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PRINCIPLES OF LEGAL PROCEEDINGS IN RUSSIA AND EUROPEAN STANDARDS OF JUSTICE

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Abstract

The principles of legal proceedings are the basis of the procedural branches of law and reflect its qualitative features. Their importance manifests in legislative sphere, when the legislator, in the process of formulation and adoption of new procedural rules, relies on a system of principles to eliminate contradictions and conflicts; in law enforcement sphere, in the case of filling gaps by applying the analogy of law; etc. The system of principles is constantly transformed under the influence of various factors. Present study examines the transformation of the system of principles of judicial proceedings under the influence of factors. The paper highlights the forms of transformation of the system of procedural principles to achieve compliance with the requirements of modern society, law and the state. The authors specify the legislative expansion of the scope of a number of principles that existed in legal proceedings but did not manifest themselves. The principle of procedural equality and adversarial proceedings can be mentioned. The study also indicates the leveling of the action of those procedural principles that do not fit into the system of conventional norms, since they were characteristic only for civil proceedings of the Soviet period. These principles include the principle of the active role of the court and the principle of objective truth. Attention is focused on the emergence of new principles of legal proceedings. This group of principles includes the principle of legal certainty, the principle of procedural economy, the principle of conscientious disposal of procedural rights.

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1. Introduction

The concept of "the principle of law" (from the Latin *principium* meaning *beginning, origin, what was in the beginning*) developed in the theory of law serves as the basis for the definition of the concept of the principle of civil procedural law. In developed legal systems, principles are a kind of "clots" of legal fabric, not only revealing the most characteristic features of the content of this system, but also acting as highly significant regulatory elements in the structure of law (O'Hare & Hill, 2000). As deep elements, they can guide the development and functioning of the entire legal system, determine the lines of judicial and other legal practice, contribute to eliminating gaps in law, abolishing obsolete and adopting new legal norms (Alekseev, 2008).

From this general theoretical concept of principles it follows that the principles of civil procedural law as a legal system are a kind of "framework", the core basis, the initial principles of the procedural branch, reflecting its main qualitative features. Their importance is manifested in a variety of areas:

- lawmaking, when the legislator in the formulation and adoption of new procedural norms relies on a system of principles in order to "fit" the new rule into already existing framework of principles in order to avoid contradictions and conflicts;

- law enforcement, when the application of procedural rules is implemented taking into account the principles of the branch. The system of principles most clearly manifests in the case of filling the legislative gaps by applying an analogy of law;

- scientific (doctrinal) sphere, allowing scientists during the study of the functioning of various institutions of civil procedural law and solution of various theoretical and practical issues to use the system of principles in the arsenal of tools defining the boundaries of the proposed transformations, innovations, excluding absurd, contradictory and unreasonable proposals.

2. Problem Statement

Despite the presence of properties of stability, certainty and conservatism in some way, the system of principles, like any system, is dynamic and can transform and develop under the influence of various factors. One of such catalysts for the transformation of the system of principles is the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter termed as the Convention, European Convention) and the judgments of the European Court of Human Rights (hereinafter termed as the Court, the European Court of Justice, ECHR) containing interpretations of the norms of the Convention (Maksurov, 2018). Since Russia's entering the European Social Charter in 1996 and ratification of the Convention on May 30, 1998, the system of principles of national legal proceedings has been in the process of transformation and harmonization with European standards of justice (Lauzikas, Nekropius, & Mikelenas, 2003). This necessitates investigating the transformation of the system of principles of legal proceedings, highlighting the forms of transformation of modern principles and evaluating the consequences of such changes (Rekhina, 2018).

3. Research Questions

For nearly twenty years of such transformations, such blocks of procedural law as the system of appeals against judicial acts, the system of enforcement proceedings have undergone significant changes; also, the guarantees for ensuring the right to a fair trial and access to justice have improved.

This process inevitably influenced the transformation of the system of principles for the administration of justice in the Russian Federation (Maksurov, 2018), implemented in three main directions:

1 – expansion of the scope of a number of principles that existed in civil legal proceedings but did not manifest themselves to the extent that corresponds to the norms of the Convention, as well as a change in the content and contextual meaning of a previously existing principle, including its terminological designation.

Such reinforcement of principles is carried out in procedural law norms by a quantitative increase in the textual consolidation of the elements by means of which this principle is implemented in civil proceedings, and by the introduction into scientific circulation of new terms and definitions meeting modern European criteria.

For instance, strengthening the principle of procedural equality and adversarial proceedings guaranteed by Art. 6 of the Convention, giving the parties equal opportunity to provide evidence, arguments and comments on them (Ruiz-Mateos (Ruiz-Mateos) v. Spain: Resolution of the European Court of Human Rights as of June 23, 1993 (complaint No. 12952/87), and also guarantees to realize a case in court within reasonable limits, which do not put any of the parties in a more advantageous position in relation to the other side (Neumeister v. Austria): Resolution of the European Court of Human Rights as of 27 June 1968 (complaint N 1936/63) occurred due to the allotment of the participants of the process with equal procedural rights (Art. 35 Civil Procedure Code (CPC) of the RF, Art. 41 of the Arbitration Procedure Code (APC) of the RF), including in the courts of verification instances (Arts. 320, 336, 391.1 of the CPC of the RF, Arts. 257, 273, 292 of the APC of the RF), by leveling the active role of the court in the process and at the same time extending the principle of disposition (Arts. 39, 173 of the CPC of the RF, Art. 49, Ch. 15 of the APC of the RF).

For instance, in the case “Vanyan v. Russia”, the European Court found a violation of Art. 6 of the Convention and the adversarial principle, which means giving the party the opportunity to know and comment on any arguments or evidence submitted by the other party, including when the case was reviewed by a higher court, as one of the parties explained during the case review by a higher court in the absence of the other party (Vanyan v. Russia): Resolution of the European Court of Human Rights as of December 15, 2005 (complaint No. 53203/99).

The principle of the rule of law and the availability of justice in the Russian Federation (Art. 6 of the Convention) on which a democratic society is built, according to the ECHR, emphasizes the exceptional role of the judiciary in administering justice, reflecting the common heritage of the States Parties to the Convention (Golder v. United Kingdom (Complaint No. 4451/70): Resolution of the ECHR as of February 21, 1975), expanded by securing in procedural legislation guarantees for judicial protection of any rights and legitimate interests, the right to initiate, notify and take part in courts of first and verification instances.

For example, in the case of *Mokrushina v. Russia*, the ECHR indicated that failure to notify, as well as inadequate notification, of the hearing at the court of second instance, and, as a result, not participating in the review of the case is a violation of the conventional right to access justice guaranteed by Art. 6 of the Convention (*Mokrushina v. Russian Federation* (Complaint No. 23377/02): Resolution of ECHR as of 05.10.2006).

The principle of publicity (the principle of transparency of legal proceedings), the principle of objective truth (the principle of judicial, formal, legal truth), and other principles were terminologically transformed.

2 – exclusion or leveling of the action of those procedural principles that do not fit into the system of conventional norms, since they were characteristic only for civil proceedings of the Soviet period. These principles include the principle of the active role of the court, both in the court of first instance and in the court of verification instances, the principle of the descriptiveness of the judicial system, the principle of objective truth, the hyperbolic significance of the principle of socialist legality (Lauzikas et al., 2003).

For example, decisions of the European Court of Human Rights, both addressed directly to the Russian Federation, and to other countries with a similar verification mechanism, have repeatedly stated that “review of cases by supervisory procedure in the Russian Federation cannot be initiated by an individual, falls within the discretionary consideration of legally appointed official individuals. Thus, a reconsideration of a case is not an effective remedy within the meaning of paragraph 1 of Art. 35 of the Convention (Decision of the European Court of Human Rights on the admissibility of complaint No. 47033/99 filed by Tumilovich L.F. against the Russian Federation as of June 23, 1999).

3 – the emergence of new principles of civil proceedings, which had no earlier normative expression, or representing the partial consolidation of individual elements, properties and features. This group of principles includes the principle of legal certainty (Musin, 2015), the principle of *res judicata* (Vishnevsky, 2013), which means the impossibility to reconsider the final judicial decision made on the case, the principle of procedural economy, the principle of fair disposal of procedural rights (Balovnev, 2017), principle of procedural justice (Shamshurin, 2016). These principles, despite the absence of a specific rule devoted to them in the procedural codes, have a normative consolidation of certain properties, features and elements.

For example, the principle of legal certainty, which follows from the meaning of Art. 6 of the Convention, enshrining the right to a fair trial, is one of the fundamental aspects of the rule of law and requires respect for the principle of *res judicata*, i.e., the principle of the inadmissibility of re-examination of a once resolved case. The case-law decision for Russia of the European Court of Human Rights in the case of *Brumarescu v. Romania* as of October 28, 1999 states that interference with the judicial process of officials, which is not limited by time limits, is considered as a violation of the principle of legal certainty and, consequently, of a right to a fair hearing (Vishnevsky, 2013).

It follows from this principle that none of the parties may demand a revision of the final and enacted resolution only for the purpose of holding a rehearing and receiving a new resolution. A retrial cannot be considered a hidden form of appeal, while only the possible presence of two points of view on one issue cannot be the basis for a retrial. Deviations from this principle are justified only when they are mandatory due to circumstances of a substantial and irresistible nature. It is unacceptable that the final, legally binding

judicial decision would not be valid to the detriment of one of the parties (Resolution of the European Court of Human Rights as of 07.07.2003 in the case of *Ryabykh v. the Russian Federation*).

The principle of legal certainty, including *res judicata*, is manifested in such elements as the establishment of a preventive term on appeal, cassation, and supervisory appeal (Arts. 320, 336, 391.1 of the CPC of the RF, Arts. 259, 276, 291.2., 308.1. of the PC of the RF), specification of the grounds for cancellation of judicial acts (Arts. 387, 391.9 of the CPC of the RF, Arts. 288, 291.11., 308.8. of the APC of the RF), the presence of a final instance for retrial of a judicial act as supervision at the national level represented by the Presidium of the Supreme Court of the Russian Federation (Art. 391.1 of the CPC of the RF, Art. 308.9. of the APC of the RF).

The prohibition of abuse of rights established by Art. 17 of the Convention, makes basic the principles for the administration of justice a provision on the fair application of procedural rights (Haferkamp, 2011). This principle is axiomatic and is manifested in the establishment and focus of attention in procedural codes on the fair use of rights by persons involved in the case, prohibition of abuse of these rights (part 1 of Art. 35 of the CPC of the RF; Part 2 of Art. 41, Part 5 of Art. 159 of the APC of the RF; Parts 6 and 7 of Art. 45 of the Code of Administrative Judicial Procedure (CAJP) of the RF), as well as measures of responsibility for procedural abuse (Art. 99 of the CPC of the RF; Art. 111 of the APC of the RF; Ch. 11 of the CAJP of the RF).

The scale of proliferation and the variety of forms of unfair behavior of the subjects of procedural relations and adverse consequences, both for the participants themselves and the entire judicial system, the lack of available preventive procedural means, as indicated in the Resolution of the Plenum of the Supreme Court of the Russian Federation as of June 13, 2017 No. 21 "On the application by the courts of measures for procedural coercion in the hearing of administrative cases", condition the elaboration of an effective mechanism for the prevention, detection and suppression of misuse of procedural rights, including for the purpose of harmonization with the European principles and standards of justice (Busnelli, Comandé, & Cousy, 2000).

The emergence of new procedural principles is confirmed by their active use and interpretation in acts of the highest judicial bodies. For instance, the Constitutional Court of the RF in its resolution as of January 19, 2017 No. 1-P "On the case of resolving the issue of the possibility of execution in the case of *OJSC Oil Company YUKOS v. Russia* in connection with a request from the Ministry of Justice of the Russian Federation", in refusing to execute this Act, relied in clause 4.1. on the principles of legal equality and justice expressed in Arts. 17 (part 3), 19 (parts 1 and 2) and 55 (part 3) of the Constitution of the Russian Federation, and the principle of proportionality (proportionality, proportional equality) arising from them, ensuring the same amount of legal guarantees to all taxpayers...".

Also, in paragraph 4.2. of this resolution there is a link to the principle of legal certainty in the form of an indication that "the identification by the Constitutional Court of the Russian Federation of the constitutional and legal meaning of Art. 113 of the Tax Code of the Russian Federation did not entail a review of the final judicial acts that entered into force in respect of the company and, accordingly, did not affect this aspect of the guarantees of legal certainty. "

In another decree in clause 4.1. the Constitutional Court of the Russian Federation indicated that the abstract nature of the normativeness, incorporated in the concept of "fundamental principles of Russian

law”, was originally predetermined by a high degree of generalization of public relations, which are regulated on the basis of these principles, and therefore cannot be considered an unacceptable departure from the principle of legal certainty, especially taking into account the fact that this principle is specified by the federal legislator in the formulation of other grounds for cancellation (refusal to issue an order of enforcement) of the arbitral award.

The Supreme Court of the Russian Federation, in formulating guiding explanations and recommendations for judges following the Constitutional Court of the Russian Federation, relies on new principles for the administration of justice, which have appeared in the system of principles in connection with the ratification of the Convention and the work of the ECHR. Paragraph 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation “On the application by courts of general jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms as of November 4, 1950 and the Protocols thereto” as of June 27, 2013 No. 21, states that if the court decision was executed at the time when the final resolution of the European Court of Justice was put into force, which states that this decision violated the provisions of the Convention or the Protocols thereto, the cancellation of such decision under the new circumstance in connection with the said resolution of the European Court prevails over the principle of legal certainty”.

4. Purpose of the Study

Based on the analysis of the practice of the European Court of Human Rights, as well as Russian judicial practice, to identify the forms of evolutionary changes in the system of principles of justice and evaluate the terminological designation and content of specific principles of legal proceedings. Highlight in the procedural branches of Russian law new principles that have gained independent significance under the influence of European standards of justice, in connection with the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. Research Methods

The study used a systemic-structural approach to the analysis of the object under study, conditioned by the use of a number of general scientific methods (dialectical-materialistic, historical), which allowed to trace the evolution of the principles of legal proceedings; and special ones: formally legal, logical, comparatively legal, which allowed analyzing the normative consolidation of principles in national legislation and norms of the Convention for the Protection of Human Rights and Fundamental Freedoms, the form of their implementation in law enforcement. The sociological techniques used in the study included observation, analysis and synthesis.

6. Findings

The system of principles is not static but is constantly transformed under the influence of various factors. One of these factors is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The paper established the forms of transformation of the system of procedural principles in order to achieve compliance with the requirements of modern society, law and the state. They were

proposed to be grouped into three blocks: 1) expansion of the scope of a number of principles that existed in legal proceedings but did not manifest themselves to the extent that corresponds to the norms of the Convention, as well as a change in the content and contextual meaning of a previously existing principle, including its terminological designation. As an example, you can specify the principle of procedural equality and adversarial proceedings; 2) leveling of the action of those procedural principles that do not fit into the system of conventional norms, since they were characteristic only for civil proceedings of the Soviet period. These principles include the principle of the active role of the court and the principle of objective truth. 3) emergence of new principles of legal proceedings. This group of principles includes the principle of legal certainty, the principle of procedural economy, the principle of conscientious disposal of procedural rights.

7. Conclusion

The transformation of the system of principles of legal proceedings is a natural process, due to various factors. The norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the judgments of the European Court of Human Rights, which together represent European standards of justice, are important catalysts for such a transformation. The impact of these factors led to the transformation of the existing procedural principles in the system, elimination of non-compliant principles of the Convention and emergence of new principles of legal proceedings. The active use of new principles of legal proceedings in judicial practice demonstrates the transformation of the entire system of procedural principles and the new stage of the evolutionary development of this strategic component.

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