The reform of the civil procedural legislation: world trends

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Abstract. The article analyzes global trends of development and reform of civil procedure on the example of Latin America (Chile), European Union, China, Hong Kong and Russia. Causes of reforming different: in some cases there is a need to bring the outdated forms of justice in accordance with international standards, in other cases civil proceedings and execution of court decisions is a factor of economic and investment attractiveness of the country, another reason for reform is the need for a uniform application of the law.
[Valeev D.K., Baranov S.Y. **The reform of the civil procedural legislation: world trends.** *Life Sci J* 2014;11(12s):728-731] (ISSN:1097-8135). http://www.lifesciencesite.com. 157

Keywords: civil process, reform, Chile, the EU, China, Hong Kong and Russia

Introduction

Recently in different countries undergoing reform of civil procedure. The main idea of the reforms associated with internal problems of procedural law in each country is necessary introduction of modern methods of consideration and resolution of civil cases. It is possible by means of dispute settlement in the early stages of the proceedings; the use of simplified proceedings; provisional measures, including provisional, to ensure actions with the purpose of execution of court decisions, as well as preservation of evidence, the use of which is enough to end the conflict; recourse to alternative methods [1].

In some countries the need for reform was caused by out dated legislation, and, therefore, ineffective legal proceedings.

The reform of civil procedure in Chile

Until recently, the civil proceedings Chile was based on the norms of the Spanish laws adopted in the XIX century, which in turn derive from the ancient code of laws of Alfonso the Wise king of Castile and Leon with 1252 on 1284 gg) "7 sections law". Obviously, the old civil procedural legislation that does not meet the requirements of modern civil turnover cannot be considered effective. So it turns out that the average length of proceedings in civil cases in the courts of Santiago - more than 5 years. For modern standards of civil proceedings such term is inconceivable.

The draft of the new Civil procedural code of Chile is based on the following key points:

• the procedural equality of the persons participating in the civil case,

• more active role of the judge in overcoming the arisen in the review process the case of imbalance;

• the development of alternative mechanisms for resolving legal disputes;

• the introduction of a simplified model of civil procedure (small claims),

• the modernization of procedures of consideration of civil cases;

• the evaluation of evidence in accordance with the General rules and regulations of constructive criticism (i.e. internal conviction of the court, without predetermined priority is some evidence over others);

• the introduction of the possibility of judicial review of the decision in the Supreme court on grounds of violation of human rights and fundamental freedoms;

• the introduction of the position of the contractor, regardless the existence of a permanent judicial control,

• the introduction of the possibility of temporary suspension of the execution of the decision [2].

As we see, the reform of civil procedure in Chile needed to bring the procedure of consideration of civil cases in accordance with modern standards.

The reform of civil procedure in China and Hong Kong

In China and Hong Kong civil proceedings are also relatively begun to undergo in significant changes. Hong Kong's handling of the case was concentrated largely in the hands of the parties. In the conceptual understanding of the model of civil procedure, Hong Kong was a competitive model of the process in the most pure and sold it. In these conditions there is an emphasis on the procedural activity of the persons participating in the case. The court acts as passive participant procedural activities: the purpose of its activity is reduced to the evaluation of the evidence and deciding on the case, without interfering with the procedural activity of the parties.

In this case, justice, in its own sense (i.e. the power enforcement), has already been degraded since meant procedural activity of the court. More significant are the procedural position of the persons participating in the case. However, persons participating in the case, bear the risk of adverse consequences resulting from the use of improperly formulated or wrong position on the case.

In this regard, the parties had serious legal costs (often with a significant excess of the amount of the claim), active "competition" of the parties during the proceedings led to serious delays.

The system of civil justice, based on excessive competition, reduces the performance of procedural rules, which leads to unjustified delay in the administration of justice in civil cases. In this situation, procedural efficiency yielded a comprehensive notion to the "justice in essentiality" [3].

Problems arising in Hong Kong were seen in other common law countries, such as England [4], the number of provinces in Canada [5] and Singapore.

In China active role of the court in civil proceedings is recognized unacceptable for modern standards of justice in civil cases too: the court can participate in gathering evidence on its own initiative. The disadvantage of this model of civil proceedings detected under a heavy load on the judicial system: if the court has the opportunity to form their own procedural position on the case (or even obliged to do it), when a large number of cases the court will not have time to implement these powers. The principle of limited intervention in private affairs on the part of state authorities (in the person of the court) is also clearly not observed. This is the effect model of civil procedure.

Therefore, the essence of the reform of civil procedure in China and Hong Kong comes to the convergence of these models into a single model, borrowing the best of each of them. From the adversarial model of civil procedure remains "inviolability" of the procedural position of the persons participating in the proceedings (court has no power, enabling him to change the procedural position). From the investigation of the model of civil proceedings brought rule on the need to establish a clear timetable for the preparatory stages of the proceedings, the General terms of consideration of the case (based on the agreement of the parties), under threat of sanctions. The court also has the authority to limit the possibility of changes in the procedural position, limit the possibilities of evidence by the parties that positively influence the timing of consideration of the case.

The reform of civil procedure in China and Hong Kong did not lead to excessive control by the court and was found reasonable balance between the efficiency of justice and achieving its ultimate goal - consideration of the material rights and obligations of persons participating in the case. The aim of the reform was to optimize civil proceedings, increase of its efficiency.

The reform of civil procedure in the EU countries

The EU countries have also come to realize the necessity of the reform of civil procedure. The economic unity of the countries of the European Union implies, in particular, and the unity of the ways of protection of economic (civil) rights of the subjects of civil turnover. In numerous letters to the European Commission have been already traced the idea of creating a unified contract law [6], however, the economic and legal value of this single contract law is reduced if it will be used differently in different countries of the European Union. The application of the contract law, the sphere of civil procedure, must also be somewhat common.

At the 24th Conference of European Ministers of justice on "the Implementation of judicial decisions in conformity with European standards" that was held in Moscow on 4 and 5 October 2001, it was decided that "the proper and effective execution of court decisions is essential for States in order to create, reinforce and develop a strong and respected judicial system" [7].

Why is the performance of plays has a Central role in the judicial process? Repeating the arguments of the ECtHR, we can say that the lack of proper enforcement leads to a situation where no matter how strict or as convincing the judge, the rights and obligations of citizens in practice illusory and not effective [8].

However, this raises a number of problems, resolution of which causes serious difficulties. First of all, civil procedural law is of a national character, it is the activity of the state judicial bodies, and, accordingly, civil proceedings varies in different countries also vary and systems of Executive manufacture. In the sphere of civil process cannot by analogy with civil (contractual) right to unify the procedural rules and procedural legislation. The direct impact of supranational bodies on national public authorities is an encroachment on the sovereignty of the state, which is unacceptable from the point of view of General principles of international law.

This creates certain difficulties in the economic integration of countries of the European Union, in the development of investment processes.

Therefore, in Europe also held integration processes aimed at convergence, harmonization of national systems of civil procedure and execution of

court acts. A single, or at least very similar to the rules of civil procedure in different countries of the European Union and create a similar application of the rules of contract law in these countries. From here one can already speak of "common rules of the game" in the sphere of investments and application of contract law, which undoubtedly increases the investment attractiveness of the state.

The reform of civil procedure in the Russian Federation

In the Russian Federation there is a global reform of civil proceedings: in connection with integration of Higher courts (Supreme Court of the Russian Federation and the Supreme Commercial ("Arbitrazh") Court of the Russian Federation), which is the first step of the reform and association of civil procedure on the basis of the common code (now act of Civil procedure and Arbitrazh procedure codes).

The task carried out in the Russian Federation judicial reform differs from similar reforms in other countries. Civil proceedings of the Russian Federation, especially in "arbitrazh" courts, are quite effective: the terms of consideration of civil cases even though it's often go beyond the legally established, but in generally they are significantly less than in many developed countries, substantive law also generally applied by courts correctly.

However, the presence of two higher courts, resolving civil cases, though different in some aspects, cannot be considered acceptable from the point of the unity of judicial practice. For this reason due to the necessity of unification of the higher courts in the Russian Federation.

On the other hand, the opinion of the legal community of the Russian Federation is not so clear. Many people are against this reform, supporting their position by saying that the system of "arbitrazh" courts of justice better than the system of courts of general jurisdiction. It may also be noted, that the "arbitrazh" process is more logical to use than the civil process. The "arbitrazh" process at least allocates special requirement for persons participating in business, on the disclosure procedure of position on the case, which, in turn, determines the specifics of the proceedings before the court of first instance: in the preliminary judicial session of the persons participating in business, are aware of the procedural positions of each other, and the court of "arbitrazh" has a picture of the procedural position of all persons participating in the case. In civil proceedings the special disclosure requirements of the procedural position for persons participating in the case, there is only a requirement for the Complainant in filing a claim: to present to the court the statement of claim and the application to it in a number of copies equal to the number of persons participating in the case. This ensures that the disclosures of the procedural position of the plaintiff, however, in respect of the Respondent and other persons participating in the case and such requirements are not contained.

From the point of view of the organization procedure of consideration of the case the first approach can be considered more effective than the second: in the first model of the organization of the proceedings already had the potential for timely implementation of justice, the timeliness of disclosure procedural position objectively reduces the terms of consideration of civil cases without compromising the quality of justice.

In the second model of organization of legal proceedings such capacity is not built, so it turns out that the preliminary court session, the court informed only about the procedural position of the plaintiff, the position of other persons participating in the case, brought to court only in the preliminary court session.

However, some achievements of the "arbitrazh" procedural rights and activities of the system of "arbitrazh" courts still persist. First of all, remains the electronic card file of "arbitrazh" cases (KAD). During the discussion of the Association of the Supreme "arbitrazh" court and the Supreme court have repeatedly raised the question of the fate of the ring road, the position of saving after merging courts of the deputies did not agree to include in the law on the work of the new Supreme court, but it will be saved as a special component similar electronic system of courts of General jurisdiction [9].

It gives hope for the preservation of the reached level of e-justice applied by "arbitrazh" courts (primarily, audio recordings of court records). Provisions of the Federal target program "Development of judicial system of Russia for 2013-2020" (appr. by decree of the RF Government dated on September 20, 2012, № 1735-R [10]) provide, in particular, and the development of e-justice in civil proceedings to the level reached in the "arbitrazh" process.

Conclusion

In conclusion, we can say that in different countries the reasons for the reform of civil procedure is different. In some cases, the legacy of the civil procedure rules seriously slow down the economic development of the state, create obstacles to the free exercise of civil rights. Therefore there is a necessity to bring the national civil proceedings in accordance with international standards.

In other cases civil proceedings is one of the instruments of economic development of the country

and the whole region, therefore, requires some unification. The reason for this unification is in unification of norms of a single material contract law, which should equally be interpreted and applied in the various countries where it operates.

In the Russian Federation there is a similar problem: two systems of state courts often have different apply the substantive law that creates the basis for the abuse of the rules of court jurisdiction and encourages stakeholders to use various legal mechanisms for artificial change of jurisdiction of civil cases with the aim of obtaining a favourable decision.

Hence the need for uniformity in the interpretation and application of norms of the Russian legislation by courts of the Russian Federation. One way to solve this problem - the creation of the unified Supreme judicial authority, in the person of the Supreme Court of the Russian Federation, and also creation of uniform rules of civil procedure on the basis of which the judicial system will form a single practice of application of legislation. At the first stage (the creation of the unified Supreme judicial body) judicial reform in the Russian Federation practically implemented, the second stage (creation of uniform rules of civil procedure) is still under discussion.

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7/28/2014