

The Protection of Litigation Right in Civil Procedure

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Abstract

Through a series of interpretations, the Justices of the Constitutional Court have elaborated on the meaning of the litigation right in Article 16 of the Constitution, which includes the right to judgement in a reasonable time, the right to effective remedy, the right to be heard, the right to procedural equality, and the right to due process. All these rights must be harmonized with one another when they conflict. The judge has duty to provide timely and proper clarification, which divides the parties' responsibility for timely defenses and setoffs, and prevents the incidence of "surprise decision" As complementary right, the right to fair (due) process should be aimed at protecting the parties' procedural interests.

It is, by nature, difficult to seek relief for the violation of the right to judgement in a reasonable time. Therefore, the court has to prevent procedural delay that hampers timely delivering of judgment. A court decision during the proceeding cannot be appealed independently without special provisions. If delay stems from inaction of the court, provisions relevant to suspension of proceedings might be applied analogously to grant the parties concerned the right to complain. However, if delay of proceeding results from breach of concentration principle, there seems to be no other remedy than administrative supervision.

The violation of the litigation right usually results from the procedural acts of the court. Under the current laws, complaint against a judgement in the constitutional court is excluded and the prerequisites of appellate remedy (appeals and revisions in the ordinary courts) have been tightened. Although

it follows the example of recent revision of the German Civil Procedure Law, it neglects the reception of appeal against violation of the right to be heard, and constitutional complaint in Germany. Consequently, there exist cases, where the litigation right being infringed without remedy. Since the Civil Procedure Law is to be interpreted in the spirit of the constitution, the prerequisites for an appeal in the third instance should be relaxed, if violation of the litigation right by judgement is involved. At least, relief should be rendered possible by way of reopening the judgement.

Keywords: litigation right, the right to judgement in a reasonable time, the right to effective remedy, the right to be heard, the right to procedural equality, the right to due process, appeal in the third instance, constitutional court