

# Consistency in the legislator's approach: the context of the Latvian civil procedure law

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## Abstract

*This article analyses the consistency of the legislator in regulating procedural requirements and adherence to the principles of good legislation. Its objective is to examine the current provisions of the Latvian Civil Procedure Law (Civilprocesa likums: Latvijas Republikas likums, 1998, hereafter – CPL) from the perspective of good legislative practice, assess the approach taken by the legislator in amending the existing regulations and consider other factors relevant to the quality of the law. The author employs analytical, logical, inductive and deductive research methods in the study. The relevance of this topic is underscored by the legislator's ongoing efforts to amend the Civil Procedure Law, as well as rulings of the Latvian Constitutional Court, which have repeatedly identified shortcomings in the legislation. Additionally, deficiencies in legal regulation, identified in both judicial practice and legal scholarship, further highlight the importance of this research. The study concludes that, when amending the CPL, the legislator does not always adhere to a consistent approach or properly assess the quality of the amendments. For instance, without a clear and comprehensible justification, identical procedural institutions are sometimes subject to different regulations. This applies, for example, to the making of a supplementary decision, the submission of knowingly unfounded applications, as well as other aspects.*

## Keywords

Civil Procedure Law • Good Legislation • Legislative Consistency

## INTRODUCTION

The first sentence of Article 92 of the Constitution of the Republic of Latvia (Satversme: Latvijas Republikas likums 1922) guarantees every person the right to a fair trial. This encompasses, first, an independent judicial authority responsible for adjudicating cases, and second, a proper judicial process that meets the standards of a democratic state governed by the rule of law (Latvian Republic's Satversmes tiesa, 2020). To ensure an adequate civil litigation process, Latvia has adopted the CPL, which sets out the principles and rules of civil procedure. The consistency and precision of this legal framework directly reflect its quality, which is crucial for both understanding and applying the law. The aim of this article is to assess the regulation of claim proceedings under the CPL from the perspective of legislative consistency, potential shortcomings and overall legal quality. The relevance of this topic is justified by two interrelated aspects. First, the Latvian legislator has consistently and intensively worked on drafting and implementing amendments to the CPL. Since its adoption on 14 October 1998, the law has been amended

more than 70 times (Osis, 2023a,b). This raises the need to evaluate these changes in terms of legislative consistency. Second, the case law of the Latvian Constitutional Court indicates that the compliance of the existing legal framework with the Constitution often requires assessment in the context of the principle of equality (Latvian Republic's Satversmes tiesa, 2010, 2012), the principle of good lawmaking and other relevant factors. This study employs analytical, logical, inductive and deductive research methods.

## RESEARCH RESULTS AND DISCUSSION

### Legislative consistency and the principle of good legislation

According to Latvian literary language (1972–1996), consistency refers to certainty, purposefulness, logical justification and coherence. Latvian conversational language (1933) defines a consistent approach as one that follows established principles. Consistency is often associated with quality and systematic progression, making

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it a crucial criterion in evaluation. The principles governing the legislator's actions, as well as procedural order, are determined by normative acts, which are mandatory for the legislator to follow. One of the key principles that the Saeima must adhere to is the principle of good legislation (Latvijas Republikas Satversmes tiesa, 2024). This principle consists of four interrelated elements: '(a) constitutional requirements set for the legislation process; (b) quality requirements set for the law; (c) legal technical requirements; (d) requirements regarding due preparation of the law' (Pleps, 2012). Legislative consistency can be understood as a logical, well-founded and structured approach to drafting normative acts, both from a legal and a legislative-technical perspective. It follows that legislative consistency directly relates to compliance with both the quality standards of normative acts and the technical requirements of lawmaking—two fundamental elements of the principle of good legislation. It is important to emphasise that legislative consistency is a complex issue. While it is a hallmark of quality, it cannot be absolute, as lawmakers must regulate a wide range of real-life situations that often require an individualised approach. At the same time, legislators are bound by the obligation to uphold legal principles, such as legal equality, among others. This means that the lawmaking process—and the quality of the law itself—is subject to high standards. This is understandable, as poorly crafted laws negatively impact legal certainty and stability, as well as hinder economic and other forms of development (Kusiņš, 2013). However, examples show that the expected consistency in lawmaking is not always achieved. This does not necessarily mean that all identified shortcomings lead to serious negative consequences, but they do not contribute positively to the legal system either. For instance, CPL Article 201 provides for the issuance of a supplementary judgement, which is essentially duplicated by CPL Article 436 (supplementary judgement in the appellate instance). While this duplication does not negatively affect the litigation process—since it formally regulates proceedings at two different judicial levels—it does not add value either. Similar considerations apply to the regulation of judgement clarification in the first and second instances (CPL Articles 202 and 437). The CPL is a fundamental element of the Latvian legal system, playing a crucial role in ensuring the implementation of individuals' fundamental rights. Specifically, it guarantees the right to a fair trial, which means that the quality standards for the CPL should be set at a sufficiently high level.

### **Legislative consistency and examples from the CPL**

The limitations of the scope of this article prevent a comprehensive review of the legislator's consistent approach, or its lack thereof, but specific examples can provide enough insight into the issue.

Section 3 of Article 201 of the CPL, which regulates the issuance of an additional judgement, stipulates that: 'The issue of issuing an additional judgment is examined in writing, with prior notice given to the participants in the case. Simultaneously with the notice, the court sends the participants in the case a request for the issuance of the additional judgment.' The analogous regulation regarding the appellate court (CPL Article 436, Paragraph 3) explicitly states that: 'The court issues an additional judgment after considering the issue in a court session, with prior notice given to the participants in the case. The absence of these persons does not prevent the issuance of an additional judgment or the rejection of the request.'

Thus, it can be concluded that identical civil procedure institutes are regulated differently concerning the absence of participants in the court session where the issue of issuing an additional judgement is considered. In one case, the legislator has regulated the absence, but in the other, the absence of the participants is left to the court's discretion. This example does not indicate a systemically accurate legislative approach and could provide grounds for the belief that the law should be improved in terms of quality. This is evidenced by two aspects. First, the necessity to duplicate regulation in the law is questionable. Second, if such repetition is considered appropriate, it should presumably be formulated identically, unless a justification for including different provisions in the representation of a single procedural institute in different parts of the law is provided. In this case, there is no logical basis for the different approach.

Similar considerations can be applied to the institute of judgement explanation. Specifically, Article 202 of the CPL outlines the procedural order for explaining a judgement. Essentially identical regulation is included in Article 437 of the CPL, which provides rules for explaining a judgement in an appellate court. It can be concluded that the legislator has included nearly identical provisions in two places, although this approach could have been avoided. From these examples, it can be concluded that the approach to the internal structure of the law should be reviewed, for instance, by considering the possibility of including identical provisions for the entire litigation process in Part A (General Provisions). Another aspect to consider is whether the legislator's approach to regulating a single procedural institute in two different parts of the law is justified unless sufficiently explained.

The first paragraph of Article 9 of the CPL explicitly states: 'The parties have equal procedural rights.' The second paragraph of this section provides: 'The court ensures equal opportunities for the parties to exercise their rights to protect their interests.' With this regulation, the CPL directly affirms the principle of equality of the parties in civil procedure, which is one of the most important principles of civil litigation. It follows from the general human rights principle of equality,

as stipulated in Article 91 of the Constitution of the Republic of Latvia (Rozenbergs and Torgāns, 2016). The equality of arms in court is an extremely important principle. It is one of the manifestations of fairness. As Lord Woolf once stated, a proper civil litigation system 'must be fair in the way it treats litigants' (Gelnias et al., 2015). A fair approach should be reflected both in the normative regulation and in the litigation process itself. The European Court of Human Rights has also emphasised that civil proceedings must ensure 'the requirement of "equality of arms", in the sense of a "fair balance" between the parties' (The European Court of Human Rights, 1993).

In this context, attention should also be drawn to Section 3 of Article 73.1 of the CPL, which explicitly states that: 'For the submission of a knowingly false application, claim, or complaint, excluding an ancillary complaint, appeal, or cassation, with the aim of achieving an unlawful purpose or delaying the protection of rights or legal interests, the court may impose a fine on the party of up to 1200 euros'. As shown, the responsibility for submitting knowingly false procedural documents under this provision is only imposed on the parties. This means that, for example, third parties with independent claims are not subject to this responsibility, even though they are participants in the case and it is not excluded that they may also knowingly submit false claims (Osis, 2025). From the perspective of the legal system, such provisions can also be viewed in a different context. Specifically, Section 5 of Article 179 of the CPL (Application for Forgery of Written Evidence) stipulates that: 'If the court finds that a participant in the case has intentionally and unjustifiably initiated a dispute regarding the forgery of written evidence, the court may impose a fine on this participant in the amount of up to 150 euros.' It is known that a participant in the case can initiate a dispute over the forgery of written evidence through a motivated application. How large a fine can be imposed, for example, on a party who intentionally and unjustifiably submitted a motivated application for the forgery of written evidence? Should this be considered solely in the context of Article 179 of the CPL, with the maximum fine of 150 euros? Or does the regulation of Section 3 of Article 73.1 apply here, allowing for a fine of up to 1200 euros? Perhaps, in this case, the fine, when both provisions are applied, cannot exceed 150 euros? It seems that the legislator has not considered such issues beforehand. The CPL system indicates that submitting a knowingly unfounded application is associated with other legal consequences. Section 2 of Article 269 of the CPL stipulates that if the court finds that the applicant has intentionally submitted an unfounded application for restricting a person's legal capacity or establishing guardianship due to mental or other health issues, the court costs are imposed on the applicant. An analogous provision exists for intentionally unfounded applications regarding the establishment of

temporary guardianship (Article 270.<sup>14</sup>). This means that the legislator has linked the submission of knowingly unfounded applications with the obligation to cover court costs in two cases, in addition to a possible fine.

In this context, the third paragraph of Section 73.1 of the CPL raises further questions, namely whether it would be more accurate for the legislator to directly specify the responsibility for submitting intentionally unfounded initial claim applications and special procedural applications, as well as applications and requests submitted intentionally unfounded, and then provide for liability for other applications and requests submitted intentionally unfounded? The third paragraph of the provision does not provide an answer to cases where the law allows for the submission of a motivated request, and such requests are intentionally unfounded. For instance, the third paragraph of Article 11 of the CPL stipulates that under certain circumstances, the court session or part of it can be declared closed upon the motivated request of a participant in the case. The second sentence of the second paragraph of Article 93 states: 'If the parties or other participants in the case are unable to submit evidence, the court may request them upon their motivated request.' A motivated request is also mentioned in Paragraph 4 of Article 111, Paragraph 1 of Article 112, Paragraph 3 of Article 116, Paragraph 3 of Article 176, Paragraph 9 of Article 238.<sup>1</sup> and elsewhere. It is clear that such an approach by the legislator cannot be considered accurate and consistent.

Overall, these examples may indicate a lack of a consistent approach, which places certain legal subjects in a procedurally disadvantaged position compared with others. In this context, the observance of the principle of legal equality can also be evaluated. An inconsistent procedural regulation complicates both the court's work and the participants' understanding of procedural rights and obligations. This can, in some cases, lead to violations of individuals' right to a fair trial.

There are also other deficiencies in the regulation of procedural sanctions. Specifically, the legislator has not consistently regulated the amount of fines in the CPL. In most cases, the CPL provides the court or judge with the authority to impose a fine and, if applied, to determine its amount up to the maximum set by law. This is the case, for example, in Section 2 of Article 50 of the CPL, which allows the imposition of a fine of up to 50 euros on a participant in the case who fails to notify the court of their electronic mail address or address change during the proceedings. A similar approach is provided in Paragraph 1 of Article 73.1, which sets the legal consequences for dishonestly using rights and obligations or disrespecting the court. If a witness fails to attend without justifiable reason after being summoned by the court or judge, the court may impose a fine of up to 60 euros, based on Section 2 of Article 109. This enumeration could continue (Articles 120, 122, Paragraph 2, 150, Paragraphs 1 and 2,

etc.), but the legislator has not fully been consistent on this issue. However, in Section 2 of Article 620.<sup>12</sup>, the legislator has precisely set the fine amount. This section determines the consequences if the debtor fails to execute the decision voluntarily, stating: 'The bailiff sends information that the debtor has not voluntarily complied with the decision to: (1) the district (city) court that made the decision regarding the return of the child to the country of their habitual residence, after receiving the decision for execution; (2) the district (city) court in whose jurisdiction the foreign court decision is to be enforced, after the expiry of the voluntary execution period.' The second paragraph of this section explicitly states: 'The court imposes a fine of 750 euros on the debtor after receiving the information.' Thus, the legislator has not been consistent in the context of procedural sanctions and, second, the provision is automatic, without providing the court discretion to evaluate the circumstances, reasons for non-compliance with the decision or the need to impose a smaller fine. These provisions do not allow for any individualised evaluation, which contrasts with other provisions in the law that foresee the imposition of fines as procedural sanctions. In this case, evaluating the circumstances, individualising and determining the fine amount becomes relevant when the sanctioned person requests the court to reduce, exempt from or substitute the fine (Davidovičs et al., 2016). It seems that this regulation should be improved, and a unified approach is necessary in the regulation of procedural sanctions.

Article 149 of the CPL contains provisions regarding the actions of the judge in preparing a case for trial. The first sentence of Paragraph 8 of this article stipulates that: 'In cases related to the reinstatement of an employee or recognition of an employer's dismissal as invalid, the court session must be scheduled no later than 15 days after receiving the explanation or the expiration of the deadline for submitting the explanation or after the preparatory session or mediation deadline.' The first sentence of Paragraph 9 of this article stipulates: 'In cases concerning claims arising from the alienation of real estate for the needs of the society, the court session must be scheduled within 15 days after receiving the explanation or after the expiration of the deadline for submitting the explanation, or after the preparatory session or mediation deadline.' The first sentence of Paragraph 10 of Article 149 specifies that: 'In cases concerning claims by administrators for the benefit of insolvent debtors, as provided for in Chapter XVII of the Insolvency Law, and claims for damages from members of legal entities or corporate members for their responsibility for damages caused, the court session must be scheduled no later than three months after receiving the explanation or after the expiration of the deadline for submitting the explanation or after the preparatory session or mediation deadline.'

There is no doubt that the mentioned categories of cases are characterised by special features. However, it is believed that

in other cases, there may also be grounds for assigning the respective case for priority consideration. For example, it is questionable whether claims arising from personal injuries resulting in disfigurement or other health damage or death could not be recognised as cases that should be considered on a priority basis (Osis, 2023a,b). A similar conclusion can be applied to cases involving claims for compensation for damages and non-pecuniary harm resulting from criminal offences or administrative violations, among others. The regulation of Section 149 of the CPL does not provide confidence that the legislator has systematically evaluated the categories of cases that could generally be recognised as those that should be considered within a shorter timeframe. Inspiration in this aspect can be drawn from the regulation of Section 43 of the CPL, which sets exceptions to the general rules on court expenses and demonstrates the legislator's desire to increase access to the court in certain cases, or from the provisions of Section 205 of the CPL on immediately enforceable judgements.

### **How to improve the quality of the CPL**

The previously mentioned examples that may raise doubts about the legislator's consistency in adopting civil procedural regulations are, of course, not the only ones. The legal literature has already identified deficiencies in the quality of the law (Osis, 2012) and procedural coherence (Osis, 2016a,b). There are also direct references in the legal literature to the lack of consistency in other extremely important issues of civil litigation. For example, it has been emphasised that Paragraph 2 of Article 104 of the CPL, which states that the court may treat the recognition of a fact as proven unless there are doubts about the connection of such recognition with fraud, error, violence or intent to conceal the truth. This may lead to the erroneous conclusion that the recognition by the opposing party is to be considered as evidence (Ose, 2012). This indicates the need to carefully evaluate ways to improve the Latvian civil procedural regulation. Before making any significant decisions, a thorough analysis of the entire CPL should be conducted to identify all deficiencies and errors that affect the administration of justice and the ability of legal subjects to understand procedural legal norms. Only a complete evaluation of the existing regulation can serve as an adequate basis for making a fundamental decision. Namely, whether to improve the existing CPL or to start working on the development of a new law. The author has identified significant deficiencies in the current law in this article and other studies, which has strengthened his conviction about the need to develop a new law. Not only the internal duplications of the law mentioned here, but possibly other technical errors are significant enough to consider drafting a new law. The law contains several fundamental deficiencies, such as in the matter of establishing the truth



(Osis, 2016a,b) or in the administration of justice individually and collegially (Osis, 2015).

## CONCLUSIONS

The consistency of the legislator is directly related to both the quality of the normative act and adherence to the technical requirements of legislation, which are two key elements of the principles of good legislation. The current regulation of the CPL shows a series of inconsistencies, which are the direct, though not always intentional, result of the legislator's actions. Not every one of these shortcomings causes significant negative consequences, but each one complicates judicial reasoning and prevents legal subjects from fully understanding the applicable procedural norms. Both the unchanged and the amended versions of the CPL norms demonstrate fundamental shortcomings that could be addressed through legislation. This indicates deviations from the principle of good legislation and provides a basis for conceptual decisions about the path to improving civil procedural regulation. Before deciding whether to amend the existing CPL or draft a new law, a thorough and comprehensive analysis of the current CPL regulation is required. The author believes that the various amendments made over more than 25 years, along with the fundamental deficiencies, justify the need for a new law. If, despite more than 70 amendments, the CPL has not been able to create a civil procedural regulation free of fundamental contradictions or errors, it seems that drafting a new law would be the most appropriate approach. Of course, this does not fully safeguard or eliminate the possibility of shortcomings or deviations from the principles of good legislation in the context of a new law. It is likely that, alongside the existing principles and traditions of lawmaking in Latvia, emphasis should be placed on participation (broader involvement of judicial system professionals), publicity (publishing the results of each stage of regulation development to ensure wider discussion) and gradualism (working in stages to enhance a structured perspective and reduce the possibility of errors, etc.).

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