of Civil Procedure, it is established that the grounds for review of judicial dispositions that have entered into effect of a court decision may be that a party to the proceedings was not notified of the proceedings in accordance with the law, including situations where the party affected by the disposition was not served the statement of the court claim, or the party was not summoned to court in accordance with the law. In cause 702 (2) 3) of the Code of Civil Procedure, it is established that a final court decision may be reviewed if a party to the proceedings was not represented in the proceedings by a person who had the authority to do so although the decision was made in respect of the party, unless the party has ratified their representation in those proceedings.

The purpose of this article is to highlight the contradictions and gaps in the case-law of the Supreme Court, discuss the potential interpretations of the law, and assess whether any provisions should be clarified or amended.

In memoriam. Endel Ploom 13.05.1935–09.01.2025