CONFERENCE REVIEW NOTES

THE FIRST SIBERIAN LEGAL FORUM 'SPECIALIZATION OF COURTS AND JUDGES'

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The First Siberian Legal Forum was held in Tyumen (Russia) from October 14–16, 2014, and was devoted to the 150th anniversary of the Russian Judicial Reform of 1864. The conference was organized by Tyumen State University, with the support of the Tyumen Oblast Court, the West Siberian District Commercial Court and in association with the *Russian Law Journal*,[1] which published some of the reports that were presented at the conference.

1. General Topic and Goals

The topic of the First Siberian Legal Forum was 'Specialization of Courts and Judges: World Practice and the Russian Experience.' The main idea was to bring together legal practitioners and leading academics in the field of procedural law from higher education institutions in Europe, North and South America, Africa and Asia. The goal was to exchange information and practical experience. What was the intention of the organizers and what were the expected results? One can find a first, tentative, answer in the mission of the First Siberian Legal Forum and in the welcome

[1] <www.siberiaforum.ru>

address of Professor Loïc Cadiet, the President of the International Association of Procedural Law (IAPL).[2] But first of all, one has to go back to the 2012 Moscow World Congress, where the global trends of the development of the civil process, in terms of socio-cultural diversity, were discussed. All reports of the Moscow Congress were published in the conference book 'Civil Procedure in Cross-cultural Dialogue: Eurasia Context.'[3] For the first time in history an IAPL conference was held in Russia, and for the first time the community of procedural practitioners and scholars focused on Eurasia. The ultimate goal of the Moscow conference was to understand how procedural systems in various jurisdictions, and the legal theories in which they are embedded, function. Moreover, contemporary procedural law cannot ignore the issue of national identity. The Tyumen Forum focused on this topic. This is important for the following reasons.

We are living in an age of profound changes in procedural law. In many countries and regions procedural reforms are taking place. These are usually triggered by similar social phenomena in modern societies, reflecting a process of convergence. Moreover, procedural law has experienced, and still is experiencing, a remarkable process of internationalization and harmonization, whereas in the past, judicial proceedings remained embedded in national legal traditions. At the same time, it is becoming apparent that 'fora such as this provide a wealth of potential for deep legal research.'[4] 'With deliberate effort and strong partnership we can bring out the best in our legal systems, as we discuss the state of our development now and create a better future'[5].

2. Forum Program

The program of the Forum provided three sessions that were designed as a step-by-step approach to understand the judicial systems of various countries and their degree of specialization. The first session was devoted to the reform of the Russian civil procedure and judicial system. The topic of the second session was specialization of judges and courts in comparative perspective and third session was about the Russian experience of the specialization of judges and courts.

Each session had 5 or 6 national reporters. Bearing in mind where the Forum took place, the organizers had invited Russian colleagues from all Siberian regions:

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2 <www.iaplaw.org>

3 Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18–21, 2012, Moscow, Russia (Dmitry Maleshin, ed.) (Statut 2012), available at <http://papers.ssrn.com/abstract_id=2280682> (accessed May 18, 2015).

4 Here we have allowed ourselves to reproduce the text of the Mission of Siberian Legal Forum, which can be found at <http://siberiaforum.ru/?lang=en>.

5 The text reproduces a part of the Welcome address by Loïc Cadiet, President of the International Association of Procedural Law, at <http://siberiaforum.ru/?lang=en>.

lawyers, academics, judges of the Constitutional Court, Tyumen Oblast Court, West Siberian District Commercial Court. At the same time, foreign experts, from all over the world,[6] were invited to take part in the discussions of the ongoing reform of Russian civil procedure, judicial systems and judicial specialization. One of the sessions was especially devoted to discussing foreign models of specialization of courts and judges. Russian experts had their chance, with the help of their foreign colleagues, to concentrate on similarities and differences of judiciaries in Russia and abroad.

Lawyers and scholars at the Forum underlined the basic fact that in an ever-changing world, any legal culture, including the judiciary, is dissimilar to others. This necessitates a joint discussion of experiences in judicial specialization

3. Forum Summary

The conference was opened by the rector of Tyumen State University, Valery Falkov and was followed by opening speeches by Veniamin Yakovlev,[7] Michail Kleandrov[8] and Vladislav Ivanov.[9] All of them focused on the strengths of the organization of the judiciary and on the advantages of the Russian Judicial Reform. According to the Constitution of the Russian Federation (Art. 118), the judicial power is exercised by means of constitutional, civil, administrative and criminal proceedings. The Russian legal system traditionally recognizes the division of courts into general (or common) jurisdiction courts and commercial courts, the latter resolving economic, or commercial, legal disputes. The judiciary also consists of the Constitutional Court of the Russian Federation. In addition, the development of the judicial system is an integral part of the implementation of the current judicial reform in Russia. A specialized court for resolving certain types of cases, the Intellectual Property Court, was established as a part of the commercial courts system in 2011. Moreover, there has been a thorough revision of the judicial review mechanism of both general jurisdiction and commercial courts. The Supreme Court and the

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[6] Elisabetta Silvestri, Professor of the University of Pavia (Italy); Remco van Rhee, Professor of Maastricht University (Netherlands); Alan Uzelac, Professor of Law at the University of Zagreb (Croatia); Stefaan Voet, Professor at the Institute for Procedural Law at the University of Gent (Belgium); Yulin Fu, Associate Professor in Peking University School of Law (China); Danie van Loggerenberg, Professor at the University of Pretoria (South Africa).

[7] Professor, Advisor to the President of the Russian Federation, Corresponding Member of the Russian Academy of Sciences, Honored Lawyer of the Russian Federation, Doctor of Legal Studies. Report on 'Economic Justice of Russia.'

[8] Professor, Constitutional Court of the Russian Federation Judge, Corresponding Member of the Russian Academy of Sciences, Honored Lawyer of the Russian federation, Doctor of Legal Studies. Report on 'The Topic Problems of Improving the Mechanism of Judicial Power in the Russian Federation.'

[9] Chairman of the West Siberian District Commercial Court. Report on 'The Interaction of Common Jurisdiction Courts and Commercial Courts During Reforming of the Judicial System of Russia.'

Supreme Commercial Court are now merged into the Supreme Court of the Russian Federation, the supreme judicial authority for civil and commercial disputes, as well as for criminal, administrative and other types of cases within the jurisdiction of the courts established according to the Federal Constitutional Law 'On Judicial System of Russian Federation' and other federal laws.[10]

According to Veniamin Yakovlev and Professor Kleandrov, the organization of the judicial power in Russia, established by the Constitution of the Russian Federation and the federal constitutional laws, reflects a modern worldwide trend of a simultaneous co-existence of general jurisdiction courts and specialized courts. From the point of view of Mikhail Kleandrov, this is relevant to the application of filtering mechanisms and summary proceedings for small claims. He also notes that processing small claims poses greater challenges for many legal systems. The Russian civil justice system, as well as other civil law countries, as opposed to common law countries, reject the '*de minimis non curat praetor*'-principle, according to which judges should not waste their time with small or irrelevant matters. In the late 20th – early 21th centuries, justices of peace were established, or, according to some authors, restored as part of the Russian general jurisdiction courts system. Justices of peace resolve the major bulk of indisputable civil cases with claims based on written documents (so called order, or writ, proceedings), small family, labor and property claims, not exceeding the amount of 50,000 rubles. This report demonstrates that processing small cases involves different approaches procedural legislation. Writ proceedings in civil procedure imply the issuing of a court order to enforce indisputable proprietary claims, without an actual trial. Commercial procedure has its own summary proceedings. The indisputable nature of a claim and its low monetary value are the relevant determinants. Ordinary proceedings before the justice of peace have special features, including a one-month case resolving term, which leads to a minimum of formalities, and a limited use of appeals. The question arises whether this is always to the benefit of the people. The reporter noted that it would be incorrect to conclude that small cases should be considered less important based on the amount in dispute.

Some reporters pay special attention to the constitutional and legal bases of the specialization of courts and judges in Russia. As is clear from the report of Gennady Chebotarev,[11] the advantage of the national judicial system is that it is able, based on the Constitution of the Russian Federation, to develop in order to protect the fundamental constitutional rights and freedoms, including the right

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[10] Federal Constitutional Law No. 3-FKZ of February 5, 2014, 'On the Supreme Court of the Russian Federation,' at <http://www.consultant.ru/document/cons_doc_LAW_170506/> (accessed May 18, 2015).

[11] Head of the Department of Constitutional and Municipal Law at the Institute of State and Law of the Tyumen State University, Professor, Doctor of Legal Dtudies. Report on 'The Constitutional Foundations of the Judiciary.'

for judicial protection, provided for by Art. 46 of the Constitution. Lidia Terekhova[12] emphasizes that it is important to analyze the bases of judicial specialization in Russia. The relevance of such analysis manifests itself in various ways. The report reflects, first of all, the fact that current legislation has no clear specialization concept. As for legal doctrine, most authors support the idea of specialization of judges and not of judicial bodies. At the same time, according to Professor Terekhova, Russian court specialization is unsystematic and lacks clear criteria. Only the subject matter is considered. This means that the bases (or the reasons) for court specialization have to do with the nature of the case, more specifically, their specificity, like the protection of intellectual property for motion pictures. To date, the legislator's concern about judicial specialization has been restricted to assigning certain cases to certain courts.

The reporters note that the specialization of judges in Russia has advantages and disadvantages. Therefore, when discussing the organization of judicial power, we must take into account both pros and cons of judicial specialization. Tatiana Otcheskaya,[13] in her report sees commercial courts as a specialized judicial authority for deciding economic disputes. Being an active judge, Professor Otcheskaya considers specialization in commercial courts as a success. Professor Yakovlev sees the advantages of specialization of courts and judges in Russia in the fact that it is based on two criteria: a subject matter criterion, that is the nature of a case, and a subject criterion, these are the case participants. This type of judicial power structure has sociological and legal foundations. For instance, it was mentioned that setting up administrative courts and a specific procedural code, though one of the current issues both in procedural doctrine and judicial practice, is still just a project.

The Russian reporters also paid attention to the historical roots of the Judicial Reform of Alexander II of 1864, and to the role of cultural traditions that still influence the current reforms of the judicial system and judicial specialization. Cultural features manifest themselves most of all in administrative justice. In Russia, the protection of rights in the area of public relations is traditionally carried out by both general jurisdiction courts and commercial courts by a specific procedure.

The session on international experience was chaired by Dmitry Maleshin.[14] The various country reports[15] show that, however strange this may seem, despite the

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[12] Head of the Department of Civil and Commercial Procedure at the Law Faculty of the Omsk State University, Professor, Doctor of Legal Studies. Report on 'Bases of Specialization of Courts and Judges in Russia.'

[13] West Siberian District Commercial Court Judge, Doctor of Legal Studies, Professor. Report on 'Constitutional Guarantees of Business Entities' Rights Protection in Economy Sphere.'

[14] Professor of Civil Procedural Law at the Lomonosov Moscow State University.

[15] Elisabetta Silvestri, University of Pavia (Italy). Report on 'Judicial Specialization: In Search of the "Right" Judge for Every Case?'. Remco van Rhee, Maastricht University (Netherlands). Report on 'Judicial Specialization in Netherlands.' Alan Uzelac, Zagreb University (Croatia). Report on 'Mixed

convergence of legal and procedural systems, judicial reforms may lead to different specialization models in different countries (Italy, Netherlands, Croatia, Belgium, China, and South Africa). Professors Yulin Fu, Danie van Loggerenberg and Stefaan Voet linger on the historical, cultural, ethnical and political features of judicial specialization in their countries. Remco van Rhee points out that the tendency to integration and enlargement of courts in the Netherlands creates conditions contrary to courts' specialization, with a few exceptions. According to Professor Uzelac, the concept of 'judicial specialization,' being not exactly precise, shows that the relationship between proportionality and the specialization of courts and judges reveals interesting problems and paradoxes in many judicial systems. In this respect an observation by Professor Silvestri draws one's attention. In her view, the 'devil's advocate' technology must be applied to reveal the disadvantages in foreign experience of specialization of courts and judges.

We thank all reporters for their contributions and reflections. Some of the conference materials are published in the *Russian Law Journal*[16] and in a special issue of the *Judicial Practice in Western Siberia*.[17]

5. Conclusion

In the concluding part of this review, it is necessary to reiterate the main reason why this international forum was held. These are the challenges all judicial systems currently face in trying to modernize their system to bring it up-to-date with the 21st century. According to the leading specialists in procedural law, it is a trend of modern law to set out the positive principles that should form the framework for an efficient procedural model.

Both the exchange of information and practical experience and the discussion of legal practitioners and prominent scholars from different countries contribute to the development of procedural practice and theory.

It was the first time that Tyumen State University held a legal forum of such a scale. It is our hope that we have created a future discussion platform, that will attract participants from all over the world.

Blessing of Judicial Specialization: The Devil Is in the Detail.' Stefaan Voet, Gent University (Belgium). Report on 'Belgium's New Specialized Judiciary.' Yulin Fu, Peking University (China). Report on 'Judicial Specialization in China since 1990[5].' Danie van Loggerenberg, University of Pretoria (South Africa). Report on 'Specialization of South African Judges and Courts: Multiskilled, Multitasked, Multiaccess?'.

16 2(4) Russian Law Journal 129–204.

17 Арбитражная практика Западной Сибири [*Arbitrazhnaya praktika Zapadnoi Sibiri*].

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