Svirin Y.A.

DOCTRINE OF CIVIL PROCEDURE RUSSIA

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Author:

Y.A. Svirin, Doctor of legal Sciences, Professor of Department of Civil Procedure Law and Organization of the Bailiff Service of the All-Russian State University of Justice, Academician of the Russian Academy of Natural Sciences, Honorary Lawyer of Russia

Transfer:

R.V Pekov, post-graduate student of the department of civil law and process of the Academy of Labor and Social Relations

Svirin, Y.A.

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This monograph is devoted to the study and description of theoretical problems of the science of civil procedure law.

In the monograph the author investigates not only normative prescriptions, but also doctrinal views of Russian processionalists from a historical perspective.

The book is written in English and will certainly be interesting for foreign scientists and students studying foreign civil procedure.

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Abbreviations:

CPC - Civil Procedure Code of the Russia.
APC – Arbitration Procedure Code of the Russia.
CAP - Code of Administrative Procedure of the Russia.
FC - Famely Code of the Russia.
CC – Civil Code of the Russia.

Table of contents

Foreword

Russian law consists of various branches of law, which are in turn combined into three groups: physical, procedural and executive branches of law.

Civil Procedural Law, along with the arbitration procedural law, administrative proceedings and criminal procedural law has procedural rights of the industry, being the most important element of the Russian legal system. In addition, the civil procedural law is a fundamental and legal science, which studies the procedural form of recovery in the courts violated the substantive law to protect a legitimate interest, or the establishment of a legal fact.

Civil proceedings as an academic discipline is studied in Russian students of all law schools as the main basic discipline. The value of civil procedure is that it sets in motion the substantive law, mediates the process of restoration of the violated rights and legitimate interests of citizens and organizations. This is due to the fact that without the implementation of a mechanism of civil procedure, the substantive rules are often lifeless rules of conduct.

This monograph, prepared Doctor of Law, Professor of the Department of civil process and the organization of the All-Russian Bailiff of Justice State University, Academician of the Russian Academy of Natural Sciences, Honorary Russian lawyer Svirin Yuri Alexandrovich.

Prepared Professor Yu. Svirin monograph is a good example of a logical and sequential study of the doctrine of the Russian civil process.

The monograph is written in English and is primarily intended for foreign readers exploring foreign civil proceedings. Studio in Russiacients Faculty of Law is also being studied such subject matter as "foreign civil procedure", in which students study the U.S. civil process, the U.K., Germany, France and some other European countries.

German, French procedural law act as a historical source of Russian procedural law, but the latter has its own national characteristics and original features.

The study of foreign proceedings in any country provides a better understanding of domestic procedural institutions, allows to apply the experience of other countries, where any legal institutions have found a more perfect development due to the active development of market relations and technical progress.

Increasing the contact legal systems has led to an increase in the share of public relations with a foreign element. Against the background of the existing differences in national law, subjects entering into a legal

relationship, should be aware of the conditions of their judicial protection of rights and interests outside of their own country.

It seems that the book will be interesting to scientists and students to study law. This book aims to familiarize students and legal scholars of foreign countries with one of the autonomous areas of comparative jurisprudence, which is a comparative study of the rules of civil proceedings in the various legal systems of our time.

Gureev Vladimir Alexandrovich -Doctor of legal Sciences, Professor, Head of Civil Procedural Law and bailiff organization Department All-Russian State University of Justice.

CHAPTER 1
The concept of civil procedural law

1.1. Justice and the judiciary

Legal conflict has arisen in the substantive law, as well as the rights and status of material uncertainties or legal fact, must be overcome by means of the court's judicial acts, the most important of which is the decision. In making the decision, the court thus dispenses justice.

The administration of justice in any country is a necessary attribute of state sovereignty. Therefore, all the decisions of the Russian courts of the Russian Federation makes a name. No other institution, including state other than the court has no authority to administer justice, i.e., to decide the name of the Russian Federation. In addition to the existing system in the country federal and municipal courts in accordance with the provisions of the Federal Law "On arbitration (arbitration)" in Russian arbitration courts and arbitration institutions are also allowed legal conflict (settle disputes) and make decisions, referred to arbitration awards. However, note that the arbitration courts and arbitration institutions are not heard by justice, and carry out arbitration administration. Arbitration, in turn, is the process of how to resolve the dispute by the arbitration court (arbitration institution) with the award is made. Arbitration and the arbitration proceedings are currently synonymous legal categories that should be distinguished from the arbitration process.

Thus, to decide the name of the Russian Federation can only courts acting within the law "On the Judicial System in the Russian Federation", and on the basis of procedural law.

In the Russian Federation justice functions independently from the legislative and executive authorities. Article 118 of the Russian Constitution contains a provision according to which the justice of the Russian Federation only by the court. The trial is carried out by means of criminal, civil, administrative, arbitration and constitutional proceedings.

Unsuccessful confusingly statutory language "arbitration" and "arbitration court" creates a false impression of the unity of those categories as the form and content. Category "Arbitration Court" and "arbitration proceedings" refer to a system of state courts and governed by the Arbitration Procedural Code, while the term "arbitrage" the essence of the activities of the arbitration courts, regulated by the law on arbitration (arbitration).

Of the total number of cases before the courts of general jurisdiction, the majority of cases falls on civil cases. In 2018, the courts of general jurisdiction was considered about 18 million civil and administrative cases that were decided.

Justice is also viewed by some protsessualistov and as a specific function of the state. In the XVIII century French philosopher Alexis de Tocqueville rightly observed that justice meant to "replace the idea of violence right idea.

In ancient times, the Roman jurists were developed the basic principles of justice. As claimed by the Roman lawyers, justice must be free, for nothing is more unjust than the corrupt justice. Justice must be swift, since the delay has the kind of failure. Justice must be complete, i.e. It should not stop halfway.

In 1910 T.M. Yablochkov wrote: "The task of the court - to solve the question of the right, of course, his decision not to remain a dead letter, it can be enforced, but the performance of actions to implement the right is a consequence, but not the content of the court's operations. Not a sword, scales of justice are in the hands of the judge "[1].

Generalizing the above, we note that Justice - is a form of state activity, which consists of consideration and resolution by the court referred to its competence cases, carried out in the established procedural order. Justice at the same time are a function of the state and a particular type of legal activity.

As rightly observes A.A. Mokhov doctrine often are tempted to combine such definitions as "justice" and "judicial proceedings", because we are talking about the same subject - court[2].

In connection with this very interesting position on this issue expressed the Constitutional Court in its judgment of 15 January 2001 on its review of the provisions of paragraph 2 of Article 1070 of the Civil Code. As pointed out by the Constitutional Court, the provisions of paragraph 2 of Article 1070 of the Civil Code, in its constitutional and legal meaning of the evidence that relates to the implementation of justice, not all legal proceedings, but only that part which takes judicial acts, shall decide the dispute on the merits. Thus, all the other issues that are resolved in the judicial establishment of his co-workers on a daily basis do not apply to a court (for example, work of office staff in civil cases can not be considered justice). In other words justice is narrower concept than trial and should be considered as part of and integrally.

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[1] Yablochkov T.M. Textbook Russian civil proceedings. Yaroslavl: Book publishing I.K. Hasanov. 1ф910. 36 p.

[2] Mokhov A.A. Civil proceedings - a form of justice // The rule of law. 2018. № 3. 34 p.

However, in science there are other opinions. For example, the A.V. Tsikhotsky sharing justice and legal proceedings indicates that the subject of justice is only a trial, whereas in the proceedings there are several subjects: the court and other participants in the process[3].

Such legal category as justice and the judiciary are not identical to each other, are heterogeneous legal concepts and relate both form and content. As rightly pointed N.I. Bogacheva: "Justice - an important manifestation of the judiciary, but not the only one. The judiciary in addition to justice carries out the constitutional control, control of the legality and validity of decisions and actions of public authorities and local self-government, enforcement of sentences and other judicial acts, explanations cottage on judicial practice, participate in the formation of the judiciary "[4].

The judiciary is a special kind of state power delegated by the State specially authorized bodies - the courts, implemented specific officials - judges (federal, international). Thus, the carriers of the judiciary can only be the judge.

In accordance with Article 1 of the law "On the Judicial System in the Russian Federation" dated December 31, 1996 - the judiciary is independent and operates independently of the legislative and executive authorities.

In the doctrine there are different opinions about the functions of the judiciary. For example, you can select the following functions:

a) the resolution of the dispute on the merits;

b) judicial review of the legality and validity of court acts;

c) the interpretation of legal norms;

d) identification of the facts having legal value (for example, the recognition of the deceased);

e) the restriction of constitutional and other legal capacity of citizens (such as deprivation of legal capacity);

f) judicial supervision over the decisions of courts.

N.A. Kolokolov justice allocates such functions as: law enforcement, law enforcement, political, ideological, diagnostic, preventive and other functions[5].

According to V. V. Skitovitch to the functions of the judiciary should be attributed not only to justice, but also jurisdictional control

[3]Tsikhotsky A.V. Theoretical Problems of effective justice in civil cases. Novosibirsk.: The science. 1997. 76 p.

[4]Law enforcement / textbook edited by R.V. Shagieva. M .: Norma Infra-M. 2015. 109-110 pp.

[5]Kolokolov N.A. The judiciary as a general legal phenomenon: the author's abstract of the dissertation of the doctor of juridical science. Nizhni Novgorod. 2006. 16 p.

(constitutional, administrative), the formation of the judiciary, the management of the judicial practice. However, we can not agree with the distinguished author, as the judiciary is implemented directly in the process (including in the performance of judicial review), therefore the judiciary is not inherent in the function of the formation of the judicial corps.

In any case, A.A. Mokhov rightly observes that the number of judicial functions may vary depending on a variety of economic and political conditions, factors, which operates the judiciary itself, but can be considered indisputable guarding justice function[6].

The procedure for forming the judicial authority in the Soviet period was significantly different from the existing order. Thus, in accordance with the Regulations on the Judicial System of the RSFSR Central Executive Committee adopted a three-tier system of judicial institutions was formed in 1922. The first link - the people's court which included people's judges and their competence extended to the county or metropolitan area. The second link - the provincial courts, directs all the people's courts in the provinces and administer justice in complicated cases. The third link - The Supreme Court of the RSFSR (the successor of the Supreme Tribunal at the Central Executive Committee).

According to the basics of legislation of the USSR and the Union Republics on the judicial system in the USSR, adopted in 1958, the judges elected to the position of the respective councils and the Congress of Soviets, is an executive body. Thus the model of the judicial system is determined by the state, depending on the stage of historical development and is the result of historical development.

At present, on the basis of the law on the judicial system in the Russian Federation are federal courts and the courts of the Russian Federation. Depending on the subject of the formation of a federalcourts include:

1. Russian Constitutional Court.
2. The Supreme Court of Russia.
3. The courts of general jurisdiction: nine appeals courts; five courts of appeal; supreme courts of republics, territorial, regional courts, courts of federal cities, courts of the autonomous region and autonomous regions; district courts.
4. Arbitration courts: courts of arbitration districts, appellate courts, arbitration courts of the Russian Federation.
5. Court for intellectual property rights - the only specialized court in the territory of Russia.
6. Military courts.

[6]Mokhov A.A Civil proceedings - a form of justice // The rule of law. 2018. N 3. 32 p.

The courts of the Russian Federation include:

1. Constitutional (charter) courts of the Russian Federation.
2. Justices of the Peace.

Based on the analysis of Chapter 7 of the Constitution, we can conclude that the judiciary in the Russian Federation exercised by the Constitutional Court, as well as a system of common and arbitration courts operating in the administrative-territorial formations. However, it should be borne in mind that the Constitutional Court as the highest judicial authority for the protection of the constitutional system of justice in individual cases does not carry out, which corresponds to Article 125 of the Constitution.

Order of Rosstandart on April 26, 2011 N 60-st All-Russia approved classifierbodies of state power and administration. In accordance with the law should distinguish the following groups of federal public authorities: a) the President of the Russian Federation (including the Russian Security Council and the Russian President's Administration);

b) The Federal Assembly of the Russian Federation (including the Federation Council and the State Duma of the Russian Federation);

c) The executive authority of the Russian Federation (RF Government, federal ministries, state committees of the Russian Federation, Russian federal committees, Federal Service of Russia, Federal Agency of Russia, federal oversight Russia, other federal executive bodies, such as the Office of the President of the Russian Federation);

d) The judicial authorities of the Russian Federation (RF Constitutional Court, Supreme Court, the Judicial Department under the Supreme Court of the Russian Federation, the system of federal courts of general jurisdiction, the system of federal arbitration courts of the Russian Federation Prosecutor's Office system, the Investigative Committee of the Russian Federation).

Thus, based on this classifier in addition to the Constitutional Court of the Supreme Court is an independent entity of state power.

Creation of an independent system of arbitration courts in 1992, instead of a pre-existing arbitration, expanded judicial function in civil cases. Currently, arbitration courts and courts of general jurisdiction are independent judicial system in the Russian Federation. The system of arbitration courts of their own competence, they administer justice but to economic disputes or other matters related to business activities (Art. 127 of the Constitution). This constitutional provision is consistent with Article 4 of the Law "On arbitration courts in the Russian Federation", which provides that the arbitration courts administer justice by resolving

economic disputes and other cases referred to their jurisdiction by the Constitution of the Russian Federation, the Federal Law and the Arbitration Procedure Code.

August 7, 2014 the Plenum of the Supreme Court by its decision № 2 approved the Rules of the Supreme Court. In accordance with current regulations, the Supreme Court consists of: Plenum, Presidium Board of Appeals, judicial board on administrative, civil and criminal cases; as well as against decisions on economic disputes in cases of military and disciplinary board. Plenum of the Supreme Court shall have the right to give explanations on issues of judicial practice, to make inquiries to the Constitutional Court. Plenum approves part of the judicial boards, shall elect the Chairman of the Supreme Court panel of judges.

In accordance with current legislation in Russia was created and operates the court for intellectual property rights, which considers disputes related to intellectual property rights, according to the rules established by the arbitration procedure legislation.

It should be emphasized that the structure of the court system of a given state is part of the procedural system and can not be seen and studied in isolation from the process.

In countries judicial structure Romano-German type is quite extensive. Almost all European countries other than the courts of general jurisdiction of separate administrative courts are created. In Germany, there are 5 independent judicial systems: general courts, administrative, financial, labor and social courts. However, the solution to all the specialized courts may be appealed to the Supreme Federal Court of Germany. In France, there are two separate legal systems: general and administrative courts. However, in the system of general courts set up specialized courts (social courts in cases related to the lease of agricultural land). In Portugal, in addition to the general courts, there are family and labor courts. In Cuba, for civil, administrative and labor courts.

The system of courts in common law countries is also quite extensive. For example, in the U.S. federal court system consists of three levels: district courts, courts of appeal and the Supreme Court. The jurisdiction of the federal courts referred the consideration of all matters not within the competence of state courts. Also Claims Court, the Tax Court of acts in the United States. But there are number of cases is small. In some states, there are courts for small claims courts on inheritance and guardianship of minors in cases courts, bankruptcy, family relationships.

It should be noted that in Russia, both among scientists and among practitioners there are judgments about the need to create specialized courts. Some researchers proposed as measures to improve

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