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Some aspects of civil and arbitrary proceeding in EU law practice

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ABSTRACT:

The article is devoted to the consideration of certain aspects of the civil and arbitration process in the European Union. The author analyzed the concept of European civil and arbitration law, highlighted the significant difference between the two processes in the EU, identified the leading principles for the implementation of arbitration. The analysis of the advantages of the European Union arbitration institutions is carried out, on the basis of which the advantages of the arbitration procedure are identified, at the same time, the shortcomings of the European arbitration are realistically considered.

The relevance of the research topic *is due to the ongoing changes in the system of pan-European and national law, which relate to civil and arbitration legislation. Possession of information on current changes and stages of development of European arbitration makes it possible to monitor the state of the Russian arbitration system in order to highlight the main shortcomings and further correct them.*

Objective: *to highlight the difference and similarity of certain aspects of the civil and arbitration processes.*

Research methods: *analysis of the scientific literature on the problem, deduction, induction, comparison, analogy.*

Key words: *arbitration, court, arbitration process, European Union.*

I. Introduction

Legal scientific periodicals increasingly use the concept of "European civil and arbitration proceedings" these days. Despite the active use of the terminological base, we can emphasize the lack of complete agreement of researchers about the essence of the concept. Thus, the European civil proceedings refer to the activity of courts for the consideration of private civil disputes, which is carried out in the territory of the European Union. Meanwhile, it considers how the concept's content directly depends on whether an industry discipline is implied, generally reflecting the situation of the legal industry and sub-sectors, or is it a discipline of the comparative legal cycle that examines the procedural systems of specific nations residing in the territory of the European Union.

In the first situation the idea was about a certain part of the international civil process, and in the second, it implies the autonomous direction of the civil proceedings of foreign states. As Y.V. Ragulina mentioned, a new

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problem of modern times appears – it also deserves the global status, as it is observed everywhere and has the key role for humanity. This is insufficient attention of national regulators to internal problems, which is manifested at the level of regions in the national economic system, which leads to reduction of living standards of population. That's why problems of regional development of modern developed and developing countries deserve the same attention as the global problems of modern times, which are manifested and solved in the third world countries. A business process is a set of processes and interactions between them, the result (output) of which is product and/or service delivered to consumers, while inputs are material, information supplied by external suppliers.

Studying the problems and features of European procedural law makes it possible to analyze European experience, and also allows you to adopt some elements of knowledge, practical experience in implementing legal reforms, as well as improving current legislation in order to regulate public relations.

Thus, an analysis of European civil law, highlighting the differences and the specifics of conducting arbitration processes in the EU countries makes it possible to subsequently draw parallels between European and Russian realities.

II. Literature review

Today, many researchers reveal the problems of the methodology and practical implementation of the civil law of foreign countries in their works. The study of legal proceedings in the territory of the European Union, in particular, was carried out by Russian researchers-processualists: K.V. Balakin, N.G. Eliseev, A.D. Keylin, E. I. Nosyreva, V.K. Puchinsky, S.V. Bobotov, I. A. Kuzovkov.

K.V. Balakin in his work "Appealing against decisions of courts of civil jurisdiction in France" examined not only the practical aspect of the appeal procedure, but also gave an overview of the current state of civil jurisprudence in the EU countries, and also conducted a comparative review of civil and arbitration proceedings in the EU.

In the work of N.G. Eliseeva "Civil and commercial law of foreign states", the author shows the sources of regulation and institutions of foreign civil and commercial law related to the general part of private law: subjects, legal nature of a merchant, property law, general provisions on obligations. And also considers the features of foreign arbitration, evaluates its effectiveness, and highlights the shortcomings and advantages.

A.D. Keylin in the monograph "International Trade Arbitration" analyzes the history of the formation of the arbitration proceedings in foreign countries, identifying the main milestones on the development pattern. The author emphasized the significant points that influenced the establishment of arbitration in Europe and identified shortcomings that reduce the effectiveness of the arbitration process.

E.I. Nosyreva, in her work on studying the civil proceedings in foreign countries, tried to develop problems of alternative ways of resolving legal disputes through arbitration, negotiation and mediation. Such an approach makes it possible to reduce the burden on the courtsand to increase the effectiveness of the judicial system as a whole.

V.K. Puchinsky in the monograph "Civil Procedure of Foreign Countries" examined the concept and sources of civil procedural law in the countries of England, the USA and France, presented a general description

of civil justice, its tasks, formed the concept of civil procedural law and determined its principles and significance.

S.V. Bobotov in "Bourgeois Justice. Status and development prospects" collected, summarized and analyzed the information regarding the prerequisites and stages of the formation of the European legal system, as well as further trends in its development.

III. Methodology

When writing the article, the author was guided by his own experience and relied on materials obtained as a result of the analysis of scientific literature on the matter. The main informational base of the article is the legislation of the European Union, while the main regulatory sources are the Convention on Human Rights, the European Civil Code, the New York Convention 1951, the European Convention on International Commercial Arbitration 1961, 1975 Inter-American Convention on International Commercial Arbitration, 1987 Amman Convention on Commercial Arbitration of the Arab States, Model Law on International Commercial Arbitration.

IV. Results

The European justice approach to the implementation of civil and arbitration processes is based on the concept of "justice" of the trial as the leading criterion for assessing the activities of the administration of justice, which combines the whole range of requirements for such activities.

Thus, part of the European standards for the administration of justice is directly reflected in the national law, while other standards are determined by the content of the procedural rules. European standards of administration of justice indicate the minimum level of judicial protection guaranteed to all individuals (individuals and legal entities). This is achieved not only with the help of fundamental ideas, principles of justice, but also through specialized requirements that are relevant for the specific practical action of these ideas.

In the national legislation of the EU countries, these principles are fixed at the level of mandatory standards, while the mechanism for implementing the Convention for the Protection of Human Rights and its Fundamental Freedoms determines their application from the standpoint of daily practice. In this regard, European standards for the implementation of justice consider not only behavioral rules, but also the conditions for the application of these rules. Here you can cite as an example the restriction of the standards in the situation of protecting private and public interests, as well as state secrets. Also, the correct implementation of principles and legal norms is constantly monitored by the parties to the Convention.

The main legislative act that regulates the implementation of civil proceedings in the EU is the European Civil Code, whose task can be considered as providing a comprehensive solution in the main areas of private law. Private law, usually covered by the civil code, includes family law, the law on inheritance, property rights and law of obligations. The law of obligations includes the law of contracts, tort (or tort) and restitution. Civil proceedings reside in the jurisdictions of courts of various levels.

The European civil proceeding is a conditional concept and it denotes an international area of mutual cooperation in order to unify civil procedural rules in the EU countries. The unification of civil procedural rules

brought not only the improvement and facilitation of legal proceedings in the EU, but also initiated the formation of a number of problems.

It can be said that the European civil proceeding does not have an internal common system; therefore, it cannot be called a comprehensive education. The EU legal principles substantively consider issues of interstate cooperation, while they do not include the basic methodology, principles, goals, objectives of the legal industry, regulating litigation and evidence.

The evolution of the European civil proceeding took place through the adoption of independent acts that close momentary problems, while a huge number of such acts led to the lack of consistency. The elimination of such problems may be caused by the adoption of a code and special acts regulating the lawmaking process and restricting the introduction of separate acts that are not consistent with the general system.

The scope of the European civil proceeding lies within cross-border cases. That is, a situation is allowed to arise when the necessary general procedure does not exist at the state level, and therefore, it is impossible to take advantage of the European civil proceeding in internal disputes. Moreover, they cannot be used in relations with third states; in addition, European projects for procedural unification are in conflict with attempts to unify law at the global level.

Another problem that must be considered is the alternative nature of a number of regulations in the European civil proceeding. Thus, the Regulations on pan-European procedures are not only not autonomous, but also optional, which testifies to the right of the applicant to choose the procedure for considering his case: either national or pan-European.

Next, we need to proceed to consider the specifics of conducting arbitration proceedings with a view to their subsequent comparison with civil proceedings. Arbitration proceedings both within the state and in international realities are carried out in arbitration, which should be understood as an arbitration court to consider disputes at the level of legal entities and entrepreneurs, when the state can also act as one of the parties. Arbitration is organized on the basis of an agreement between states, legal entities, a trial or with the participation of an arbitrator, a group of arbitrators whose decisions are binding on the parties involved.

Today, arbitration in the EU is a modern legal institution based on the agreement of the parties to the dispute and the statute. It can act both on an ongoing basis and be formed to consider a specific case.

1. Basic principles of the arbitration proceeding in the EU

Let’s consider the basic principles of the arbitration proceeding in the EU:

1.1. Democracy

Arbitration at the European Arbitration Chamber, especially with regard to the International Arbitration, are public associations that are not related to the state system of the administrative and judicial apparatus.

1.2. Possibility to change and settle disputes by the parties

Both parties to the proceedings can make decisions and influence all stages of the arbitration.

1.3. Facilitated proceedings

The process excludes the involvement of many principles and rules that are characteristic of judicial

institutions, respectively, this can significantly save time for the initiators of the proceedings.

1.4. Possibility of holding meetings closed to the public and third parties

Due to the fact that arbitration proceedings are most often associated with commercial, industrial, state secrets, closed proceedings are allowed to preserve it.

1.5. The arbitral award is final

This implies that it cannot be reviewed in essence, cannot be changed, and can be enforced (but not at the initiative of the UN).

1.6. Court jurisdiction is excluded

If two parties apply to arbitration at any level to resolve disputes, then the intervention of judicial institutions of the European Union (except the actions of the National Court) is not permissible.

1.7. The right of two proceedings

Despite the prohibition of judicial intervention in arbitration, the courts have the right to take two proceedings to take coercive measures to secure the claim in advance.

Moreover, the National Court of Justice may exercise its right to insist on the enforcement of an arbitral award if both parties to the proceedings evade their obligations. Also, the National Court of Justice may cancel the decision of the arbitration upon receipt of an application from one of the interested parties to the court registry.

2. Types of arbitration represented in the EU

Let’s consider the existing types of arbitration represented in the EU:

2.1. Constantly functioning (institutional) arbitration

As a rule, it is created with various associations, organizations, chambers of commerce, unions, chambers of commerce, exchanges. Commercial arbitrations operate on an ongoing basis, with their own rules, procedures and regulations. This type of arbitration is based on the rules of the International Commercial Arbitration or on specific national laws.

If complicated cases are presented in arbitration, for example, regarding issues of applicable law, complicated multilateral cases, this type of arbitration is preferable.

2.2. Ad hoc (also called one-time or isolated)

It is created on the initiative of opposing parties to the dispute in order to consider a specific case. After the meeting and the adoption of a specific decision, the arbitration shall dissolve, ending its existence.

The basis for the creation of Ad hoc arbitration is the unlimited will of the initiators of the arbitration. The parties draw up the rules for the election of arbitrators, create the arbitration procedure itself and choose the place of the arbitration.

A similar option is effectively used in disputes due to factual circumstances, such as researching product quality and identifying its price.

2.3. International commercial arbitration

This is the most common type of arbitration, which does not have a direct relationship between international treaties or national laws of specific states, which makes it independent in making decisions from outside opinions, making it possible to rely on the principles of justice, which we reported earlier, the principles of international commercial law, and also legal customs and general legal principles.

Let's now consider the legislative acts on which arbitration is based on the example of the International Arbitration, which is the most frequently demanded institution for resolving arbitration disputes.

2.4. International law

The leading legal source governing commercial arbitration is the 1958 New York Convention. The document was developed by UNCITRAL, and later, under the auspices of the UN, was adopted by the international community. More than 140 world states are members of the Convention; therefore, the adoption of the Convention can be considered one of the most significant projects in the field of international law.

The Convention includes two main provisions:

- Recognition of arbitration agreements and their implementation

The essence of the provision is to establish a requirement for directing a party to an arbitration meeting if one of the parties requests it, and the agreement is not found invalid. Thus, the court will be forced to refuse the defendant legal protection, even if the arbitration proceeding took place in another country.

- Enforcement of arbitration agreements

The regulation establishes the obligations of the participating states on the mandatory recognition of decisions of foreign arbitration (under the auspices of the Convention) within their borders, as well as determining the list of documentation that is required for the implementation of the relevant procedure by local courts. Moreover, a small list of grounds for refusing recognition of arbitral awards is introduced.

Thus, in the *framework of international legal documents, the conduct of the arbitration proceeding* is regulated by:

- New-York Convention of 1951;
- European Convention on International Commercial Arbitration 1961;
- Inter-American Convention on International Commercial Arbitration, 1975;
- Amman Convention on Commercial Arbitration of the Arab States of 1987.

2.5. Domestic national law

There is a place of arbitration right in international arbitration and its theoretical and methodological basis. That is, the power to resolve the arbitration by state law is given in exchange for the possibility of regulating the arbitration process, including determining the powers of the arbitrators.

The key consequence of the implementation of such a principle was the difficulties arising for the arbitrators at the time of their stay in states whose legislative base was not well known. In 1985, UNCITRAL initiated the development of the Model Law on International Commercial Arbitration, after which the UN made recommendations on the adoption of the Law to all participating States in order to unify arbitration procedures and

simplify the practical work of International Arbitration. In 2006, the Law was amended.

More than 60 countries, including the Russian Federation, joined the Law, while France, Great Britain, the USA, Sweden, Switzerland and other states remained outside the zone of active application of the Legislation.

National arbitration law allows the parties to determine the rules for the conduct of the proceedings themselves. At the same time, legally certified decisions of the parties will play the role of an additional legal source that affects the course of the arbitration procedure.

As a rule, the parties to the meeting determine the rules of arbitration during the discussion, based on the implementation of the current arbitration rules.

3. Advantages and disadvantages of the arbitration proceeding

Now we should consider the advantages and disadvantages of the arbitration proceeding.

3.1. Short-term proceeding flow

When describing this advantage, it is necessary to note the practical realities of arbitration. In theory, arbitration was conceived as an attempt to shorten the length of court proceedings, but in practice it often happens that the desire of an arbitral tribunal to make a fair decision, considering all existing arguments, can take too much time: up to several years.

3.2. Components of arbitration expenses

Despite the fact that the costs of conducting the arbitration proceeding are as transparent as possible, including payments to arbitrators, payment of the arbitration dispute, and the services of legal advisers, they directly depend on the time period during which the proceeding is ongoing.

The lion's share of the costs will be paid to legal advisers, which can be compared with payments to the courts in a civil proceeding if the length of the arbitration is more than six months.

Summarizing the features of the conduct of arbitration and civil proceedings, it is necessary to highlight the differences between arbitration proceedings and civil litigation:

- participation of both parties in the 1 section of an arbitrator, while in ordinary civil proceedings courts the composition of participants does not depend on the parties;
- determination by the parties to the parties of the arbitration of the procedural order, which guarantees procedural flexibility and helps to save time in the consideration of the case (EU civil courts are guided by a set of procedural rules and their own statutes);
- possibility of a closed, that is, confidential conduct of the proceeding in arbitration, as opposed to a civil court hearing;
- inability of the UN Security Council to influence the enforcement of a decision in a case by arbitration.

Note that a decision made in arbitration may be challenged in the International Court of Justice of the United Nations, if judicial jurisdiction is extended to it.

V. Discussion

Previously we highlighted the features of the arbitration proceeding in the civil law system in the territory of the European Union, examined the advantages and disadvantages of the arbitration proceeding in comparison with civil. After that, it is necessary to analyze the specifics of conducting arbitration proceedings in the European Union and Russia, in view of the frequent continuity of European practice on Russian grounds, subject to the possibility of its adaptation.

In September 2016, amendments entered into a large-scale reform of the arbitration courts, which had the task of improving the quality of functioning of the arbitration institutions of Russia, as well as increasing the popularity of Russian arbitration in resolving commercial issues among Russian business, and therefore stimulate the return of capital, which is directed to international arbitration.

According to V. Khvalei, vice president of the ICC court, member of the LCIA, Chairman of the Board of the RAA, only cases with minor complexity and a small price issue are referred to the Russian arbitration tribunal these days. The crisis of confidence in Russian arbitration courts forces sports participants to turn to large foreign arbitration centers, such as LCIA, ICC, SCC, etc. The ICAC (International Commercial Arbitration Court) currently attracts far fewer applications in significant cases and proceedings.

According to R. Malinskaya, head of the Goltsblat BLP group, participant in arbitration at LCIA, ICAC, the lack of popularity of Russian arbitration lies not only in the lack of stability in judicial practice, but also in the presence of procedural difficulties. Thus, the rules of foreign arbitration determine the active contact of the meeting participants with the arbitrators and advisers during the discussion of the terms of the proceeding and its conditions. Thus, the speed of progression of events, the list of procedural actions to be taken by the participants of the meeting, depend on the involvement of the parties.

Drawing a comparison between Russian and foreign arbitrations from the standpoint of relevance and effectiveness, R. Malinskaya emphasizes that there are urgent recommendations for contacting the parties in large arbitrations of the European Union, which include the need for phone calls, emailing, attendance at personal meetings, sending mail. The recommendations consider the period during which the contact should take place: 21 days after receiving a written notice of the initiation of the arbitration proceeding. In addition, the parties may agree on common proposals for joint consideration. These rules are present in both SCC and ICC.

Meanwhile, there are no such rules and regulations in Russian arbitration tribunals, which make the dispute resolution process much longer, not flexible and not able to provide a productive trial.

Moreover, all communication proceedings in the ICAC pass through the administrative office, and the arbitration participants meet with the arbitrators only at the first oral hearing for the first time, it is also worth noting the more meticulous preparation of the experts running business, a number of working issues are not properly discussed.

The expert also noted the practical examples of the work of the ICAC, when the lack of thought in the regulations led to the violation of the participants in the proceedings. Thus, one of the participants was refused to attach evidence and call witnesses on the basis of an excessively late appeal with the deadlines for submitting applications not agreed and not previously approved.

Another aspect that affects the flexibility of the proceeding is the underdeveloped technical and information equipment of the authorities, which does not allow effective, quick, result-oriented business interaction between the participants in the event. The material and technical base in many tribunals is outdated, requires replacement, as well as an increase in the number of administrative staffs is required, especially in the regions of the Russian Federation.

The above-mentioned factors significantly affect the flexibility of the implementation of the arbitration proceeding and play an additional contrast between the quality of arbitration in the European Union and in the Russian Federation.

Expert I. Urzhumov, a member of Ivan International Arbitration Institute (IAI), a representative of Foley Hoag, highlights another difference between Russian and European arbitration: a low degree of transparency of the proceeding and preparation for it. Thus, European arbitrations are making significant efforts to achieve maximum transparency of the meeting. An important component of transparency is the open selection of arbitrators for the meeting. SCC publishes monthly reports containing detailed statistical information on the selection of arbitrators, the reasons for choosing one or another specialist, and the reasons for the withdrawal of experts. In Russia, the transparency of the proceedings and the appointment of arbitrators leaves much to be desired so far. This is especially true if we speak about regions.

Billebru, a member of the Swedish Arbitration Association (SAA) and the Royal Institute of Arbitrators of the UK (MCIArb), argues that the peculiarity of European institutions is to consider factors such as the place of arbitration, the language of the proceedings, the nationality of the participants and their representatives, which may play a huge role in the proceedings. While the rules of the ICAC involves the selection of arbitrators from a pre-formed list without considering the features of the process, which does not make it possible to select a candidate that is best suited to specific conditions. The expert also notes that the regulation, including the impossibility of accepting the nationality of the parties, does not yet exist in the ICAC, which makes the arbitration process excessively “Russified”, not objective enough.

VI. Conclusion

Summarizing the material of the article, it is necessary to come up with the appropriate conclusions. Under the European civil proceedings can be understood a conditional concept denoting the transnational area of mutual cooperation in order to unify civil procedural rules in the countries of the European Union.

The main legislative act that regulates the implementation of civil proceedings in the EU is the European Civil Code, whose task can be considered as providing a comprehensive solution in the main areas of private law. Private law, usually covered by the civil code, includes family law, the law on inheritance, property rights and law of obligations. The law of obligations includes the law of contracts, tort and restitution. Civil proceedings are included into jurisdictions of courts of various levels.

In turn, the arbitration process in the EU is a modern legal institution, which is based on the agreement of the disputing parties and statutes. The arbitral tribunal may act continuously or be convened to consider a specific case. Arbitration is organized on the basis of an agreement between legal entities, states in various

proportions; invited arbitrators participate in making the decision.

The advantages and differences of European arbitration institutions from civil proceedings can be considered flexibility in decision-making, transparency of activities, short-term consideration of each case, independence from the state system, as well as the possibility of holding a meeting in closed session.

The key factors that influence the demand for arbitration in the market and its popularity are:

- transparency of activity in general, especially when choosing or rejecting arbitrators;
- focus on results, fairness in relation to both parties to the dispute, regardless of nationality, status, position and financial component;
- qualification of arbitrators;
- opportunity to discuss agreements and come to an early development of a process development plan.

Drawing a comparison between the existing arbitration institutions and Russian arbitrations (in particular, the ICAC), we can conclude that the arbitration system is not sufficiently developed in Russia, despite the adopted full-scale reform of the arbitration courts.

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