CONFERENCE REVIEW NOTES

REFORMING RUSSIAN CIVIL PROCEDURE

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The II Annual Symposium of the journal *Herald of Civil Procedure* '2015: The Civil Procedure 2.0: Reform and Current State' took place on October 9, 2015, at the Faculty of Law of Kazan (Volga region) Federal University.

The Symposium is now an established tradition for the University. In 2015 it brought together in Kazan eminent scholars of civil procedure from cities across the whole of Russia: Moscow, St. Petersburg, Saratov, Ekaterinburg, Omsk, Samara, Nizhnekamsk and others. This large-scale event attracted the attention not only of Russian scholars, but also of legal scholars from abroad: Elisabetta Silvestri (Professor, University of Pavia, Italy), William B. Simons (Professor, University of Tartu, Estonia), Jaroslav Turlukovsky (Professor, Warsaw University, Poland), Stuart H. Schultz (Practising Attorney, USA), Irina Izarova (Associate Professor, Taras Shevchenko National University of Kyiv, Ukraine).

The opening ceremony of the Symposium began with greetings to all participants and best wishes for productive discussions. Participants were welcomed with remarks by Marat Khairullin, Deputy Chair of the Supreme Court of the Republic of Tatarstan, Radik Ilyasov, Head of the Federal Bailiff Service of the Republic of Tatarstan, and Ildar Tarkhanov, Academic Supervisor at the Faculty of Law. They expressed their appreciation for the great value of the journal *Herald of Civil Procedure* in the growth

of the science of civil procedure and enforcement procedure, and for its contributions to the development of the judicial system of the Russian Federation.

In addition to hearing prepared reports and discussing viewpoints on current issues of civil and arbitration procedure, participants attended presentations by representatives from procedural law periodicals in the frame of the Symposium. The Editor-in-Chief of *Herald of Civil Procedure*, Damir Valeev, and the Commercial Director of the *Statut* Publishing House (Moscow), Kirill Samoilov, presented new books in the series 'Classics of Civil Procedure,' which is a joint publication of the University and *Statut*. Editors of law periodicals noted this great event, too. Professor Vladimir Gureev introduced the first publication of the new scientific and practical journal *Herald of Enforcement Procedure* and Professor Dmitry Maleshin presented the new book *Eurasian civil procedure: the 25th anniversary of the CIS and Baltic countries*.

The conference topics were devoted to the actual issues facing civil procedure and enforcement procedure in the Russian Federation, and in other countries, too.

1. The Code of Administrative Procedure

One of the main interests of the Symposium was the Code of Administrative Procedure, which was adopted and entered into force in 2015. Its passage produced much discussion and raised many issues between legal scholars and those practical workers who have to execute its requirements. First, it was noted that the Code is meant to be used by courts of general jurisdiction while arbitration courts will still be guided by the Code of Arbitration Procedure, though there is no significant difference between cases arising out of public relations involving citizens or organizations. Second, the text quality of the new code was subject to criticism. For instance, about 80 percent of the text was borrowed from the Code of Civil Procedure and the Code of Arbitration Procedure, and as a result of this there is a question about the expediency of the new code. In addition, the borrowings do not seem to be particularly well advised. For a long time scholars and practical workers have criticized many of the norms of the Code of Civil Procedure, yet there was no improvement of them in the process of implementation to the new code. Moreover, due to some unknown cause duplicated dispositions of the Code are not identical with source materials and were paraphrased without substantial reasons, which causes confusion of terms. Third, the principles of the Code of Administrative Procedure are placed in an illogical way, and some of them are not expanded upon for clarity. For example, the quite complex 'principle of fairness' is stated, but without any explanation of what that principle involves.

In spite of the these shortcomings, some positive aspects of the Code were also noted. With regard to the issue of the subjects of administrative procedure, a number of new categories were coined, such as administrative plaintiff and defendant, administrative claim, a group of individuals with a collective claim, and new order

of commutation of abolished bodies in the order of succession. The new norm on 'legal monopoly' is quite revolutionary, for it establishes the requirement that legal representatives have a law degree. The section on evidence is more detailed. Notifications by SMS, which have been used for quite a long time, are legal now. A new opportunity to recover fines from the personal funds of public officials was established, too.

2. Foreign Experience

Elisabetta Silvestri, Professor at University of Pavia, noted in her presentation 'Towards a European Code of Civil Procedure? Recent Initiatives for the Drafting of European Rules of Civil Procedure' that the approximation of the laws and regulations, as well as the promotion of the compatibility of the rules on civil procedure applicable in the Member States, seem to mark significant steps towards a full awareness that the objectives pursued by the EU, and in particular the implementation of both rights and freedoms granted to European citizens under EU law, cannot be attained unless the main differences existing in the rules governing civil procedure in different Member States are removed. She added it was necessary to mention a few elements that could limit the effectiveness of the process of a more significant involvement of the EU institutions in the regulation of civil procedure. First of all, in the field of judicial cooperation in civil matters, the EU has a legislative authority that coexists with the legislative powers of each Member State and that is exercised according to the principles of subsidiarity and proportionality. The harmonization of civil procedure among Member States can be achieved with a variety of normative instruments (*e.g.*, the so-called 'optional instruments' or sector-specific directives). At present, though, the EU institutions seem particularly interested in establishing minimum standards in the regulation of civil procedure, regardless of the subject matters of the cases at stake. The idea of drafting minimum standards of civil procedure is also the basis of a project undertaken in 2013 by the European Law Institute and UNIDROIT (International Institute for the Unification of Private Law) with a view to drafting a set of 'European Rules of Civil Procedure.' The goal of the project is to outline a set of general, uniform standards regarding the most sensitive areas of civil procedure; hopefully, these standards will be transposed in a directive that Member States will be required to implement in their rules of civil procedure, meaning the rules governing both domestic and cross-border litigation. This, Professor Silvestri noted, would be a significant step towards a true harmonization of civil procedure within the EU, since – at least so far – most initiatives in this field have laid down rules applicable only to cross-border cases, and not to domestic cases as well.

Also speaking at the Symposium was practising attorney *Stuart H. Schultz* (USA) who gave a presentation 'Discovery Reforms under the US Federal and State Rules of Civil Procedure.' His focus was the reform of civil procedure legislation in the

USA relating to the order for disclosure of evidence during application to the court, including the electronic form. It was noted that US federal law as well as Utah state legislation establish a ranking system that limits the amount of disclosed information relating to a case in proportion to the amount of the claim. For instance, if a case involves US$50,000 or less in damages, discovery is limited to a total of three hours of depositions, no interrogatories, five requests for production of documents, five requests for admission and 120 days in total to complete discovery.

3. Unified Code of Civil Procedure

The idea to prepare a Unified Code of Civil Procedure was first proposed in 2014, just a few months after the abolishment of the Russian Supreme *Arbitrazh* Court. At the beginning of 2015 the concept of the Code[1] was declared by a committee of the State Duma (the Russian parliament). And during 2015 discussions on the draft version of the Code took place in the Russian legal academic community, exemplified by the following two contributions.

Dmitry Maleshin, Professor at Lomonosov Moscow State University, prepared the report 'From the Unified Code of Civil Procedure to the Unified Code of Judicial Procedure.' He noted that the draft of the Unified Code of Civil Procedure had been hastily prepared and that the idea underlying the code was marred by a misunderstanding: the discussion should not be about drafting a unified code of *civil* procedure, rather, he proposed, it should be about a unified code of *judicial* procedure concerning civil, *arbitrazh* (commercial), administrative and penal procedures.

Dmitry Abushenko, Professor at Ural State Law University, spoke on this issue with the theme 'Unified Code of Civil Procedure: Is the Best the Enemy of the Good?'.

4. Some Other Issues of Civil Procedure

The talk given by *Askhat Kuzbagarov*, Professor at North-West Branch of the Russian University of Justice, was devoted to various details of the implementation of civil justice. The goals and tasks of civil – and now administrative and arbitration – justice should be considered common components (Art. 2 of the Code of Civil Procedure, Art. 3 of the Code of Administrative Procedure, Art. 2 of the Code of Arbitration Procedure); the same is true with respect to the principles of the work of the state courts, the guiding sources of law for the courts, as well as other aspects of procedure. In addition, all the participants in civil, administrative or commercial

[1] Concept of a Unified Civil Procedure Code of the Russian Federation (approved by the Decision of the Committee on Civil, Criminal, Arbitration and Procedural Legislation, State Duma No. 124(1) of December 8, 2014), at <https://www.consultant.ru/document/cons_doc_LAW_172071/> (accessed Mar. 13, 2016).

disputes should proceed from the concept of the significance and value of legal acts as the main source in Russian law. One of the important parts of the Russian understanding of the law today is the application and interpretation of substantive and procedural norms; and the elimination of ambiguity in the mechanism of the legal regulation of relations for the consideration and resolution of civil cases. The question as to the principles of civil law and their practical use is an especially important one. Principles, as fundamental ideas, are an essential basis for forming not only the legal position for a concrete case (or a future case), but also for forming civil order with its democratic elements and the concept of creating civil society within the state. Most of the attention was given to the 'principle of good faith,' a relatively young concept for the Russian legal system. Moral principles, spiritual and cultural values, which are held by the multi-national and multi-religious people of the Russian Federation, are an important component in the establishment and formation of the civil law principles. According to Professor Kuzbagarov, these institutions, which are divided into general and specific, require attention and should be used for guidance both in theory and in law enforcement activities.

Marat Fetyukhin, Associate Professor at Kazan (Volga region) Federal University, spoke on the current status and reform of arbitration procedure. Recently, a new law on arbitration was passed, which raised a large number of questions during the project stage;[2] however, the law has not yet entered into force and thus time remains for understanding its import.

Maria Zarubina, Associate Professor at Saratov State University, discussed her article 'Stages of Reforming the Compensatory Procedure in Russian Procedural Law: Results and Prospects.' She delivered her assessment of the present state of compensatory procedure, providing proof of the need for a complex approach in the formation of a unified mechanism for compensation of damage, which was caused by the judicial process, having regard to concrete cases. The historical experience should be taken into account in the analysis of modern legislation, too. She explained that in her article she examines the main characteristics of the modern state of compensatory procedure and the reason for the insufficient functioning of the mechanism of awarding compensation for the violation of the right to a fair trial in Russian national law. Formation of 'compensatory procedure'[3] (the procedure of the award of compensation for the violation of the reasonable length of proceedings and the execution of court decisions) functions chaotically and spontaneously in Russia. Her research shows that the reform of procedure for compensation for the violation of the right to trial within a reasonable time and the right of execution

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[2] Федеральный закон от 29 декабря 2015 г. № 382-ФЗ «Об арбитраже (третейском разбирательстве) в Российской Федерации» [*Federal'nyi zakon ot 29 dekyabrya 2015 g. No. 382-FZ 'Ob arbitrazhe (treteiskom razbiratel'stve) v Rossiiskoi Federatsii'* [Federal Law No. 382-FZ of December 29, 2015, 'On Arbitration in the Russian Federation']] (Russian Gazette, Dec. 31, 2015, no. 297).

[3] *Fakhretdinov and Others v. Russia (dec.)*, nos. 26716/09, 67576/09 and 7698/10 (Eur. Ct. H.R., Sep. 23, 2010).

of the act within a reasonable time is not yet fully realized. Further work is needed on improving not only the procedural legislation, but also the substantive rules in this area. The list of cases in which such compensation may be recovered must be significantly extended. As practice shows, the mechanism of protection of the right to a fair trial is spreading in Russia, which means it must be effective. And the reason for this is not that it is recommended by the European Court of Justice. Rather, the Russian Government must act responsibly toward its citizens, no matter in what area a violation of their rights occurs, even if it takes place in the judicial system.

Also among the invited speakers at the Symposium, and their topics, were *Lydia Terekhova*, Professor and Head of the Department of Civil Procedure, Omsk State University, 'Current Status of the System of Review of Judicial Acts Which Have Entered into Force;' *Denis Latypov*, Associate Professor at Perm State University, 'The Procedural Conditions of Use of the Appropriate Method of Protection of Civil Rights;' *Vitaly Petrushkin*, Judge of the *Arbitrazh* Court of the Volga District, 'The Main Innovations in Arbitration Procedure Legislation: The Current Situation;' *Rafail Shakiryanov*, Judge of the Supreme Court of the Republic of Tatarstan, 'Issues on the Unification of Appellate Review of Decisions in the Frame of the Unified Code of Civil Procedure of the Russian Federation;' Marat Zagidullin, Associate Professor at Kazan (Volga region) Federal University, 'New Issues in Court Practice on Corporate Disputes.'

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