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Good Faith in Civil Procedure:

The Latvian Experience

Abstract. Civil procedure has traditionally been viewed as a means of resolving disputes between two parties, with the court providing a formal framework for the proceedings, focusing primarily on delivering a judgment and leaving the conduct of procedural activities largely at the parties' discretion. This article provides insights into the regulation in Latvia, which establishes the obligation of good faith and truthfulness in civil proceedings, and examines Latvia's experience in identifying procedural abuses in case law at all three judicial levels. As constitutional values have gained importance and the concept of the right to a fair trial has evolved, our understanding of civil procedure is gradually changing; it must serve not only the protection of the parties' subjective interests but also the common good of society, with the court playing a more active role in ensuring a fair trial. These developments call for a shift in the approach to how parties' rights are exercised and enforced, as well as for strengthening the court's role—an evolution highlighted by procedural law reforms in European countries. Considering over 200 publicly available rulings of Latvian courts, the article categorises the most common instances of procedural abuse and violations of the obligation to tell the truth. The final section addresses the court's role in promoting and ensuring compliance with the duty of good faith.

Keywords: civil procedure, good faith, abuse of procedural rights, bad faith, fair trial

1. Introduction

Abuse of civil procedural rights, aimed at exploiting the process and hindering the attainment of justice, has long been discussed in legal doctrine.^{*1} The idea that procedural rights can be exercised in bad faith—and that such conduct creates obstacles to achieving justice—is highlighted by Recommendation No. R (84)5 of the Committee of Ministers of the Council of Europe, adopted in 1984, on the principles of civil procedure designed to improve the functioning of justice.^{*2} The development of legal thought in European countries affirms the increasing significance of the principle of procedural good faith. The strengthened emphasis on the principle of good faith in procedural regulations is evidenced by the civil procedure rules adopted over the last 20–30 years in several European jurisdictions, for example, in Estonia,^{*3} Switzerland,^{*4} and Spain.^{*5} A resolution of the European Parliament requesting that the European Commission provide proposals for a directive setting out the minimum common standards in civil procedure within the European Union, along

¹ Adolf Wach, *Die Civilprozessordnung und die Praxis* (first published 1886, Duncker & Humboldt reprints) 31–32.

² Council of Europe Committee of Ministers, Recommendation No. E (84) 5 on the principles of civil procedure designed to improve the functioning of justice.

³ Tsiviilkohtumenetluse seadustik [Code of Civil Procedure], s 200(1): RT I 2005, 26, 197; RT I, 22.03.2024, 8.

⁴ Schweizerische Zivilprozessordnung [Swiss Code of Civil Procedure], Art 52: AS 2010 1739.

⁵ Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil [Law on Civil Procedure], Art 247(1): BOE-A-2000-323.

with the proposed directive, also enshrines the principle of procedural good faith.^{*6} The issue of delaying proceedings is addressed in the ELI/UNIDROIT Model European Rules of Civil Procedure, approved in 2020, stressing the obligation of cooperation to facilitate the fair, efficient, and prompt resolution of disputes.^{*7} The principle of cooperation is derived from the general duty to act in good faith.^{*8}

These examples highlight trends in the development of European civil procedure law, in which attitudes toward civil procedural obligations are changing:^{*9} there is a growing requirement to consider both the subjective rights of each party and the common good of society—an honest, prompt, and economical process. This requires litigants to act in good faith and refrain from actions that impair the process.^{*10} The role of the principle of good faith in civil procedure is to ensure compliance with the principle of equality of the parties, the speed of the proceedings,^{*11} legal certainty and stability, the exercise of rights, and the fulfilment of obligations in accordance with the purpose and spirit of the law.^{*12} Ensuring good faith in civil procedure is a complex task for the court.^{*13}

2. Regulation of good faith in the Latvian Civil Procedure Law

The Latvian Civil Procedure Law (CPL)^{*14} entered into force on 1 March 1999, incorporating '[civil procedural] principles existing in European countries'.^{*15} From the outset, Section 74(6) of the CPL specified that the parties must exercise their rights and fulfil their obligations in good faith. However, the principle of good faith had long lacked a direct impact on parties' behaviour during the proceedings because the law did not provide for general liability for the abuse of procedural rights. The court could impose procedural sanctions on parties only for specific, clearly identifiable violations: for example, a fine for not informing the court of an address change during the proceedings (Section 58(2) of the CPL), a fine for failing to submit written or material evidence without justification (Section 120 of the CPL), or a fine for failing to submit explanations within the prescribed period or failing to respond to a request from the judge (Section 150). Although the principle of good faith also entails a duty to tell the truth^{*16}, which the parties fulfil by providing the court with explanations of the circumstances of the case and submitting evidence to substantiate them, for a long time the CPL did not provide for procedural sanctions for the parties' bad faith in presenting the facts and discharging the burden of proof.

⁶ European Parliament resolution of 4 July 2017 with recommendations to the Commission on common minimum standards of civil procedure in the European Union (2015/2084(INL)) [2018] OJ C 334/39.

⁷ European Law Institute (ELI), International Institute for the Unification of Private Law (Unidroit), ELI-UNIDROIT Model of European Rules of Civil Procedure (2021) <https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_UNIDROIT_Model_European_Rules.pdf> accessed on 2 August 2023.

⁸ Halvard Haukeland Fredriksen, Magne Strandberg, 'Impact of the ELI/UNIDROIT European Model Rules for Civil Procedure on National Law – the Case of Norway' (2022) 9 (3) Oslo Law Review <<https://doi.org/10.18261/olr.9.3.1>>.

⁹ Joan Picó i Junoy, 'The Principle of Good Procedural Faith' <<http://www.justiciayderecho.org.pe/revista4/articulos/EL%20PRINCIPIO%20DE%20LA%20BUENA%20FE%20PROCESAL%20Joan%20Pico%20i%20Junoi.pdf>> accessed on 25 February 2024.

¹⁰ See more Alan Uzelac, 'Towards European rules of civil procedure: Rethinking procedural obligations' (2017) 58 (1) Hungarian Journal of Legal Studies 3.

¹¹ Daina Ose, 'Pierādījumu iesniegšanas ierobežojumi un pieļaujamība apelācijas instancē [Limitations and Admissibility of Submitting Evidence at the Appellate Instance]' (2023) Latvijas Universitātes 81. starptautiskās zinātniskās konferences tiesību zinātnes rakstu krājums, LU Akadēmiskais apgāds 135.

¹² Katarzyna Gajda-Roszczyńska, 'Abuse of procedural rights in Polish and European civil procedure law and the notion of private and public interest' (2019) 2 (3) Access to Justice in Eastern Europe 53.

¹³ Ibid.

¹⁴ Civilprocesa likums [Civil Procedure Law of the Republic of Latvia]: Latvijas Vēstnesis, 326/330, 3 Nov 1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 3 Dec 1998.

¹⁵ Jānis Lazdiņš, 'Latvijas Republikas tiesību attīstības tendences pēc neatkarības atjaunošanas 1990.–1991. gadā [Tendencies in the Development of Laws in the Republic of Latvia after the Renewal of Independence in 1990–1991]' (2010) 1 Journal of the University of Latvia 'Law' 53.

¹⁶ Iván Hunter Ampuero, 'There Isn't Good Faith without Interests: Good Faith in Legal Procedure and the Duties of Veracity, Completeness and Collaboration' (2008) XXI (2) Revista de Derecho 151.

The exhaustively listed violations, for which the court had the power to impose procedural sanctions, rendered a formal need to apply legal criteria or assess a participant's conduct from the standpoint of good faith unnecessary.

Shortcomings in determining the truth in civil cases due to the behaviour of participants and the malicious delaying of proceedings, along with the ineffectiveness of procedural sanctions, were identified in a 2010 study on strengthening the independence and increasing the efficiency of the judiciary.^{*17} In 2015, Section 9¹ (Obligations to Tell the Truth) and Section 73¹ (Use of Rights and Obligations in Bad Faith or Disrespect Against a Court) were added to the CPL. Section 9¹ of the CPL established an obligation to tell the truth, stipulating that the parties, third parties, and representatives on behalf of those represented must provide the court with truthful information about the facts and circumstances of the case. Meanwhile, Section 73¹ of the CPL introduced, for the first time, differentiated liability for the abuse of procedural rights, no longer linking liability solely to the non-fulfilment of a specific obligation and giving the court grounds to assess the parties' honesty. In general, where procedural rights are exercised in bad faith or procedural duties are not properly performed (including breaches of the duty of truthfulness and dilatory conduct), the court may issue a warning or impose a fine of up to EUR 800; in cases of disrespect against a court, a fine of up to EUR 1,000 may be imposed. The court may also impose a fine of up to EUR 1,200 for an intentionally false application, statement of claim, or complaint (excluding ancillary complaints and notice of appeal or cassation) submitted in order to pursue an unlawful aim or to hinder the protection of rights or legitimate interests.

These amendments were supported by the Judicial Council of the Republic of Latvia.^{*18} The Council believed that the obligation to provide truthful information about case circumstances and the introduction of procedural sanctions would expand 'the court's own discretion to promote the honest exercise of a participant's rights and obligations and respect toward the court'.^{*19} The amendments aimed to speed up and increase the effectiveness of civil proceedings.^{*20} However, the idea of specifying in the CPL an obligation to tell the truth was criticised because that obligation was viewed as implied by the general duty of good faith in Section 74(6) of the CPL, as well as by the adversarial principle realised by submitting evidence about the facts of the case.^{*21} Concern was also raised that the obligation to tell the truth and the court's discretion entailed the risk of subjectivity on the part of the court.^{*22}

3. Approaches to the problem of bad faith in court practice

3.1. Establishing bad faith

Latvian legal doctrine, court practice, and Supreme Court case law still do not offer a concise definition of good faith or clear criteria for evaluating a party's good faith, therefore first- and appellate-instance courts continue to evaluate the parties' conduct with considerable caution and reserve. Current developments in case law do not yet suggest a systematic approach to preventing bad faith in civil procedure. Still, legal

¹⁷ Sanita Osipova, Aigars Strupiņš, and Aija Rieba, 'Tiesu varas neatkarības un efektivitātes palielināšanas un nostiprināšanas rezerves [Reserve for increasing and strengthening the independence and effectiveness of the judiciary]' (2010) 10 (605) *Jurista Vārds*.

¹⁸ The Judicial Council is a collegial body that participates in the development of the policy and strategy of the judicial system, as well as in the improvement of the organisation of the work of the judicial system. The Judicial Council was established on 1 August 2010, and the legal basis for its activities is determined by the Law on the Judiciary. The Council for the Judiciary has its own website <https://www.tieslietupadome.lv/lv>.

¹⁹ Tieslietu padome [Judicial Council], 'Atbalsta lietas dalībnieku atbildības pastiprināšanu par negodprātīgu tiesību izmantošanu civilprocesā [Supports strengthening the parties' liability for the bad-faith exercise of procedural rights in civil proceedings]' <https://www.tieslietupadome.lv/lv/jaunums/atbalsta-lietas-dalibnieku-atbildibas-pastiprinasanu-par-negodpratigu-tiesibu-izmantosanu-civilprocesa?utm_source=https%3A%2F%2Fwww.google.com%2F> accessed on 5 September 2024.

²⁰ Evita Drobiševska, 'Kā "patiesības paušanas pienākums" tika nostiprināts Civilprocesa likumā [How the 'Duty to Tell the Truth' Was Enshrined in the Civil Procedure Law]' (2015) 30 (882) *Jurista Vārds* 4.

²¹ Daina Ose, 'Patiesības princips un patiesība civilprocesā [The Principle of Truth and Truth in Civil Procedure]' (2014) *Latvijas Universitātes 72. zinātniskās konferences rakstu krājums*, LU Akadēmiskais apgāds 169.

²² Mārcis Krūmiņš, 'Patiesības teikšanas pienākums un Latvijas Civilprocesa likums [The obligation of the truth telling and Latvian Civil Procedure Law]' (2014), *Latvijas Universitātes Juridiskās fakultātes 5. starptautiskās zinātniskās konferences "Jurisprudence un kultūra: pagātnes mācības un nākotnes izaicinājumi"* raksti. Rīga, 2014. gada 10.–11. novembris, LU Akadēmiskais apgāds 533.

doctrine and case law point to indicators that may allow a party's actions to be deemed performed in good faith, or conversely, in bad faith. Therefore, examining case law is a crucial source for clarifying the content of this concept.

Legal scholarship has acknowledged that the principle of civil procedural good faith is linked to the principle of good faith enshrined in Article 1 of the Civil Law (*Civillikums*).^{*23} Article 1 of the Latvian Civil Law states that rights must be exercised, and obligations must be fulfilled in good faith. Within Latvian private law, the principle of good faith is considered a general clause. The principle of good faith means that everyone must exercise their rights and fulfil their obligations fairly, taking into account the justified interests of other persons.^{*24} It is occasionally noted also in case law that, when analysing the duty of good faith, it is viewed in conjunction with the principle of good faith established in Article 1 of the Latvian Civil Law.

In case No. SKC-377/2024, the Supreme Court found violations of Section 74(6) of the CPL and specifically emphasised that 'Section 74(6) of the Civil Procedure Law imposes on litigants (the parties) the duty to exercise their rights and fulfil their obligations in good faith. Meanwhile, Article 1 of the Civil Law embodies the principle of good faith, which, in the interests of society as a whole, requires each person to exercise his or her individual rights in good faith—that is, honestly and for the pursuit of lawful objectives. Conduct by a litigant aimed at delaying the hearing cannot be considered good faith; it is impermissible and essentially amounts to procedural hooliganism.'^{*25}

In case No. SKC-144/2023, the Supreme Court examined a situation where the plaintiff ceded his claim rights against the defendant after the plaintiff received an adverse judgment at the appellate level. It appeared that the cession's true purpose was to evade paying litigation costs if the judgment took effect, given the cessionary's apparent financial difficulties. Relying on its earlier reasoning in case No. SKC-1304/2020, the Supreme Court stated that the good-faith exercise of rights entails exercising them in accordance with their essence, thereby respecting the rights and interests of others protected by law. It is not permissible for a person to exploit their rights in an impermissible way or pursue unjustifiable goals.^{*26}

In an ancillary decision of 11 July 2024 in case No. SKC-709/2022, the Supreme Court assessed delaying tactics from the perspective of attorney ethics:

[I]t is not permissible for an attorney to prepare such obviously poor-quality legal documents that they needlessly delay the resolution of the case. Such conduct is incompatible with the said legal framework, because by failing to carry out the actions that can reasonably be expected of him to ensure effective litigation, the attorney, as a person belonging to the judicial system, not only undermines confidence in the judicial system but also collects fees from the client for additional work that would not be required if the attorney fulfilled his obligations properly and in a timely manner.^{*27}

In the Supreme Court's case law, bad faith has also been found in other actions: parties delaying the proceedings by failing to provide themselves with a representative^{*28} or belatedly choosing a representative one day before the hearing^{*29} or changing the defence strategy to reassess facts that had not previously been contested.^{*30}

At the first-instance and appellate-instance levels, the most common cases in which the court finds a violation of Section 74(6) of the CPL involve delaying the hearing by failing to appear in court and repeatedly requesting postponement, as well as failure to submit explanations and evidence by the court's deadline. Requests to postpone a hearing are often based on reasons for which no proof is submitted:

²³ Dagnija Palčevska, Linda Vaļte, and Iveta Gedus, 'Ekonomisko lietu tiesas process civillietās – Civilprocesa likuma iespējas ar nepietiekami izmantotu potenciālu [Proceedings before the Economic Court in Civil Cases: Opportunities under the Civil Procedure Law with Underutilised Potential]' (2020) 48 (1158) *Jurista Vārds* 57.

²⁴ Kaspars Balodis, 'Labas ticības princips mūsdienu Latvijas civiltiesībās [The Principle of Good Faith in Contemporary Latvian Civil Law]' (2002) 24 (257) *Jurista Vārds*.

²⁵ The decision of the Supreme Court of the Republic of Latvia SKC-377/2024, 26 February 2024.

²⁶ The decision of the Supreme Court of the Republic of Latvia SKC-144/2023, 31 October 2023.

²⁷ The ancillary decision of the Supreme Court of the Republic of Latvia SKC-709/2022, 11 July 2024.

²⁸ The judgment of the Supreme Court of the Republic of Latvia SKC-276/2015, 8 December 2015.

²⁹ The judgment of the Supreme Court of the Republic of Latvia SKC-136/2020, 30 June 2020.

³⁰ The judgment of the Supreme Court of the Republic of Latvia SKC-66/2020, 30 January 2020.

incapacity for work or health issues;^{*31} the need to obtain a sworn attorney's assistance despite having had time to find one;^{*32} seeking new evidence in the appellate court;^{*33} and expressing a wish to amend the claim despite failing to submit such amendments.^{*34} In nearly all cases, the hearing had already been postponed multiple times, frequently for the same reasons. One case of delaying the proceedings was found when a party obtained a postponement to arrange for expert examination, yet after the expert examination was approved, the party that had requested it avoided taking the subsequent procedural steps, making it impossible to conduct the expert examination.^{*35}

In the appellate court, a party's bad faith is most often established when the court evaluates arguments about procedural violations in the court of first instance and concludes that the party exercised its rights in bad faith by delaying the hearing or obstructing the disclosure of significant facts.^{*36} Also deemed bad faith is the failure to provide evidence within the time prescribed by law in the first instance, only to request it in the appellate instance after the time limit set by the court, or submitting explanations past the court's deadline when the case has been scheduled for written proceedings.^{*37} The Supreme Court has held that repeated failure to appear in the appellate court without a justified reason constitutes bad faith, which rightly leads to the termination of the appellate proceedings in accordance with Section 431(3) of the CPL.^{*38} Section 431(3) of the CPL provides that the court may terminate appellate proceedings if the appellant, without a justified reason, fails to appear at the hearing twice and has not requested that the case be heard in their absence.

Other instances of the abuse of procedural rights identified in court practice cannot be confined to a single category, illustrating the diverse forms such abuse may take. For example, courts have found that certain behaviours constitute the abuse of procedural rights when inconsistencies or omissions in the content of parties' submissions or explanations were deliberately used to influence the outcome of the proceedings. Examples include the defendant's explanations regarding the child's place of residence contradicting the evidence in the case; the submission of inaccurate factual circumstances in the statement of claim and failure to reduce the amount claimed, even after acknowledging that the claim amount is incorrect; and the plaintiff maintaining a claim despite having received payment.

In other cases, the abuse of procedural rights has been found in actions aimed at delaying the course of proceedings or the entry into force and enforcement of a final judgment or at justifying one's own procedural violations. Examples include the appellant, a bank that should be regarded as a professional party, claiming that the first-instance court failed to inform it of the right to submit a counterclaim; the defendant requesting to pay the judgment amount in instalments despite having acknowledged the claim but having made no payments during the proceedings; and the plaintiff belatedly filing a claim and requesting the restoration of a missed deadline, even though the claim concerns the same subject and legal grounds as a previous case dismissed due to the plaintiff's failure to attend the hearing.

Although courts often acknowledge the abuse of procedural rights based on a party's specific actions or omissions, in many cases, the court's reasoning is based more on an intuitive assessment of the situation. The court rulings frequently lack detailed reasoning as to why a particular behaviour has been deemed abusive. This is largely because courts have not relied on clear criteria to evaluate the conduct of participants, nor have they elaborated on how the principle of good faith is to be applied in civil proceedings in a specific situation. Likewise, the court rarely refers to legal doctrine or case law to substantiate its opinion. The assessment of good faith in other types of cases appears to remain exceptional rather than a consistent element of judicial reasoning.

However, when clarifying the content of the principle of good faith within the scope of the right to a fair trial, based on court practice and case law, it can be concluded that the good-faith exercise of rights and performance of obligations is characterised by honest conduct. This means that a party, while adhering to procedural formalities, cooperates and acts in a way that promotes a fair, timely, economical, and effective

³¹ The decision of the Supreme Court of the Republic of Latvia SKC-2566/2016, 19 October 2016.

³² The judgment of Riga District Court C04450712, 10 October 2017.

³³ The judgment of Riga Regional Court C33341410, 16 October 2013.

³⁴ The judgment of City of Riga Vidzeme Urban District Court C30506512, 11 February 2014.

³⁵ The judgment of City of Riga Pārdaugava District Court C31349813, 21 May 2021.

³⁶ The judgment of Riga Regional Court C17160610, 22 December 2014.

³⁷ The judgment of Riga Regional Court C33612717, 3 February 2022.

³⁸ The decision of the Supreme Court of the Republic of Latvia SKC-0968/2016, 5 February 2016.

course of the proceedings, taking into account the common good. It also entails a sincere purpose, i.e. the party's conduct is always aimed at the genuine exercise of rights. The court should not interfere with the exercise of the parties' procedural rights and obligations as long as the parties' actions comply with the above-mentioned criteria. Given that in civil proceedings the parties enjoy considerable freedom under the adversarial principle and the principle of party autonomy, the motives and aims behind a party's actions, as well as the side effects of a certain action, may be decisive in assessing whether the person has exercised their rights and fulfilled their obligations in bad faith.

3.2. Establishing a violation of the obligation to tell the truth

Violations of the obligation to tell the truth are rarely established by courts. The most common violation of the obligation to tell the truth occurs when a party's statement of claim or testimony in court contradicts facts later proven by the evidence in the case file, or when certain circumstances are withheld.

Courts have found violations of the obligation to tell the truth in situations such as when a party gives explanations in court that contradict evidence of the party's assumption of knowing a certain person,^{*39} the plaintiff states that she attended the funeral of person C, while a witness testified otherwise, which the plaintiff did not dispute,^{*40} the plaintiff and her representative falsely claim that the plaintiff had not received LVL 10,000 in cash from the defendant upon concluding the disputed contract,^{*41} the plaintiff submits false information regarding a rental agreement and fails to withdraw an unfounded appeal,^{*42} the plaintiff does not act in good faith in filing the claim and linking the defendant's duty to pay a debt under a loan agreement, while during the proceedings it was established that a barter agreement had been signed,^{*43} or the defendant gives the court false information about the plaintiff's working hours.^{*44}

Deliberate omission by a party of facts known to them that are material to the outcome of the case has likewise been recognised as a breach of the duty to tell the truth: the defendant concealing the fact that the defendant's insolvency process had been concluded without confirmation of a bankruptcy procedure, with no debt discharge procedure applied to the debtor, even though in the insolvency proceeding the defendant acknowledged an existing obligation to the company,^{*45} the landowner filing a claim against the Ministry of Finance to recognise ownership rights to a garage, even while ongoing litigation existed between the landowner and person G over ownership rights to the same garage,^{*46} the filing of an application for the compulsory enforcement of obligations according to the warning procedures and obtaining a favourable decision, knowing that the obligation was no longer valid,^{*47} the plaintiff in a child support case failing to mention that, at the time of filing the statement of claim, there was no actual non-payment of child support by the defendant.^{*48}

Typically, a breach of the duty to tell the truth results merely in the court finding that the relevant statements are untrue and, on that basis, dismissing the arguments advanced. Although Section 73¹ of the CPL provides for procedural sanctions, publicly available decisions in the anonymised court ruling database show that courts seldom impose procedural fines for providing false information to the court. For example, in a case where sanctions were applied, the court found that both the defendant and her representative had provided false information about the facts and circumstances of the case. The court concluded that knowingly submitting false information delayed the appellate proceedings, requiring the court to verify the truth of this information by re-examining the witness and appointing an expert, which

³⁹ The judgment of Riga Regional Court C04343611, 14 February 2017.

⁴⁰ The judgment of Riga Regional Court C04403512, 14 June 2017.

⁴¹ The judgment of Kurzeme Regional Court C29563913, 25 April 2018.

⁴² The judgment of Riga Regional Court C31153717, 29 November 2018.

⁴³ The judgment of Zemgale Regional Court C33435917, 23 April 2019.

⁴⁴ The judgment of Zemgale Regional Court C73546718, 2 December 2020.

⁴⁵ The judgment of Riga Regional Court C30598520, 29 September 2021.

⁴⁶ The decision of the Supreme Court of the Republic of Latvia SPC-3/2023, 23 March 2023.

⁴⁷ The judgment of Riga Regional Court C30503522, 12 July 2023.

⁴⁸ The judgment of City of Riga Latgale Urban District Court C29647716, 27 December 2016; the judgment of City of Riga Latgale Urban District Court C29677916, 16 February 2017.

led to the adjournment of the hearing. The defendant was fined EUR 100, and the defendant's representative was fined EUR 80.^{*49}

Supreme Court findings suggest that the obligation to tell the truth can also be breached in other situations not directly tied to explanations about the case's actual circumstances. In case No. SKC-191/2022, the Supreme Court noted to the plaintiff that the parties are obliged to submit truthful information to the court: the plaintiff claimed that the court had violated the adversarial principle by examining the statute of limitations on which the defendant allegedly did not rely, even though the defendant had raised the limitation period argument multiple times before both the first- and second-instance courts.^{*50}

4. The court's role in ensuring compliance with the requirement of good faith

The CPL does not specify whether supervision of the good faith requirement, including the obligation to tell the truth, is a general obligation of the court or whether it is a right that depends on the court's discretion. The CPL does not, *expressis verbis*, impose on the court the duty to oversee compliance with the requirement of good faith. By comparison, Section 200(2) of the Estonian Code of Civil Procedure stipulates that the court does not allow the parties or their representatives or advisers to misuse their rights maliciously, delay the proceedings, or mislead the court.

Various situations in Latvian court practice indicate that the courts generally view the supervision of the good faith requirement as a matter of judicial discretion. The prevailing view is that the legislature grants the court discretionary power to encourage the fair exercise of rights and obligations and respect for the court, and that the main purpose of all procedural sanctions is not to punish but to discipline and foster a suitable litigation culture.^{*51} In certain cases, courts do not address the question of good faith even when a party points out the potential abuse of procedural rights committed by another party.^{*52} The extent of the court's obligations in ensuring good faith in Latvia therefore remains open to debate, for which the principle of a fair trial may provide an answer.

The principle of a fair trial or the fundamental right to a fair trial, guaranteed in Article 92 of the Constitution of the Republic of Latvia (Satversme), derives from the supreme principle of the rule of law.^{*53} In case No. 2002-06-01, the Constitutional Court of the Republic of Latvia elaborated on this principle and, in later cases, developed it further, stating that the right to a fair trial involves both an impartial and independent judicial institution that hears the case and a due process consistent with a state governed by the rule of law.^{*54} In case No. 2011-16-01, the Constitutional Court of the Republic of Latvia noted that the material and procedural aspects of the right to a fair trial are inseparable: the fairness of the procedure would be meaningless if access to the process was not guaranteed, and *vice versa*—access to the court would be pointless if fairness was not ensured in the proceedings.^{*55} Tom Bingham, when naming eight principles of the rule of law, points out that the rule of law ensures instruments for resolving *bona fide* disputes without disproportionate costs or delays.^{*56}

The principle of a fair trial should be examined from the standpoint of proper procedure in a rule-of-law state and procedural fairness, applying the principles of civil procedure that guarantee observance of the fair trial standard in the sense of Article 92 of Satversme. These principles of fair civil procedure

⁴⁹ The judgment of Kurzeme Regional Court C68505218, 7 May 2020.

⁵⁰ The decision of the Supreme Court assignments hearing SKC-191/2022, 2 May 2022.

⁵¹ The judgment of Riga Regional Court C69166121, 24 May 2023.

⁵² The judgment of Riga City Court C771362723, 1 December 2023.

⁵³ Konstitucionālo tiesību komisijas viedoklis un materiāli [Opinion and materials of the Constitutional Law Commission], 'Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu [On the Constitutional Foundations of the Latvian State and the Inviolable Core of the Satversme]' (Latvijas Vēstnesis 2012).

⁵⁴ The judgment of 4 February 2003 by the Constitutional Court of the Republic of Latvia in case 2002-06-01 (2003) 19 Latvijas Vēstnesis.

⁵⁵ The judgment of 17 January 2005 by the Constitutional Court of the Republic of Latvia in case 2004-10-01 (2005) 9 Latvijas Vēstnesis.

⁵⁶ Tom Bingham, *The Rule of Law* (first published 2010, Penguin Books 2011) 85.

also constitute part of the content of Articles 91 and 92 of Satversme^{*57} and are also set out in the Law on Judicial Power^{*58} and in the CPL: the principle of legality, the observance of procedural rules, the right of a person to judicial protection, the principle of equality before the law and the court, the principle of truth and the obligation to tell the truth, the principle of equality of the parties, the adversarial principle, the requirement for resolution within a reasonable time, and procedural economy. The Supreme Court's Department of Administrative Cases has recognised that '[t]he honest exercise of one's rights, or the prohibition of abuse of rights, is a general principle of law deriving from the overarching principle of the rule of law'.^{*59}

Compliance with these civil procedure principles ensures a fair process, and their violation or departure from them infringes the right to a fair trial. Consequently, the abuse of procedural rights or procedural bad faith entails a breach of fair trial principles. Judicial inaction in preventing dishonest conduct can be explained by the dominant nature of the adversarial and dispositive principles: 'in civil procedural law, the judge is limited by the adversarial principle in ensuring fairness and discovering the objective truth'.^{*60} For several reasons, the assertion cannot be sustained in its unqualified form. It should be noted that there is no hierarchy among principles—either in civil procedure or in the legal system as a whole. The principle of good faith does not restrict either the adversarial principle or the principle of dispositivity (party disposition); rather, it delineates the legal boundaries within which, consistent with dispositivity, the parties may conduct the adversarial contest in civil proceedings. Unlike its function in private law, where the good-faith principle operates primarily as an inter partes standard, civil procedural rights belong to the realm of public law. Accordingly, the requirement to act in good faith when exercising procedural rights serves not only the parties' individual aims but also the public interest, namely the broader guarantee of the right to a fair trial. Accordingly, a party's conduct in civil proceedings may be subjected to the principle of good faith far more extensively than is the case in substantive law.

A party's procedural bad faith may serve a variety of material or procedural purposes. It can be aimed at delaying the proceedings,^{*61} harming the opposing party's material interests,^{*62} unlawfully acquiring material rights,^{*63} hindering the ascertainment of the objective truth by exploiting a special professional status,^{*64} or even achieving criminal goals.^{*65}

The objectives, methods, and consequences of bad faith demonstrate that breaching the obligation of good faith disturbs the procedural balance between the parties, granting one or the other party a procedural advantage and creating a collision of constitutional interests. The dishonest party formally relies on its right of access to the court to obtain privileges it would not gain if it acted in good faith. The other party's right to effective judicial protection is thereby compromised; procedural equality is disrupted, and the restoration of justice is delayed.^{*66} Hence, making the duty of good faith unconditionally subordinate to the adversarial and dispositive principles does not ensure a fair process. Even if a conflict were to arise between the adversarial principle and the principle of good faith, or with other principles of civil procedure (e.g. equality of arms), such conflicts must be resolved in each individual case through legal reasoning, by

⁵⁷ The judgement of 15 February 2005 by the Constitutional Court of the Republic of Latvia in case 2004-19-01 (2005) 30 Latvijas Vēstnesis; the judgement of 30 March 2010 of the Constitution of the Republic of Latvia case 2009-85-01 (2010) 53 Latvijas Vēstnesis.

⁵⁸ Likums "Par tiesu varu" [Law on Judicial Power]: Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1/2, 14 Jan 1993.

⁵⁹ The judgment of the Supreme Court of the Republic of Latvia SKA-380/2017, 8 December 2017.

⁶⁰ Jānis Kārklīšs, 'Sacikstes princips un taisnīgums [The Adversarial Principle and Justice]' (2022) 41 (1255) Jurista Vārds 18.

⁶¹ The judgment of the Civil Chamber of the Supreme Court of the Republic of Latvia C04436410, 29 May 2014; the judgment of the Riga Regional Court C27161513, 12 November 2014.

⁶² The decision of the Supreme Court of the Republic of Latvia SKC-144/2023, 31 October 2023.

⁶³ The judgment of the Supreme Court of the Republic of Latvia SPC-3/2023, 23 March 2023.

⁶⁴ The decision of the Supreme Court of the Republic of Latvia SKC618/2018, 24 May 2018.

⁶⁵ 'Maksātspējas administratoram Durevskim par izspiešanu un tirgošanu ar ietekmi – 3 gadu cietumsods' <<https://www.lsm.lv/raksts/zinas/latvija/maksatspejas-administratoram-durevskim-par-izspiesanu-un-tirgosanos-ar-ietekmi--3-gadu-cietumsods.a378957/>> accessed on 14 August 2023.

⁶⁶ Joan Picó i Junoy, 'The Principle of Good Procedural Faith' <<http://www.justiciayderecho.org.pe/revista4/articulos/EL%20PRINCIPIO%20DE%20LA%20BUENA%20FE%20PROCESAL%20Joan%20Pico%20i%20Junoi.pdf>> accessed on 25 February 2024.

weighing and assessing the competing principles to determine which should prevail in order to achieve the fairest outcome.^{*67}

Since it is the judicial power alone that institutionalises and protects the right to a fair trial in a rule-of-law state, only the courts can be held responsible for guaranteeing fair procedural order and restoring it in the event of a breach.^{*68} The Supreme Court's Department of Administrative Cases has emphasised that 'the court has both the right and essentially the duty to act so as to prevent dishonest use of rights'.^{*69} The court's duty to monitor the proceedings and prevent the abuse of procedural rights aligns with the necessity for more active court involvement in managing the proceedings.^{*70} Only the court can ensure a fair balance of procedural rights and interests, thus bearing responsibility for preventing bad faith and restoring procedural equality.^{*71}

The CPL supplies courts with a sufficiently robust toolkit for proactive case management, including the prevention of bad-faith conduct. Under Section 149 of the CPL, the court, at the pre-trial stage, is empowered to determine pending motions; to require written submissions from the parties for the clarification of facts and evidentiary issues and impose deadlines for their filing; and to convene a preparatory hearing. At the preparatory hearing, the judge delineates the subject matter and boundaries of the dispute, informs the parties of their procedural rights and duties together with the consequences of (non-)performance, determines the motions submitted, promotes settlement, including, where appropriate, by proposing mediation, and sets a procedural timetable for specific acts. These case-management powers, which enable the court to require that procedural steps be taken in a timely manner before the hearing, help prevent the bad-faith exercise of procedural rights, in particular the deliberate delay of proceedings. If, for example, motions are submitted or decided only at the hearing, the parties may exploit the procedure in bad faith to obtain an adjournment. Complementing these managerial powers, Section 73¹ of the CPL authorises the imposition of procedural sanctions for the abusive exercise of rights at any stage of the proceedings, calibrated to the nature of the conduct. Nevertheless, practice reveals a tendency to under-utilise these powers: courts rarely facilitate the clarification of unclear circumstances before the hearing or set specific deadlines for the exercise of procedural rights, for example for the submission of evidence; courts also frequently defer the consideration of motions until the hearing on the merits. This postponement often results in the emergence of material circumstances only at that later stage, thereby enabling delaying tactics by a party acting in bad faith. The case law examined does not evidence a structural deficit of procedural instruments for the active oversight and guidance of proceedings or for fostering the good-faith exercise of procedural rights and obligations. This pattern appears to be associated with a still-prevalent conception of the court's role in civil procedure as predominantly passive.

Hence, guaranteeing the rule of law—an overarching principle of a state governed by law, implemented through a fair trial—cannot be left to the court's free choice. The court's tasks in ensuring compliance with the duty of good faith do not include creating new rights or obligations for the parties, but rather the timely and prudent application of the procedural instruments provided by the CPL.^{*72} To comply with the principle of a fair trial, the court is obliged to use all available procedural means to ensure that the good faith requirement is met, to verify a person's conduct against the duty of good faith, and, in the event of a breach, to apply the legal consequences prescribed by law.

⁶⁷ Daiga Rezevska, *Vispārējo tiesību principu nozīme un piemērošana* [The Role and Application of General Principles of Law] (Daiga Rezevska 2015) 111–112.

⁶⁸ Sannija Matule and Aigars Strupiņš, 'Negodīgai taktikai nav vietas tiesas procesā [There Is No Place for Unfair Tactics in Court Proceedings]' (2019) 43 (1101) *Jurista Vārds* 8.

⁶⁹ The judgment of the Supreme Court of the Republic of Latvia SKA-249/2020, 30 January 2020.

⁷⁰ Linda Vēbere, 'Tiesneša loma civilprocesuālajā sacīkstē [The Judge's Role in Civil Adversarial Proceedings]' (2022) 41 (1255) *Jurista Vārds* 30; Alan Uzelac, 'Towards European rules of civil procedure: Rethinking procedural obligations' (2017) 58 *Hungarian Journal of Legal Studies* 3.

⁷¹ Irene Kull, 'Principle of Good Faith and Constitutional Values in Contract Law' (2002) VII *Juridica International* 142.

⁷² The decision of the Supreme Court of the Republic of Latvia SKC-681/2021, 12 May 2021.

Conclusions

The good faith requirement in civil procedure is intended to ensure procedural fairness, whose overarching objective is to guarantee the right to a fair trial. However, legal doctrine in Latvia still lacks a consensus on the court's role in combating dishonest behaviour; therefore, the concepts of procedural good faith and the obligation to tell the truth in civil proceedings are still evolving. The doctrine and case law do not provide explicit definitions of either concept; however, the case law allows for identifying party conduct that may be considered an abuse of procedural rights. Typical cases involve various ways of delaying the proceedings, but the abuse of procedural rights is most often established when the conduct is systematic, i.e. the party has succeeded in postponing the hearing several times, thus obtaining the desired outcome. In such cases, courts rarely impose procedural sanctions. Regarding the obligation to tell the truth, the courts most frequently find an infraction when the plaintiff's statement of claim or testimony in court conflicts with facts that are supported by the evidence. The only consequence is that the courts reject the party's argument without imposing procedural sanctions. As a result, when the court eventually finds the conduct in bad faith, it is more of a formal acknowledgement that does not motivate the party to change its attitude towards a fair process, nor does it prevent the procedural abuse or restore the procedural balance between the parties.

The principle of a fair trial requires a more active role by the court in ensuring procedural good faith and preventing abuse of procedural rights. The court is the only judicial authority able to safeguard the balance of parties' procedural rights, thus ensuring a fair process. Consequently, the court must effectively supervise how parties exercise their procedural rights and obligations, and its discretion is limited only to the choice of suitable procedural means to prevent or sanction violations.

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