

Procedural Guarantees of Rights of Citizens of the Russian Federation in the Foreign States

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Abstract: The study analyzes procedural guarantees applicable for protecting rights of citizens of the Russian Federation in the foreign states, regarding discrimination measures taken internationally. Protection of rights of juridical persons is a sophisticated system used in the foreign courts of arbitration while physical persons can have their rights protected solely in national courts. The study touches upon peculiarities of the Russian doctrine of procedural guarantees reflected in current legislation concerning civil legal procedure and notarial activities.

Key words: Procedural guarantees, notarial procedure, courts of general jurisdiction, protection of rights of citizens of the Russian Federation, realization of procedural rights

INTRODUCTION

The possibility of realization of subjective rights of citizens (natives) is not restricted to borders of states whose citizenship they are granted.

Within unification of legal systems and harmonization of legal families in most states subjects are not restricted to enjoy their subjective rights and incur their obligations depending on their nationality.

Meanwhile, some discrimination measures which seemed to be forgotten, unfortunately take place even in our days. This fact is proved by sanctions imposed on the Russian Federation by a number of states after the Republic of Crimea and Sevastopol, a city with a federal status, merged into Russia. Thus, EU members imposed economic sanctions on the Russian Federation applicable to large entities (juridical persons) and some Russian citizens which the “sanctioners” want to bear negative economic consequences.

RESEARCH

Protection of rights of juridical persons with big or average finances in possession, regarding their specific status and interest of every state to invite foreign funds, can have a number of guarantees including national measures of protection and a well developed system of protection in the foreign courts of arbitration. Meanwhile, persons (being non-legal entities) subject to the discrimination measures come face to face with “sanctioners” having their “own” state as the only

ally. This explains the need for a system of procedural and process guarantees of rights of the Russian citizens in any part of the world irrespective of a political situation and its escalation at any time period.

B.N. Yurkov marks that such legal guarantees include measures of protection of civil rights and actions of specific authorities protecting these rights. Thus, the author suggests that the notion of legal guarantees should include two mutually connected criteria:

- Legally established measures of protection of civil rights and interested
- Legally established actions of public authorities concerning restoration of a violated right as a protection measure of personal rights and interests

Zakharov (1980) points out that the system of guarantees of rights of parties allows to apply procedural rights and more than that helps to execute justice in conformity with the law. Motovilkover (1974) assumes that the object of procedural guarantees is a certain public or individual interest. What the academic literature calls guarantees of realization of subjective rights and obligations and objectives of the judicial procedure, actually stand for guarantees of an interest reflected in an objective of the judicial procedure or intended to be satisfied with regard to subjective rights and obligations.

See (1982) interprets procedural guarantees as a legal mechanism that is realized in legally established measures, helping to achieve procedural objectives

(including prevention, detection and remedy of crimes) by competent bodies and authorities. Smolyarchuk (1966) characterized procedural guarantees in the context of labour law as a system of measures taken to arbitrate and resolve labour disputes, protection of labour rights, rights and legally protected interests of official institutions.

From all definitions given above to legal guarantees we consider the position of B.N. Yurkov to be more well-grounded because he assumes that legal guarantees, apart from measures of protection of rights and legal interests include actions of authorized bodies as a means of protecting civil rights and interests. B.N. Yurkov notes that the system of legal guarantees includes:

- Law making and law enforcement activities of state authorities and regulation
- Procurator's supervision
- Judicial activity as a guarantee of legitimacy
- Activities of courts of arbitration and notarial agencies

In this study, procedural guarantees are regarded as those concerning judicial protection of civil rights at courts of general jurisdiction in a form of civil proceedings. Meanwhile, process guarantees are provided during the notarial proceedings.

Current legislation in civil procedure predetermines the following measures of protection of rights of the Russian citizens and sets exceptional subject-matter jurisdiction of disputes including the Russian citizens irrespective of their place of residence in cases concerning:

- The right to real estate located in the Russian Federation
- Disputes over carriage, if the carrier is located in the Russian Federation
- Dissolution of marriage between the Russian citizens and nationals of other states, if both spouses reside in the Russian Federation

Under the stated circumstances, a trial shall always be conducted in the Russian Federation. Violation of this rule will make it impossible to enforce the decisions of the foreign court in the Russian Federation. When examining evidence by the Russian and foreign courts, the measure of protection of rights of the Russian citizens lies in mutual acceptance of documents issued or certified by competent bodies of foreign states (Article 408 of the Code of Civil Procedure of the Russian Federation (Civil Procedure, 2002)). This requires only apostille or legalization of a document as required by the law. It is

important to mutually acknowledge and execute decisions of the foreign courts in the Russian Federations and the decisions of the Russian courts in foreign states if this is stipulated in the international treaty of the Russian Federation. Meanwhile, rights of Russian citizens are protected during the process of forcible execution of the decisions in the Russian Federation by evaluating the following criteria by the Russian courts:

- A Russian citizen was deprived of the possibility of taking part in the proceedings because he/she was late and not properly notified about the time and the place of the consideration of the case in the foreign court
- The consideration of the case is referred to the exclusive cognisance of the courts in the Russian Federation
- The execution of the decision of the foreign court may cause damage to the sovereignty of the Russian Federation or present a threat to the security of the Russian Federation or contradicts public law and order in the Russian Federation

CONCLUSION

The matter of current interest in civil jurisdiction is the obtaining of evidence in the order of letters of request in the foreign courts. According to Article 407, part 4 of the Code of Civil Procedure of the Russian Federation the courts of the Russian Federation may turn to foreign courts with orders on the performance of the individual procedural actions. The procedure for intercourse of the courts of the Russian Federation with foreign courts is determined by the international treaty of the Russian Federation or by the federal law. By comparison, the Russian legislation establishes a well-defined procedure and terms of execution of a letter of request (Articles 62, 63 of the Code of Civil Procedure of the Russian Federation). As a disadvantage, we can point to a fact that in 2010 an alternative measure of obtaining evidence by consular institution officials in the foreign states was excluded in accordance with Article 38 of Fundamental Principles of Legislation for Notary Activities (Fundamental Principles, 1993).

We consider this exclusion of the possibility of pre-trial obtaining of evidence in any foreign state by officials of consular institutions to be a fundamental defect. We assume it should be restored as a possible pre-trial procedure of obtaining evidence in the foreign states because the current Russian legislation allows that it may be performed by a notary officer.

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