**Journal of Business and Economics, ISSN 2155-7950, USA**
**September 2020, Volume 11, No. 9, pp. 1065-1080**
**DOI: 10.15341/jbe(2155-7950)/09.11.2020/008**

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# The Meaning of the Preparatory Hearing for Efficiency of the Civil Procedure

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**Abstract:** The article is devoted to the instruments useful for the efficiency of the civil procedure and in this scope author analyzes the important role of the preliminary case hearing proceedings, as well as describe the importance of this procedural stage to achieve the main purposes of the civil procedure. The preliminary case hearing is important to find out the main object of discussing of litigants, clarify and decide other procedural issues of the case, as well as to offer for litigants to solve the case with the settlement agreement. The preliminary procedure is under the conduct of judges own vision and there are no possibilities for litigants to change it. The author detects the existing problems in Latvian civil procedure law regulation relating to preliminary proceeding stage and judge role in this stage and clarify that in Latvia's civil procedure, the preliminary case hearing and preparing stage is not in use and judges do not obey to this rule excusing oneself with the base principle of the competition of litigants. According to the author's point of view, this is negative aspects which have a direct influence on the possibility to find the truth and made correct judgment. For research reasons, the author analyzes the historical development of the civil procedure and general ideas important for judge role of the preparing stage of the case and experience and law regulation of the foreign states such as Lithuania, Slovakia, Czech Republik, Italy and Russian Federation. For researches, the author has used analysis and comparative methods and gives the author's own assumptions.

**Key words:** civil process; efficiency of process; preparatoy hearing; role of judge
**JEL codes:** K4, K41

## 1. Introduction

The procedural economy and the speed of the process are the purposes for which amendments to the Civil Procedure Law of the Republic of Latvia are made. This trend has been going on continuously and with increasing intensity (according to the author) for about the last ten years. The novelty of the legislature in civil proceedings is that they — shorten deadlines, disregarding deadlines for delivery of items sent by postal services; for example, Chapter 15, Article 93 (3), Chapter 20, Article 148, Chapter 30.$^{4}$, Article 250.$^{32}$ of the Civil Procedure Act exclude the possibility of appeal against procedural decisions (Civil Procedure Act 1999, Sections 11, 81 and 83). Article 15, Section 93, Part 3.$^{3}$, Section 56, Section 455], provides for a written hearing (Civil Procedure Act 1999, Section 30.$^{3}$, Section 46.$^{1}$, Section 363.$^{15}$, Section 55, Section 447, Section 73, Section 613), it should be noted in

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this example that the written procedure is not considered to be an appropriate way of conducting civil proceedings, for example, sworn attorney G. Zemribo in an article "What's going on in the courtroom: the speech of all parties in the performance of the parties and the judge" shall be followed by "*(...) unfortunately, the importance of court speech is now diminishing. I believe that we are not learning from the best examples, we are striving for 'faster, faster', through the written process. I have a very negative view of the tendency that our processes are increasingly contaminated with written processes. First, there is a contradiction in the term itself. How can there be a process without a process? The written procedure takes place without a hearing. How can there be a court without a hearing? In all court history since the ancient world, the opposite is true. There has always been a judge behind the table and the audiatur et altera pas principle (hear the other side)* (..) (Journal The Lawyer's Word, 21.06.2016/255 (928), 18), as well as the amendments introduced from 2019, significantly restrict the right of a person to choose a representative for civil proceedings (Civil Procedure Law, 1999, Article $82^1$), provides for the case to be adjudicated on the merits in only one court instance (Civil Procedure Act 1999, Chapter $30^4$), severely impedes the right of a person to lodge an appeal in cassation, inter alia, because of improper, contradictory regulation of the law, namely Section 56, Section 458 (1) and Section 4 of the Civil Procedure Act in conjunction with Section 453(6). Similarly, the amendments to the law increase the level of procedural sanctions, which is characterized by disproportionality (Civil Procedure Act 1999, Chapter 9, $73^1$ Part 1 and Chapter 15, Article 93 ($3^3$)), it should be emphasized in this example that the Civil Procedure Law does not specify how and when the applicable procedural penalty will be collected, so it is unclear — in the event of a penalty being imposed, for example, for the untimely submission of documentary evidence (Civil Procedure Law, Chapter 15, Article 93, para 3.3) the trial will continue, but the court will impose a penalty by protocol order to be paid later and the evidence will be admitted or the trial will be deferred, the late evidence will be added to the case only after the penalty has been paid.

Consequently, the overall trend observed is a reduction and/or limitation of the procedural rights of persons who are suing (hereinafter referred to as "ordinary courts") or are called as parties to the proceedings, and the *transfer* of responsibility for the proceedings only to a person with a common goal — the speed of the proceedings and the relief of the court, as exemplified by Article $32^1$ of the Civil Procedure Law, which may be referred to a court geographically distant from the litigants' domicile or property, and thus all travel expenses to and from the court, the time consumed increases significantly, but the litigants' access to the file, which is the lawyer's right under Article 74 of the Civil Procedure Law, is considerably encumbered, for example, when a case from Riga is sent for consideration to Liepaja, Daugavpils or Rezekne. It should also be noted that this decision is not open for challenge by the litigants and cannot be requested to return the case to the court which initially accepted the action.

The speed of the process, which focuses solely on restricting or depriving procedural rights, or increasing procedural sanctions, may, in the author's view, lead to formalism in the handling of cases and the disbelief of individuals in the establishment of a fair trial institution as such.

As shows Dr.habil.iur Kalvis Torgan's article "Civil Process: In Development with Endless Additions" [Journal The Lawyer's Word, 07.11.2017/No.46 (1000), 100-101] and the explanations therein about the many changes that have taken place in the civil process over time, judicial burdens were at the heart of most of the amendments made to civil proceedings. It is also clear from that article that the legislature intended to amend the lawsuits against a majority of the litigants who were, *a priori*, accepted as *being dishonest.* Of course, many of the changes in civil procedure are also based on the necessity to introduce European Union norms into Latvian

legislation, incl. Civil Procedure Law, but this is a separate section that the author will not address here.

The author's long-term observations in practice (over a period of more than ten years) show that understanding of the civil procedure in Latvia is developing, assuming, by its very nature, a detrimental tendency, namely that the burden of responsibility for the conduct of civil proceedings is being shifted entirely to the litigants, effectively excluding the judge from the proceedings, especially at the case preparation process, since proper preparation of the case is practically impossible without the active participation of the judge.

The author assumes that the emergence of such a tendency is linked to a misunderstanding of the adversarial principle, which logically leads to the conclusion that the judge only accepts the role of a passive observer.

Here the author wishes to make it clear that she does not deny the substantive importance of the adversarial principle in civil proceedings and the liability of litigants as such, but that the tasks of the court in civil proceedings are not limited to the parties to the dispute; assuming that it depends solely on the parties to the dispute itself, recourse to the courts would be irrelevant since the parties to the dispute would be resolved without the involvement of the court, i.e., with the methods that would seem more appropriate to them every time. As a democratic state is based on law and order, the involvement of an independent tribunal in the settlement of disputes is directed towards the fair settlement of the disputes that arise, where the judge cannot remain merely in a role of an observer. In the author's view, civil proceedings do not provide the judge with merely an observer's role, which is determined, inter alia, by Article 17 of the Law "On Judicial Power" and the duty of the court to establish the objective truth, ascertain facts and examine evidence.

The Civil Procedure Act imposes certain duties on the judge and they are very specific, and the period of their execution is clearly defined by law (Civil Procedure Act 1999, Sections 149 and 149[1]), consequently, the section of the proceedings that are dealing with the preparation of the case — is the responsibility of the judge and, depending on the degree of attention the judge has devoted to the preparation of the case, increases the ability to deal promptly and effectively with the dispute, and the goal is — to reach the objective truth and justice, which is known to be the goal and purpose of the process, because not only the speed of the process plays a decisive role. Thus, the speed of the proceedings and the proper handling of the case are closely interrelated procedural elements that interact, but at the same time they have completely opposite internal content.

In the author's view, the legislator's exaggeration of prohibitions, penalties and disqualifications in civil proceedings has left an important procedural tool without effective enforcement, it being — a preparatory hearing, which has to be organized by the judge not the litigants. The preparatory court hearing was introduced in the Civil Procedure Law in 2003, although before that the Civil Procedure Law provided for the right of a judge to perform preparatory actions and to invite the parties to come to inquire about the merits of the case and conclude a settlement (Civil Procedure Law, 1999. Section 148 ed. 7.01.2001). Consequently, it is the responsibility of the judge to prepare the proceedings for the period following the admissibility of the application and after receipt of the defense (or the expiry of the time-limit for its submission). For comparison, it should be noted, for example, substantial changes in the legislation of the Slovak Republic regulating civil procedure, related to the process of preparation of the case, were adopted on 21 May 2015 by Act no. 160/2015 "The Civil Code" for Adversarial Proceedings (Slovak-Civilný sporový poriadok), and only with these modifications, as of July 1, 2016 does the Slovak Civil Procedure Act provide for preparatory hearings in which parties and others involved individuals are invited and in the framework of which the court seeks to settle the case by amicable settlement and, if possible, to resolve the matter at the preparatory stage. It is also intended that, at this stage of the proceedings, the judge advises the litigants as to which evidence the court considers relevant and irrelevant in the particular dispute.

Conversely, a litigator who is duly summoned to a preparatory hearing but fails to appear for unjustified reasons may lose the case. The amendment introduces a time limit for litigants to adduce evidence, and the court no longer admits new evidence after the expiration date, thus regulating that during the trial no new evidence which the litigator would like to add to the case, will appear, justify his position. The author would like to emphasize that the Latvian Civil Procedure Law has, for a long time (since 2003), contained a regulation which gives a judge wide powers and possibilities to prepare a case for review, among other things it is an opportunity to determine and hold a preliminary hearing to obtain further explanations and evidence (Civil Procedure Act 1999, 149 and 149[1]).

Certainly, the lodging and adjudication of an application and the receipt of explanations from the defendant do not necessarily mean that the case is sufficiently prepared for review and there is does not mean that there are no procedural issues, requests to be adjudicated, nor does it mean that sufficient or appropriate evidence has been submitted. Conversely, it is for the judge to determine whether what the parties have pleaded and answered the necessary whereas the judge shares the appraisal function and this function arises from the first paragraph of Article 97, Article 94 and the first paragraph of Article 95 of the Code of Civil Procedure. Based on the foregoing, the author wishes to emphasize in this work that the long-term changes do not provide the speed and efficiency of the Civil Procedure process, by their very nature, since the preparatory phase of the case is missed and is not complied with by the judge (further discussed in the next section of the paper), therefore, disciplining litigators with procedural sanctions has a superficial and formal meaning that does not guarantee the preparation of the case for trial nor does it help the judge to determine the objective truth. The author wishes to give another perspective and importance to the role of the judge in civil proceedings precisely in terms of ensuring the speed and efficiency of the proceedings. The Civil Procedure Law, by its construction and the division of the relevant stages of the proceedings, indicates that the judge, not the litigants, plays an important role in the stage of the procedure prescribed by law for the preparation of the case. In this case, the litigants must perform the duties of a judge as determined. Foreign researchers, who have turned their attention to *post-Soviet* countries and their analysis of the laws regulating civil procedure, including those currently in force in the Baltic States, indicate that in the Estonian and Latvian processes it is not clearly separated, when the preparatory process for a civil case begins directly, and in fact it is reasonable to think that it lasts all the way up to the main hearing (Ervo L., Nylund A., 2016, pp. 144-145, 157). It is also noted that the pre-action stage in the civil proceedings of the Baltic States is not the same among them, however, the laws governing the Baltic civil procedure do not provide for preparatory actions such as — the obligation to present all evidence to the court immediately (the so-called *sua sponte* principle), the mandatory mediation procedures before bringing a lawsuit (Ervo L., Nylund A., 2016, p. 145). The author will return to quotes from the work of these foreign authors in the following chapters of this article, however, regarding the conclusions of those authors, that the beginning of the preparation process is not regulated by the Latvian Civil Procedure Law, that the beginning of the preparation process is not regulated by the Latvian Civil Procedure Law, the author wishes to object by stating that the commencement of the preparatory process is governed by the Civil Procedure Law and is specified in Section 149, Paragraph one of the Act. At the same time, the author agrees that the end of the case preparation process is not explicitly stated in the Civil Procedure Law, although it follows from the general structure of the law, governing the preparatory acts, that they should end on the date which the judge sets (Civil Procedure Act 1999, Article 149, paragraph 7), while considering the provisions of Article 93(3) of the Civil Procedure Law, after the judge has appointed a date for the merits of the case.

Concluding the introductory part of the thesis, the author notes that the thesis uses laws and regulations, explanations in the legal literature and opinions on the efficiency of the process and the rights of the person and the role of the judge in the process. The issue is not particularly addressed in Latvian legal literature; the author believes that this issue is important for promoting an understanding of the structure of civil procedure for facilitating its operation and putting into practice an existing but little used procedural tool. The work uses historical, analysis, synthesis and comparative methods.

## 2. Preparatory Hearing — A Means of Ensuring the Efficiency of Proceedings

In history, we see that the role and importance of the judge in civil proceedings and the extent of the judge's involvement were debated well before World War II, and it is already recognized that the adversarial principle and the dispositional principle of justice may even be opposite.

For example, prof. V.Bukovskis points out that the principle of rivalry is valid where both litigants are equally strong and equally trained (Bukovskis V., 2015, p. 236), and more importantly, the fact that t.s. During "the first" Latvia, the Saeima granted the civil court greater opportunities for self-employment. V. Bukovski points out the following: "*(...) The Saeima of Latvia, following some of the theses of the said commission, but also partly of the procedural laws of Germany and Austria, has granted the civil court considerably greater powers of self-employment and initiative by: (a) requiring the court or tribunal to request certain explanations from the parties regarding any circumstances which are not clear to the court; (b) enabling the court at any time to request the personal appearance of the litigants in order to clarify the uncertain circumstances; (..); (c) granting the right to declare that a party who did not appear at the summons and did not give the necessary explanations to contest the claims of the other party ...; (d) requiring the court or tribunal to give the parties the opportunity to comment, even on matters which the court or tribunal must determine of its own motion, without awaiting the instructions of the party (...)*" (Bukovskis V., 1933/2015, p. 239). The Institute for the Preparation of Cases has historically evolved in civil proceedings, with the idea of greater involvement of the judge in clarifying the nature and circumstances of the dispute. The preparatory trial, which is currently within the framework of civil proceedings, and the tasks and duties of the judge, which it sets out, are a means by which the process can be successfully conducted, while achieving two important objectives — speed of the process and correct judgment. Looking at the 1939. edition of the Civil Procedure Law, it can be seen that there is no preparation stage of the case as such and the judge may request written explanations (Civil Procedure Law, 1939, p. 417), as well as, after the time limit for their submission has finished, the hearing can be determined (Civil Procedure Act 1939, §422), the emphasis is on the information provided to the court in oral proceedings, which the court accepts for consideration. It should be noted that in complex cases the civil procedure provided the judge with the possibility of requesting further written explanations, notwithstanding that they have already been filed and irrespective of the given oral explanations, whereas the unclear or uncertain explanations may be required to be explained (Civil Procedure Law 1939, §438, p. 440).

From this it can be concluded that the cognitive and inquiry function does exist, although it does not take the form of a special preparatory stage and is not intended to clarify the actions of the judge before initiating proceedings, however they may be exercised during the proceedings.

The author would like to point out that the understanding of the necessity and importance of the preparatory actions of a judge for the correct and timely consideration of the case in the legal literature is already outdated.

For example, in the commentary of the Civil Procedure Law issued in 2001, i.e., before the Civil Procedure Law Amendments to the Law Enacting the Preparatory Session, in the comments prepared by the prof. K. Torgans and M. Dudelis regarding Section 148 of the Civil Procedure Law, state: "*(...) The preparation of a case for trial is an ongoing stage of the proceedings, the main purpose of which is to ensure that the case is dealt with in a fair and timely manner, as well as the possibility for the parties to exercise their procedural rights and to prepare for the trial in due time. The chapter regulates the procedural steps that are sufficiently clear and comprehensible and must be carried out by the judge in preparing the case for trial. (...)*" (Torgans K., Dudelis M., 2001., p. 162). In this context, it should be emphasized that the preparation of the case is explained as a separate procedural step and the author fully approves of it, as it is undoubtedly a result of the structure of the civil procedure and the rules governing the procedure. At the same time, the author emphasizes that in today's reality, judges and litigators have moved away from this crucial task of a judge — the process of preparing a case. For example, practice shows that preparatory court hearings are rare, in the author's own experience only one preparatory court hearing was held during past five years, in 2014 (Civil Case No. C04128314), it was held to rule on the question of jurisdiction, but this decision was appealed and set aside. It should be noted here that the question of jurisdiction would not really be raised at the preparatory hearing, since the consideration of this issue does not fall within the scope of Article 148 of the Civil Procedure Law - as an action to be taken during the preparatory stage of civil proceedings. The author attends approximately one hundred hearings a year as a representative, while the other lawyers who are active in the practice are familiar with the day-to-day experience of preparing cases, the author asked questions to several lawyers, incl. attorneys-at-law, she received answers, that preparatory hearings are rare, however, they are in most cases used in labor disputes cases, as well as in cases involving family law disputes. It should also be noted that the duties of the preparatory court and the judge related to the provision of evidence and/or explanations, as well as the deadlines set for them are useful for speeding up the efficiency and effectiveness of the proceedings, as they are subject to the control of the judge and, in the event of failure to observe these deadlines, the right to perform procedural acts is lost (Civil Procedure Act 1999, p. 49). Failure to comply with the obligations imposed by the judge to prepare the case for trial, incl. in the context of a preparatory hearing, gives reason to believe that the participant in the proceedings has refused to comply with it, being aware of the procedural consequences involved, marked by a publicly available and anonymous judgment in Civil Case C10045112, held in 2013, which held a preparatory hearing and explained to the defendant the burden of proving his objections, as well as setting procedural deadlines that were not respected. The failure to fulfill obligations as explained, at the preparatory stage, as well as the failure to fulfill obligations may be accepted by the court as a waiver of these acts and used accordingly as an argument in further proceedings on the merits. The second aspect, which is important in the above context, is that the law defines the steps to be taken by the judge to prepare the case, so the statement that the judge is only an observer in the proceedings could not be supported. The judge, in preparing the case and deciding on the procedural issues involved, performs a function, which is absolutely necessary for the proper adjudication of the case, as well as to ensure that the parties enjoy the same procedural rights, therefore, these rights cannot be restricted to a judge, referring to the principle of the parties' competition and disposition, otherwise it will be difficult for the judge to ascertain the objective truth, to settle the dispute in a fair and conscientious manner. The author would like to emphasize that in the Civil Law Comments, issued in later years, commenting on Section 149.[1] of the Civil Procedure Law on the preparatory session, shows the predominance of the adversarial principle and the court's role of the observer, which has been illustrated by the commentary on the article: "*(...) The position of the judge is complicated by the fact that the merits of the case*

*must be determined by the parties in a hearing in which the court is primarily an observer and an assessor. Therefore, judges have some concerns that instructions to one party could be interpreted as a departure from the adversarial principle, or worse, as a preliminary bias in favor of one party. (..)*" (Torgans K., 2006, p. n241). In the author's view, the above quotation and explanation in the particular section of the Civil Procedure Law, indicates that it is precisely the misunderstanding of the adversarial process and the place of the adversarial proceedings in the civil proceedings that has caused the situation, that the judges are non-conducting preparatory activities, at least not in accordance with Articles 149 and 149[1] of the Civil Procedure, incl. and, in particular, does not hold preparatory meetings, clarify unclear issues and decide procedural issues, so in practice the preparatory stage is missed, but, as procedural issues must be decided and evidence requested, this process will, in practice, take place at the hearing, which is assigned to the merits of the case, thus significantly slowing down the speed of the proceedings. In the author's view, the adversarial principle of the parties cannot be applied to the stage of the preparatory process and to the preparatory hearing, because at this stage the judge is investigating the dispute, that is, by questioning the parties or explaining to the parties the procedural aspects that the court considers relevant to the particular case. For this purpose, the court is free to exercise the rights conferred on it by Article 149 of the Civil Procedure Law. The litigants cannot demand that the court, figuratively speaking, "be in the dark", but still arrive at a fair trial. It should also be noted that the judicial function includes efforts to reconcile the parties as well as to offer mediation. Both of these are important tasks for the judge, because in both cases the litigants can find a reasonable, mutually acceptable solution and terminate the trial. The fact that such a solution is achieved by means of explanations by the judge is not at all considered to be incompetence or inclination on the part of the litigants, but proves that the judge, being a highly qualified professional, was able to convince the parties of the dispute, of the importance of a peaceful resolution of the matter and the effectiveness of such a solution. Public Report of the Ministry of Justice of the Republic of Latvia on the Annual Conference "Current Issues in Civil Procedure" it has been stated: "*(...)By modernizing the Civil Procedure Law, it developed rules that facilitated quicker adjudication. (..) In the course of the modernization of the Civil Procedure Law, great importance was paid to the actions of the judge in the preparation of the case.*" A preparatory meeting is an essential procedural tool for a faster and more efficient and fair trial of cases (Civil Procedure Law 1999, p. 149[1]). In the first paragraph of this article, the law lists those procedural issues that can and should be decided during the preparatory hearing, rather than being addressed during the hearing that the court already designates on the merits. However, the choice of whether to hold such a hearing is a matter of the judge and cannot be influenced by the litigants. It should be noted that civil proceedings do not even provide that any of the parties concerned may make such a request. Consequently, at the stage of the proceedings referred to in Article 149 of the Civil Procedure Law, the litigants themselves cannot influence the course of the proceedings and are left to wait for the judge to act, so there would be no rivalry between the parties. At present, it has become an established practice that the judge deals with procedural issues at the first hearing designated by the court for the merits of the case. This is a well-known fact for any professional in the field. In the opinion of the author, the established practice in the application of the Civil Procedure Law, does not in fact correspond to that prescribed by the Civil Procedure Law. Taking a closer look at the structure of the Civil Procedure Law and the provisions of Articles 149 and 149[1], the author concludes that all relevant procedural issues are to be decided at the stage of the proceedings, preceding the hearing on the merits, namely, litigants have to make them known and ask the court to clarify aspects that are unclear or insufficiently proven, in order to avoid misunderstandings later. The preparation process is also important because each individual's way of thinking and perception is very individual and can lead to mutual

misunderstandings, which can be overcome by additional explanations or dialogue. The tool necessary to decide procedural issues, as well as, to clarify any uncertain issues and to understand the sufficiency of evidence, is provided by law, but in practice there is little or no use. Therefore, in this case, it would not be possible to say that the law is not of sufficient quality, but to address it — whether and how the law is understood or respected and who is responsible for ensuring that the law is observed and properly applied at that stage of the proceedings. In the author's view, responsibility for the proper conduct of the proceedings at the preparatory stage is entirely the competence and responsibility of the judge who prepares the case for consideration, and the views and explanations quoted above confirm this statement. Thus, at the stage when it comes to deciding on the preparation of the case for trial and the matters listed in the third paragraph of Article 149 of the Civil Procedure Law, the case has already been adjudicated in court, which means that it has reached the initial stage of the proceedings and that issues such as — jurisdiction, exemption from dues and consideration of whether all claims required by sections 127-129 of the Civil Procedure Law have been complied with and settled, and if necessary, the issue of securing a claim under sections 137-138 of the Civil Procedure Act has been resolved. Section 149 (1) of the Civil Procedure Act specifically identifies the next stage of the proceeding, i.e., after receiving explanations or after expiry of the time limit for submitting observations, the judge shall prepare the case for examination. In the author’s view, at this stage, the judge as a whole must have a clear idea of the substance of the case, the subject-matter and the basis of the claim, as well as the existance or the absence or lack of evidence, as well as the defendant’s objections and the written evidence in support thereof, unless the defendant has submitted statements and evidence. If the judge has questions for the parties to the dispute, then in this case the fourth paragraph of Article 149 of the Civil Procedure Law requires the parties not only to provide additional explanations but also to provide evidence. In the author’s view, this judge's right is particularly important, not only from the point of view of a more accurate hearing of the case, since the judge, as a professional, must have a clear view of what evidence and what is proved in the particular case (in the judge’s understanding of the dispute in question), and what has to be proved in the present case, and what is already considered to be proved, by the applicable statutory regulation and/or by explanations provided by the parties, however also from the aspect of carrying out the conciliation function of the parties. The judge, being a highly qualified and conscientious lawyer, must not only be able to correctly identify the subject-matter of the dispute, but must also reasonably consider whether and which evidence of the parties corroborates or excludes the other’s allegations. Undoubtedly, mediation between the parties is always the fairest solution for the judge, as it means that the judge has not only been able to prevent further escalation of disputes, has done a professional evaluation of the arguments and objections of the litigants, in conjunction with the rules of law and the evidence submitted by the litigants, but has also successfully explained to the parties not only the rules of the law but also whether and what each of them can or cannot prove in this case. At the same time, by the conciliation, the judge has reached a compromise and can be sure that the litigants will be happy with a speedy resolution of the case, which they both accept as a fair solution. It should be noted that the second paragraph of Article 149 of the Civil Procedure Law states that immediately before the hearing, i.e., during the preparation of the case for trial — the judge seeks mediation between the parties and offers a solution to the dispute. This clearly indicates that the judge must perform the conciliation function of the parties already at the stage of preparation of the case. The conciliation of the parties and the conclusion of the settlement also entail a lift of burden on each individual judge and, more generally, on the court as a whole, which, in the author’s view, has a positive effect on procedural economy in civil proceedings. This effect can be successfully secured and achieved by the judge himself, in a qualified and responsible approach to the performance of his duties under the law, which would be

recognized as a rather proportionate means of relieving the courts, than economic and/or procedural restrictions on litigants, but which by their nature do not speed up the process or improve its quality. Of course, the course of proceedings described above and the order of the cases require a thorough examination of the substance of the case.

Returning to the review and evaluation of the rights of a judge under Section 149 of the Civil Procedure Law, from the point of view of procedural economy, the author considers (as confirmed by observations in daily work) the current practice applied is inconsistent with the law. It should be noted that case law in the form of written procedural decisions is not available for the preparatory stage and therefore cannot be compiled or made available for analysis since the Civil Procedure Law does not provide for a judge in writing, i.e., in the form of a separate procedural document, to make a decision on the organization of the preparatory meeting. Similarly, the law does not require the judge to inform the parties in any way about the commencement of preparatory actions for the hearing of the case, as the Civil Procedure Law does not require such actions either. Similarly, the law does not require the judge to inform the parties in any way about the commencement of preparatory actions for the hearing of the case, as the Civil Procedure Law does not require such actions either. Pursuant to the court's obligations under Article 149 of the Code of Civil Procedure to prepare the case for review, if the judge orders a hearing and sets time for the review of the merits of the case, then, in accordance with Article 149(7) of the Civil Procedure Law, the judge has ruled that a preparatory hearing in the case is unnecessary because Article 149(7) of the Civil Procedure Law reads as follows: *If a preparatory hearing is not required, the judge shall determine the date and time of the hearing, the persons to be summoned. (..).* From this we can conclude that if the judge sets the date and time of the hearing, the judge recognizes that a preparatory hearing is not required, thus, there is no need to carry out any of the activities referred to in the second to fifth paragraphs of Article 149 of the Civil Procedure Law for the preparation of the case. At the same time, it can be concluded that if these matters are decided at a hearing set for adjudication on the merits of the case, the judge, by setting the date of the hearing under Section 149, Paragraph seven of the Civil Procedure Law, has failed to fulfill its obligations under Article 149, paragraphs 1 to 5, of the Civil Procedure Law. Under these circumstances, the litigants can not be accused of obstructing the process and requesting the taking of evidence, the summoning of witnesses, the determination of expertise, and other procedural requests being made at the hearing on the merits of the case, since the judge himself considered that no preparatory steps had to be taken during the preparatory phase.

Of course, this issue cannot be dealt only from one side, since Article 149 of the Civil Procedure Law and the procedure for preparing a case are not “implemented” in practice, and the current course of proceedings is in fact completely contrary to Article 149 of the Civil Procedure Law, therefore, the result is unprepared and sluggish processes, because in the course of the proceedings, procedural issues, adjournment, preparation of evidence, etc., are being decided. It is not explained to litigants that, before the review of the substance of the case, there is the first preliminary stage in the proceedings, in which all procedural issues, including unclear or unproven allegations/explanations, etc. have to be resolved, but also the judges do not make the effort at the preparatory stage of the case — they do not ask questions to the parties, do not point to unproven allegations, lack of evidence, etc., which is actually required in the preparatory stage. The next logical result is a relatively lengthy process or the case is not properly prepared and is just formally dealt with, which in this case already leads to a completely different result, i.e., distrust of individuals in the judiciary system and its ability to legitimately, reasonably and, above all, qualitatively resolve civil disputes between individuals. The author has already pointed out that such an approach is based on the notion that the court has an *observer role*, but that, even if the court were at the

substantive stage of the proceedings, it could not be required that the court would be an observer, because then it cannot be admitted that the requirements of the law for the preparation of the case have been fulfilled. It is logical that the judge will not carry out the preparatory work required by Article 149 of the Civil Procedure Law and will not be active in preparing the case for consideration if the judge has the role of observer. The observer has no responsibility for the progress of the process, the observer is on the sidelines, so it is unreasonable to expect the observer to be actively involved in the process or to have any interest in the process. The fact that the assertion or assumption about the role of the judge as an observer is not really correct, is confirmed by Article 149 of the Civil Procedure Law itself, which states that the judge is the one who prepares the case for trial and not the litigants. It is the judge who, having examined the case, decides what evidence is or is not admitted and what remains to be determined in the case, the judge he is entitled to request further explanations from the parties and ask to submit evidence. It is the judge who sets the time-limits for carrying out the prescribed procedural steps and thus foresees the approximate duration of the proceedings. If, on the other hand, a judge has an *observer role*, he or she is not expected to be interested in anything that has been mentioned above. It should be noted that the *role of an observer* is incompatible with the duty of the judge under Article 17 of the law "On Judicial Power" — to ascertain the objective truth. Finding out the objective truth implies a set of actions aimed at achieving clarity. On the other hand, there is no obligation for an independent observer to do anything to bring clarity. These are the essential differences that the author wishes to highlight, and which exist between the passive observer and the person who has certain functions in a particular process, with certain responsibilities and duties. According to G.Sniedzite's work "Judicial Rights. Concept and Meaning in the Doctrine of Sources of Latvian Law" it is stated: "*(...) The role of each court in modern democracy is to administer it in the light of the following three principles: (1) to solve each case coming within its jurisdiction; 2) to settle a case on the basis of law (rights); 3) to reach a fair solution to the case; (..)*" (Sniedzite G., 2013., p. 266). Taking into consideration the before mentioned, in conjunction with Article 149 of the Civil Procedure Law, it must be concluded that a judge is not an independent observer but a person who, in a professional case, deals with the preparation of the case, and shall also take steps to bring the parties of the dispute before a conciliation. This also follows from the principles recommended for application and implementation by the Council of Europe in its Recommendation No. R (84) 5 of the Committee of Ministers to the Member States and where Principle No. 1 stipulates that the trial must take place in no more than two hearings, one of which is a preparatory hearing, the other of which is devoted to the examination of evidence, the hearing of arguments and, if possible, the judgment on the case. In turn, Principle No. 3 requires the judge to play an active role, at least in the preparatory hearing, but preferably throughout the proceedings, in order to facilitate the expeditious course of the case, while respecting the rights of the parties; including the right to equal treatment, the judge must, inter alia, have the right to propriu motu, in order to impose obligations on the parties to submit the necessary explanations and to request evidence, to order the parties to appear in person, etc. At the same time, these principles are formulated, in regard of the Recommendation that civil proceedings should be simpler, more flexible and faster. The principle of effective judicial protection of the rights is also contained in the Charter of Fundamental Rights of the European Union, which states in Article 47: "*(...) Any person whose rights and freedoms, guaranteed by the law of the Union, are violated has the right to an effective remedy under the conditions set out in this Article. Everyone has the right to a fair, transparent and timely hearing within an independent and impartial tribunal established by law. Everyone has the right to consultation, defense and representation.*"

In the author's view, Section 149 of the Civil Procedure Law, in practice is very important and necessary

because it will not only greatly facilitate the work of judges and courts as a whole, but will also help litigators to set boundaries for the realization of the race and assess their ability to fight and understand — whether and what evidence is available to each litigant in support of his or her arguments and allegations, and what the court's attitude is towards them. The author wishes to emphasize that the judge's treatment of the claim and of the defendant's counter-arguments is very important, since litigants in the proceedings should not have to deal with guessing — whether they have submitted all evidence and answered all possible questions, which the judge might encounter as this is not the purpose of the proceedings, given that the judge has a duty to ascertain the objective truth, so the judge as the person adjudicating the case must indicate its boundaries and those questions which the judge deems necessary to answer and/or prove in this case, in other words, the limits of the race. The author wishes to emphasize in particular that the understanding of the race and the process itself can be infinite without defining its limits. The judge should indicate what he considers to be relevant to the case, in conjunction with the requirements of the law. The judge should indicate what he considers to be relevant to the case, in conjunction with the requirements of the law. Such conduct by the judge would not compromise the judge in any way, would not violate the Civil Procedure Law and the principles applicable to it, nor would it diminish the credibility of the judge in terms of independence, integrity and accountability, because the careful and professional treatment of the case, would be demonstrated by requests and instructions made and signed by the judge under the fourth paragraph of Article 149 of the Civil Procedure Law, could not be attributed to the judge's loss of independence, but to present the judge as a high-end professional and knowledgeable. The fact that the judge is entitled by law to draw the attention of the litigants to the lack of evidence, as well as to request such evidence from the parties, is proved not only by Article 149 (4) of the Civil Procedure Law but also by Article 93 (4). Admittedly, the procedural stage of the case and the significance of the preparatory hearing must also be considered in the sense that the judge assesses the evidence submitted by the parties, as well as the written and oral explanations, according to the criteria contained in Section 97, criteria outlined in Paragraph one, incl. their internal convictions, which are based on evidence which has been comprehensively, completely and objectively verified at the hearing, so that the judge cannot remain merely an observer in order to gain internal conviction and understanding of the substance of the dispute.

## 3. Preparatory Hearing in Foreign Civil Proceedings

According to explanations in foreign legal scientific literature regarding the preparation of the case and the actions of the judge in this stage of the proceedings, for example, the explanations to the Code of Civil Procedure of the Russian Federation it is stated that the preparatory stage of the case is a separate procedural stage, which follows the admission of the case and is carried out by the judge alone in order to prepare the case for a timely hearing. It is also stated that these steps must also be taken to enable the case to be dealt properly and that, at this stage of the proceedings, the parties and the court cooperate to determine the subject-matter of the dispute, i.e., a set of facts which are of legal importance and must be proved to the parties, but if the parties to the dispute are in error as to the facts which are relevant and must be proved, it is for the court at this stage to explain to the parties, what has to be proven, as well as the requirements of substantive law (Treushnikov M. K., 2001, pp. 269-271). On the other hand, according to comments to Article 150 of the Code of Civil Procedure of the Russian Federation, which prescribe the actions of the judge for the preparation of the case, it is emphasized that at this stage the judge decides on possible third parties without standing claims, the replacement of the false defendant in the case

*(author's note: in Latvia, civil procedure does not provide for the replacement of a false defendant, but the Code of Civil Procedure of the Republic of Lithuania provides for it.)* as well as issues relating to the merger and/or division of a civil case. In particular, it is emphasized that at this stage the judge takes steps to reconcile the parties. The Code of Civil Procedure of the Russian Federation provides for the possibility of mediation *(author's note: mediation in the Russian Federation civil proceedings was introduced earlier than in Latvia),* as well as the explanatory commentary, referencing the Russian Federation Supreme Court Presidium in its 2015 report "On the Application of Alternative Procedures (Mediation)", states that it is at the preparatory stage that the use of conciliation procedures is most effective. Pursuant to Article 152 of the Code of Civil Procedure of the Russian Federation (Code of Civil Procedure of the Russian Federation, 2002), which governs the designation, conduct and matters of the preparatory meeting, however, it does not state that the judge is obliged to hold a preparatory hearing, although the commentary on Article 153 of the Code of Civil Procedure of the Russian Federation indicates that a judge only after hearing all the matters referred to in Article 152 of the Code of Civil Procedure sets a hearing on the merits. Consequently, it must be concluded that the structure of the law does not allow without the preparatory process and the resolved questions, incl. what concerns procedural — organizational issues, to set the hearing on merits of the case. The author emphasizes that they are identical in the Civil Procedure Law of the Republic of Latvia, where the court is not obliged to hold a preparatory hearing in order to prepare the case for review. The issues that the statutory hearing is intended to address are identical, except for some features that the author wishes to draw attention to, The Code of Civil Procedure of the Russian Federation gives the defendant the right to raise a plea that the claim is time — barred at the preparatory hearing, whereas the court, having established such circumstances, closes the case at the preparatory stage without further clarification. In the author's view, such a procedural opportunity is a way of relieving the court and saving procedural time, in order not to proceed with the preparation and hearing of the case and the issue of judgment, if the claim is time-barred, and if it is easy to determine that it is time-barred.

As stated, the procedural nature of the preparatory hearing is less formal, than the merits of the case, at the commencement of the hearing, the judge shall refer to the questions to be examined at the preparatory hearing. Similarly, at a preparatory hearing, the judge may close the case if the claimant has either withdrawn the claim or the parties have come to a amicable settlement, also the proceedings may be suspended if any circumstances required by law arise, such as the death of one of the parties or the loss of legal capacity, as well as in the preparatory phase, the court may dismiss the claim if it finds that the out-of-court procedure set out in the law or the contract has not been followed or there is an agreement between the parties to resolve the dispute in arbitration and other cases.

Reviewing the stages and major trends in the preparation process, as well as insights into existing problems, the author studied the conclusions and descriptions of the work by authors Ervo Laura and Nylund Anna: "*Current Trends in Preparatory Proceedings. A comparative Study of Nordic and Former Communist Countries*" on post-soviet state civil preceedings and development. With regard to the stage of the preparation process and its importance in the work of these authors, that one of the purposes of civil proceedings is to have a substantively correct judgment, but fair judgments are considered to be based on true facts and the correct application of the law. This requires that properly formulated claims and relevant evidence be submitted to the court. On the other hand, the court must be able to provide litigants with appropriate guidance to prevent possible errors and enable the parties to defend their interests before the court, and the court may facilitate the crystallization of the substance of the dispute, incl. the factual and legal aspects of the case, the determination of the position and the views of the

parties of the dispute. The importance of these preparatory actions is that, the main phase of the case review should focus on the factual but questionable issues of facts and legal considerations of the case. It is also be emphasized that due process guidance by the court does not necessarily mean that the court advises litigants on what procedural steps they should take or their position in the proceedings (Ervo L., Nylund A., 2016, p. 63). But the consideration of the case during the preparation process is one of the "key tools" for the efficiency of the process. The active position of the judge and the handling/preparation of the case requires the judge to be aware of all statements made by the parties and to respond to any errors, uncertainties in the conduct of the parties, and other similar issues (Ervo L., Nylund A., 2016, p. 65).

By reviewing and understanding the Czech Code of Civil Procedure and its regulations for the preparation of civil cases, it has to be admitted that this process does not really contain a dedicated preparation procedure, not even to the level of specification as in the Latvian Civil Procedure Law. The Czech Code of Civil Procedure provides for a preparatory stage which is understood slightly differently, as preliminary proceedings are provided for settlement procedures (Czech Code of Civil Procedure, 1963, §67), as well as preliminary measures which can be identified similar to those provided for in Articles 137-140 of the Latvian Civil Procedure Act. The Czech Code of Civil Procedure imposes an obligation on the parties to submit to the court information on facts and evidence relevant to the adjudication of the case and requires the parties to comply with other obligations imposed by the court. It also requires the court to continue the proceedings even if the parties to the dispute are inactive and it is allowed to hear the case even if the parties did not appear in the proceedings but were notified in accordance with the law and in good time (Czech Code of Civil Procedure, 1963, §101). Legal literature points out that the reform of the year 2000 introduced some very modest tools for the implementation of the written preparatory procedure for litigation, for example, if a litigant's procedural behavior and actions are sluggish and delayed, the court is entitled to set appropriate time limits for the performance of certain procedural acts, i.e., making statements of facts and submitting relevant evidence. Failure to do so within the time limit set by the court protects the other litigant from the emergence of new evidence and/or arguments at a later stage of the proceedings. However, as the 2000 reform did not deliver the expected results and the intended effect was not achieved, the 2009 reform no longer provided for any innovations or improvements regarding the introduction of the preparatory phase due to its ineffective and infrequent application in practice. It is noted that, in practice, the first substantive hearing provided for by the Czech Code of Civil Procedure is in fact a preparatory hearing (Ervo L., Nylund A. 2016, 120).

On the other hand, when looking at the regulation of the Code of Civil Procedure of the Republic of Lithuania, it can be seen that the preparatory process and the tasks of the judge are aimed at the preparation and proper handling of the case; i.e., to submit to court all available evidence and explanations as well as to produce evidence which is not available to the parties (Lithuanian Code of Civil Procedure, 2002, p. 226). A preparatory hearing is to be held within fourteen days of the filing of the pleadings of the defendant and of third parties or the expiry of the time-limit for filing them (Lithuanian Civil Procedure Code 2002, p. 228), and it is provided that, where the court deems a friendly solution to be possible, a further preparatory hearing may be ordered, to be held within thirty days at most (Lithuanian Civil Procedure Code 2002, p. 229). It should be noted that the filing of a counterclaim is possible at the stage of preparation of the case whereas not until the conclusion of the case on the merits in the court of first instance, as in the Latvian Civil Procedure Law (see §136). The author concludes that the stage of the case preparation process in foreign civil proceedings fulfills the same tasks as provided by the Civil Procedure Law, however, the duties of a judge are such that the avoidance of the preparatory phase of the

case is practically ruled out, consequently, the judge cannot proceed to assign the case if the tasks of the preparatory process have not been fulfilled. In the author's opinion, these processes are regulated in great detail in the Code of Civil Procedure of the Republic of Lithuania, while specifying the obligations of litigants. The author wishes to emphasize that the Lithuanian Code of Civil Procedure contains such an important principle as the principle of cooperation (Lithuanian Code of Civil Procedure, 2002, p. 8), and this principle requires the court to cooperate with the parties within the statutory framework for the proper conduct of the proceedings. The process of preparing the case and the role of the judge in it clearly illustrates this judicial cooperation with the litigants is necessery in order to deal with the case more accurately. In the author's opinion, defining the principle of co-operation in the Latvian Civil Procedure Law would be significant in that it would determine the role and importance of the judge in the proper conduct of proceedings and adjudication of the case, thus separating it from the distortion of the adversarial principle, which in the author's view has led to the judge *refraining* from active actions during the preparatory phase of the case.

At the end of the thesis, the author will look at the regulation of the preparation and progress of cases within the framework of the Italian Code of Civil Procedure. It should be noted that the Italian Code of Civil Procedure provides "appearance before a judge" which applies individually to the plaintiff and the defendant, and the statutory time limits for the performance of these duties (Commentary on the Italian Code of Civil Procedure, 2010, Article 165-166). After the case is registered in the Main Registry, the case is prepared by including the original documents, i.e.. a record of the case, a copy of the claim, a copy of the defendant's response. An investigation judge is appointed for the case (Commentary on the Italian Code of Civil Procedure, 2010, Article 168bis). According to the explanations concerning the basic features of the structure of the Italian Code of Civil Procedure, it is noted that the Italian Code of Civil Procedure does not distinguish between "preparatory" and "pre-trial" and "trial" stages, since all procedural steps take place in the presence of a judge. Likewise, the submission of new evidence and facts after certain procedural time-limits are not possible unless there are exceptional circumstances beyond the control of the litigants. The legislature has directed the procedural regulation in such a way that it is as complete as possible prior to the initial hearing of the case; however, in practice, the tendency of lawyers is to withhold too much information, so that it does not get to the other party too early, as far as possible, with due regard to procedural deadlines and the avoidance of consequences, which translates procedural inaction as a waiver of rights (Commentary on the Italian Code of Civil Procedure, 2010, 9-10). The appointed investigating judge in the first instance performs what is actually the preparation of the case, incl. the assessment of the sufficiency of the available evidence, as well as the investigating judge, may, at the request of both litigants, order a separate hearing to freely hear the litigants and facilitate their conciliation. The investigating judge decides on the sufficiency of the existing and collected evidence and the preparation of the case for trial, i.e., redirecting it to the court. Similarly, the investigating judge shall decide on the issue of securing the claim and paying the uncontested sum to the creditor (Commentary on the Italian Code of Civil Procedure, 2010, Article 183-188).

Having considered all of the above, the author concludes that the stages of preparation of civil cases are regulated differently and the understanding of the steps to be taken in the preparatory process may vary, but they are intended to ensure that the case is heard properly, as well as to reconcile the parties and the role of the judge in this process is crucial.

## 4. Conclusions

1) With regard to the necessity of the case preparation process and its effectiveness in civil litigation, the legal literature recognizes that it is essential to the proper handling of cases as well as to the time and resources involved in the process.
2) The author concludes that the interpretation of the adversarial principle has been misunderstood in Latvia's civil litigation in the context of preparation proceedings, incl. the preparatory hearing and in fact is lifeless procedural tools because (as the practice shows) the judge (usually) does not carry out the steps provided by the rule for the preparatory proceedings.
3) The revival of the preparatory hearing in Latvia's civil procedure is necessary, to restore the proper structure of the process, to improve the efficiency and quality of court proceedings, as well as to restore the judge's essential role in the preparation of the case for its proper adjudication.
4) The author concludes that preparatory hearings should be made compulsory, both to ensure that the judge is interested in the tasks of the preparatory process and also to organize the litigants themselves to prepare for the process in a timely manner.
5) The holding of a preparatory hearing would preclude possible unfair litigants from invoking the impossibility of carrying out the intended or prescribed procedural steps.

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