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SHORT COMMUNICATION

Ecosystem of Russian legal proceedings and perspective influence of European justice standards

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The principles of legal proceedings are the basis of the procedural branches of law and reflect its qualitative features within the complex legal ecosystem. This importance is manifested in the legislative sphere, when the legislator in the formulation and adoption of new procedural rules is based on a system of principles in order to avoid contradictions and conflicts; law enforcement area, in the case of filling gaps by applying the analogy of law; scientific (doctrinal) sphere, allowing scientists to use the system of principles in the arsenal of tools that define the boundaries of proposed changes, innovations, excluding absurd, controversial, unjustified proposals. The system of principles is not static, but is constantly transforming under the influence of various factors. Our study examines the transformation of the system of judicial principles under the influence of such factors as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the rulings of the European Court of Human Rights. The forms of transformation of the system of procedural principles in order to achieve compliance with the requirements of modern society, law and state are highlighted. It is indicated the legislative expansion of the scope of a number of principles that existed in legal proceedings, but do not manifest themselves to the extent that meets the standards of the Convention, as well as the change of the content, content, contextual meaning of the previously existing principle, including its terminological designation. As an example, the principle of procedural equality and the adversarial principle can be mentioned. We proposed to level out the effect of those procedural principles, which do not fit into the system of the Convention norms, as they were typical only for civil proceedings of the Soviet period. This group of principles can include the principle of legal certainty, the principle of procedural economy, the principle of good faith management of procedural rights.
Keywords: legal ecosystem; justice; principles; court practice; European Court of Human Rights; law enforcement

Introduction

The concept of "principle of law" (from the lat. principium - "beginning", "origin", "what was at the beginning") developed in the theory of law serves as a basis for the definition of the concept of "principle of civil procedure law". In developed legal systems, principles are a kind of "lumps" of legal tissue, 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, 2000). As deep-rooted elements, they are able to guide the development and functioning of the entire legal system, define the lines of judicial and other legal practice, contribute to the elimination of gaps in the law, the abolition of obsolete and the adoption of new legal norms (Alexeyev, 2008). From this general theoretical concept of principles, it follows that the principles of civil procedure law as a system of law represent a kind of "framework", the core, the starting point of the procedural industry, reflecting its main qualitative features. Their importance is manifested in various spheres:

- law-making, when the legislator in formulating and adopting new procedural rules is based on a system of principles in order to "fit" the new norm into the existing framework of principles to avoid contradictions, conflicts;
- law enforcement, where the application of procedural rules is implemented in accordance with the principles of the industry. The system of principles is most pronounced when legislative gaps are filled by applying the analogy of law;
- scientific (doctrinal) sphere, allowing scientists in the study of the functioning of various institutions of civil procedure law and solving a variety of theoretical and practical issues to use a system of principles in the arsenal of tools that define the boundaries of proposed changes, innovations, excluding absurd, controversial, unjustified proposals.

Despite the properties of stability, stability, certainty and in some way conservatism, the system of principles, like any system, is in dynamics and is able to transform, transform and develop under the influence of various factors. One of such catalysts for principles transformation is the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter - the Convention, the European Convention) and the rulings of the European Court of Human Rights (hereinafter - the Court, the European Court, the ECHR), which contain interpretations of the norms of the Convention (Maxurov,

2018). Since Russia's accession to the Statute of the Council of Europe in 1996 and ratification of the Convention on 30 May 1998, the system of principles of national legal proceedings has been in the process of transformation and unification with European standards of justice (Lauzikas et al., 2003). In this connection, there is a need to study the transformation of the system of principles of judicial proceedings, to highlight the forms of transformation of modern principles, to assess the consequences of such changes (Rechtina, 2018).

This article aims to the identification of the evolutionary changes in the principles of justice, to assess the terminology and content of specific principles of legal proceedings. We also planned to identify new principles in the procedural areas of the Russian law, which have gained independent meaning under the influence of the European standards of justice in connection with the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Methods

The study used a systematic and structural approach to the analysis of the object of study, due to the application of a number of both general scientific methods (dialectical-materialistic, historical), which allowed to trace the evolution of the principles of legal proceedings, and special: formal-legal, logical, comparative-legal, which allowed to analyze 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 the law enforcement sphere. Among sociological methods, observation, analysis and generalization were used.

Results and Discussion

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

They are proposed to be grouped into three blocks:

1) legislative expansion of the scope of a number of principles that existed in legal proceedings, but do not manifest themselves to the extent that meets the standards of the Convention, as well as changes in the content, content, contextual meaning of the previously existing principle, including its terminological designation. As an example, the principle of procedural equality and the adversarial principle can be mentioned;

2) leveling out the effect of those procedural principles, which do not fit into the system of the Convention norms, as they were typical only for the civil proceedings of the Soviet period. Such principles may include the principle of active role of the court, the principle of objective truth;

3) emergence of new principles of legal proceedings. This group of principles can include the principle of legal certainty, the principle of procedural economy, and the principle of good faith disposal of procedural rights.

Over the twenty years, such blocks of procedural law as the system of appealing against judicial acts, the system of enforcement proceedings have undergone significant changes, and the guarantees of the right to a fair trial and access to justice have increased.

This process has inevitably had an impact on the transformation of the system of principles of justice in the Russian Federation (Maksurov, 2018), which is being implemented in three main areas:

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

Such strengthening of the principles is carried out in the norms of the procedural legislation by means of quantitative increase of textual fixation of the elements, by means of which this principle is realized in civil proceedings, and introduction of new terms and definitions, meeting modern European criteria, into scientific circulation.

For example, the strengthening of the principle of procedural equality and adversarial proceedings guaranteed by Article 6 of the Convention, giving the parties equal opportunities to provide evidence, arguments and comments on them (Ruiz-Mateos v. Spain: Judgment of the European Court of Human Rights of 23 June 1993. (Complaint N 12952/87)), as well as guarantees to pursue one's case in court within reasonable limits that do not put one party in a more advantageous position in relation to the other (Neumeister v. Austria): Judgment of the European Court of Human Rights of 27 June 1968 (Complaint N 1936/63), occurred due to the granting of equal procedural rights to the parties to the proceedings (Art. 35 of the Code of Civil Procedure of the Russian Federation, Art. 41). Art. 320, 336, 391.1 of the CPC of the Russian Federation, Art. 257, 273, 292 of the CPC of the Russian Federation) by leveling the active role of the court in the process and simultaneously expanding the principle of dispositiveness (Art. 39, 173 of the CPC of the Russian Federation, Art. 49, Ch. 15 of the CPC of the Russian Federation).

Thus, in the case "Vanyan v. Russia" the European Court found a violation of the art. 6 of the Convention and the principle of adversarial proceedings, which means providing the party with an opportunity to know and comment on any arguments or evidence, presented by the other party, including during the review of the case by a higher court, since one of the parties gave explanations during the review of the case by a higher court in the absence of the other party (Vanyan v. Russia): the Decision of the European Court of Human Rights of 15 December 2005 (complaint N 53203/99).

The principle of the rule of law and accessibility of justice in the Russian Federation (Art. 6 of the Convention), on which a democratic society is built, according to the ECHR, emphasizes the exclusive role of the judiciary in the administration of justice, reflecting the common heritage of the States Parties to the Convention (Golder v. the United Kingdom (Complaint No. 4451/70): ECHR judgment from 21.02.1975), has been expanded by enshrining in the procedural legislation guarantees for judicial

protection of any rights and legitimate interests, the right to initiate, notify and participate in judicial proceedings, and the right to participate in judicial proceedings.

For example, in the case "Mokrushina v. Russia", the ECHR pointed out that the failure to notify, as well as improper notification, of the hearing in the court of second instance, and, as a result, failure to participate in the review of the case is a violation of the Convention right of access to justice guaranteed by Article 6 of the Convention (Mokrushina v. Russia (complaint No. 23377/02): ECHR, 05.10.2006).

Terminological transformation was obtained by the principle of publicity (the principle of transparency (transparency) of court proceedings), the principle of objective truth (the principle of judicial, formal, legal truth), and others.

2. Exclusion or levelling out of the effect of those procedural principles, which do not fit into the system of convention norms, as they were typical only for civil legal proceedings of the Soviet period. Such principles include the principle of the active role of the court, both in the court of first instance and in the court of checkpoints, the principle of the discretionary nature of the judicial system, the principle of objective truth, and the hyperbole meaning of the principle of socialist legality (Lauzikas et al., 2003).

For example, the decisions of the European Court of Human Rights, both those addressed directly to the Russian Federation and to other countries with similar vetting mechanism, have repeatedly stated that "review of cases by way of supervision in the Russian Federation cannot be initiated by an individual, falls within the sphere of discretionary discretion of officials determined by law. Thus, a supervisory review of a case is not an effective remedy within the meaning of paragraph 1 of Article 35 of the Convention" (Decision of the European Court of Human Rights on admissibility of complaint No. 47033/99 filed by L.F. Tumilovich against the Russian Federation on 22.06.99).

3. Emergence of new principles of civil proceedings which did not have earlier normative expression or represent partial fixation of separate elements, properties and features. This group of principles can include the principle of legal certainty (Musin, 2015), the principle of res judicata (Vishnevsky, 2013), consisting in the impossibility to review the final court decision made in the case, the principle of procedural economy, the principle of fair management of procedural rights (Bolovnev, 2017), the principle of procedural justice (Shamshurin, 2016). These principles, despite the absence of a specific rule on them in the procedural codes, have a normative fixation of certain properties, features and elements.

For example, the principle of legal (legal) certainty arising from the meaning of Article 6 of the Convention, which enshrines the right to a fair trial, is one of the fundamental aspects of the rule of law and implies respect for the principle of res judicata, i.e., the principle of inadmissibility of re-examination of a once solved case. In the precedent-setting decision of the European Court of Human Rights for Russia in the case "Brumarescu v. Romania" of 28.10.1999, it is noted that the non-interference in the judicial process of officials, not limited by time limits, is considered as a violation of the principle of legal certainty and, consequently, of the right to a fair trial (Vishnevsky, 2013).

It follows from this principle that neither party may demand a review of the final and effective ruling only for holding a second hearing and obtaining a new ruling. A review cannot be considered a hidden form of appeal, while the mere possible existence of two points of view on the same matter cannot constitute grounds for a review. Derogations from this principle are justified only when they are mandatory due to circumstances of a material and overwhelming nature. It is inadmissible that a final, legally binding court ruling would not have been acting to the detriment of one of the parties (Ruling of the European Court of Human Rights of 24.07.2003 in the case "Slaves v. Russia").

The principle of legal certainty, including res judicata, is manifested in such elements as the establishment of a preventive period for appeal, cassation, supervisory appeal (Articles 320, 336, 391.1 of the Civil Procedural Code of the Russian Federation, Articles 259, 276, 291.2, and 308.1, CPC of the Russian Federation), specification of the grounds for cancellation of judicial acts (Articles 387, 391.9 of the Russian Federation Code of Civil Procedure, Articles 288, 291.11, and 308.8 of the Russian Federation Code of Civil Procedure), availability of the last instance to review a judicial act at the national level by way of supervisory review procedure represented by the Presidium of the Russian Federation Supreme Court (Article 391.1 of the Russian Federation Code of Civil Procedure, Article 308.9 of the Russian Federation Code of Civil Procedure).

The prohibition of rights abuse established in Article 17 of the Convention elevates the provision on fair use of procedural rights to the status of the basic principles of justice (Haferkamp, 2011). This principle is axiomatic and manifests itself in the establishment and focus of attention in the procedural codes on the fair use of persons involved in the case, their rights, the prohibition of abuse (Part 1 of Art. 35 of the Civil Procedural Code; Part 1). 2, Art. 41, Part 5, Art. 159 of the Russian Federation Code of Administrative Offences; Part 6 & 7, Art. 45 CAS RF), as well as measures of liability for procedural abuses (Art. 99 of the Russian Federation Code of Civil Procedure; Art. 111 of the Russian Federation Code of Administrative Offences; Chapter 11 CAS RF).

The scale and variety of forms of unfair behavior of subjects of procedural relations and adverse consequences, both for the participants themselves and the entire judicial system, the insufficiency of available preventive procedural means, which is indicated in the Resolution of the Plenum of the Supreme Court of the Russian Federation from 13.06.2017 N 21 "On the application of measures of procedural coercion by the courts in consideration of administrative cases", make it necessary to develop an effective mechanism for prevention, detection and suppression of abuses of the rights and freedoms of the participants of procedural relations.

The emergence of new procedural principles is confirmed by their active application and interpretation in acts of the highest judicial bodies. For example, the Constitutional Court of the Russian Federation in its resolution dated 19.01.2017 N 1-P "On the case of resolving the issue of the possibility of execution in the case of JSC "Oil Company "YUKOS" against Russia in connection with the request of the Ministry of Justice of the Russian Federation", refusing to execute this act, in article 4.1 was based on the principles of legal equality and fairness expressed in Articles 17 (Part 3), 19 (Parts 1 and 2) and 55 (Part 3) of the

Russian Constitution and the principle of proportionality (proportionality, proportionality) resulting from them, which provide the same amount of legal guarantees to all taxpayers ...".
Also in the given decision in art. 4.2 there is a link to the principle of legal certainty, in the form of an indication that "discovery 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 the revision of the final court acts which came 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 of The Constitutional Court of the Russian Federation pointed out that the abstract nature of the normality inherent in the concept of "fundamental principles of Russian law" was initially predetermined by a high degree of generalization of social relations that are regulated on the basis of these principles, and therefore cannot be considered as an inadmissible departure from the principle of legal certainty, especially taking into account the fact that this principle was specified by the federal legislator when formulating other grounds for cancellation (refusal to issue a writ of execution on the basis of a compulsory and enforceable license).
The Supreme Court of the Russian Federation in formulating guidelines and recommendations for judges following the Constitutional Court of the Russian Federation relies on the new principles of the administration of justice that have appeared in the system of principles in connection with the ratification of the Convention and the activities of the ECHR. The clause 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the Application by the Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and its Protocols" of 27.06.2013 N 21 states that if the court's decision was executed at the moment when the final decision of the European Court of Justice, which found that the provisions of the Convention or its Protocols had been violated in the adoption of this decision, the annulment of such decision on a new circumstance in connection with the said decision of the European Court of Justice prevails over the principle of legal determination.

Conclusions

Transformation of the system of judicial principles is a natural process caused by various factors. The norms of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the rulings of the European Court of Human Rights, which together represent the European standards of justice, are important catalysts for such a transformation. The impact of these factors has led to the transformation of the existing procedural principles in the system, the exclusion of principles that do not conform to the norms of the Convention, the emergence of new principles of legal proceedings. The active use of new principles of legal procedure in the judicial practice testifies to the transformation of the whole system of procedural principles and to the new stage of evolutionary development of this system-forming component.

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