

# MODERN TRENDS IN REGULATING JUDICIAL ACTIVITIES: RUSSIAN EXPERIENCE

Article



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## Balance of Court Protection Effectiveness and Access to Justice in the Context of Achieving Civil Litigation Goals

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**Abstract:** The paper analyzes the notions “court protection effectiveness” and “access to justice” in civil cases, as well as the balance between them. The study established that court protection accessibility is the key for effective justice; however, the accessibility does not guarantee effectiveness. Moreover, there were revealed objective and subjective circumstances influencing achieving civil litigation goals in the context of justice effectiveness. Subjective factors encumbering receipt of the court protection of violated rights are circumstances depending on the plaintiff. In some instances, a goal of judicial recourse cannot be achieved because of plaintiff’s bona fide ignorance. Objective preclusions do not depend on the plaintiff though sometimes are created by courts. The authors studied indicators, conditions, assessment criteria, guarantees of court protection effectiveness, alongside with characteristics of the latter. There was made a conclusion that the most significant characteristics of court protection are the following: timely case consideration; rationality

of procedural activities by the court and interested persons; procedural economy; validity, relevancy, equitableness of a trial court decision; its stability and consistency with higher courts position within the principle of legal certainty; court decision enforceability. There have been worked out ways to improve legislation that are aimed at optimizing implementation of the right to judicial recourse and receiving effective court protection. Some of the most significant ways are stimulation of mediation through offering relief for the payment of state duty, implementing criteria for admissibility of complaints, as well as criteria for admissibility of limitation of the right to judicial recourse.

**Keywords:** court protection; civil litigation; judicial recourse; non-contentious matter; access to justice

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## I. Introduction

Effectiveness of court protection of civil rights, freedoms and legally protected interests is still among front burner issues for modern law and jurisprudence both in Russia (Panteleev, 2018; Golovkova, 2019; Kurochkin, 2023) and abroad (Gentile, 2022; Prechal, 2020; Khabirpour, 2023). In the EU countries, issues of court protection effectiveness are often considered in the context of the compliance of national legislation with Art. 47 of EU Charter of Fundamental Rights

(Prechal, 2022; Bonelli et al., 2023; Poli, 2022). Traditionally, in Russia court protection effectiveness is associated with achieving civil litigation goals in protection of violated or disputed rights, freedoms and legally protected interests of citizens, organizations, rights and interests of the Russian Federation (RF), RF constituents, municipalities, and other parties that are subjects to civil, labor, or other legal relationships. The established approach should be considered narrow, since not every trial results in the direct protection of interested party's rights for subjective and objective reasons that require independent research. Moreover, sustaining the claims by the court does not mean automatic restitution of the situation that existed before the rights violation or compensation for the violation committed.

Civil rights are tangibly protected when court decisions are enforced through legally prescribed methods. That said, litigation may have drawbacks complicating parties' ability to obtain judicial protection, from the initial filing of a complaint and ending with the enforcement of a court decision, for instance:

- Excessive pleading requirements (Porokhov and Porokhova, 2015);
- High state duty fees for filing complaints (Safagareev and Aseev, 2024);
- Prolonged adjudication of civil cases that often render judicial protection of violated rights meaningless (Pleshanov, 2020);
- Abuse of procedural rights by litigants (Osipova, 2022);
- Unjustified court decisions (Kniazkin, 2020), and
- Violations of enforcement time limits for final and binding court rulings, etc.

On the one hand, such justice does not provide effective protection for violated rights; on the other hand, it impedes the proper and timely adjudication of civil cases. These circumstances show a clear need to study the indicators and criteria for assessing the effectiveness, conditions, and characteristics of judicial protection, which will enable the development of methods and guarantees the court protection effectiveness.

## **II. Objective and Subjective Circumstances Influencing Achieving Civil Litigation Goals in the Context of Justice Effectiveness**

Under Art. 2 of the Civil Procedure Code of the Russian Federation (RF CPC), the goal of civil litigation is to protect violated or disputed rights, freedoms and legally protected interests of citizens, organizations, rights and interests of the Russian Federation, its constituent entities, municipalities, and other parties engaged in civil, labor or other legal relationships. The stated goal is in the line with civil litigation tasks of correct and timely adjudication of civil cases. Meanwhile, the law does not mention court protection effectiveness as a goal or a task of civil litigation. Effective court protection may be defined as an outcome of the resolution of a civil case when the rule of law is applied to disputable legal relationships, resulting in the most justified, lawful, and reasonable judicial decision that protects the violated right and provides either restitution of the situation that existed before the right was violated or compensation for the damage sustained.

Civil rights protection, as a goal of judicial proceedings, does not necessarily result in the parties obtaining their desired procedural or substantive outcomes. Firstly, upon filing a claim in court, the plaintiff's (or applicant's) subjective right is presumed to have been violated by virtue of the legal interest presumption set forth in Clause 1, Part 1, Art. 134 of the RF Civil Procedure Code. The actual possession of a subjective right by the interested party, as well as the fact of its violation, is established during the trial, which determines the appropriate method of judicial protection to be applied under the relevant rule of substantive law. Thus, the outcome anticipated by the plaintiff may not be achieved if the plaintiff is mistaken about their entitlement to have the claim upheld. In such cases, the court instead protects the defendant from unfounded or unlawful claims asserted by the plaintiff.

Secondly, the principles of adversarial proceedings and judicial truth do not always permit the establishment of a violation of the plaintiff's subjective right, because possibilities for presenting evidence in court are limited to what is available or has been preserved. Some circumstances important for a case are obviously not provable because

the parties did not anticipate the dispute arising and therefore failed to formalize their relationship in an appropriate legal manner. Examples of such relationships include lending money between relatives to one another under an oral agreement, selling a premarital apartment owned by one spouse and investing the proceeds in the purchase of jointly owned residential property, transferring property for temporary use or storage without a formal contract, and making cash alimony payments for the support of minor children, etc.

Attempts to prove or refute the violation of rights under such circumstances often provokes parties to “create suitable evidence”, which is subsequently not always accepted by the court as admissible (e.g., drafting backdated contracts, inviting witnesses to confirm the transfer of funds, printing screenshots of private correspondence, or documenting negotiations between the parties, etc.). Failure to prove legally significant circumstances of the case, which is the plaintiff’s burden, results in the denial or partial satisfaction of the claims. Conversely, failure to prove the facts underlying the defendant’s pleadings leads the court to grant the plaintiff’s claims. In both instances, the protection of violated or disputed rights, freedoms, and legally protected interests — as the primary goal of civil litigation — is formally achieved. However, from the parties’ perspective, this goal is not achieved, and the result, as embodied in the court decision, often fails to align with their expectations of fairness of justice.

Thirdly, failure to obtain a desired procedural or substantive result at trial is often associated with a party’s refusal to resort to qualified legal assistance due to their overconfidence in their own abilities, reliance on the knowledge and experience of a non-lawyer representative, insufficient financial resources to retain legal counsel, or poor qualifications of an engaged legal specialist. Erroneous or negligent procedural activities impede court’s authority to grant the claim. Such actions may include filing claims that do not comply with legal requirements, selecting an inappropriate remedy, failure to prove legally significant facts, or misinterpreting and miscommunicating case results to the client. On the other hand, if the defendant fails to prove the fact of the violation of a right, the court will not be able to dismiss a frivolous or unsubstantiated claim.

Consequently, achievement of the goal of civil litigation, namely, the court's activity in hearing and resolving civil cases to protect violated or disputed rights, freedoms and legally protected interests, depends on subjective and objective circumstances. As S.A. Kurochkin aptly notes, "the greatest significance in assessing court activity lies in the prudent satisfaction with the case outcome among those who participated in the proceedings" (Kurochkin, 2024, p. 47).

The effectiveness of court protection increases the significance of the civil litigation goal beyond the abstract notion of protecting violated rights to a possible maximum in terms of requirements for court decisions – including fairness, legality, relevancy – as well as the practical result reflected in the actual enforcement of the court decision. The court protection effectiveness should be reflected in a balanced regulation of legal proceedings, ensuring a rational balance between the number and nature of procedural activities and way of achieving civil litigation target settings, subject to equality and interaction between the court and the parties during the trial (Bernem et al., 1996, p. 55). Court protection ineffectiveness is expressed in imbalance between interested parties' efforts in obtaining court protection of their rights and the obtained trial result.

The issue of the effectiveness of court protection is particularly relevant in the context of recent amendments to the civil procedural legislation regarding the increase in state duties paid for filing claims and the requirement to make advance deposits into the court's account to cover the costs of forensic examination.<sup>1</sup> In addition to these expenses, the costs associated with retaining qualified legal counsel, mediation services, travel to the court venue, oral and written consultations with specialists, review of experts' reports, obtaining necessary documents, and other legal fees can be quite significant. Procedurally diligent plaintiffs, defendants, and third parties strive to fulfill their procedural obligations to appear in court as efficiently as possible. This often

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<sup>1</sup> Federal Law of 22 June 2024 No. 191-FZ "On Amendments to Civil Procedure Code of the Russian Federation and annulment of section four of Article 16 of Federal Law 'On State Forensic Activities in the Russian Federation'". Available at: <http://publication.pravo.gov.ru/document/0001202407220006> [Accessed 10.08.2025]. (In Russ.).

results in non-compensable losses of time, such as lost wages for the time spent attending trial, lost income from entrepreneurial activities, and expenses for care and supervision of dependent family members.

Moreover, the costs of seeking judicial protection are not limited to financial expenditures. Preparation for each court hearing requires significant efforts, including searching for information related to the subject of judicial proof, collecting evidence, conducting negotiations, involving witnesses, identifying expert organizations willing to carry out examinations and provide cost estimates, negotiating the terms of settlement agreements, and formulating grounds for appeals. Frequently, even after receiving a favorable court decision, the winning party must wait a long time for the enforcement of the court decision and for the reimbursement of legal costs incurred.

The disproportion between the parties' efforts and the outcome of the trial, in addition to subjective factors within the parties' control, may also result from other factors, such as failure to adhere to statutory time limits for cases consideration – which can sometimes render the protection of rights meaningless, – imperfections in civil procedural legislation regulating judicial proceedings; incorrect application of rules of substantive and procedural law; failure to perform necessary procedural activities, or performance of inappropriate procedural activities. Taken together, these factors give grounds to support the opinion that the main problem of justice effectiveness lies in the identification and eliminate judicial errors, specifically errors in fact-finding and applying legal rules (Lazarev, 2024, p. 4).

### **III. Effectiveness of Court Protection: Indicators, Conditions, Assessment Criteria, Characteristics**

The concepts of “effectiveness of justice” and “effectiveness of court protection” are often used as synonyms. This is partly because justice is understood as the court's activity in hearing and deciding civil cases with the aim of protecting violated rights. In support of this thesis, we would cite the definition of the effectiveness of court protection given by V.B. Vershinin and stating, “this is the achievement of positive results of legal activity, expressed in giving public relationships such a

direction of development that best meets the outlined in the legislation goals of the mechanism of court protection functioning in the absence of judicial errors, obviously unjust decisions, negative ‘side effects’, as well as reasonable costs of financial, organizational, informational, time and other resources connected with hearing legal cases in court and enforcement of judicial decisions” (Vershinin, 2011).

Thus, in a broad sense, court protection is equated with the activity of a court as a state institution, that is, with the administration of justice. In a narrow sense, court protection pertains to a particular civil case and represents the goal of the court activity in relation to the subjective right of an interested party. Consequently, the categories of “effectiveness of justice” and “effectiveness of court protection” are close, but not identical.

In a broad sense, the effectiveness of civil rights court protection is assessed by a number of indicators that are grouped on various grounds. A.Yu. Astafiev suggests evaluating judicial activity in civil cases by itemizing the factors that influence the effectiveness of justice. In his opinion, the effectiveness of justice is reflected in four key aspects:

- Normative aspect: the quality of legislation;
- Procedural aspect: the quality of court decisions, timeliness, openness of justice;
- Organizational aspect: the material, technical and personnel resources available to the court;
- Communicative aspect: the culture of interaction between the judge and the participants in the proceedings.

In addition, the level of effectiveness of justice is determined by the professionalism and ethical standards of legal professionals, who shape participants’ perceptions of court procedures (Astafiev, 2012).

When addressing the substance of the narrower category of “effectiveness of court protection”, legal scholars most often highlight two primary aspects in its definition:

1. the conformity of court decisions with the broader goals of justice, which are inherently social in nature (Vasilev, 2022);
2. the compliance of a particular court decision the goal of civil proceedings to protect the rights, freedoms and legally protected interests of the interested party (Anikeev, 2019).

In essence, the above-mentioned aspects are related as the general to the particular, where the former ensures the uniformity of judicial practice, while the latter applies to the resolution of an individual dispute under consideration by the court. Both aspects determine the court protection effectiveness through compliance with the goal of civil proceedings. However, as we have argued above, the goal of protecting violated rights is not always achieved, and attaining this goal in the form of a formally correct decision does not necessarily equate to effective court protection. The effectiveness of court protection should not be equated with the litigation result also for the reason that it must be ensured throughout the entire process from the moment of filing a claim (complaint).

A universal approach to assessing the effectiveness of court protection enabled S.A. Kurochkin to develop a multi-level system of indicators for evaluating the achievement of court protection goals with optimal expenses. Moving from the general goals of civil litigation to the specific goals of each stage of the litigation, the author proposed the following indicators as a framework for assessing the effectiveness:

- the extent to which the primary goal of protecting the rights and legally protected interests of participants in legal relationships is achieved;
- the extent to which the goal of a fair and public trial within a reasonable time is met;
- the extent to which the goals of strengthening the rule of law, preventing offenses, and fostering respect for the law and the court are accomplished;
- the extent to which justice is accessible and disputes are effectively resolved;
- the rationality of legal costs and the cost-effectiveness of procedural forms.

The extent to which these indicators are achieved should serve as the criterion for assessing the effectiveness of procedural law and civil litigation as a whole, as well as the effectiveness of individual stages of the litigation process, including legal recourse, trial, court decision, and review proceedings (Kurochkin, 2020a, p. 149). V.B. Vershinin offers a similar perspective on the criteria for assessing the effectiveness of

court protection. According to him, the general criteria for assessing the effectiveness of court protection are the goal, the means, and the result. He further identifies specific indicators for assessing the effectiveness, including: (1) accessibility of court protection; (2) speed of its implementation; (3) quality of judicial acts; and (4) their enforcement (Vershinin, 2011).

With regard to the effectiveness of court protection in specific civil cases, S.A. Kurochkin posits that it hinges upon five interdependent elements: (1) Accessibility of judicial recourse; (2) Procedural regimentation of case examination; (3) Quality of adjudicatory outcomes; (4) Efficacy of review proceedings; 5) Efficient procedural legislation. Each element must achieve its institutional objectives through cost-optimal realization of temporal, financial, and systemic resources. So, the proposed effectiveness criteria are:

**1. Procedural Legislation Efficacy:** a) degree of normative influence on litigant conduct (e.g., adherence to disclosure rules); b) extra-judicial effects like institutional trust-building and dispute prevention (measured through public confidence indices); c) cost efficiency (optimal expenditure proportionality).

**2. Litigation Initiation Efficacy:** a) barrier-free realization of standing rights (eliminating economic or procedural obstacles); b) minimized documentation/remittance burdens (filing fees, evidence-collection expenses).

**3. Trial Proceeding Efficacy:** a) procedural integrity: adherence to fairness and independence principles within reasonable timelines; b) cost-optimal case administration (hearing duration *vs.* outcome quality); c) reduction of judicial mistakes and their repercussions.

**4. Judicial Decision Efficacy:** a) effective dispute resolution for litigants; b) influence on the society (precedents, violation deterrence); c) alignment between adjudication costs and societal utility.

**5. Review Proceeding Efficacy:** a) reduction of flawed judgments; b) ensuring the uniformity of judicial practice; c) cost-efficient error-correction mechanisms (Kurochkin, 2020a, p. 138).

Based on the idea expressed by the authors, parties should obtain court protection of violated rights and legally protected interests in a timely manner, without unnecessary complications and financial, time

and other expenses of civil litigation participants, provided that a lawful and reasoned decision is made. T.V. Solov'eva holds a similar view, noting that the highest level of the effectiveness of court protection is achieved if it is "received by the interested party within the time period established by law, in full, and with minimal legal costs and actions required from other participants in the litigation related to the consideration and resolution of the dispute" (Solov'eva, 2022, p. 429).

In summary, the characteristics of effective judicial protection can be outlined as follows:

- timeliness of case consideration;
- rationality of procedural actions by the court and interested parties;
- procedural cost-effectiveness;
- legality, relevance, and fairness of the trial court's decision;
- trial court's decision stability and consistency with the positions of superior courts within the framework of the principle of legal certainty; and
- enforceability of the court's decision.

#### **IV. Ways of Increasing and Guaranteeing the Effectiveness of Court Protection**

Defining indicators and criteria for assessing the effectiveness of court protection makes it possible to answer the questions "What needs to be improved in the courts activities?" and "How can we determine the level of effectiveness?" The next important question is "How can the level of court protection be improved?" The answer to this question serves as the foundation for determining ways to increase the effectiveness of court protection, ensuring its enforcement, as well as developing proposals for improving the legislation and court activity in administration of justice.

V.B. Vershinin identified the following priority trends in the modernization of court protection in the context of administration of justice:

1. Improving the organizational structure of the judicial branch of power (judicial system);

2. Aligning the development of the judicial system with reforms in procedural legislation and the renovation of court instances;
3. Enhancing the legal status of judges;
4. Optimizing court jurisdiction and developing alternative methods for resolving legal disputes;
5. Advancing the use of innovative technologies for implementing court protection;
6. Improving state regulation and law enforcement practices related to the enforcement of court decisions;
7. Aligning domestic legislation and legal practices with international legal standards for the administration of justice (Vershinin, 2011).

To increase the effectiveness of court protection, T.V. Solov'eva suggests that several conditions must be met: procedural cost-effectiveness, dynamism and ergonomics of legal proceedings. These requirements apply to both civil litigation as a whole and to individual civil cases (Solov'eva, 2022, p. 429).

The deductive method enables a transition from examining general trends in the modernization of judicial administration to analyzing the specific circumstances that directly influence the effectiveness of court protection.

The court protection effectiveness is contingent upon high-quality implementation of several procedural guarantees: guarantees ensuring protection of the rights and interests of the interested parties at the stage of initiating civil proceedings; guarantees ensuring the issuance of a lawful and reasoned decision following the consideration of the claim; and guarantees ensuring the enforcement of court decisions. As S.A. Kurochkin points out, "the guarantees of the right to court protection enshrined in law do not simply ensure its implementation; they must also predetermine its effectiveness; otherwise, judicial recourse may not occur at all. We are confident that the implementation of the right to court protection is determined, among other factors, by effective, cost-effective access to the courts" (Kurochkin, 2020b).

According to I.L. Petrukhin et al., the effectiveness of court protection is determined by a ratio of the achieved result to the goals set before the rule of law or legal institution (Petrukhin et al., 1976, p. 45). The legal institution enshrined in Chapter 12 of the Civil Procedure

Code of the Russian Federation, titled “Filing a Complaint”, aims to ensure the unimpeded exercise of the right to judicial recourse. This goal is achieved by fulfilling tasks of timely and proper verification of the admissibility of judicial recourse, which ultimately leads to the acceptance of an application for court proceedings and the initiation of judicial activity to consider a civil case (Borisova, 2009).

At the same time, the right to judicial recourse should be limited by legal procedural mechanisms to prevent the misuse of granted powers for court protection, which could result in unjustified time and financial costs. In such circumstances, establishing a balanced model of judicial recourse within general jurisdiction, guaranteeing unimpeded access of citizens to court protection while preventing the abuse of the right to judicial recourse, is of fundamental importance (Borisova, 2013, p. 13).

To optimize the implementing of the right to judicial recourse and obtain effective court protection, the following legislative measures are proposed:

1. **Reducing the amount of state duty** for filing a complaint with the court if the parties have attempted to settle cases where pre-trial settlement of a dispute is not mandated by law.

2. **Introducing criteria for admissibility of complaints** based on the circumstances examined by the court when accepting a statement of claim for court proceedings. These criteria should encompass requirements related to the form and content of the statement of claim (or complaint), conditions for exercising the right to judicial recourse, and prerequisites for the right to judicial recourse, as well as substantive circumstances that are evident at the stage of initiating civil proceedings. The criteria for the admissibility of a claim should include:

- The cause of action must have a legal foundation;
- The existence of the mechanism for court protection of a particular violated right in law;
- The compliance of the chosen remedy with norms of substantive law;
- A proper definition of the competence of public authorities to bring a claim to court in order to protect public interest;

– The lack of hidden changes in the subject of the claim, the substantial and legal cause of action, or the nature of the stated claim, nor should there be any substitution of parties intended to circumvent the identity of previously considered and new claims;

– The non-existence of an obvious interchange of the form of judicial recourse with the purpose of reconsideration (for example, filing a non-contentious matter instead of filing a complaint, filing an application to reconsider the case on new and newly discovered circumstances after an unsuccessful appeal of a previously issued court decision on the same case).

**3. The implementation of criteria for admissibility of restrictions on the right to judicial recourse.** These criteria should include: a) reasonableness of requirements to handling the formalities of filing; b) a right to remedy the complaint deficiencies identified by the court; c) the prevention of abuse of the right to judicial recourse. The reasonableness of the requirements concerning the handling of the formalities of filing a complaint should include:

**A) The proscription of an obligation to submit, at the stage of initiating civil proceedings, evidence that cannot be obtained by the plaintiff or applicant on their own** without court assistance, as well as evidence that the court recommends submitting additionally not in connection with the substantial circumstances set out in the complaint;

**B) The limitation of the court’s requirements regarding the proof of the party’s inability to obtain evidence independently** when disclosure of such evidence to a private individual is directly prohibited by the legislation on personal data protection and other applicable laws.<sup>2</sup>

In civil litigation, the legal axiom “the court knows the law” applies. Thus, the court, as a distinct subject within civil procedural legal relationships, should not impose on a party an a priori obligation to obtain evidence that is inherently unfulfillable due to a direct prohibition

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<sup>2</sup> Art. 10.1, Federal Law dated 27 July 2006 No. 152-FZ “On Personal Data”; Art. 84, 102, Tax Code of the Russian Federation; Art. 9, Law of the Russian Federation dated 2 July 1992 No. 3185-1 “On Psychiatric Care and Guarantees of Citizens’ Rights in Its Provision”, etc.

of the law — knowledge of which the court possesses. Compelling the party to provide confirmation of impossibility to obtain evidence independently is an unnecessary act delaying the trial;

**C) Adequate assessment of the purpose of applying to court and the applicant's legal interest in special proceedings.**

Eligibility to initiate these proceedings is statutorily confined. Moreover, applicants frequently fail to articulate the requisite legal purpose, engendering two systemic deficiencies: 1) legitimate interests remain judicially unprotected, as aggrieved parties fall beyond the scope of permissible petitioners; 2) avenues for rights violations arise against individuals precluded from petitioning the court.

Jurisprudence demonstrates that courts considering applications to declare a citizen missing decline to recognize the following as valid legal purposes: a) an employer's pursuit of procedural regularization of employment termination<sup>3</sup>; b) relatives' initiatives toward residency deregistration to reduce utility payments;<sup>4</sup> or secure utility payment benefits,<sup>5</sup> etc. Consequently, protection of citizens' legitimate interests (e.g., expense reduction) is not recognized by courts as a relevant purpose for establishing another person's status in special proceedings, worsening individuals' circumstances.

A similar paradigm emerges in determinations of incapacity. Under Art. 281 of the RF Civil Procedure Code, an application to declare a citizen incompetent due to mental disorder may be filed by family members, close relatives (parents, children, siblings — even if not cohabiting), guardianship authorities, specialized institutions. This language of the norm deprives former spouses of the person, their parents-/siblings-in-law, and other non-close relatives of the right to apply to court. Consequently, individuals requiring psychiatric assistance remain

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<sup>3</sup> Ruling of the Forth cassational court of general jurisdiction dated 21 December 2023 No. 88-42790/2023, 2-943/2023. The document is not published. Access through "ConsultantPlus" (16.08.2024). (In Russ.).

<sup>4</sup> Ruling of the Seventh cassational court of general jurisdiction of 6 June 2023 No. 88-9397/2023, 2-2709/2022. The document is not published. Access through "ConsultantPlus" (16.08.2024). (In Russ.).

<sup>5</sup> Ruling on appeal of Moscow oblastnoy court of 20 November 2023 in case No. 33-34330/2023. The document is not published. Access through "ConsultantPlus" (16.08.2024). (In Russ.).

without it due to the absence of an eligible applicant. Moreover, until a person is declared incompetent, fraudulent transactions (e.g., real property sales) are executed on their behalf under powers of attorney, violating distant relatives' and third parties' rights and undermining civil law stability in society;

**D) Relaxation of requirements for documents confirming grounds for granting deferral or installment plans for state duty payment, or exemption therefrom.**

Under Clause 2, Art. 64 of the Tax Code of the Russian Federation, such relief is granted to a person whose financial position prevents payment of this tax. The law permits deferral/installment payment of state duty on condition of its payment after the deferral period ends. However, under Subclause 4, Clause 2 of said provision, the applicant must submit information about their movable and immovable property (excluding property exempt from enforcement under the Russian law). Consequently, notwithstanding the *de jure* recognition of this economic safeguard for indigent litigants — specifically, the statutory entitlement to seek duty remission — *de facto* implementation remains fraught with operational deficiencies: procurement and submission of requisite documentation proves excessively burdensome.

So, courts frequently decline to process statements of claim precisely absent state duty receipts (Art. 132 of the RF CPC). This procedural impasse stems from a regulatory misalignment wherein financially distressed applicants petition for state duty deferrals concurrently with filing their complaint. Yet courts overwhelmingly deny such petitions, primarily because applicants fail to submit documents proving dire financial status as enumerated in Art. 64 of the RF Tax Code. Most applicants presume pension/salary statements and zero-balance bank accounts constitute sufficient proof while courts require comprehensive disclosure of movable/immovable assets to establish financial hardship. To prevent deprivation of citizens' right to access court, courts must precisely specify (citing relevant legal provisions) exactly which documents must be submitted;

**E) The prohibition against requiring representatives of state agencies and local authorities, who appear in court to**

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**provide opinions on a case, to hold a law degree when filing an appeal, cassation, or supervisory complaint.**

In particular, the participation of custody and guardianship authorities in providing opinions on cases concerning the termination of parental rights is provided for by Art. 47 of the RF Civil Procedure Code and Art. 70 of the RF Family Code. Thus, the department responsible for exercising delegated state powers regarding custody and guardianship does not constitute a third party. The requirement to submit documents confirming a law degree or an academic degree in the field of jurisprudence does not apply to prosecutors;<sup>6</sup> legal representatives;<sup>7</sup> heads of bodies acting within the authority granted to them by federal law, other legal acts, or founding documents; or to representatives of organizations acting within the powers provided by federal law, other regulatory legal acts, or founding documents.<sup>8</sup> Consequently, imposing a law degree requirement on specialists in departments responsible for the execution of delegated state powers in the area of custody and guardianship is unlawful. Such a requirement deprives custody and guardianship authorities of the ability to fulfill their legally mandated function of presenting and supporting opinions in court proceedings;

**F) The prohibition against formalizing requirements regarding methods for confirming service of process to the defendant and other individuals participating in the case,** in particular the prohibition against court refusing to accept the copy of the complaint bearing the personal signature of the recipient as confirmation of delivery. According to the jurisprudence summary, “The sending or delivery of a complaint and copies of attached documents to other persons participating in the case may be confirmed by a receipt for sending a registered letter, a report on sending a letter to the email address specified by these persons and available in the case materials, a hand receipt, etc., which must include information about which documents were sent to other persons participating in the case. At the

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<sup>6</sup> Art. 401 of the Federal Law dated 17 January 1992 No. 2202-I “On the Prosecutor’s Office of the Russian Federation”. (In Russ.).

<sup>7</sup> Art. 52 of the Civil Procedure Code of the Russian Federation. (In Russ.).

<sup>8</sup> Part 3 Art. 53 of the Civil Procedure Code of the Russian Federation. (In Russ.).

same time, the inventory of attachments as a mandatory document is not provided for by the aforementioned provisions of the law”;<sup>9</sup>

**G) The prohibition of unjustified rejection of applications submitted to the court in electronic form.** Order No. 251 of the Judicial Department under the Supreme Court of the Russian Federation dated 27 December 2016 establishes specific technical requirements for electronic images of documents, electronic documents, electronic signatures; the procedures for verifying, registering, and accepting documents received by the court; and the grounds for rejecting such documents. The grounds for rejection by notification are listed in Para. 4.5 of the Order.<sup>10</sup>

The language of subparagraph 1 of Para. 4.5 of the Order, which provides for the rejection of electronically submitted documents on the grounds that “the application is not addressed to this court”, may encompass a variety of situations:

– The application is not within the factual competence of the court, which constitutes grounds for rejecting the complaint under Part 1 Art. 134 of the RF CPC;

– The case does not fall within the jurisdiction of this court of general jurisdiction, or it is within the jurisdiction of an arbitrazh court, which constitutes grounds for returning the complaint pursuant to Para. 2 of Part 1 Art. 135 of the RF CPC.

Rejection of an electronic application on the grounds that it is identical to a previously submitted application (subparagraph 2 of Para. 4.5 of the Order) is similar to the procedural ground for returning a complaint provided in Para. 5 of Part 1 Art. 135 RF CPC, which applies when an identical claim is already pending before a court or arbitrazh court.

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<sup>9</sup> Summary of judicial practice on errors in resolving the issue of accepting a claim for proceedings. Ruling of the First cassational court of general jurisdiction dated 16 April 2021 Nos. 88-8652/2021, 9-218/2019. Official website of the First cassational court of general jurisdiction. Available at: [https://1kas.sudrf.ru/modules.php?name=docum\\_sud&id=38](https://1kas.sudrf.ru/modules.php?name=docum_sud&id=38) [Accessed 15.08.2025]. (In Russ.).

<sup>10</sup> Order of the Court Department of the RF Supreme Court of 27 December 2016 No. 251 “On approval of Procedure for filing documents in electronic form, including in the form of an electronic document, with federal courts of general jurisdiction”. Bulletin of Acts of Court System. 2017. No. 2.

It should be noted that automated systems used for filing applications and submitting documents employ statuses that are not regulated by civil procedural legislation. The RF CPC does not contain such concepts as “technical refusal” or “rejection of an application”, nor does it establish rules for their procedural documentation. The list of reasons for technical refusal is generally consistent with the grounds provided for by the current RF CPC and should be processed in the form of a court ruling.

Thus, the absence of a legal framework for rejecting complaints on technical grounds diminishes the guarantees of access to judicial protection, as plaintiffs are deprived of the opportunity to appeal the lawfulness of the court’s actions in rejecting their complaints to a higher instance. Thus, it can be concluded that it is necessary to incorporate into the civil procedural legislation the concept of “technical refusal” of documents submitted in electronic form, as well as the rules for its procedural documentation.

When courts use automated information systems, the range of mutual rights and obligations between the court and other participants in litigation is significantly expanded. Currently, a significant number of court powers related to electronic systems operation remain outside the scope of legal regulation. A wide range of new activities are undertaken by litigation participants in connection with submitting evidence to the court in electronic form. Despite the absence of a legal classification for electronic evidence and electronic images of written evidence, the court is still required to assess such evidence for relevance, admissibility, and reliability. The lack of established rules for examining electronic evidence significantly diminishes the effectiveness of judicial protection, as much of this evidence is rejected by the court, thereby depriving parties of the opportunity to substantiate their legal positions to a high standard. Consequently, rules for the examination of electronic evidence should be incorporated into legislation, including procedures for court sessions conducted via videoconferencing systems and web conferences.

Currently, the authority of a judge facilitating remote participation in a court hearing is strictly confined to verifying the identities of physically present participants and administering oaths or affirmations to witnesses and experts.<sup>11</sup> This judicial officer is neither vested with

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<sup>11</sup> Art. 155.1 of the RF CPC.

procedural powers to adjudicate the substantive merits of the civil case nor authorized to participate in evidentiary proceedings. Consequently, such judge lacks competence to admit evidence, authenticate documents, or transmit materials to the court hearing the case on its merits. This statutory limitation inherently restricts remotely participating parties' capacity to submit evidence during the hearing itself (Borisova, 2021). Thus, it is necessary to empower courts that provide for remote participation of a party to authenticate evidence submitted by these participants and to establish regulations for assessing evidence obtained from electronic sources.

An additional measure to enhance the effectiveness of court protection should be taken to permit Russian judges to use domestic software on court technical devices for examining electronic evidence. This would enable judges to directly and efficiently review modern forms of evidence without relying on the parties' technical devices, thereby minimizing doubts regarding the identity of the evidence presented, and preventing potential distortion of evidence or violations of procedures for its presentation and storage on tangible media.

Summing up the above, we can conclude that to increase the effectiveness of court protection, it is necessary to eliminate unnecessary procedural prohibitions and restrictions that impede the exercise of the right to judicial recourse, while concurrently establishing a comprehensive regulatory framework for contemporary — including digital — techniques and methods governing the fulfillment of procedural rights and obligations by litigants.

## **V. Conclusion**

The study analyzes the circumstances underlying the ineffectiveness of court protection and the failure to achieve the goals of civil proceedings, dividing them into objective, conditioned by the existing legislation, and subjective, depending on the actions of the participants in the litigation.

The paper compares the concepts of “effectiveness of court protection” and “effectiveness of justice”, identifying two main approaches to their balance. According to the broad approach, these categories are

considered identical, referring to the activities of the court as a state body in the consideration and resolution of civil cases, aimed at protecting the violated rights, freedoms, and legally protected interests of parties to civil legal relationships. Under the narrow approach, effective judicial protection is understood as the ultimate outcome of a particular case, relating to the subjective right of an interested party, achieved within the prescribed period and with optimal costs.

The study of factors influencing the effectiveness of court protection allowed for the identification of indicators, conditions, and criteria for assessing the effectiveness of court protection, and the formulation of the key features of effective court protection, namely, timeliness of case consideration; rationality of procedural actions by the court and interested parties; procedural cost-effectiveness; legality, relevance, and fairness of the trial court's decision; its stability and consistency with the positions of superior courts within the framework of the principle of legal certainty; and enforceability of the court's decision.

Based on the analysis of trends in modernization of court activities, the authors propose ways to improve the court protection effectiveness. These include encouraging the use of conciliation procedures; reducing the amount of state duty; introducing criteria for admissibility of complaints; introducing criteria for admissibility of restrictions on the right to judicial recourse.

Special attention is paid to the proportionality of the requirements concerning the handling of the formalities of filing a complaint. In particular the authors propose to amend requirements to submitting evidence; to revise the process of filing an application in non-contentious matters and extend standing eligibility to broader categories of applicants; to relax requirements for documents confirming grounds for granting deferral or installment plans for state duty payment; to simplify methods for confirming service of process; to introduce into the legislation the grounds for rejecting electronically filed applications, and procedural rules regulating videoconference proceedings. In addition, Russian judges should be permitted to use domestic software on court technical devices to examine electronic evidence during court sessions.

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