CHAPTER EIGHTEEN

Independence of Court Proceedings

Impartiality and Fairness*

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I Introduction

The matter concerning goals and objectives of the civil procedure that may include ensuring of justified public court proceedings conducted by an independent and unbiased court may seem old and trite. However, Professor A. Uzelac believes that the interest to the matter has recently grown and there is an obvious connection between a detailed discussion or even full reconsideration of goals and objectives of the civil procedure, on one hand, and success of procedural reforms undertaken in many countries, on the other hand.1

As Professor M. Treushnikov noted at the recent Moscow conference, the comparative law method under contemporary conditions and globalization first requires the learning of procedural values of procedural systems common for all nations.2 Such values include the fundamental norms (principles) recognized and recorded in international documents; such as the principle of

* This report is a result of professional discussions with colleagues from various countries taken during the Moscow Conference of the International Association of Procedural Law that took place on 18–21 September. As it was determined that foreign colleagues somehow misunderstood the civil procedure development trends in Russia which is caused by insignificant number of Russian scientists’ works translated to working languages and not very active participation of Russian colleagues in international professional discussions. As stated Marcel Storme in his introductory report in Moscow, the situation has been recently changed, and I am very thankful to Professor Storme for his positive assessment and invitation to participate in this conference. M. Storme, “Best Science, Worst Practice?,” Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, Russia: Conference book (Moscow, 2012), p. 17.

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court independence, the right of justified court proceedings and reasonable timeframe for consideration and resolution of cases.3

The importance of the comparative legal analysis also resides in discovery of particularities of procedural systems. The socio-cultural type of the society and its legal culture mainly determine the goals and objectives of the civil procedure. As noted by D. Maleshin, for the typological purposes of civil legal systems, they may be differentiated into collective and individual socio-cultural types.4 The adherence of a civil procedural system to the first or second type determines the structure of the civil procedure, the degree of the court effectiveness in evidence gathering, requirement to achieve the objective or formal truth, place of execution of court resolutions and decisions in the civil procedural system, the court enforcement type and many other aspects. The Russian civil procedural system is characterized by the fact that it contains both, collective and individual elements. Collective elements include many common principles, in particular, the permissive rule and adversarial principle; individual elements include court effectiveness in evidence gathering, expanded prosecutor’s powers, revision of cases in exercise of supervisory powers and the doctrinal principle of objective truth.

Unique Russian experience includes adoption and development of institutes of the continental system. Regardless of the dominating Romano-German element, we can talk about the originality of the Russian legal system, including its civil procedure. Let’s observe it on the example of the system of titles.5

II Goals and Objectives of the Civil Procedure

As S. Nikitin stated in his report, civil proceedings are carried out in the Russian Federation by courts of general jurisdiction and arbitration courts. Courts of general jurisdiction consider civil cases with public involvement.6 In contrast to foreign arbitration courts, arbitration courts of the Russian Federation are state-owned courts, not tribunals, and consider economic disputes involving

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5 See note 5 above.