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The International Association of Procedural Law was established in 1948 on the initiative of Italian academicians. Today the Association unites 500 scholars from 50 countries of the world. Its official languages are English, French, German, Italian, and Spanish.

The Association conducts world congresses every four years, and during the intervals it conducts annual conferences on various topical problems of legal procedure. The congresses and conferences attract a great number of scholars and practicing lawyers. On 18 – 21 September, 2012, the International Organization of Procedural Law will hold their session in Russia for the first time.

On the threshold of the international conference, the Federal Commercial Court of the Ural District has prepared a number of articles about the Russian Commercial Procedure that reflect basic directions for the development of current procedural law and the practice of its application. The articles were prepared by the judges and the staff of the court having academic degrees in the sphere of civil and commercial procedure. They are the members of the Expert Advisory Group on the Application of the RF State Arbitration Procedural Code.

THE EVOLUTION OF THE CIVIL JUDICIAL PROCEDURE IN RUSSIA

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The civil judicial procedure of each country is specific; it reflects the existing legal, national, and cultural traditions, but at the same time it cannot stand off the world trends in the civil procedure development.

According to Art. 118 of the RF Constitution, justice in Russia is exercised in four forms. They are the constitutional, civil, criminal, and administrative judicial procedures. The civil judicial procedure in its turn includes two types of the procedure. The first one is the civil procedure itself in courts of general jurisdiction. The second one is the arbitration procedure in state specialized courts on economic disputes referred to as commercial courts. As there are two types of civil procedure, the second one is often referred to as the civilist procedure.
It is a common thought that two systems of judicial procedure - inquisitorial and adversarial – have been historically formed. The adversarial system originated from Great Britain, and then was accepted in the USA, Canada, India, Australia, and other common law countries. That is why the adversarial procedure has the following characteristic features: the procedural branches of law are highly developed; the laws are not codified; the significance of judicial precedent is high; the courts play a very important role in the life of the society. Nevertheless, in recent years the adversarial procedure has begun to change, absorbing some features of the modern mixed type of judicial procedure (e.g., Lord Woolf’s Reform).

The inquisitorial system has been more developed in the continental Europe countries. These countries base their legal systems on civil, or Roman, law. As the mentioned system is based on the Roman type of law, this system has its own peculiar characteristics: the rule of law, the judicial practice subordinate to the law, the dominance of civil law, and the codification of rules for administering justice, etc. The countries with the said type of the procedure are often called the civil law countries, as civil law is dominant there.

The classic inquisitorial procedure was based on secretiveness, written language, formal evidence evaluation, absence of representation and rights of parties to protect their interests in court. The inquisitorial principle of judicial procedure entrusts the court with a duty “to find out the essence of the case on its own initiative; the inquisitorial principle also gives the way for arbitrary rules”; so the consequences of the said are the sluggishness of the proceedings and other abuses. The said procedure was used in the middle ages in Russia. In the times of Peter the Great, the process was uniform. There was no division into civil and criminal procedure.

The Russian Court Reform of 1864 began the transition from the inquisitorial procedure to a mixed type and dramatically changed the judicial procedure. The court reform was based, first of all, on the French codification experience and less on the Austrian and Prussian legislation. The Russian Court Reform of 1864 had

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the following characteristic features: the separation of judicial power from the legislative and administrative branches of power; the introduction of the independent status of a judge, the adversarial type of the proceedings, and the publicity and the orality of the procedure; changes in the system of appeal against court decisions.\(^5\)

The 19th century court reform resulted in a mixed type of the judicial procedure in Russia\(^6\) which took the main features of the adversarial procedure. Nevertheless, the inquisitorial roots of the Russian judicial procedure could not disappear completely – the court in Russia still played a more active role than in the countries with a classical adversarial procedure.

The next important period in the development of the Russian judicial procedure is the Soviet period. After the Revolution of 1917, the pre-revolutionary court system and the system of advocacy was cancelled. The search for a new model of the judicial system took several years. Many lawyers refused to work in the socialist state; that is why in court proceedings parties tended to represent their interests themselves, the court had to be more active in collecting and examining evidence on specific cases, and all these facts found their reflection in the legislation. The requirements for being a judge were minimal. They were the RF citizenship and the age of not less than 25 years old. Till the 1980s, there were judges without higher legal education. Due to objective causes, the court had to take an active part in collecting and examining evidence on specific cases; the principle of objective truth became a standard of proof that had to be established by the court in each case.

At the same time, during the Soviet period the principles of orality, publicity of the judicial procedure, the independence of judges, and other innovations of 1864 remained the same; besides, unique procedural institutions appeared, e.g., the supervisory procedure guaranteeing the review of judicial acts at any time independently of the date when the judicial decision entered into force. There was another innovation in the Soviet procedure – the participation of the prosecutor and public organizations in civil proceedings. These institutions can be considered similar to the existing institutions of law and public interest in England and especially in the USA.\(^7\) For objective reasons, the Soviet civil procedure lost some

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\(^6\) About the mixed character of the civil procedure see: E.A. Nefed’ev, Ibid, p.38; Cieslak M.D. Polska procedura karna: podstawowe założenia teoretyczne. Warszawa, 1984, p. 81-82 and others.

adversarial features, but at the same time did not return to the classical inquisitorial procedure.

The next stage of the development of civil procedure was in the 1990s. 

First, in 1992 the commercial courts were set up. They were specialized state courts which resolved economic disputes between enterprises and sole proprietors. Accordingly, the Commercial Procedure Code was adopted independently from the Civil Procedure Code of the Russian Soviet Federative Socialist Republic (RSFSR).

Second, the judiciary was separated from the legislature and the executive. Russia was ahead of many countries in taking courts out of the subordination to the Ministry of Justice and establishing the bodies of judges’ community (the Judicial Council and the RF Highest Qualifications Board of Judges with their branches in the constituent entities of the Russian Federation). Later the Judicial Department at the RF Supreme Court was established. The judicial system was no longer supervised by the Prosecutor’s Office. The final structure of the judicial system was formed by the end of 1996 with the adoption of the No. 1 Federal Constitutional Law of 31 December “On the RF judicial system”, the creation of federal courts and the courts of the RF constituent entities, and the proclamation of uniformity of judicial system irrespective of the hierarchy and types of courts. Then, the judicial system was complemented by independent commercial courts of appeal.

Third, in the middle of the 1990s, considerable changes were introduced into the RSFSR Commercial Procedure Code, which resulted in rejecting the principle of objective truth; the court ceased to have the power to collect evidence on the case; the writ and absentia proceedings as forms of speeding and simplification of court proceedings were introduced. Till 1996, the court was obliged not to be limited by the submitted materials and explanations and to take all measures provided by law for detailed, full and objective clarification of the real facts of the case, rights and duties of the parties. So, it was the court that had to collect and present evidence.

In 2002, the new RF Commercial Procedure Code and the RF Civil Procedure Code were adopted. They developed the adversarial character of the judicial procedure and used the experience of common law countries.

During the last decade, the procedural legislation has been significantly improved in adversarial character. There have been some significant achievements in modern commercial procedure.

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This modern commercial procedure not only proclaims adversarial character but also guarantees all components of this principle.

The first component is the activity of the parties to the commercial procedure. To be active, parties must be given not only rights but also duties to prove their case by evidence (in the Soviet procedure); the model of the procedure should require parties to be active. Now, the court is not obliged to collect evidence; its authority to schedule expert examination and other things is limited. The Commercial Procedure Code contains a logical mechanism of the roles played by the court and the parties in the process of providing evidence. The court defines the object of proof (part 1 Art. 64 of the Commercial Procedure Code) proceeding from the norm of material law and the cause of action. The parties, according to their burden of proof, present evidence giving grounds for circumstances for which they refer (Art. 65 of the Commercial Procedure Code). If the court sees that the circumstances to be proved are not proved by the party, it suggests presenting additional evidence (part 2 Art 65 of the Commercial Procedure Code)\(^9\). The right to present or not to present evidence belongs to the party that is obliged to prove the case. So, the case will be decided on the fullness of the established evidence. Otherwise, the court conclusions will not be consistent with the facts of the case, or not all facts of the case will be proved. The said is the ground for reversing the act by higher judicial authorities (part 1 Art. 270 of the Commercial Procedure Code).

It is very important that under the law, incomplete finding of the facts important to the case but not their establishment (part 1 Art. 270 of the Commercial Procedure Code) is a ground for reversing the act by higher judicial authorities.

The burden of proof is directly connected with the so called standard of proof. The term “standard of proof”\(^10\) is common in English and American procedure and means the moment at which the court is able to pass a decision. In Soviet times, obtaining objective truth was such standard of proof. At present, the court makes a decision depending on whether the circumstances of the case have been proved, proceeding from the fulfillment of the burden of proof by the parties.

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\(^9\) It is interesting to note that part 2 Art 66 of the Commercial Procedure Code has a dispositive formulation “The Commercial Court has right to offer parties participating in the case to produce additional evidence necessary to find the facts which are important for correct proceeding and passing of a legal and well-grounded act before the court hearings or within the time limit stated by the court”. At the same time, courts concluded that in accordance with the systemic interpretation of Art 268 of the Commercial Procedure Code, which provides the possibility to submit additional evidence in the appellate court, it is better to interpret part 2 Art 66 of the Commercial Procedure Code imperatively and suggest that parties present evidence in the absence of evidence related to these or those facts at issue.

In other words, today the standard of proof is connected with the fulfillment of the parties their burden of proof. When there is a well-grounded motion, the court renders assistance in presenting evidence, but the initiators of these actions are the parties or other persons involved in the case.

The RF Commercial Procedure Code contains such adversarial institutions as: the exchange of pleadings, the disclosure of the evidence (the answer to the complaint is the defendant’s defendant), the preliminary hearings, etc. The introduction of the disclosure has resulted in a statutory prohibition, according to which parties involved in the trial cannot refer to the evidence about which the other parties have not been informed. The said provision has to encourage parties to commit procedural actions in good time. The Commercial Procedure Code contains the presumption of the so called, tacit consent; according to part 3.1 Art. 70 of the Code “circumstances to which a party refers in substantiating the claim or objections, are considered accepted by the other party if the latter does not contest them directly, or disagreement with the circumstances are not the result of other evidence substantiating the produced contests relating to the essence of the stated claims”. The said provisions and some other ones indicate the following: if a party wishes to “win” cases, it has to fulfill an assigned burden of proof by committing certain actions in good time.

As parties exchange pleadings, disclose evidence and so on, the pre-trial stage has an adversarial character.

The enumerated innovations were not immediately applied in practice. In 2002 the Commercial Procedure Code was adopted, and the courts of the first instance faced in a dilemma: if they do not admit the non-disclosed evidence, then the decision can be reversed. That is why the judges did not obey the prohibition of Art. 65 of the Code. So, the practice of reversing judgments had a negative impact which resulted in the following: the first instance courts started to ignore the normative prohibition. Only in the last years the courts ceased to admit non-disclosed evidence in the procedure, and the appellate instance rarely admitted evidence non-disclosed in the first instance. Why was it difficult for the courts to accept new adversarial rules? Because they were afraid that their acts would be reversed by higher courts, and the hovering spirit of objective truth was very strong. Also, higher judicial instances tended to reverse the court acts if the court had not ascertained the facts in the case though the law required and requires these facts to be established.

If parties involved in the case have the right to active participation in the trial, then there is a certain risk of negative consequences in the case they did not fulfill the procedural duties and did not use the procedural rights. “Parties involved in the trial bear the risk of consequences which may arise if they commit or do not
commit procedural actions” (part 2 Art. 9 of the RF Commercial Procedure Code). The law-maker considers this provision to be an example of the adversarial character of the judicial procedure, that is why the inclusion of this norm in the article devoted to the said principle is not incidental.

For example, if the party did not produce evidence in the first instance court, then during the appeal procedure, the law limits the possibility of referring to new evidence. According to part 2 Art. 268 of the Commercial Procedure Code, “the appellate commercial court admits the evidence if a person participating in the proceedings has proved that it was impossible to produce the said evidence in the trial court because there were reasons which did not depend upon him or her, including when the trial court denied the motion to submit evidence, and the appellate court regards these reasons excusable”. Thus, the parties involved must produce evidence in due time or they may lose an opportunity to examine them during the hearings.

The parties bear risks of choosing the model of behavior, which may lead to negative consequences: they may lose the case or fail to achieve the intermediary procedural goal (e.g., during the motion, etc.).

The regulation of judicial notifications based upon the concept of procedural risk also became a novation: when a party receives the first judicial act on the case, it is for the party to track the case progress through the Internet. This type of regulation is the cardinal innovation of the Russian procedure in terms of adversarial procedure and responsibility of the parties. The law reduces the level of the court responsibility to notify the parties properly, so the parties’ responsibility grows.

The parties’ activity presumes not only the creation of the adversarial model, but its real implementation in the behavior of the parties’ representatives. At the same time, Russian representatives have not turned into “legal gladiators”11, as J. Jacob figuratively said, and the court does not look like a referee in a tennis match, as M. Zander said12. Though the parties are usually represented by professional lawyers, but as a rule by corporate lawyers, not advocates.

Chapter 19 of the Commercial Procedure Code does not contain a detailed regulation of interviewing witnesses, and of examining evidence, etc. The Civil Procedure Code regulates the said procedure in details. Thus, according to Art. 177 of the Civil Procedure Code, “every witness is interviewed separately. The presiding judge finds out the witness’s attitude towards the persons participating in the proceedings and asks the witness to tell the court everything he/she knows

about the facts of the case. After that the witnesses may be questioned. The first person to ask questions is the one who asked to summon this witness and the representative of this person, and then other persons participating in the case as well as their representatives may ask questions. Judges have the right to question the witness at any time during the interrogation. If necessary, the court may question the witness again during the same or next proceedings as well as interview witnesses to examine their contradictory evidence”.

It is easy to note that the Russian version of interrogation retained the previous structure: at the beginning, there is a free story of a witness about the facts of the case and then comes the questioning. In the Russian judicial procedure, there is no mechanism of examination and cross-examination, like in adversarial procedure. Also, there are no so called partisan methods of conducting proceedings. The court is very active in examining evidence and is usually the first to ask questions. Though, since the times of the Soviet legislation, the rules of court proceedings have not prevented representatives from interviewing witnesses and applying to disallow a question. But usually it is the court that conducts interrogation, and then the representatives may ask their questions. Unfortunately, bringing up the advocates of new generation may take time. Adversarial procedure demands a great patience from the court. It must not prevent parties and their representatives to compete; there should be enough time for court proceedings. If a judge has more than ten hearings a day, it is obvious that all the hearings are conducted in a hurry, which is unacceptable for this adversarial procedure.

Russian parties in the hearings differ from similar subjects of the adversarial procedure because they are not reconciliation-oriented. Thus, in 2011 the commercial court system terminated the proceedings of the case because of amicable settlement agreement of the parties only in 2.8% of all the cases considered\(^\text{13}\).

In the US federal courts in 1962, 1.5% of civil cases were considered in the first instance courts, in 2002 – 1.8%. This statistics is taken from the article of M. Galanter. He says that everything increases: the number of lawyers, literature on law, documents, but not the number of cases considered by court\(^\text{14}\). Thus, every federal district court in 1962 considered 20.8 civil cases; in 2002 it considered


One of the reasons for “vanishing trials” is the parties’ resorting to alternative forms of dispute resolution, such as mediation.\footnote{Ibid, p.521.}

Such conciliation procedures are not very popular in Russia for many reasons:
- court hearings in Russia do not take much time, and legal costs are not very high. Sometimes the expenses for a mediator are higher than the legal costs, so the economic component does not encourage reconciliation;
- representatives of the parties are not active at the pretrial stage. They do not negotiate and do not ensure the provision of evidence, etc. The Commercial Procedure Code ensures the possibility of pre-trial securing of claim and evidence, but these procedures are not often used. As a result, by the beginning of the trial the parties do not have full information about the opponents’ arguments and cannot see the perspectives of dispute resolution;
- absence of obligatory professional court representation of persons involved in the case;
- possibly, there is, probably, a habit to apply to the great of this world for dispute resolution, and not to seek ways to solve the dispute by means of reconciliation;
- reconciliation agreement is concluded in the court which validates it, checking the legality of conditions and nonviolation of rights and interests of the third parties. The parties seldom conclude civil contracts to terminate a dispute, etc.

Various procedures concerning the disclosure of evidence have not yet become the pre-trial practice. The modern Russian version of the discovery stage concerns only written evidence that must be attached to the claim or the answer to the claim. For example, there are certain forms of discovery:\footnote{Below are the forms of disclosing evidence given in the books by W. Burnham. Introduction to the Law and Legal System of the United States. St. Paul, 1985, pp. 240–245; J.H. Friendenthal, M.K. Kane, A.R. Miller. Civil Procedure. St. Paul, 1993, pp. 395–409.}

1) The oral sworn testimony. The interrogation under the similar judicial procedure is conducted by the parties’ counsel. A person who testifies then signs the record made during the testimony;

2) The written sworn testimony. The procedure is similar to the oral sworn testimony. The main difference is the absence of a party’s counsel. A witness is read the questions prepared by the counsel, and oral answers are recorded;

3) The exchange of written questions that either party may send to the other to have them answered in due time. The information is mailed;

4) Requests for written and material evidence. In accordance with federal legislation, a party may examine documents and objects of property in the possession or control of the other party;
5) Requests for admissions.

The advantages of the discovery procedure are obvious. The parties can evaluate strengths and weaknesses of their position in the case, which facilitates the reconciliation agreement. The parties are protected from the appearance of unknown evidence; consequently, the grounds for delaying an action arise very seldom.

The active behavior of the parties and their representatives should be confronted with the passive behavior of the court that keeps silence during the hearing (this does not concern the Russian courts). The court should not initiate the beginning of the process and go beyond the declared claims of the parties. This provision is contained in the current Commercial Procedure Code. In practice, very rarely does the court go beyond the limits of the declared claims. However, this can happen indirectly, demonstrating the former active behavior of the court in determining the way of protecting the violated rights. Thus, lodging a complaint against an act (or omission to act) of the Russian Register authorities on registering rights to real property, the claimant often chooses an administrative procedure and lodges a complaint according to the rules of the said procedure. A person draws up an application and pays a stamp duty in accordance with the complaint against the actions of a state body. A judge, accepting a petition, sees that the case should be tried according to the rules of action proceedings, as there is no complaint against the actions connected with registering right to real property. In this case, there is a substantive dispute connected with the right to real property. But the judge cannot change the subject of the request at his/her discretion, and the party, using the principle of a discretionary rule, has chosen a non-claim procedure of protection of its rights. What can be done if the applicant does not wish to change the object of the complaint? There are two ways: the first way is to try the case in action proceedings, and the second way is to leave the application unconsidered and ask the applicant to bring an action. In practice, the first way is used, and the Commercial Procedure Code does not provide for the ground to leave the application unconsidered. Does the court have the right to ignore the applicant’s will in choosing ways of protecting his/her rights?

This example demonstrates, on the one hand, a certain legislative gap in regulating the consequences of choosing an incorrect way to protect somebody’s rights. On the other hand, this example demonstrates the active behavior of the court that tries, instead of the party, to solve the problem of choosing a proper way to protect the violated right. The RF Civil Procedure Code has chosen another way: “If at the time when application is filed, it is established that there is a dispute falling within the court’s jurisdiction, the judge leaves the application unconsidered and explains the applicant the need to file a complaint complying
with the requirements of a law.” Undoubtedly, defining the nature of a dispute at the moment of accepting the application does not always seem possible.

It should be said that in countries with adversarial procedure, the court is passive in trying cases, but at the same time, the court has always had strong powers. Only a strong court may allow the parties to “struggle” during the proceedings and is not afraid to lose these powers. Therefore, it is very important not to let the visual passiveness during court proceedings mix with the absence of court power. There are sufficient reasons to believe that the judicial branch is the third branch of power in the state. The procedural legislation empowers the court with the authority symbolizing the most important statement – the court is the body that exercises the state function of administering justice in the state.

Whether the system belongs to the common law family or to the Roman family has a great impact upon the adversarial and inquisitorial justice. One example is the role of judicial practice. In Roman law countries, there is the principle of the rule of law, and judicial practice plays a subordinate role. Common law countries have a developed precedent law. The role of judicial practice is growing in modern Russia, while the rule of law principle is preserved.

Thus, according to the Commercial Procedure Code, the declaration may contain references to resolutions of the Plenum of the RF Supreme Commercial Court on questions of judicial practice, and resolutions of the Presidium of the RF Supreme Commercial Court (part. 4 Art. 170 of the Commercial Procedure Code). If resolutions of the Plenum of the RF Supreme Commercial Court provide the generalized interpretation of judicial practice, then resolutions of the Presidium of the said court are passed on specific cases. In this connection, it is possible to say that precedent law is developing in Russia.

The practice of reviewing judicial acts due to new circumstances and newly-discovered circumstances is developing in the same direction. Moreover, according to Resolution No. 52 of the Plenum of the RF Supreme Commercial Court of 30 June, 2011 “On applying the provisions of the RF Commercial Procedure Code when reviewing judicial acts due to new circumstances and newly-discovered circumstances”, the legal view of the said provision may be given a retroactive effect. For this effect, the Resolution should contain the following indication: “Valid acts of commercial courts on cases with similar factual circumstances that were passed on the basis of the legal norm in the interpretation contradicting the interpretation of the given Resolution may be reviewed in accordance with para. 2 part 3 Art. 311 of the RF Commercial Procedure Code if there are no other impediments”.

If resolutions of the Plenum or the Presidium of the Supreme Commercial Court contain several legal views, the retroactive effect may be given to one of them if it
is directly stated in the corresponding act. In the absence of such an indication, if there is the retroactive effect provision, this retroactive effect extends to all legal views formulated in the corresponding resolution.

Resolutions of the Plenum or the Presidium of the RF Supreme Commercial Court may define the judicial acts to which the effect of the said provision is applied.

This approach has given grounds to speak about the development of principles of precedent law in Russia. Precedent law and adversarial proceedings are interconnected phenomena.

The modern stage in the development of the commercial litigation procedure symbolizes the adversarial character of judicial procedure. The parties become more active (mainly, at the legislative level) and more responsible for performing or non-performing procedural actions. Indisputably, the role of judicial practice is growing. At the same time, the Russian commercial procedure still differs from classical adversarial procedure, which can easily be explained as the Russian procedure has its own peculiar roots and development). As judicial systems of different types are getting closer, this process will inevitably lead to reciprocal exchange of certain features that did not use to be inherent to these systems.\textsuperscript{17}

\textbf{THE STRUCTURE OF THE RUSSIAN CIVILISTIC PROCEDURE}
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In the Russian civilistic procedure, the issue of its structure is viewed in 3 aspects. **First**, the dual nature of civil jurisdiction is taken into account – the existence of commercial courts and courts of general jurisdiction. **Second**, procedural rules for considering cases depend on the substantive law essence of the case – different kinds of proceedings are distinguished. **Finally**, the consideration of each case goes through three stages in time.

**Civil Procedure And Commercial Litigation Procedure**

*First of all, different kinds of legal conflicts* are resolved by different organs (courts, other state organs of extra-judicial jurisdictions), using different rules of procedure (the RF Criminal Procedure Code, the RF Civil Procedure Code, the RF Commercial Procedure Code, the RF Code for Administrative Offences, etc.).

The main criterion is the sphere of conflict. Thus, substantive peculiarities of the case imply relevant rules for its resolution, which is reflected in the existence of constitutional, criminal, civil and administrative procedure.

Because of economic changes in Russia, at the end of the 1980s-the beginning of the 1990s, the need for commercial litigation arose. In 1992 commercial courts were created.

At present, civil and administrative disputes in Russia are heard by commercial courts and courts of general jurisdiction between which the cases are distributed with the help the institution of jurisdiction.

Commercial courts are specialized courts in relation to courts of general jurisdiction. Under Part 1, Art. 27 of the RF Commercial Procedure Code, commercial courts have jurisdiction over economic disputes and other cases connected with the performance of entrepreneurial and other economic activity by legal entities and sole proprietors, and in cases stipulated by the RF Commercial Procedure Code and other federal laws, by other organizations and individuals. Courts of general jurisdiction conducting proceedings according to the Civil Procedure Code are competent to consider other disputes in the sphere of civil jurisdiction.

Until now, disputes about the demarcation of jurisdiction between two judicial systems have been dramatic. This dispute is rooted in the question of the necessity distinguish commercial courts and independency of commercial litigation law.

It should be noted that the existence of the system of commercial courts considering cases under the rules of Commercial Procedure Code gives grounds to
a number of scholars to believe that commercial procedure law is an independent branch of the Russian law the object of which is commercial litigation procedure.\textsuperscript{18}

The proponents of another viewpoint believe that commercial litigation procedure, along with civil procedure, constitutes the object of civil procedural law\textsuperscript{19}. This viewpoint implies the existence of uniform procedural law in which, among others, specific features of commercial disputes are reflected.

Within the framework of the article, taking into account the goals set, we can afford to avoid the discussion. At the same time, in this article the term “civilistic procedure”\textsuperscript{20} will be used in order to unite civil and commercial procedure.

The existence of two jurisdictions has its advantages and disadvantages. Among its advantages are the following:

1) The possibility of timely and expedited consideration of commercial disputes which is among the prerequisites and grounds for distinguishing commercial jurisdiction.\textsuperscript{21} But on the basis of this approach, for persons interested in justice a question arises about equality before the law. Government must ensure the timely and professional resolution of any conflicts without giving preference to a particular sphere of relationships. At the same time, if we compare the time limits for action proceedings in trial courts, we can see that under Art.154 of the RF Civil Procedure Code, this time limit does not exceed 2 months, but under Art. 152 of the RF Commercial Procedure Code it is not more than 3 months. Thus, within the framework of the laws, one cannot make the conclusion about the timely and expedited nature of commercial procedure.


\textsuperscript{20} We borrowed the term “civilistic procedure” from T.V.Sakhnova. See: T.V.Sakhnova. Sudenbuye protsedyr (o budushchem tsivilisticheskom protsessu. // Arbitrazhnyi i grazhdanskii protsess [Judicial procedures (about the future of civilistic procedure). //Commercial and civiliprocedure], 2009, No.2

2) Commercial proceedings are more simplified in terms of procedure in comparison with the court of general jurisdiction. Rules of procedure in the RF Civil Procedure Code and the RF Commercial Procedure Code are different when they regulate similar relationships.

But the analysis of similar legal institutions gives no grounds to speak about the commercial procedural form as a more simple one.

3) The competition between the two jurisdictions contributes to their development and enriches them. Competition in business can often cause confrontation. Without clear criteria for demarcation of jurisdiction, there is every ground to be concerned about attempts to penetrate into the “wrong” territory, which often happens.

4) The existence of commercial courts for consideration of commercial disputes helps implement special tasks typical only of such disputes.\textsuperscript{23}

Under para.6, Art. 2 of the RF Commercial Procedure Code, one of the tasks of commercial courts is to facilitate and develop business partnership relationships, customs and business practices. There is no such a task in the RF Civil Procedure Code. Meanwhile, the analysis of provisions of the RF Commercial Procedure Code does not bring us to the conclusion that this task is successfully fulfilled by commercial courts. For example, Chapter 15 of the RF Commercial Procedure Code is aimed at accomplishing the task stated in para.6, Art. 2 of the RF Commercial Procedure Code. According to the Report about validation of settlement agreements by commercial court judges in Russia in 2008-2011\textsuperscript{24}, court proceedings were terminated due to the validation of the settlement agreement only


in 3% of all the cases considered. Thus, the distinctive task of commercial courts is not fulfilled.

5) Judges of commercial courts specialize on consideration of a certain category of cases, which helps improve the quality of justice. But in courts of general jurisdiction, there is also specialization of judges in considering certain categories of cases.

Among the disadvantages of having 2 jurisdictions are the following:

1) The existence of different judicial practice in similar cases. The given problem is solved by passing joint Rulings of Plenums to clarify and interpret court practice. For example, Ruling No.10 of the RF Supreme Court Plenum, Ruling No.22 of the Supreme Commercial Court of April 29, 2010 “On Some Questions Arising In Judicial Practice In Resolution Of Cases Connected With The Protection Of Right Of Ownership And Other Property Rights”. But as practice shows, sometimes it is hard to reach an agreement. For example, Ruling No.54 of the Plenum of the Supreme Commercial Court of the RF of July 11, 2011 “On Some Issues Of Dispute Resolution In Cases Arising From Contracts In Respect To Immovable Property That Will Be Created Or Acquired In The Future” was passed in connection with questions that arose in commercial courts considering disputes about immovable property that would be created or acquired in the future. But similar questions arise in courts of general jurisdiction when the participants of the relationships are individual citizens. For these courts, the ruling above is not binding.

2) Inconvenience for clients of justice in determining the competent court – disputes about jurisdiction hamper access to justice.

For example, the non-government association “Sutyazhnik” files an action against the Directorate of Justice of Sverdlovsk Oblast demanding to re-register the organization. On 17 June, 1999 the Commercial Court of Sverdlovsk oblast satisfied the claim of the association and obliged the Directorate to register the claimant. This decision was affirmed by the Federal Commercial Court of the Ural District on 18 October, 1999. According to Ruling 3599/00, the proceedings were terminated due to the court’s incompetence in the case because the case was not economic and, therefore, not subject to consideration by commercial courts. The European Court of Human Rights, admitting the violation of Art. 6, Section 1 of the Convention, in the final Judgment on the case of Sutyazhnik v. Russia, No. 8269/02, 23 July 2009, stated:

“...as a matter of principle, the rules of jurisdiction should be respected. However, in the specific circumstances of the present case the Court does not detect any pressing social need which would justify the departure from the principle of legal certainty. The judgment was quashed primarily for the sake of legal purism, rather than in order to rectify an error of fundamental importance to the judicial system...

In sum, in the circumstances of the case the quashing of the judgment of 17 June 1999, as upheld on 18 October 1999, was a disproportionate measure and respect for legal certainty should have prevailed.”

Thus, a difficult question of jurisdiction resolved in the court of supervisory instance can postpone the protection of rights.

The analysis of advantages and disadvantages of simultaneous existence of commercial courts and courts of general jurisdiction enabled some legal writers to propose uniting the two systems, at least at the federal level. But this question is not theoretical, but political, and it is connected with the necessity to amend the RF Constitution, which in Art. 126,127 provides for the existence of two highest courts having civil jurisdiction.

**Kinds of court proceedings.**

The procedure of considering cases in courts is not uniform.

The theory of the Soviet civil procedural law distinguished **three types of proceedings**: action proceedings, proceedings arising from administrative law relationships, and special proceedings.

The *first two types* were different in terms of substantive law peculiarities of cases that had caused the dispute. Action proceedings were designed to consider disputes arising from civil law relationships that were founded on the equality of participants in pre-action relationships. On the contrary, pre-action inequality of participants in administrative relationships affected the procedure of the consideration of such cases in the court. When the parties, before initiating the proceedings, were in the relationships of power and subordination, the rules of procedure had to ensure the procedural equality of the participants. Thus, substantive law peculiarities of cases were the criterion for the division of judicial

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proceedings into separate types. The type of judicial proceedings was viewed as “a procedure regulated by the rules of civil procedural law and aimed at administering justice in civil cases similar to each other in their substantive law nature that stipulated certain procedural peculiarities of their consideration and resolution in the court”.  

Special proceedings were designed to consider cases in which there is no dispute about the law, i.e., another criterion for distinguishing different types of proceedings was “the unquestionable nature of the object of the judicial activity or the objective impossibility to exercise the uncontested right, or unquestionable unilateral procedural form”.

The abovementioned structure of proceedings existed in the RF Civil Procedure Code of 1964. The RF Civil Procedure Code of 2002 added another four types to the existing three types. At present, the RF Civil Procedure Code provides for the following types of proceedings: 1) writ proceedings (Subsection I); 2) action proceedings (Subsection II); proceedings in cases arising from public law relationships (Subsection III); 4) special proceedings (Subsection IV); 5) proceedings on recognition and execution of decisions of foreign courts and foreign arbitration tribunals (Chapter 45); 6) proceedings in the cases of challenging decisions of arbitration tribunals and issuance of orders of execution for enforcement of decisions of arbitration tribunals (Section VI); proceedings connected with execution of judicial rulings and rulings of other organs (Section VII).

The first RF Commercial Procedure Code of 1992 did not contain any other types of judicial proceedings except action proceedings. In the RF Commercial Procedure Code of 1995, Article 143 stipulated the necessity for commercial courts to consider cases of insolvency (bankruptcy) of organizations and individuals according to the rules specified by the Code with peculiar features established by the law on insolvency (bankruptcy). Besides, in the Commercial Procedure Code of 1995, cases of establishing facts having legal significance were also placed into a separate chapter. But these cases were considered by commercial courts in the procedure specified by the given Code (Art.144), i.e., in the Code there was no indication of particular procedural peculiarities in their proceedings.

The RF Commercial Procedure Code adopted in 2002 specified several types of proceedings: action proceedings (Section II); proceedings in cases arising from

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31 I.A.Zheruolis. Sushchnost’ sovetskogo grazhdanskogo protsess [ The essence of the Soviet civil procedure], pp.179-183.
administrative and other public law relationships (Section III); proceedings in cases involving foreign persons (Section V); proceedings in cases connected with execution of judicial acts of commercial courts (Section VII). Besides, Section IV of the RF Commercial Procedure Code stipulates peculiarities of commercial courts proceedings in certain categories of cases: cases of establishing facts having legal significance (Chapter 27); insolvency (bankruptcy) cases (Chapter 28); corporate disputes (Chapter 28.1); cases of protecting rights and legitimate interests of a group of persons (Chapter 28.2); cases heard in summary proceedings (Chapter 29); cases of challenging decisions of arbitration tribunals and issuance of orders of execution to enforce decisions of arbitration tribunals (Chapter 30); cases of recognition and execution of foreign judicial decisions and foreign arbitration decisions (Chapter 31).

These types of proceedings require some explanations.

It should be noted that the three historically developed types (action proceedings, proceedings in cases arising from administrative and other public law relationships; special proceedings) are preserved in the RF Civil Procedure Code and Commercial Procedure Code. But these three types are not only different in commercial and civil proceedings, but also have serious distinctions in some institutions, e.g., in the institution of initiating action proceedings, notification of persons involved, etc. Action proceedings are the basic type. In 2011, 59% of all applications to commercial courts were filed for action proceedings, 37.84% - in cases arising from administrative and other public law relationships; 0.48% - in cases of establishing facts having legal significance.

Summary proceedings in commercial courts resemble writ proceedings – in both cases the case is considered without the participation of parties. But in contrast to summary proceedings, a writ is issued without court proceedings. The writ is at the same time an execution document, whereas for execution of the decision of a commercial court the issuance of an execution order is required. The judge repeals the writ if the debtor submits objections against the writ within the established time limit. In the case of disagreement with the decision of the commercial court passed in summary proceedings, an appellate complaint has to be filed to the appellate instance. Thus, the procedural regulation of these two institutions is essentially different. Both procedural institutions are the result of simplification of procedural forms.

Proceedings in cases of challenging decisions of arbitration tribunals and issuance of execution orders for enforcement of arbitration decisions, proceedings

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in cases of recognition and execution of decisions of foreign courts and foreign arbitration decisions are stipulated by the RF Civil Procedure Code and the RF Commercial Procedure Code. Depending on the sphere of dispute, the competent court is determined. If the dispute has arisen from civil law relationships in the process of entrepreneurial and other economic activity, the relevant application is subject to consideration in the commercial court. The procedures provided for these cases by the two codes are similar. The competent Russian court does not review decisions of arbitration tribunals, decisions of foreign courts and foreign arbitration decisions. In this case, the court either recognizes these decisions and enforces them, or does not recognize them. Thus, these proceedings are control proceedings as to confirmation of the validity of a dispute resolution by an arbitration tribunal or a foreign court (validity of the arbitration agreement, proper notification about the procedure, the absence of exclusive competence of a Russian state court, etc.) and conformity of the decision to fundamental principles of the Russian law.

The proceedings in cases of insolvency (bankruptcy) in commercial litigation procedure have no equivalents in the Civil Procedure Code of the RF because these cases are within the exclusive competence of commercial courts. Cases of bankruptcy of legal entities and individuals, including sole proprietors, are considered by commercial courts in accordance with the rules specified by the Commercial Procedure Code of the RF with peculiarities established by Federal Law No. 127-FL “On Insolvency (Bankruptcy)”. The procedure for consideration of these cases is different.

The purpose of proceedings in these cases is to establish the fact of the debtor’s insolvency or solvency. Thus, these cases belong to cases of special proceedings under the jurisdiction of commercial courts.

Cases involving corporate disputes and cases related to protection of rights and lawful interests of a group of persons are also within the exclusive jurisdiction of commercial courts. The relevant provisions of the RF Commercial Procedure Code establish procedural peculiarities of proceedings in these cases. These cases are a kind of action proceedings. It should be noted that legal literature distinguishes peculiarities of preparing cases involving securities, privatization, land disputes, contracts, recovery of damages, protection of intellectual property, etc., for judicial proceedings in the commercial court. In courts of general jurisdiction, there are

33 The original text of the document was published in: Rossiiskaia Gazeta (Russian Newspaper] No. 209-210, 02 November, 2002.
also specific features of consideration of cases arising from employment, marital, family and other legal relationships.\textsuperscript{35}

Peculiarities of consideration of certain categories of cases are found not only in procedural legislation, but also in laws regulating substantive law relationships and in the rulings of highest judicial instances.

Proceedings connected with execution of judicial rulings are regulated by the RF Commercial Procedure Code and the RF Civil Procedure Code. The essence of this kind of proceedings is in the resolution by the court of the major questions connected with initiation, development and completion of execution proceedings on execution of court rulings. Besides, courts of general jurisdiction perform these functions when executing decisions of other organs. Execution proceedings complete the protection of a violated or contested right.

This, even a brief overview of the proceedings shows the absence of clear criteria for dividing them into types. N.A.Gromoshina devoted her research to this problem and came to a similar conclusion.\textsuperscript{36}

There may be a collision among types of proceedings. For example, a case may contain attributes of action proceedings and proceedings regulated by Chapters 24,25 of the RF Commercial Procedure Code.

According to para.56 of Ruling No.10 of the RF Supreme Court Plenum, Ruling No.22 of the Supreme Commercial Court of April 29, 2010 “On Some Questions Arising In Judicial Practice In Resolution Of Cases Connected With The Protection Of Right Of Ownership And Other Property Rights”,\textsuperscript{37} the registered right to immovable property cannot be challenged by filing claims subject to consideration according to the rules of Chapter 25 of the RF Civil Procedure Code or Chapter 24 of the Commercial Procedure Code because a dispute about the right to immovable property cannot be resolved in the proceedings in cases arising from public law relationships. At the same time, if a person believes that the state registrar has made a mistake during the state registration procedure of registering a right or a transaction, this person can apply to the court under the rules of Chapter 25 of the RF Commercial Procedure Code or Chapter 24 of the RF Commercial Procedure Code, taking into account the jurisdiction of the case.


\textsuperscript{37} Rossiiskaia Gazeta [Russian Newspaper] No. 109, 21 May 2010.
The judicial act in such cases is the only ground for making a record in the Uniform Register of Rights only if this was stipulated in its resolutive part. The court has power to make such a conclusion if the change in the Uniform Register of Rights will not involve violation of rights and lawful interests of other persons, and also if there is no dispute about the right to immovable property (for example, when a judicial act was passed as a result of the application filed by both parties to challenge the refusal of the registrar to perform the registration).

In para.6, Art. 2 of Federal Law No.122-FL of 21 July, 1997 “On State Registration Of Rights To Immovable Property And Transactions With It”, the lawmaker stipulated that the state registration is the only proof of existence of the registered right, and the registered right can be challenged only in the court.

Invalidity of documents serving as a ground for the registration record can be established only within the framework of a civil law dispute and cannot be considered under the rules of administrative court proceedings established by Chapter 24 of the RF Commercial Procedure Code.

Thus, according to the legal view of the Supreme Commercial Court, cases arising from administrative law relationships but the consideration of which requires the resolution of the dispute about the right of other persons must be resolved in action proceedings. The problem of challenging the registered right to immovable property must be resolved within the framework of general ways of protecting the right, and when there is a dispute about the right, the ways of protecting the right must be within civil law regulation, enabling the court to establish, in the resolutive part of the decision, the right of a person to property, with the owner of the registered right as the respondent. The resolution of the dispute about the right by means of a public law dispute (in relation to finding non-normative acts, decisions, actions (omissions) of the registering organ invalid) is unacceptable because this can result in serious violation of civil rights of subjects of entrepreneurial activity.

Given all that, the evaluation of validity of acts underlying the state registration and of transactions can be made only when the dispute about the right to property has been resolved.38

The collision between action proceedings and special proceedings is also possible.

According to Part 3 Art. 217 of the RF Commercial Procedure Code, in cases when during the hearing of the case a dispute about the law arises, the commercial court leaves the application about establishment of facts having legal significance without consideration and passes a special ruling. This ruling clarifies to the

38 This legal view is stated in Ruling No. 15951/09of the Presidium of the SRF Supreme Commercial Court of 25 February, 2010
applicant and other persons involved their right to resolve the case in action proceedings.

Thus, the application for establishing presence or absence of a right (the right of ownership, etc.), the application for establishment of the fact of fulfilling an obligation by a particular person or of the fact that a property belongs to the applicant under the right of ownership, the application to recognize the contract concluded or not concluded are not subject to consideration in special proceedings (para.5,6,7,11 of Informational Letter No.76 of the Presidium of the Supreme Commercial Court of 17 February 2004 “The Overview Of Commercial Court Practice In Establishing Cases Having Legal Significance”).

As A.V.Yudin correctly put it, “the right choice of the kind of proceedings, undoubtedly, reflects the interests of protecting rights of the person applying to the court, but this is not a necessary condition for judicial protection, and the mistake in the choice of the kind of proceedings does not necessarily lead to the refusal in judicial protection.”

Thus, the wrong choice of court proceedings in the case when correction is impossible in this procedure does not exclude the possibility of judicial protection in the future. The person involved has the right to apply to a competent court with the proper application, observing the procedural legislation.

**Stages Of Proceedings**

Consideration and resolution of cases in the court is a focal point in the protection of rights of participants of civil relationships, but not the only major point. To ensure fair court proceedings, there is a possibility to correct judicial errors, including verification stages. Besides, rights are properly protected only when the decision of a jurisdictional organ is fulfilled.

In the domestic theory, a stage in civil procedure is “the combination of procedural actions connected by the closest procedural purpose.”

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39“The Herald of the Supreme Commercial Court of the Russian Federation”, No. 4, 2004
The purpose of each stage is different. For the proceedings in the court of the first instance, the purpose is to establish factual circumstances, to choose, analyze and apply a rule of law to the factual circumstances, i.e., consideration and resolution of the case.

For verification stages in courts of appellate and cassational instances, the purpose is to consider complaints of persons involved in the case against the judicial acts passed.

The supervisory proceedings are an exceptional stage the purpose of which is the review of judicial acts upon the application of persons concerned as to observation of uniformity in interpretation and application of rules of law by the courts, observation of rights and freedoms of man and citizen, and also of rights and legitimate interests of an indefinite group of persons or other public interests.

The review of the case due to new or newly-discovered circumstances is also an exceptional stage the purpose of which is the new consideration and resolution of the case due to the establishment of the newly discovered circumstances existing at the moment of passing the judicial act in the case, or new circumstances that appeared after the judicial act was passed, but which have a substantial significance for the correct resolution of the case.

Since the second half of the XX century, the question of execution proceedings as a stage of civil proceedings has been debated. M.K.Yukov suggested that proceedings in cases of execution of judicial decisions and decisions of other jurisdictional organs is not a stage of civil procedure, but the object of regulation of an independent branch of law – the law of execution. Since that time, the discussion subsides at times and then runs high again.

Limited by the framework of the article, we can state that the purpose of civil proceedings is the protection of rights and legitimate interests of persons concerned. Passing a just and lawful judicial act by the court, as a rule, does not restore the violated right – very often enforcement of the judgement is necessary. In connection with this, justice without execution of judicial acts is meaningless.

In this connection, 5 stages of court proceedings classified by M.A.Gurvich are still of great practical significance. These stages are:

1) trial proceedings

House, p. 24 and other textbooks.


44Sovetskii grazhdanskii protsess [Soviet Civil Procedure]/ Under the ed. of M.S.Shakaryan. Moscow, 1985, p.11.
2) cassational proceedings;
3) review of judicial decisions that have entered into legal force in supervisory proceedings;
4) review of judicial decisions, holdings and rulings that have entered into legal force due to new or newly discovered circumstances;
5) execution proceedings.

In the modern procedure, these forms must be complemented by the appellate proceedings.

Thus, proceedings in the commercial court may consist of 6 stages:
1) trial proceedings;
2) appellate proceedings;
3) cassational proceedings;
4) review of judicial decisions that have entered into legal force in supervisory proceedings;
5) review of judicial decisions, holdings and rulings that have entered into legal force due to new or newly discovered circumstances;
6) execution proceedings in cases of judicial acts of foreign courts.

But not every case goes through all the stages above. If the court decision is not appealed but executed voluntarily (or in the case when the decision is not subject to enforcement, for example, in claims for recognition), the proceedings can be completed in the trial court.

If an appellate or cassational complaint has been filed, the case goes to another stage. If the execution order has not been recognized voluntarily, upon the application of the recoverer additional proceedings can be initiated. In these cases, the procedure consists of more stages.

Thus, the stages mentioned above consistently go one after another but their number depends on the will of the persons concerned. Besides, cassational proceedings and supervisory court proceedings to review judicial acts can take place simultaneously with execution proceedings, and proceedings to review judicial acts that have entered into legal force due to new or newly discovered circumstances can take place even after the execution of the judicial act.

The absence of strict succession of stages and their different number in a particular case enabled Yu.K.Osipov to suggest calling them not stages in the sense of moments of development in application of law separated in time, but law application cycles completed with passing an act of application of law. Each of the cycles includes three stages implying alternation: initiating the activity of law application, preparation and commission of the act (action) of application of law.45

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45 Yu.K.Osipov. Elementy I stadii norm sovetskogo grazhdanskogo protsessual’nogo prava// Problemy primeneniia norm grazhdanskogo protsessual’nogo prava [Elements And Stages Of
Although this point of view was proposed at the end of the 1970s, its heuristic potential is not exhausted yet.

The ground for distinguishing stages (law application cycles) is their purpose. But in the domestic commercial litigation proceedings, the grounds for such a division into stages are clearly observed. Appellate and cassational instances do not replace each other and trial proceedings. With the other stages the situation is similar.

At the same time, inside every stage (law application cycle) there is no clear division into initiation, preparation, consideration of the case on its merits. The trial proceedings have the most detailed regulation.

Initiation of proceedings, common for every stage, has some differences at each of them. For example, in considering a case due to new and newly discovered circumstances, the commercial court, as a rule, cannot leave the application without consideration. It is important to note that in order to ensure access to justice, the procedure of initiation is not only regulated in details on each stage, but it is also separated from other steps within the stages. Preparation of cases for consideration at each of the stages cannot start before the proceedings are initiated.

Meanwhile, preparation of the case for the hearing and the hearing itself may coincide in time. The Russian civil procedure has been renovated during the past two decades in terms of many legal institutions. But in the area of structure development of the process, the changes have not been significant.

To a great extent, inconsistency of civil procedure is caused by historical reasons, among others, by the dominance of the principle of objective truth.

For a long time, the only criterion of the right process of the case was the necessity to pass a legal and well-grounded decision. Here the procedural instruments were of secondary importance in the resolution of the major substantive law question. In this connection, before the court retired to the deliberation room, the Soviet procedural legislation allowed to present evidence, submit motions to order expert examination reports, file a counter-claim, etc. To a great extent, this situation still exists. Legal regulation allowing for such actions in considering a case on its merits eliminates the borderline between preparatory actions and the final stage.

The court guides the procedure. But every time the judge starts the trial proceedings, he/she is not sure about the possibility of passing a final procedural act in the forthcoming court hearing. Persons concerned can influence the process of the case through the exercise of their procedural rights. The court has to consider the case fairly and timely. The fairness of the decision implies not only

the observance of rules of substantive law, but also securing the procedural rights of the parties that are not limited in time. The exercise of procedural rights of the participants brings unpredictability into the procedure and can be connected with the abuse of these rights.

In this connection, questions of timely submission of applications and motions in the domestic procedure are traditionally viewed within the framework of counteracting the abuse of procedural rights.

Actions to prepare the case for court hearing stipulated by Art. 135 of the RF Commercial Procedure Code can be committed and are often committed during the consideration of the case on its merits, which does not as a rule involve a pause in court proceedings.

In contrast to the detailed regulation of powers to conduct court proceedings in Part 3 of the Civil Procedure Rules of Britain, the RF Commercial Procedure Code does not contain such rules. The legal regulation of the conduct of proceedings is exercised within the regulation of the adversarial principle (Part 3, Art. 9 of the RF Commercial Procedure Code), and in some norms regulating certain legal institutions.

Meanwhile, most of these norms are declarative. For example, under Part 1, Art. 70 of the RF Commercial Procedure Code, commercial courts of the first and appellate instances at all stages of the commercial procedure must contribute to the parties’ agreement in evaluation of circumstances as a whole or in parts, demonstrate necessary initiative, exercise their procedural powers and the authority of an organ of judicial power.

Under Part 1 Art. 138 of the RF Commercial Procedure Code, the commercial court takes measures for conciliation of the parties, helps them to settle the case.

Meanwhile, the legislation does not contain measures aimed to contribute to the parties’ agreement in evaluation of circumstances or to a settlement agreement.

Thus, for commercial procedure in Russia, theoretical research and practical application of procedural means of conducting the proceedings is still of great importance.

**Conclusions**

On the basis of what has been said, we can come to the following conclusions:

1. In Russia, civil and administrative cases are considered by commercial courts and courts of general jurisdiction on the basis of the rules of the RF Commercial Procedure Code and the RF Civil Procedure Code, which has advantages and disadvantages.

There is no convincing answer to the question about the necessity of existence of the two procedures for similar cases.
2. The current RF Commercial Procedure Code and the RF Civil Procedure Code contain several types of proceedings. But the criterion for their division satisfying the requirements of formal logic has not been found yet.

3. The civilistic procedure can be divided into stages (law application cycles) according to the test of the closest procedural purpose. Each stage can be divided into steps: initiation, preparation, hearing. Initiation of every stage (law application cycle) depends on the will of the person involved. Preparation and hearing are separated from initiation, but not separated from each other.

These conclusions demonstrate that the issue of the structure of the civilistic procedure in Russia is of great importance and needs to be resolved.
The issue of judicial evidence and proof by evidence is one of the most developed in the domestic doctrine of civil procedure. Well-known Russian legal writers in the sphere of civil procedure, such as K.Yudelson, A.F.Kleiman, S.V.Kurylev, M.K.Treushnikov, A.T.Bonner, A.G.Kovalenko, I.V.Reshetnikova have devoted their works to this issue.

Given all the research works in this area, proof by evidence can be defined as a cognitive procedural activity of those involved in court proceedings in order to establish relevant circumstances.

This definition implies that proof by evidence is subject not only to rules of law, but also to laws of logic. The latter are an objective reality, are not subject to legal regulation and, unfortunately, not well researched by lawyers.

The doctrine of commercial and civil procedure distinguishes judicial proof by evidence from scientific, everyday and other types of cognition.

Undoubtedly proof by evidence relies on scientific methods of cognition (for instance, in the use of expert research), but, nevertheless, differs from the scholarly activity in principle.

First, proof by evidence is cognition aimed at establishing particular facts relevant to the resolution of a case, and not laws of nature.

Second, the procedure of proof by evidence in court proceedings is regulated by procedural legislation in details.

Third, due to the principle of free evaluation of evidence in the Russian civil procedure (Art. 71 of the Commercial Procedure Code of the Russian Federation, Art. 67 of the Civil Procedure Code of the Russian Federation), the discretion of a judge seems to be an inalienable attribute of proof by evidence (or, rather, of evidence evaluation). For example, A.Ya.Vyshinsky was very convincing when he stated:

“…the attempts to build the system of evidence and the law of evidence on principles ignoring subjective elements of judgement are completely fruitless…”

“the judge, weighing the circumstances of the case, evaluating actions of the defendant, plaintiff or respondent, inevitably relies on his moral, political, ideological principles in his entire understanding of the world, in his vision of relationships among people, on goals and objectives of his own existence.”

D.M.Chechot also believed that the court has free discretion in evaluating evidence.

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47 Ibid., p.118
Evidence in the case is legally obtained evidence of facts on the basis of which the court establishes the presence or absence of circumstances substantiating demands and objections of the parties to a case, as well as other circumstances relevant to the proper consideration and resolution of the case. There are certain means of obtaining evidence; explanations of the parties and third persons, witnesses’ testimony, written and physical evidence, audio-and video-recordings, expert examination reports, other documents and materials (Part 2, Art.64 of the RF Commercial Procedure Code).

In the theory of evidence, evidence has the following characteristic features:

**First**, evidence is information about facts, and not facts themselves.

**Second**, this is information about facts as part of the *total object of proof* in the case, i.e., evidence helps to establish presence or absence of circumstances stipulating demands and objections of the parties and other circumstances relevant for the case to be considered and resolved properly. This feature reflects such a property of evidence as relevance.

**Third**, facts of a case can be established only by means of evidence specified by the law (Part 2, Art. 64 of the RF Commercial Procedure Code).

Fourth, evidence is the information about facts obtained and examined by means of procedure established by the RF Commercial Procedure Code. The last two features of evidence characterize such an aspect of evidence as admissibility.

All the features of evidence exist in combination, and the absence of one of them shows that the evidence is absent or impossible to use.

Experts suggest various classifications of evidence included in the total object of proof:

- by the nature of connection of evidence with circumstances to be proved in a case – direct (the text of a contract) and indirect (the parties’ correspondence confirming the presence of certain contractual relationships) evidence;
- by the source of evidentiary information – physical, personal, and mixed (an example of the latter is expert examination reports);
- by the process of formation of evidence – primary and derivative evidence.

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49 It should be noted that in the RF Commercial Procedure Code, the concepts of evidence and means of proof are confused (sources of evidentiary information, such as witnesses testimony, expert examination reports, etc.). For example, para.2 Part 2 Art.39 says that parties have the right to file a motion to have their case considered at the place where most od their evidence is located. Here evidence means not information about facts, but means of proof (physical evidence, etc.)

In the Russian law, there is the principle of free evaluation of evidence according to which no evidence has a previously established force and is evaluated by the court according to its free conviction (Art. 71 of the RF Commercial Procedure Code).

There is also a viewpoint that the principle of preliminary disclosure of evidence can be distinguished within the framework of the institution of proof by evidence in commercial procedure. This principle is believed to have come from the Anglo-Saxon legal system where it is referred to as discovery. In the RF Commercial Procedure Code it is found in Parts 3-5, Art.65.

Part 4, Art.65 of the RF Commercial Procedure Code gives grounds to maintain that the court considering the case has power to establish a deadline for certain evidence to be submitted to the Court and presented to other persons involved in the case. With account of rules of preliminary disclosure of evidence, such a time limit must expire before the court hearing starts. In its turn, in the case the court requirements for the timely submission of evidence are not fulfilled, the person involved can be devoid of the right to refer to such evidence.

At the same time, commercial courts seldom find the evidence, submitted (disclosed) after the deadline, inadmissible. This happens because if such evidence is found inadmissible and a judgement is passed without taking this evidence into consideration, the higher court has a possibility to reverse the court’s judgement as groundless.

Of interest is the explanation given in the last but one subparagraph of para.26 of Ruling No.36 (May 28, 2009) of the Plenum of the RF Supreme Commercial Court “On application of the Commercial Procedure Code of the Russian Federation in consideration of cases by a commercial court of appellate instance”:

“Admission of additional evidence by the court of appellate instance cannot serve as a ground to reverse the ruling of the appellate court; at the same time, non-admission of new evidence by the appellate court on the grounds stipulated by Part 2, Art. 268 of the Code can be the ground for reversal of the appellate court ruling under Part 3, Art.288 of the Code if such non-admission has led or could have led to passing an erroneous judgement”.

It seems that the ambiguous solution of the issue of the possible non-admission of evidence submitted with the violation of the established submission deadline reflects the problem of philosophical and legal nature of truth that must be achieved by the court as a result of considering the case (objective and subjective, formal, absolute or relevant)51.

**Relevance of evidence.** According to Art. 67 of the RF Commercial Procedure Code, commercial courts admit only evidence relevant to the case being considered; they do not accept motions to support persons involved in the case or evaluation of their activity, other documents not relevant to establishing circumstances surrounding the case and refuses to admit them as evidence. Such refusal is included in the court records.

To solve the problem of relevance of evidence requires, the **following questions** to be considered:

1) to determine whether the facts to be established by such evidence are relevant;

2) if the fact is relevant, whether the evidence can confirm or rebut it\(^{52}\).

**Thus,** relevance of evidence implies the connection of evidence with the the object of proof.

Here it is important to take into account that Part 2, Art.65 of the RF Commercial Procedure Code means that circumstances relevant to the proper consideration of a case are determined by a commercial court on the basis of demands and objections of persons involved in the case, as well as on the basis of the applicable rules of substantive law, i.e., the court has power to bring up certain circumstances for discussion between parties even if the parties have not referred to them\(^{53}\).

**Admissibility of evidence.** Under Art.68 of the RF Commercial Procedure Code, circumstances surrounding a case that must be confirmed by certain evidence cannot be confirmed by other evidence in commercial courts.

While relevance shows the essence of evidence, admissibility is related to the form of evidence.

Admissibility of evidence can be of general or specific nature. General nature of admissibility means that in all cases, irrespective of their category, there is a requirement to obtain information from sources determined by the law in compliance with the procedure of collecting, submitting and examining evidence. Violation of these requirements results in finding the evidence inadmissible.

The special nature of admissibility is reflected in the rules prescribing the use of certain evidence to establish circumstances of the case (positive admissibility) or prohibiting the use of certain evidence (negative admissibility)\(^{54}\).


For example, now the right to immovable property is generally confirmed only by information obtained from the Uniform Register of Immovable Property Rights and Related Transactions (positive admissibility). According to para.1, Art.162 of the RF Civil Procedure Code, failure to observe a simple written form of a transaction deprives parties of the right to refer to witnesses’ testimony (negative admissibility) to confirm the transaction and its terms and conditions if a dispute arises, but this failure does not deprive the parties of the right to submit written and other types of evidence.

Reliability is a quality of evidence characterizing accuracy, adequate reflection of circumstances included in the total object of proof. Reliability of evidence can be confirmed:

1) by obtaining the evidence from a reliable source of information;
2) by comparing several pieces of evidence;
3) by evaluating the total weight of evidence in the case.

Sufficiency of evidence. In every particular case, sufficiency of evidence is evaluated individually.

Sufficiency of evidence is a quality of the total weight of evidence necessary to resolve the case. Evidence is sufficient when a court of law can resolve a particular civil case relying on this evidence. Sufficiency is not a quantitative but qualitative attribute of the total weight of evidence collected.

The literal interpretation of Part 2, Art.71 of the RF Commercial Procedure Code leads to the conclusion that evidence in a case must also have such a quality as interdependence of evidence.

In contrast to the RF Criminal Procedure Code (Art.73), the RF Code of Administrative Offences (Art.26.1), the RF Commercial Procedure Code does not contain a list of circumstances to be ascertained in each case considered by a commercial court (i.e., the total object of proof is not defined). This is stipulated by a variety of cases considered in the commercial court proceedings. At the same time, in the doctrine of civil procedure there is a model according to which all material facts established in the resolution of the case can be divided into several types.

1. Facts of legitimation, which in their turn are divided into facts of active and passive legitimation. The former confirm the legal connection of the plaintiff with the subject matter of the dispute, while the latter show the legal connection of the defendant with the subject matter of the dispute. For example, in a claim for damage to property caused by a traffic accident, what has to be proved is the fact that the damaged property belongs to the plaintiff (the fact of active legitimation).

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55 See ibid. pp.227-228.
56 See ibid. p.229.
and that the vehicle that has caused the damage belongs to the defendant (the fact of passive legitimation).

2. Facts of cause of action are facts showing that the plaintiff’s right has been violated or challenged and, therefore, needs judicial protection.

Failure to prove at least one of the above mentioned facts must result in the denial of claim. At the same time, what has to be taken into account is that the given classification of facts is conditional, and in a number of cases one and the same legal fact can be classified as relating to several types of the abovementioned facts. Thus, in a claim for contractual damages, the fact of making a contract is both the fact of legitimation and the fact directly generating law.

Defining such concepts as “total object of proof”, “limits of proof” have caused numerous discussions in the procedural doctrine\(^{57}\).

Circumstances to be proved are believed to be understood as the sum total of all circumstances to be established for the resolution of the case in a court of law. These facts can include not only juridical facts but also the so-called “evidentiary facts”, i.e., facts not stipulated by hypotheses of rules of law, but, nevertheless, relevant to a particular case (e.g., the alibi of a person who is brought to justice for an administrative offence).

It is important to mention that within the framework of court proceedings, not only material, but also procedural legal facts must be proved. For example, the person that has filed the claim for interim measures must prove the grounds for them to be taken within Part 2, Art.90 of the RF Commercial Procedure Code. The person moving for distribution of legal costs in his/her favour must prove that these expenses have been incurred. Prof. V.V.Yarkov has proposed the concept of local objects of proof including facts that must be established in resolving the issue of performing a particular procedural action\(^{58}\).

One should take into account that the total object of proof includes circumstances of the case but not rules of law applicable in the case. The content of rules of law does not have to be proved by persons involved in the case because in this process, there is an axiom of law in action – “the court knows the law” (juria novit curia). In the RF Commercial Procedure Code it is found in Part 1, Art 168, based on which, when passing a decision, the commercial court independently determines what laws and other normative legal acts should be applied in the case.

At the same time, a party to the proceedings has the right to propose a certain interpretation of rules of law, to ask the court to apply or not to apply them (Part 1. Art 41 of the RF Commercial Procedure Code). Such an activity undoubtedly has


\(^{58}\) Ibid.,p.139.
the legal procedural significance, but it is not covered by the concept of judicial proof by evidence.

The general rule of distributing the burden of proof is found in Part 1, Art 65 of the RF Commercial Procedure Code and consists in the obligation for every person involved in the case to prove circumstances to which this person refers as grounds of their demands, objections, arguments.

At the same time, for example, in cases arising from public legal relationships there is another rule protecting a weaker party. According to this rule, the obligation to prove circumstances that constituted a ground for state organs, local self-government bodies, other organs and officers to pass the disputed acts, decisions, to commit actions (or omissions) is laid on the relevant organ or officer.

In commercial procedure there are also circumstances that do not require any proof.

First, facts of common knowledge do not have to be proved. Certain circumstances can be recognized to be common knowledge if they are available to general public, including the court panel considering the case. Such facts are usually divided into world renowned, known on the RF territory, locally known (i.e., fires, floods). Such common knowledge must be included in the court judgement (in case of future appellate, cassational, or supervisory complaint against the judgement).

Second, pre-judicial facts, i.e., facts established by the judicial act that has entered into legal force, do not need to be proved (Parts 2-4, Art. 69 of the RF Commercial Procedure Code). Under the general rule, pre-judicial facts cannot be refuted if the judgement of court sentence that established them have not been reversed in accordance with the procedure established by the law.

But pre-judicialness has its subjective and objective limits. The subjective limit consists in the fact that prejudice is effective until the same persons or their legal successors act in different cases. Objective limit outlines the sum total of all the facts established by the judicial act that has entered into legal force and not requiring any proof when another case is considered.

For pre-judicialness of judgements and sentences different object limits are determined.

Circumstances established by a judicial act of a commercial court that has entered into legal force are not proved again when another case is considered with the same persons involved. The decision of a court of general jurisdiction on an earlier civil case that has entered into legal force is binding on the commercial court considering a case related to relevant circumstances established by the decision of the court of general jurisdiction. A court sentence in a criminal case is binding on the commercial court only in relation to questions about whether certain
actions have been committed and whether they have been committed by a certain person. (Part 2-3, Art. 69 of the RF Commercial Procedure Code).

Of interest is the question about prejudicial significance in commercial procedure of judicial decisions of courts of general jurisdiction in cases of administrative offences. Ruling of the Plenum of the RF Supreme Commercial Court No.10 as of June 02, 2004 (with amendments) seems to lead to the legal view according to which court rulings in cases of administrative offences do not have prejudicial significance, they are only “taken into account by commercial courts”. Another approach is found in para.8 of Ruling of the Plenum of the RF Supreme Court No. 23 (December 19, 2003) “On a judicial decision” according to which judicial acts of commercial courts in cases of administrative offences by analogy have the same prejudicial significance as sentences in criminal cases.

_Circumstances recognized by the parties to a dispute._ Under Parts 2,3, Art.70 of the RF Commercial Procedure Code, circumstances recognized by the parties as a result of an agreement reached between them are accepted by the commercial court as facts not requiring further proof. The agreement reached in court or out of court concerning such circumstances is confirmed by their written statements and included in the court records.

The recognition by a party to a dispute of circumstances which are grounds for the other party’s demands or objections saves the other party the trouble of having to prove these circumstances. The fact of recognition of these circumstances by a party is included in the court records by the commercial court and verified by the party’s signature. The written statement of recognition is deposited into case materials.

_A special innovation in commercial proceedings is part 3.1, Art.70 of the RF Commercial Procedure Code._ After Part 3.1. was introduced into Art.70 of the RF Commercial Procedure Code, for the first time in the history of domestic civil procedure there appeared a legal rule according to which recognition of circumstances that are part of the total object of proof in a case began to be seen in connection with the passive conduct of a party to a dispute.

Similar rules of civil procedural law used to concern only certain types of evidence. _Thus_, Art.444 of the Charter of Civil Proceedings states that if a party refuses to submit a required document, when this party does not deny having it, the court can recognize as proved the circumstances to confirm which the reference to the document has been made⁵⁹. Under Part 3, Art 79 of the current RF Code of Civil Procedure, if a party avoids participating in expert examination, submitting

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necessary materials and documents for expert examination and in other cases when
due to circumstances of the case and without this party the expert examination is
impossible, the court (depending on which party avoids expert examination and
what it means to this party) has power to recognize the fact to ascertain which the
given examination was ordered as established or refuted.

Interestingly enough, according to E.A.Nefedyev, before the October
Revolution, courts made the conclusion that a party recognizes facts provided by
the opponent in the proceedings because the party does not challenge them, i.e., the
courts proceeded from silent recognition of such facts. At the same time, the
possibility to classify such conduct did not result from the literal interpretation of
general provisions of the Charter of Civil Proceedings and caused principal
objections in the doctrine\(^\text{60}\).

Interpreting Part 3.1, Art 70 of the RF Commercial Procedure Code, one should
note that procedural legal facts with which the relevant norm connects the court’s
conclusion about a party’s recognition of factual circumstances of the case belong
to procedural (juridical) actions.

A procedural action is believed to the conduct of a subject of procedural law that
gives rise to certain consequences *irrespective of the will* (italics mine – R.O.) of
the relevant subject\(^\text{61}\). In this case, the passive conduct of a party to a dispute (non-
submission of the answer to a claim, non-submission of evidence) can result in a
procedural consequence consisting in the court’s finding certain legal facts
recognized by that party. In our opinion, this is the consequence of non-use of
procedural rights by the person involved, and this consequence is not connected
with the subjective aspect of this passive behaviour (i.e., establishing whether such
behaviour was intentional or not).

If one can assume that certain behaviour, by the intention of the law-maker, is
viewed as expressing a person’s will to recognize factual circumstances in a case
(owing to presumption or fiction), it is unclear why, under the current laws, this
behaviour can result in different legal circumstances, depending on the other
party’s behaviour and even the court’s discretion.

What is meant here is, among other things, that according to the meaning of
Parts 1,3, Art 156 of the RF Commercial Procedure Code, passive behaviour can
result in consideration of the case on its merits in the absence of the defendant who
has not shown interest to participation in the process, and the claim will be denied
on the basis of the court’s evaluation of evidence as to its admissibility, relevance,

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\(^{60}\) E.A.Nefedyev. Uchebnik russkogo grazhdanskogo cudoproizvodstva.[The textbook of the

\(^{61}\) See V.V.Yarkov. V.V.Yarkov. Yuridicheskiye fakt y v mekhanizme realizatsii norm
grazhdanskogo prava.[ Legal facts in the mechanism of enforcing rules of civil procedural law].
reliability and sufficiency. In this case the court will not make any conclusions about the recognition of facts by the defendant. Therefore, the defendant’s passive behaviour can indicate that he/she regards the claim against him/her as groundless and does not want to spend time and money for protection against such a claim, meaning that the defendant can be ordered to pay legal costs irrespective of the outcome of the case (Part 4, Art 131 of the RF Commercial Procedure Code)

Such a vision is confirmed by the position reflected in para.20 of the Minutes of the Roundtable meeting devoted to the issues of applying the RF Commercial Procedure Code with the participation of the Deputy Chair of the RF Supreme Commercial Court T.K.Andreyeva on March 18, 2011, according to which the rule of Part 3.1, Art 70 of the RF Commercial Procedure Code does not relieve the court of responsibility to evaluate the sum total of evidence submitted by the plaintiff. In other words, Part 3.1, Art 70 does not relieve the party of responsibility to prove circumstances to which it refers as on grounds for its demands and objections (Part 1, Art 65 of the RF Commercial Procedure Code). At present, in our opinion, one can refute an interpretation of Art. 70 of the RF Commercial Procedure Code consisting in the assertion that after the introduction of Part 3.1 in Art. 70 of the RF Commercial Procedure Code, the general rule of distributing the burden of proof begins to work only after the opposite party, directly or indirectly, challenges a circumstance underlying demands or objections of the opponent.

Here we clearly see the difference of recognition by way of the party’s submitting a written document or making an oral statement about it for the court records from recognition under Part 3.1 in Art. 70 of the RF Commercial Procedure Code. According to Part 4 of the given Article, the court has power not to accept the first kind of recognition only if the court has evidence giving grounds to believe that recognition of factual circumstances by this party was committed in order to conceal certain facts or under the influence of deceit, violence, threat, error, which underlines the willful nature of the relevant recognition. Pursuant to Part 5, Art. 70 of the RF Commercial Procedure Code, circumstances recognized and confirmed by the parties in accordance with the given article, in the case they were accepted by the commercial court, are not checked by the court during further proceedings.

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63 See, e.g., O.N.Shemeneva. Neosporennye obstoyatel’stva v arbitrazhnom protsesse. [Uncontested circumstances in commercial litigation.]//Commercial and civil procedure. 2011, No.2.
On the contrary, passive behaviour may not lead to the conclusion about the recognition of circumstances constituting the object of proof even when the court does not have any evidence at its disposal proving concealment of certain facts, deceit, violence, threat or error on the part of the party to the dispute unless relevant circumstances are confirmed by the evidence in the case. This is explained by the fact that passive behaviour of a party to a dispute does not relieve the party of obligation to prove its claims and/or objections, and the court is still obliged to check circumstances to which the party refers, i.e., to evaluate relevant circumstances as to their admissibility, relevance, reliability and sufficiency.64

Thus, the solution of the problem of classifying passive behaviour as recognition of a fact depends, to a great extent, on the evaluation of the evidence in the case by the court.

The passive behaviour of the respondent can be explained by the fact that he/she knows about the claimant’s losing interest in the factual participation in the case because under para.9 Part 1 Art.148 of the Commercial Procedure code of the RF, a commercial court leaves the claim without consideration if after the claim has been accepted by the court, the claimant did not appear in court again, including ignoring the summons by the court, and did not file the motion to hear the case in his/her absence or about postponing the court hearing, and the respondent does not demand to have the case considered on its merits.

Therefore, the conduct stipulated in Part 3.1 Art 70 of the RF Commercial Procedure Code can be referred to such a kind of legal facts as procedural offences. On the basis of the definition of a procedural offence, the respondent’s failure to appear in court, non-submission by the respondent of the answer to the claim and evidence refuting the claim can lead to the court’s conclusion about the respondent’s recognition of the circumstances to which the claimant is referring, irrespective of the respondent’s will. The respondent’s will in respect to the recognition of the relevant circumstances, under part 3.1 Art 70 of the RF Commercial Procedure Code is not ascertained because it does not have any legal significance.65


65 It is another matter that if within the framework of the proceedings in the appellate court a party substantiates the impossibility for the party to submit to the trial court the evidence refuting the other party’s evidence, this first party has the right to present such evidence in the court of the appellate instance and thus to refute the conclusion about the recognition by this party of
Such understanding, in our opinion, helps to show real aims of introduction of this legal innovation into the RF Commercial Procedure Code. We believe that in the first place, drafters of the innovation tried to discipline defendants ignoring requirements of the law about preliminary disclosure of evidence, giving an answer to a claim, and not to introduce a new restriction for establishing truth into the modern commercial proceedings. Non-submission or untimely submission by the respondent of arguments and evidence in the case can now serve as a ground for certain legal consequences. These consequences consist in the court’s conclusion that certain legal facts are recognized by the respondent on condition that relevant facts are confirmed by the evidence in the case.

It is important to note that such a conclusion does not usually have a great practical significance because, in contrast to the procedure in common law countries, in the domestic commercial proceedings there are no full-fledged preliminary proceedings in a civil case with a lot of various detailed procedures within which, before the court starts to consider the case, a range of facts recognized by the parties is determined. In domestic commercial proceedings, the conclusion about recognition of circumstances by a party will be made on the stage of court proceedings with the account of conclusions that the court has made after examining other evidence in the case. For this reason, the recognition in question can hardly make the court’s procedural activity easier. As a matter of fact, as a rule, the court could have easily considered the case on its merits and satisfied or denied the claim (depending on the quality on evidentiary material submitted by the active party of the dispute), not making any conclusion about recognition of facts by a person that has not undertaken any actions to defend his/her actions in the proceedings.

In spite of what has been already said, presence in the current RF Commercial Procedure Code of fictions of proper notification of a person involved in the case (Part 4, Art 123 of the RF Commercial Procedure Code) has resulted in the certain legal facts (such a legal view is reflected, e.g., in para.11 of the Recommendations of the Scientific Consultative Council at the Federal Commercial Court of the Ural District after their session on Nov 10-11, 2011 in Yekaterinburg). It should be taken into account that this is a general rule for presenting additional evidence to the appellate court, which is a rule of law applied on the second stage of the commercial litigation procedure, and it is independent from the rule of part 3.1 Art.70 of the RF Commercial Procedure Code.

Unfortunately, in the explanatory note to the relevant draft law, the purposes for the introduction of part 3.1. Art 70 of the RF Commercial Procedure Code were not clarified (see the official site of the RF State Duma http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=211568-5&02).


Thus, under part 4 Art 123 of the RF Commercial Procedure Code, persons involved in the case and other participants of the commercial proceedings are believed to be properly notified by
formation of rather careful approaches in court practice as to the application of Part 3.1, Art 70 of the RF Commercial Procedure Code.

Thus, para. 11 of the Recommendations No.2/2011 of the Scientific Consultative Council at the Federal Commercial Court of the Ural District (following the results of the meeting on November 10-11, 2011 in Yekaterinburg) reflects the legal view according to which Part 3.1, Art 70 of the RF Commercial Procedure Code is applied on conditions of notifying a party about the start of the proceedings (among other things, under the rules in Part 4, Art 123 of the Code), and the party’s committing certain actions within the framework of the given procedure, with these actions enabling the court to regard circumstances that are included in the object of proof in the case as recognized by the party (e.g., giving an answer not refuting certain circumstances of the case, factual participation in the court proceedings without raising any objections as to particular legal facts).

This cautious and balanced approach is explained, in our opinion, by the necessity to provide a party to a dispute (the respondent in the first place) a real opportunity to challenge and disagree with the arguments, evidence of the opponent in the proceedings.

Only if such an opportunity existed can intentional or indifferent behaviour of a person lead to the court’s making a conclusion that the party has recognized the circumstances constituting the object of proof in the case. This opportunity is obvious when the respondent has participated in the procedure of considering a dispute – if he/she has written an answer or came to the court hearing.

Presumptions are of major importance in distributing the burden of proof in the case, i.e., assumptions about presence or absence of certain legal facts. Presumptions exist to simplify the process of proof by evidence in the court. They are established in the interests of a particular party to a dispute but can be refuted by the opposite party. It is believed that irrefutable presumptions do not exist.

Presumptions can be divided into legal, i.e., directly formulated in the law (e.g., the presumption of innocence is contained in Art. 1.5 of the RF Code of Administrative offences), and factual (e.g., the presumption of legal ability of a person of majority age involved in the case).

the commercial court if, in spite of the mail notification, the addressee did not appear to collect the copy of the judicial act that was sent by the commercial court in accordance with the established procedure, and the mail office notified the commercial court about that; if a copy of the judicial act was not delivered because of the addressee’s absence at the said address, stating the source of this information
ACCESS TO JUSTICE AND THE PROCEDURE OF APPLYING TO FEDERAL COMMERCIAL COURTS FOR JUDICIAL PROTECTION.

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The modern legal system of Russia is being constantly developed in terms of both renewing and updating legislation that regulates private law relationships and in terms of modernizing public law mechanisms envisaging procedures for protecting violated rights to one extent or another.

The system of commercial courts of the Russian Federation - its establishment in the early 1990s, its operation and development - is, perhaps, the best example of how one can create a brand new model of considering economical disputes in the shortest time possible, in a difficult political situation, in a country having no experience in resolving disputes between actors in a free economic market.
The Russian Federation commercial courts are state courts considering economical disputes between business entities. And the existing commercial courts system is generally acknowledged as an example of effective justice in the economic sphere within such a large country with numerous geopolitical peculiarities as the Russian Federation. This results from the fact that the commercial court system is "young" and, consequently, progressive. This system is flexible and dynamic enough to perceive the most relevant issues of court practice quickly enough. Besides, for such a large country, the commercial court system is rather small. Commercial courts comprise only 82 courts of first instance (and only half of them can be considered big), 20 courts of appellate instance and 10 federal district commercial courts - courts of cassation.

Thus, virtually, all commercial court practice is centered around 20 appellate and 10 cassational courts, and the Supreme Commercial Court of the Russian Federation. There is a good interaction and electronic document flow among the courts.

In 2011, an opportunity was introduced to apply to a court for judicial protection through an electronic system for filing claims, which is actively and effectively used. By means of the system, one can file not only a claim, but also an appeal against judicial decisions in a dispute. Given the geographical position of Russia, the importance of these innovations can hardly be overestimated, some territories of the country being very remote from regional centers.

The procedure of applying to commercial courts of the Russian Federation is, in fact, as accessible as possible in the existing legal system with account of economic possibilities of the state and society.

In order to file a claim in electronic form, one needs to go through a simple registration procedure in the "Electronic Guard" system available at the site of the Supreme Commercial Court of the Russian Federation. After the registration, a personal account is created, and the person becomes a user of the e-system of filing documents. To register in the system, the following identifying data for an individual or a legal entity should be provided: name, taxpayer identification number (INN), primary state registration number (OGRN), place of registration, place of domicile, detailed contact information.

Any paper documents to be filed to a commercial court in e-format should be converted into electronic format via data scanning devices: all documents, including the signed claim, are scanned black and white or grey in the Adobe PDF format to secure all authenticity features.

Besides, "Commercial Court Electronic Records" database available at the site of the Supreme Commercial Court of the Russian Federation enables any person to become familiar, in real-time mode, with all case-related judicial acts and
information about the scheduled court sessions. It contains information on more than 8 million decided cases, and about 50 million judicial acts. Thus, access to judicial protection in the Russian commercial litigation is determined, among other things, by maximum openness of information on cases considered by commercial courts.

The new e-format opportunities of filing documents to the court, getting acquainted with judicial acts, and monitoring case progress are daily used by a large number of people all over the country, which confirms the increased effectiveness of justice in the commercial courts system and access to judicial protection in all regions of Russia.

The introduction and effective use of the mechanism of conducting trials via videoconferencing system has become an important step in tackling the problem of access to judicial protection.

The most striking example in this respect is the personal experience of conducting judicial proceedings by means of videoconferencing: the plaintiff was in Yekaterinburg, the defendant was in Krasnoyarsk, and the cassational complaint proceedings were held by the Federal Commercial Court of the East Siberian District in Irkutsk. Another example of using a videoconferencing system in court proceedings is the case brought before the Commercial Court of the Sverdlovsk Region (in Yekaterinburg) where the plaintiff carrying out entrepreneurial activity in Yuzhno-Sakhalinsk filed a suit against the defendant on the territory of Sverdlovsk Oblast (Region).

A look at the map of Russia gives a chance to see that the litigants would have had to cover the distance of several thousand kilometers to be physically present at the hearing.

The only condition for conducting a court hearing with the use of a videoconferencing system is the necessary equipment in the relevant court. At present, such equipment is installed in all commercial courts of Russia. Failure to conduct a hearing can only result either from some technical problems or ill-timed submission of the petition for such proceedings, when properly equipped courtrooms are being used to hear the cases with parties whose petitions have been approved earlier. Provided a petition to conduct a hearing via videoconferencing system is filed simultaneously with filing a claim, the court, when scheduling its session, will choose the date taking into account the possibility of conducting the hearing in the mode required.

Undoubtedly, one of the most important criteria of access to justice is convenience of a judicial system. What is meant here is that it is not just specific procedural aspects of judicial proceedings that matter, but, in a broad sense, conditions convenient for both litigants and courts. The innovations introduced
into the modern commercial litigation (such as submitting documents, including claims, in e-format, creating electronic catalogue of commercial court cases, real-time posting of all passed judicial acts in the Internet, which is a chance for any person to get acquainted with the chronology of a particular case, including all the data about additional case-related documents and interlocutory court orders, mandatory audio recording of court proceedings, hearings through a videoconferencing system) significantly increase the level of access to justice in the economic sphere.

Another criterion of access to justice in the sphere of protection of rights and legal interests in the area of entrepreneurial and other economic activities is rather short time limits for disputes to be considered, relatively small amounts of stamp duties, and a flexible system making it possible to delay a duty payment or to pay it in installments. Thus, the minimum amount of stamp duty for filing property claims is 2,000 roubles, the maximum amount being 200,000 thousand roubles. The amount of stamp duty for filing non-property claims, including claims for recognition of rights, claims for specific performance, lawsuits arising from entering into, amending or terminating agreements, along with disputes over nullifying transactions, is only 4,000 roubles.

As regards promptness of the Russian justice system, the following considerations should be noted. The total duration of a court hearing in a commercial court is three months, and one month is given for lodging an appeal. Thus, the period between filing a claim and receiving a writ of execution is not more than four months. Furthermore, it should be noted that a considerable number of cases are decided before expiration of the statutory three-months period - as a rule, in 1.5 or 2 months.

Of course, in a complex case involving many participants and a considerable volume of evidentiary material, the time period for the court of first instance to consider the case is extended from four to six month. And the respective appeal, if filed, will be considered within the next two months. However, the majority of cases are decided within much shorter time periods, and the duration of court proceedings in "complex" cases does not normally exceed six months. In addition, it should be noted that the number of cases considered with violations of statutory time limits is reducing annually, with the violations in question being insignificant.

Obviously, just like in any other court system, in the system of commercial courts there is occasional red-tape, unreasonable delays and so forth, but it should be emphasized once again that the number of such cases is decreasing every year due to, among other things, the enactment of Federal Law of April 30, 2010, No.68-FL "On Compensation for Violation of Right to Judicial Proceedings
Within a Reasonable Time Limit Or the Right to Execution of Judicial Act Within a Reasonable Time Limit”.

From a practical standpoint, there can be two conditions for the exercise of the right to apply to a commercial court:

- interest in judicial protection of one's own (or, if established by law, somebody else's) rights and legal interests. And the interest of an applicant to the court in receiving judicial protection and in the subject-matter of the dispute (in respect to which this form of protecting a civil right is chosen) is regarded as a sort of legal presumption;

- compliance with the procedure of applying to a commercial court (a claimant should simply file a claim to a commercial court in accordance with the established procedure (Art. 125, 126 of the RF CPC)).

The procedure of applying to a commercial court for protection is not very complicated. A person whose rights or legal interests in the sphere of entrepreneurial activity have been violated should choose the right court to apply to, pay the stamp duty, deliver a copy of the claim and the attached documents to the respondent.

Technically, the procedure of applying to a commercial court is rather simple: a claim with attachments is either mailed to a respective commercial court or submitted directly, as a rule, through the registry or another similar authorized department.

When filing a claim in electronic form, a claimant must fill in all the sections of the e-form correctly and go through all the stages of on-line registration. After the login name and password are entered, all the necessary stages gone through, and all the fields of electronic document filled in, the claim is considered to be filed to the commercial court and given a registration number.

Generally, a claim is filed to a commercial court of the constituent entity of the Russian Federation at the respondent's location or residence. As the territorial organization of the system of commercial courts is similar to the division of the Russian Federation into constituent entities (republics, krays, oblasts/regions, etc.), the first instance court is the commercial court of the respective constituent entity of the Russian Federation (the Commercial Court of Sverdlovsk Oblast, the Commercial Court of the Krasnoyarsky Kray, the Commercial Court of the Chechen Republic, Moscow City Commercial Court and so on).

**Thus,** if a claimant and a respondent carry out entrepreneurial activities on the territory of one and the same constituent entity, their claim will be considered by the court located in the regional (republican) centre. In the case a claimant and a respondent are registered on the territory of different constituent entities of the Russian Federation (for instance, the claimant is registered in Moscow and the
respondent - in Krasnoyarsk), the claim will be considered by the court at the location of the respondent (the Commercial Court of the Krasnoyarsky Kray).

The law provides for the cases when the right to choose a court belongs to the claimant. For instance, a claim to the respondent whose location or place of residence is not known can be filed to a commercial court at his property location or at his last known location or place of residence in the Russian Federation; a claim to respondents located or residing on the territories of different constituent entities of the Russian Federation is filed to a commercial court at the location or place of residence of one of respondents; a claim arising from a contract that specifies the place of its execution can also be filed to a commercial court at the place of execution of the contract; claims for damages caused by a collision of vessels, for marine salvage award can be filed to a commercial court at the respondent's location or the home port of the respondent's vessel, or at the place where the damage was inflicted, etc., (Art. 36 of the RF Commercial Procedure Code).

Under Art. 36 of the RF Commercial Procedure Code, the right to choose a commercial court competent to hear a case belongs to a claimant.

The law also regulates cases of exclusive jurisdiction where a dispute can be heard by a particular court only. Thus, under Art. 37 of the RF Commercial Procedure Code, claims for title to immovable property are filed to a commercial court at the place where the said property is located; claims for rights to marine vessels and airborne vessels, inland navigation vessels, space objects are filed to commercial courts at the place of their state registration; a claim to a carrier arising from a contract for carriage of goods, passengers and their baggage, including the cases when the carrier is one of respondents, are filed to a commercial court at the location of the carrier; a claim to declare a debtor bankrupt is filed to a commercial court at the location of the debtor, etc. (Art. 38 of the RF Commercial Procedure Code).

General or alternative jurisdiction can be changed by mutual agreement of parties. Among the most common issues resolved by courts are the issues of determining jurisdiction where there is an agreement on changing statutory territorial or alternative jurisdiction between the parties. Negotiated jurisdiction is based on the principle of optionality and allows the parties to determine territorial and alternative jurisdiction at their own discretion.

The form of agreement on jurisdiction is not stipulated in the RF Commercial Procedure Code or the RF Civil Procedure Code. (In this connection, an agreement on changing statutory territorial or alternative jurisdiction can be made in any form: either as a separate agreement or as an arbitration clause of the main agreement. An agreement to change general rules of jurisdiction can be made prior
to the moment the court accepts a claim for consideration, that is prior to commencement of proceedings, namely, before the date the court rules on accepting a claim for hearing and initiating proceedings on a case. An agreement made after the said dates entails no legal consequences and should not be taken into account by the court when deciding upon the claim’s jurisdiction.

If a claimant, when applying to a court for judicial protection, in his/her claim, refers to change of jurisdiction based on an agreement with a respondent, the court, while deciding whether or not to accept the claim for consideration, needs to establish these circumstances, namely, to make sure such an agreement exists, which clearly confirms that the parties have agreed to have their disputes resolved by this particular court. And the court must establish the fact of concluding the said agreement.

The decision on accepting a claim for consideration is made within five workdays. The court ruling on accepting the claim for consideration and scheduling the hearing is posted on the site of the Supreme Commercial Court of the Russian Federation in the commercial courts' case files not later than on the next day after the judge signs the judicial act.

If a claim does not conform to the established form and content (Art. 125 of the RF Commercial Procedure Code) or the attached documents are lacking (Art. 126 of the RF Commercial Procedure Code), the claim acceptance is deferred until all the defects are eliminated. If the defects are not eliminated within the time limits prescribed by the court, the claim is returned to the claimant.

Apart from the reason mentioned above, in the RF Commercial Procedure Code there are three more grounds for a court to pass the ruling to return the claim:

— a claim is returned if the case is not within the jurisdiction of a particular commercial court;
— if the motion to defer payment of a stamp duty, to pay the stamp duty in installments, or to reduce its amount is denied;
— if a claimant files a motion to withdraw his claim prior to the court’s accepting it for consideration.

It should be noted that the return of a claim is no obstacle for re-applying to the court with the same claim. For instance, a claimant who failed, for a particular reason, to eliminate the defects and provide the necessary documents can apply to the commercial court again after the claim is returned.

If a claim complies with the requirements to form and content established in the RF Commercial Procedure Code, a commercial court is obliged to accept it for consideration and pass the respective ruling for proceedings to be commenced. The court ruling specifies the preparation for court proceedings, actions to be performed by the parties to the dispute and their time limits, the address of the
official site of the commercial court in the Internet, telephone numbers, fax numbers and the commercial court's e-mails to be used to receive information on the case under consideration.

Unlike the Civil Procedure Code, the current Commercial Procedure Code does not provide for such an institution as denial to accept a claim. When accepting a claim for consideration, a commercial court is authorized to pass only three types of rulings: on accepting a claim for hearing and initiating judicial proceedings, on deferring the acceptance of a claim and on returning a claim.

Thus, even if a claim is not within the court's jurisdiction or if the claim is an identical claim, the commercial court will have to accept it for consideration, provided it meets the requirements to form and content of a claim stipulated in the RF Commercial Procedure Code and there are no grounds to return it.

Under Art. 125 of the RF Commercial Procedure Code a claim must contain information on:

1) the name of the commercial court to which the claim is filed;
2) the name of the claimant, his/her location; for a citizen, the place of residence, date and place of birth, place of employment or date and place of registering as a sole proprietor; telephone numbers, fax numbers, e-mail addresses;
3) the respondent’s name, location or place of residence;
4) the claimant's demands against the respondent with reference to relevant laws and other statutory acts, and, when filing a claim to multiple respondents, demands against each of them;
5) the circumstances on which the claim is based and the proof of the said circumstances;
6) the value of claim if it is subject to evaluation;
7) calculation of the amount to be recovered or contested;
8) information about the claimant's complying with the complaint procedure or any other pre-trial procedure for settlement of claims if such a procedure is envisaged by the federal law or an agreement;
9) any measures taken by a commercial court to protect proprietary interests before the claim was filed;
10) the list of attached documents.

It is a legal requirement that a claim should contain minimum information on, for instance, the respondent and the respondent's location. Applying to a court, one should give detailed contact information about both the claimant and the respondent. For instance, postal addresses, telephone numbers, fax numbers, e-mail addresses, telephone numbers of the claimant's representative, and telephone numbers of the respondent's representative, if available.
This will enable the court to duly issue court summons and provide prompt communication with the parties to the case, to solve, if necessary, any issues arising during the proceedings, for instance, those related to some technical aspects of ordering expert examination and its payment, correcting some technical errors and clearing out misunderstandings.

The Commercial Procedure Code makes it mandatory, when applying to a court, to attach to the claim a set of documents specifically enumerated in Art. 126 of the RF Commercial Procedure Code. In accordance with this rule, the attachments should contain:

1) a return of service or other documents confirming service upon other parties to litigation of copies of the claim and a set of attached documents that other parties to litigation lacked;

2) a document confirming payment of stamp duty in the established amount and under established procedure or the right to duty payment relief, or the motion to defer payment of a stamp duty, to pay the stamp duty in installments or to reduce its amount;

3) documents confirming circumstances serving as the ground for the claimant's demands;

4) copies of the certificate of State Registration as a legal entity or sole proprietor;

5) a power of attorney or other documents confirming the authority to sign the claim;

6) copies of a commercial court’s ruling on protection of proprietary interests before filing the claim;

7) documents confirming the claimant's compliance with the complaint procedure or any other pre-trial procedure for settlement of claims if stipulated by the federal law or an agreement;

8) a draft agreement if there is a claim to compel a party to enter into an agreement;

9) extracts from the Union State Register of Legal Entities or the Uniform State Register of Individual Entrepreneurs (Sole Proprietors) stating the location or the place of residence of the claimant and the respondent, and (or) confirming the status of an individual as a sole proprietor, or a document confirming termination of his activity as an individual entrepreneur, or any other document confirming the said information or its absence. These documents should be obtained no sooner than 30 days prior to the claimant's application to the commercial court.

Thus, the list of requirements to a claim and the attached documents is rather short. A person applying to a commercial court for judicial protection is informed as to the date of the hearing in five days after filing the claim. As a rule, a court
holds a hearing within one month (give or take two weeks depending on the judge's workload), and from this point forward, the parties exercise their right to judicial protection while their case is considered in court.

THE PROCEDURE OF REVIEWING JUDICIAL ACTS OF COMMERCIAL COURTS OF RUSSIA

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The institution of judicial acts review dates back to the Roman law. However, any state or any international organizations consider the possibility to challenge judicial acts as one of the guarantees, a constituent component of the right to judicial protection; it is stipulated by the necessity to eliminate a judicial error which may occur during court proceedings.

Unlike other countries, including those with the continental system of law, Russia has three separate judicial subsystems, each having its own, independent from others, procedures of judicial acts review. Although there is a lot of debate over the necessity to merge all these types of courts into a single judicial system, we should agree that these three judicial subsystems reflect the global trend of dividing courts into courts of general jurisdiction and courts of special jurisdiction. Of utmost importance, as we see it, are the issues of coordinating the work of courts of general jurisdiction and commercial courts, the highest judicial bodies of these subsystems.

The contemporary stage of the development of commercial courts in Russia which handle economic disputes dates back to 1991; it is connected with the adoption of three Commercial Procedure Codes of the Russian Federation in 1992, 1995, and 2002. The current procedure of judicial acts review in this system is unique, and it is the outcome of the judicial reform in Russia which was


The Constitutional Court has repeatedly stated that the right to judicial protection presupposes the protection of rights and legitimate interests of the citizen not only from the arbitrariness of legislative and executive bodies but also from erroneous judgments; the possibility of review by higher courts in some form (taking into account the peculiarities of each type of proceedings) serves as an effective guarantee of the protection and should be provided by the state (see, for example, Ruling No. 1-П dated January 17, 2008).

This is about the system of courts of general jurisdiction with the Supreme Court of the Russian Federation as its highest judicial body, state commercial courts (taking into account the rules of the Russian legislation which use this term and refer such a type of courts to the state courts) with the Supreme Commercial Court of the Russian Federation as its highest judicial body and judicial bodies of the constitutional control and charter (constitutional) courts of the RF constituent entities and the Constitutional Court of the Russian Federation.


Despite certain trends to uniformity due to the adopted Federal Law No. 353-FA dated December 9, 2010, the procedure of judicial acts review in courts of general jurisdiction and commercial courts is significantly different and to some extent it is accounted for by the historically developed structure of these judicial subsystems and the questions of generic jurisdiction. These differences concern both the number of review forms and their content. In particular, unlike the commercial procedure, the RF Civil Procedure Code provides for several instances of cassation (p.1 Part 2 Art.377, p.3 Part 2 Art.377 of the said Code), the right of a person involved in the proceedings to appeal by way of cassation depends on the opinion of the judge in cassational proceedings concerning the grounds (or the lack thereof) for challenging judicial acts by way of cassation (Art.381 of the said Code).

The unique character means the four-tier model of the instance structure while the generally recognized is the three-tier system. Its main provisions are stipulated in Recommendation No. R (95)5 on the introduction and improvement of appellate proceedings in civil and commercial
conducted considering global judicial standards and information technologies. The major trends in the conception of development of commercial procedure legislation concerning judicial acts review were defined by the Federal Special-Purpose Program “The Development of the Russian Judicial System” for 2002-2006 and 2007-2012, which have been implemented through the Commercial Procedure Code of the Russian Federation. For example, Russia has created appellate commercial courts, adopted the rules of considering a cassation complaint only after appellate proceedings, and has significantly modernized supervisory proceedings.


Thus, the Russian commercial procedure has four types of judicial acts review. A judicial act which has not entered into legal force yet can be challenged only through the appellate procedure. The judicial acts review by the cassational procedure, the supervisory procedure and the review of judicial acts due to newly discovered circumstances are acceptable only in respect to judicial acts which have come into force.

The judicial acts review in appellate and cassational proceedings is considered to be a simple (ordinary) procedure of review.

The peculiarities of supervisory proceedings determined by their aims as well as by the role and functions of the RF Supreme Commercial Court in the system of commercial courts enable scholars to consider supervisory proceedings as an exclusive method of judicial acts review. The introduction of a preliminary procedure of reviewing supervisory complaints (reports) which is not covered by some obligatory procedural rules, and a certain degree of motivation of an interested party to review judicial acts through supervisory proceedings are aimed to prevent the court of supervisory instance from becoming an ordinary judicial instance and to guarantee that the legal certainty requirements of the review procedure through supervisory proceedings are observed.

The *procedure of judicial acts* review due to new or newly discovered circumstances is an out-of-instance method of review. Legal scholars consider cases which was adopted by the Committee of Ministers of the member-states of the Council of Europe dated February 7, 1995.

The decision of the court of first instance, awards of appellate and cassational courts as well as Rulings of the Presidium of the RF SCC may be challenged due to new or newly discovered
this type of review to be a separate function of courts to control their judicial acts, and generally this type of review is not connected with a judicial error\textsuperscript{75}.

The increased role and significance of interpretation of rules of law by the RF Supreme Commercial Court for commercial courts proceedings has led to the necessity to essentially reform this method of judicial acts review. Along with the notion of “newly discovered circumstances” introduced in 2010, grounds to review cases “due to new circumstances” have been established. In particular, among the \textit{new circumstances}, the law distinguishes decisions or amendments to the Rulings of the Plenum of the RF Supreme Commercial Court (further – the RF SCC) or to the Rulings of the Presidium of the RF SCC in the practice of application of a rule of law if a corresponding judicial act of the RF SCC provides that judicial acts having entered into legal force can be reviewed on the basis of such a circumstance. \textbf{Thus}, when the institution of “new circumstances” was introduced, it became clear that this type of review would be directed at eliminating errors in interpretation of rules of law that were made by the court which passed the judicial act. Meanwhile, it is worth mentioning that legal views of the RF SCC may be a ground for reversing judicial acts by inspecting bodies. In this connection, if by the day when the RF SCC publishes (on its official site) its act containing legal views that may give grounds for the review of a judicial act due to new circumstances, the claimant still has the possibility to file a complaint against this judicial act to the appellate and (or) cassational court (considering the given time limit for such complaints), the complaint to review the judicial act due to the stated new circumstance is returned to the claimant\textsuperscript{76}.

The analysis of the legal regulation of issues concerning the correlation of methods of eliminating judicial errors, subjects initiating review proceedings, time limits for complaints, and the procedure of initiating appellate, cassational, and supervisory review gives a general impression of how the domestic system of review operates as well as how the right to judicial protection is guaranteed.

\textsuperscript{75} This article does not cover methods (types) of the court control over judicial acts (to correct spelling or arithmetic errors, to take additional decisions or awards). It should be said that some form of self-control may be exercised by commercial courts of any instance.

One of the latest significant reforms of judicial acts review proceedings in the commercial procedure in Russia was the prohibition to resort to a court of cassation without any preliminary appellate complaint\(^\text{77}\). This prohibition was introduced in 2010. In particular, the RF SCC stipulates that any interested party may file a cassational complaint only if the decision of the commercial court of first instance that has entered into legal force has been considered in the commercial court of appellate instance or if the commercial court of appellate instance has refused to extend the time limit for filing an appellate complaint that the party has missed\(^\text{78}\).

The provisions of the RF CPC on supervisory proceedings (Part 3 Art.292 of the RF CPC) also state that all existing opportunities to check the legality of judicial acts should be exhausted. At the same time, the interested party has the right to file a supervisory complaint without resorting to the appellate or cassational method of review. If, in the process of consideration of the interested party’s complaint, no grounds for supervisory review of judicial acts have been established but some other grounds for checking the correct application of substantive and procedural rules have been found, the RF SCC may refer the case to the commercial court of cassational instance provided that this judicial act has not been considered by way of cassation (Part 6, Art.295 of the RF CPC).

It should be mentioned that the domestic legislation also provides for certain peculiarities of correlation of methods of judicial acts review depending on the category of cases considered by the commercial court of first instance. Thus, there are some categories of cases which permit neither appeals nor cassations. In particular, the following judicial acts may be challenged in cassation proceedings (but there is no appellate review procedure for decisions and holdings mentioned below): decisions of courts of first instance concerning the cases to challenge normative legal acts (Parts 4, 7 Art.195 of the RF CPC), rulings to reverse decisions of the non-state arbitration courts or to deny the claim to reverse such a decision (Part 5 Art. 234 of the RF CPC), decisions either to issue a writ of execution to enforce the decision of the non-state arbitration instance or to refuse to issue a writ of execution (Part 5, Art.240 of the RF CPC), rulings to recognize

\(^{77}\) See also Postanovlenie Plenuma Vysshego Arbitrazhnogo Suda RF “O primenenii arbitrazhnogo protsessual’nogo kodeksa RF pri rassmotrenii del v arbitrazhnom sude apellyatsionnoi instantsii No. 36 [Ruling of the Plenum of the RF SCC “On the Application of the RF Commercial Procedure Code in Considering Cases in the Commercial Court of Appellate Instance” No.36], dated May 28, 2009, para.23.

\(^{78}\) As to decisions of the court of first instance which in accordance with the current procedural legislation may be challenged separately from challenging the judicial act that is the outcome of considering the merits of the case, the cassational examination is possible only if the court of appellate instance passed a judgment following the results of considering the appellate complaint against the decision of the commercial court of first instance (Art.188 of the RF CPC).
and enforce a decision of a foreign court or a foreign arbitration decision, as well as a decision to refuse to recognize and enforce the corresponding decision (Part 3, Art.245 of the RF CPC), rulings to adopt out-of-court settlement (Art.141 of the RF CPC).

On the contrary, decisions taken in summary proceedings, in cases concerning administrative responsibility, in cases to challenge decisions of administrative bodies imposing an administrative penalty – a certain amount of the fine for an administrative offense, as well as decisions of the appellate commercial court in these cases may be challenged in the cassational commercial court only if the courts of first instance and appellate instance violated the rules of procedural law which serve as grounds for their reversal in any case (Part 4, Art.288 of the RF CPC).

Besides, it should be noted that decisions and awards made by the RF SCC as the court of first instance which have come into force, in particular when the court considers claims challenging normative legal acts referred to the generic jurisdiction of the RF SCC, may not be challenged in cassation proceedings. Such a procedure corresponds to the position of the RF SCC in the system of commercial courts and to the significance of cases under its jurisdiction. The enforcement of the provisions of Article 46 of the RF Constitution is guaranteed by the possibility of supervisory review of the mentioned judicial acts by the Presidium of the RF SCC if the court ascertains that the judicial error has led to serious violations of rights and legitimate interests and that they can be restored only by abolishing or changing the erroneous judicial act.\(^79\)

The right to appeal for judicial acts review by any of the mentioned methods is guaranteed to any person, a party to court proceedings (engaged in the proceedings or involved in the proceedings in the court of first instance or the court of appeal if the court of appeal considers the case by the rules of the court of first instance), irrespective of their procedural status.

Besides, the RF CPC stipulates that persons who are not involved in the proceedings but whose rights and obligations are affected by the judicial act of the commercial court (Art.42) have the right to appeal against this judicial act, to challenge it by way of supervisory proceedings, and file a complaint to review the case due to new or newly discovered circumstances, according to the rules established by the Code. Such persons enjoy rights and bear obligations similar to those of parties to the case. It should be said that if an inspecting court concludes that the decision really affected the rights and obligations of the person who is not a party to the dispute, then the inspecting court should reverse the judicial act.

Taking into account the powers of each inspecting court, the case in the appellate commercial court is subject to consideration in accordance with the rules of the court of first instance; courts of cassational and supervisory instances refer the case for re-consideration to the commercial court of first instance. If after accepting the appellate complaint the court finds out that the claimant has no right to challenge the judicial act, then the review proceedings are to be terminated.

The *domestic legislation regulates the procedure of filing* a complaint in the commercial court and requirements to its form and content in details. Appellate complaints and cassational complaints are filed through the commercial court of first instance which has passed the disputed judicial act because the case materials are kept in that court. The court of first instance only deals with referring the complaint and the case materials to the appellate commercial court or to the cassational commercial court, depending on the type of complaint, and does not take any other procedural actions.

The judge of an inspecting commercial court makes an independent decision about whether the appellate complaint or the cassational complaint conforms to the requirements to its form and content and passes the corresponding judicial act to dismiss the complaint or return it to the claimant.

As to supervisory proceedings, there is a different procedure of filing a complaint. The complaint is submitted straight to the RF Supreme Commercial Court since the question whether there are grounds or not to refer the case to the Presidium of this court is to be considered by three judges of this court primarily on the basis of the materials of the supervisory complaint; they can request the case from the court of first instance only if it is necessary.

An *important guarantee of the right to judicial protection* is the opportunity established by the RF CPC to challenge the decision to return the appellate or cassational complaint, and a claim to reconsider the case due to newly discovered circumstances. Decisions to return the complaint or review judicial acts by way of supervision, made by the RF SCC judges independently, or decisions to refuse to refer the case to the Presidium of the RF SCC are not to be challenged due to the legal character of this method of judicial acts review.

An appellate, cassational, or supervisory complaint should contain sufficient arguments to challenge the disputed judicial acts; they are to be presented to other parties to the dispute by the claimant before presenting them to court. Despite the fact that the domestic legislation has no institution of notice of intent to appeal 80

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80 If a party challenges the awards made during the proceedings and which are not final yet, the original of the disputed judicial act and copies of documents related to the complaint and verified by the commercial court are to be presented.
against a judicial decision\textsuperscript{81}, the practice shows that parties to the dispute often file additional appeals or cassations with a wider range of arguments to challenge the disputed judicial act when appellate or cassational proceedings have already started. In this case, the inspecting court has to take measures to guarantee the adversarial character of the proceedings and to make sure that all the procedural rights of all parties to the dispute concerning their objections to the new arguments are not violated.

As a major guarantee of the right to challenge judicial acts, a new procedure of filing a complaint against a judicial act was introduced in 2010. Since then, for instance, it has been possible to file a complaint by filling in an application form on the official website of a commercial court in the Internet, i.e., in the electronic form.

The commercial procedural legislation of Russia, as well as any foreign legislation, specifies certain time limits within which, depending upon the type of proceedings, an interested person can exercise the right to challenge the judicial act.

The general rule is that the time limit to file a complaint against a judicial act passed by the court of first instance by way of appeal is one month. The specified period starts with the date of completing the judicial act by the court of first instance. Some categories of cases have special time limits to file an appellate complaint. Thus, for example, an appellate complaint against the decision of the commercial court of first instance in the case of challenging the decision of an administrative body to impose an administrative penalty may be filed within ten days, virtually in all cases of insolvency (bankruptcy); there is also a ten-day time limit for filing an appellate complaint against the judicial acts that have been passed.

Generally, the cassational complaint against a decision of the court of first instance and against the decision of the appellate commercial court may be filed within the time limit not exceeding two months since the day the disputed judicial acts entered into force unless the RF CPC states otherwise for some categories of cases.

If a party missed the time limit specified for filing an appellate or cassational complaint against the judicial act due to the reasons outside its control, this time limit can be extended by the corresponding commercial court, provided that the motion is filed within six months after the beginning of the specified time limits.

\textsuperscript{81} The legislation of some foreign countries provides for a possibility of filing a notice (a declaration) of intention, and there are special time limits to file a legally well-grounded complaint. See, for example, the procedural legislation of Germany, France (E.A. Borisova. Proverka sudebnykh postanovlenii v grazhdanskom protsessе stran ES i SNG [Checking Judicial Decisions in the Civil Process of the EU and CIS Countries]. Moscow, 2007, pp. 146, 333).
for appellate and cassational complaints. The time limit cannot be extended after the expiration of six months if the party which files a motion has been duly notified about the proceedings in the court of first instance. If the motion is filed either by a person who is not a party to the dispute or by a person who did not take part in the proceedings because he/she had not been duly notified about the time and the place of the proceedings, the six-month time limit to file a corresponding motion starts with the day when the person learnt or should have learnt about the violation of his/her rights and legitimate interests by the disputed judicial act.\footnote{See: Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii No. 11-П [the Ruling of the Constitutional Court of the Russian Federation No.11-П], dated November 17, 2005; p.13 of the said Postanovlenie Plenuma Vysshego Arbitrazhnogo Suda RF No. 36 [Ruling of the Plenum of the RF SCC No.36], dated May 28, 2009.}

It should be mentioned that taking into account the introduction of a compulsory procedure of placing all judicial acts on the RF SCC official website in the Records of Arbitral Awards, access to information concerning the results of judicial acts review has increased.

There are also special time limits to appeal to a court of supervisory instance. Pursuant to Part 3 Art.292 of the RF CPC, a complaint or submission for a judicial act review by way of supervision may be filed to the RF SCC within three months since the last disputed judicial act enters into legal force if all other means to check the legality of the mentioned act have been exhausted. The time limit which was missed by the party may be extended by a judge of the Supreme Commercial Court of the Russian Federation. If this time limit was missed due to the reasons beyond the control of the party that filed such a complaint or submission, including the situation when the party had no information about the disputed judicial act, a RF SCC judge may extend the time limit if the motion is filed within six months since the last disputed judicial act came into force or if the motion is filed by a person who is not a party of the proceedings or since the day when the person learnt or should have learnt about the violation of his/her rights and legitimate interests by the disputed judicial act.

Thus, the specified time limit of six months for filing a motion and the rules of its calculation in the domestic legislation are aimed to meet international standards to ensure legal certainty, on the one hand, and to guarantee the right to judicial protection on the other hand.

Traditionally, the distinctive features of ways of judicial acts review are the subject matter of a dispute, the limits of jurisdiction of inspecting courts, the powers of appellate, cassational, and supervisory courts, depending on their tasks and objectives.

Judicial acts review proceedings in the appellate commercial court are the proceedings of second instance.
Twenty appellate commercial courts were established in Russia in 2005\textsuperscript{83}. The system of commercial courts of the RF constituent entities was reorganized, and since 1995 there has been an appellate instance in this system. The jurisdiction of these courts includes several constituent entities of the Russian Federation to ensure the opportunity to exercise the right to judicial protection to the fullest degree.

The appellate proceedings in commercial courts are the only method to review judicial acts which have not entered into legal force. The appeal concerns decisions of commercial courts of first instance which have not entered into legal force yet as well as judgments passed by the court of first instance if the commercial procedural legislation provides for an opportunity to file an appeal against them independently from appeals against judicial acts that are passed after considering the case on its merits and if these decisions hamper the progress of the case.

Appellate commercial courts check the legality and reasonableness of judicial acts. Proceedings in the appellate commercial court are essentially a reconsideration of the case with the detailed study of all the evidence brought before the court. The main task of the appellate instance is to eliminate a judicial error both in the points of law and in the matters of ascertaining circumstances of the case in order to ensure that rights and legitimate interests of the parties are guaranteed.

Appellate complaints against one and the same judicial act may be filed by a few participants in the case either jointly or separately within an entire time limit specified for filing such a complaint\textsuperscript{84}. But all the appellate complaints filed against judicial acts with regard to one case\textsuperscript{85} are to be considered jointly. If appellate complaints are filed after the consideration of the case by an appellate instance asking to extend the missed time limit, such appellate complaints are to be returned to the claimant. The only exception is a complaint of a person who was not involved in the proceedings, but whose rights and obligations have been affected by the disputed judicial act (Art.42 of the RF CPC). In this case, such a complaint


\textsuperscript{84} The Russian legislation does not use the term “counter appellate complaint”. Besides, the national legislation has no such institutions as “permission to file a complaint” (that is provided for by the legislation of England), “the admissibility of the appellate complaint” (that is provided for by the legislation of Germany). The right to file and consider a complaint by the appellate instance is not restricted by the discretion of a commercial court in Russia.

\textsuperscript{85} An appellate complaint can be filed against one or several judicial acts in one case, while each of them can be challenged separately. One complaint may contain claims to challenge the decision or award to return the counter claim or rulings to leave the counter claim without consideration, or to terminate the proceedings concerning the counter claim.
is considered by the court of appellate instance by the rules of considering the complaint to review a judicial act due to newly discovered circumstances\textsuperscript{86}.

Analyzing provisions of the current legislation and the powers of the court of appellate instance, Art.269 of the RF CPC in particular, one can come to the conclusion that appellate proceedings in commercial courts in Russia are more likely to be complete appellate proceedings\textsuperscript{87}.

The court of appellate instance checks the legality and reasonableness of judicial acts only in the disputed part, taking into account the will of the participants and on the basis of evidence presented to the court of first instance. Given that for appellate proceedings the inspecting character of its activity is of primary importance, when the claimant files a complaint concerning a part of a judicial act, the court of appellate instance finds out whether all people present at the hearing have any objections concerning the examination of the disputed part only. The court cannot exceed the limits of an appellate complaint at its own discretion. If the explanation to the appellate complaint or objections to the arguments contain reasons for challenging the judicial act in the part different from the part mentioned in the appellate complaint, then the court of appellate instance checks the judicial act within the limits defined by the appellate complaint and arguments stated in the explanation and objections to the complaint. After considering the appellate complaint against some part of the decision of the court of first instance, the court of appellate instance passes a judicial act, and its concluding part states only those conclusions which concern the disputed part of the judicial act.

Irrespective of the arguments stated in the appellate complaint, the appellate commercial court checks whether the court of first instance violated the rules of procedural law, which, in accordance with Part 4 Art.270 of the RF CPC, is the ground to reverse judicial acts of the commercial court of first instance.

Judicial acts review proceedings by the appellate instance are usually conducted under the rules set forth for courts of first instance, taking into account some peculiarities (exceptions) stipulated by the law. The restrictions concern the possibility to present additional evidence to the court of appellate instance (only if the participants can prove the impossibility of presenting evidence to the court of first instance due to the reasons beyond their control, in particular when the court of first instance groundlessly denied motions of the parties to the dispute to obtain the evidence or requests for expert examination of evidence), to make claims which were not considered by the commercial court of first instance (for example,\textsuperscript{86}

\begin{footnotesize}
\textsuperscript{86} See the comments of the RF SCC p.22 of the said Postanovlenie Plenuma Vysshego Arbitrazhnogo Suda RF No. 36 [Ruling of the Plenum of the RF SCC No.36]. dated May 28, 2009.

\textsuperscript{87} The restriction of the right to present additional evidence to the appellate court which exists in the commercial procedural legislation of Russia is not typical of complete appeal.
\end{footnotesize}
claims to reduce penalties, penal damages and fines cannot be accepted and considered if such claims were not made in the court of first instance). The appellate procedure also does not apply the rules which permit to combine or separate several claims, to change the subject matter of the dispute or the cause of action and the extent of the claim, to make a counter claim, to replace an undue defendant or engage third parties in the proceedings. Commercial court assessors are not involved in the appellate proceedings.

In exceptional cases, if a court of first instance violates the rules of procedural law, and the appellate court in appellate proceedings establishes violations which in any case lead to the reversal of the judicial act (unconditional grounds for the reversal of judicial acts, Part 4 Art.270 of the RF CPC, namely, there is a judicial act concerning rights and obligations of a person who was not involved in the case), the appellate commercial court considers the case following the rules established for a commercial court of first instance, without the above mentioned restrictions concerning the application of separate institutions of the commercial procedure in the court of appellate instance. There must be a special ruling on transition to the procedure of considering the case according to the rules for a court of first instance. The reversal of the decision of a commercial court of first instance is specified in the ruling of the appellate commercial court, based on the results of appellate proceedings. A similar procedure in the court of appellate instance is applied when the court of appellate instance finds out that in the court of first instance the person moved to change the subject matter or the cause of action, to reduce or increase the extent of the claim, but the court wrongfully denied the motion or considered the claim ignoring the motion for changes, or did not take any decision on a request of another person involved in the proceedings, and thus the possibility to pass an additional decision was lost.

While checking the legality and reasonableness of the final judicial act in a case, the court of appellate instance in commercial proceedings is not authorized to refer the case for re-consideration. If there are grounds to reverse the judicial act, the court of appellate instance can reverse or change the decision of the court of first instance in full or just in part and to pass a new judicial act, or to reverse the decision in full or in part and to terminate the proceedings on the case or to leave the claim without consideration in full or in part.

Alongside with the above mentioned functions, the court of appellate instance has the right to refer a particular question for re-consideration to the court of first instance (para. 2 Part 4 Art.272 of the RF CPC). This concerns only issues within the jurisdiction of the court of first instance which the court has not considered on their merits because the claim has been returned for no reason, left without consideration, the proceedings have been terminated or the judicial act review due
to newly discovered circumstances has been denied, while a court of appellate instance is competent to re-hear the case. In these cases, since the court of first instance has not considered the case on its merits and has not determined the circumstances important for the case to be resolved properly, the court of appellate instance has no possibility to re-consider the case.

Judicial acts review proceedings in the cassational commercial court are proceedings in the third instance.

Russia has 10 federal commercial courts of federal districts established in 1995\(^88\). Each district has two appellate commercial courts.

Cassational commercial courts check the legality of decisions (awards) made by commercial courts of first and appellate instances. They check whether the rules of substantive law and the rules of procedural law were correctly applied in court proceedings and in the passing of the disputed judicial act. The court of cassation also checks whether the conclusions of commercial courts of first and appellate instances concerning the application of rules of law are consistent with the circumstances established and the evidence presented in the proceedings\(^89\).

Besides, courts of cassational instance consider cassational complaints against decisions of the same commercial court to award compensation for the violation of the right to court hearings within a reasonable time limit or the right to execution of the judicial act within a reasonable time limit (Part 4 Art.222.9 of the RF CPC) as well as against the rulings of the cassational instance.

Thus, the competence of the cassational instance in the system of judicial act review is limited by the power to check whether the courts apply the rules of law correctly, which determines the procedure for considering cassation complaints.

Cassational commercial courts consider cases by a panel of judges. The rules established by the RF CPC solely for judicial proceedings in a commercial court of first instance are not applied in judicial proceedings in the commercial court of cassational instance.

Unlike the appellate instance, the cassational instance has narrower limits in judicial proceedings. The court of cassational instance reviews judicial acts strictly based on arguments stated in the cassational complaint and objections to the complaint\(^90\). Submitting additional evidence to the court of cassational instance is


\(^{89}\) The instruction of the RF SCC to cassational instances to check the conclusions of the court concerning the established circumstances is a part of the reasonableness of the judicial act. It predetermines the powers of the cassational instance and causes debates over the limits of judicial act review in the court of appellate and cassational instances.

\(^{90}\) The analysis of the legal literature (for example, A.M. Gubin. Kassatsiya v sudebno-arbitrazhnom protsesse [Cassation in the Commercial Court Procedure]. Moscow, 2005) as well as the practice of commercial courts of federal districts demonstrate the priority of strict limits of
prohibited. The commercial court which considers a case as the cassational instance has no right to establish circumstances or to find them proven if these circumstances were not ascertained in the court decision or its ruling or rejected by the court of first instance or appellate instance.

Irrespective of arguments in a cassational complaint, the commercial court of cassational instance, like the court of appellate instance, checks whether commercial courts of first and appellate instances violated rules of procedural law, which under Part 4 Art.288 of the RF CPC i considered to be the grounds for reversing the decision of the court of first instance or the ruling of the commercial court of appellate instance.

The procedure of checking one and the same judicial act in the court of cassational instance may be conducted only once. Consequently, if complaints to extend the missed time limit for a cassational complaint are submitted after the case was heard in the court of cassational instance, they are returned to the claimant.

The court of cassational instance has wider powers than the court of appellate instance. The list of powers is given in Art.287 of the RF CPC. Since the court of cassational instance does not consider the case on its merits, the case is to be referred for re-consideration to the appropriate court of first or appellate instance the decision (the award) of which has been either reversed or changed provided there are sufficient grounds (violations of rules of procedural law which result in unconditional reversal of judicial acts, the necessity for courts to establish circumstances that have to be proved). At the same time, the court of cassational instance has no right to predetermine questions of reliability or unreliability of a particular piece of evidence, of priority of one piece of evidence over another, of rules of substantive law to be applied, and of decisions or rulings to be passed while re-considering the case.

Of great importance for the timely protection of rights and legitimate interests of parties to a dispute is the fact that the commercial court of cassational instance has the power to pass a new judicial act without referring the case for re-consideration provided that the factual circumstances vital for the case were established by courts cassational control by arguments of the appellate complaint (irrespective of the error with the exception of unconditional grounds for reversal) which in our view may be viewed as the right interpretation of the current legislation. At the same time there are other approaches that the court of cassational instance cannot ignore the violations of law by lower courts even if the appellate complaint has no relevant arguments (See, for example, L.A. Terekhova. Sistema peresmotra sudebnikh aktov v mekhanizme sudebnoy zashchity [Judicial Acts Review in the Mechanism of Judicial Protection]. Moscow, 2010, p. 215).

91 It should be said that Part 1 Art.279 of the RF CPC stipulates that the recalling of the cassational complaint may be accompanied by documents which confirm the objections to the complaint.
of first and appellate instances on the basis of complete and comprehensive examination of evidence in the case, but these courts (or one of them) wrongfully applied a rule of law.

One of the most important tasks before the court of cassational instance is to exercise its powers rightly in order to ensure the balance of interests between parties to a dispute, to guarantee the proper judicial protection, and to perform typical functions of the cassational method of judicial acts review.

It should be noted that commercial courts of federal districts also exercise the function of guaranteeing the uniformity of judicial practice in their districts.

First and foremost, the judicial practice as to application of the current legislation is formed by the process of considering cassational complaints and passing relevant rulings. Thus, according to Part 2 Art.288 of the RF CPC, instructions of the commercial court of cassational instance, including those on interpretation of laws stated in its ruling to reverse the decision or the ruling of the court of first and appellate instances, are binding upon the commercial court reconsidering the case.

Besides, the federal district commercial courts have various non-procedural types of work to ensure the uniform interpretation of rules of law. In particular, this work includes scientific and advisory councils of commercial courts of corresponding districts engaging scientists and experts in their work, the creation and operation of working groups in various branches of law discussing difficult questions of law application, and the work of presidiums of the federal district commercial courts. The legal regulation of this work is of major significance for the courts of cassational instance.

Judicial acts review proceedings by way of supervision are proceedings in the fourth instance.

Supervisory proceedings are the final proceedings on judicial acts review in the system of review of judicial acts which are functioning in the commercial procedure in Russia nowadays and which are aimed at eliminating a judicial error.

As it has repeatedly been said in legal literature, supervisory proceedings, including the term itself and its initial meaning, are a unique form of review which has no equivalents in foreign legislation\(^9\). The review by way of supervision is conducted only by the Presidium of the Supreme Commercial Court of the Russian Federation, which is also determined by the tasks of the supreme judicial body in the system of commercial courts.

Meanwhile, the analysis of contemporary procedural rules governing the review by way of supervision, and the right of parties to the disputes to independently

apply to the Supreme Commercial Court of the Russian Federation, i.e., to initiate
the review procedure personally, bring us to the conclusion about the new content
of this method of review that reflects the impossibility of endless review of judicial
acts, as well as international standards of ensuring legal certainty. At the same
time, many scholars speak about the evolution of the institution of judicial
supervision and its gradual transformation into a type of cassation -
“extracassation”\(^93\).

There are three grounds for review of a case by way of supervision, so we can
speak about a unique method of eliminating essential errors\(^94\) connected, for
example, with the violation of the principle of uniformity of judicial practice and
the necessity to form legal views of the supreme judicial instance for commercial
courts.

Unlike mandatory proceedings in the appellate and cassational instances, which
must review cases upon the claim of a party to the dispute on a mandatory basis
(which serves as some sort of procedural guarantee of passing a legal and well-
grounded judicial act), the review of the case by way of supervision is not
connected with the subjective right to review the case by way of supervision.

Proceedings in the court of supervisory instance are divided into stages.

Persons involved in the proceedings and any above mentioned interested persons
have the right to challenge a judicial act by way of supervision if they believe that
the act in question has essentially violated their rights and legitimate interests in
the sphere of entrepreneurial activity or any other type of economic activity as a
result of violation or wrong application of substantive or procedural rules by the
commercial court that passed the disputed judicial act (Part 2 Art.292 of the RF
CPC). In the commercial procedure of Russia, unlike in the civil process in courts
of general jurisdiction, officials of the RF SCC have no right to initiate supervisory
proceedings.

As it has been noted before, a complaint to review judicial acts by way of
supervision must be sent directly to the RF SCC. The judge of this court personally
checks whether the complaint conforms to the form and content requirements and
whether the procedural time limits for filing such a complaint have been observed,
and then makes a decision either to accept the complaint and start supervisory
proceedings or to return the claim to the claimant.

At the first (preliminary) stage, when a complaint has been accepted, it is
considered by a panel of judges of the RF SCC without notifying persons involved

\(^93\) V.V. Yarkov. Razvitie tsvivilisticheskogo protsessa v Rossii: otdel’nye voprosy [The
Development of the Civil Process in Russia: Several Aspects]// Bulletin of the civil process

\(^94\) G.A. Zhilin. Pravosudie po grazhdanskim delam: aktualnye voprosy: [Justice in Civil
in the proceedings. To decide whether there are grounds for the judicial act review by way of supervision, the court may request the case materials from the commercial court and then passes a corresponding ruling. Based on the results of the proceedings, within one-month time limit from the day of receiving this claim or the case materials if they have been requested by the RF SCC, the panel of judges makes the decision either to refer the case for the review of the disputed judicial act by way of supervision, or to refuse the review, or send the case to the court of cassational instance when there are necessary grounds unless the judicial act has been reviewed by way of cassation. Resubmission by one and the same person of an application or claim to review a judicial act by way of supervision is not allowed.

The second stage is the review of the judicial act by way of supervision in itself. This stage starts when a court makes the decision to review the disputed judicial act by way of supervision if there are grounds stated in Art.304 of the RF CPC.

It should be said that the grounds mentioned in the Article also determine the necessity to review a case by way of supervision and serve as the basis for changing or reversing the judicial act. Thus, judicial acts of commercial courts that have come into force are subject to change or reversal if during the supervisory judicial proceedings the court establishes that the disputed judicial act violates the uniformity in the interpretation and application of rules of law by commercial courts; violates rights and freedoms of man and citizen according to the generally recognized principles and rules of international law, international treaties of the Russian Federation; violates rights and legitimate interests of an indefinite group of people or other public interests.

The persons involved in the proceedings are notified as to the time and the place of supervisory proceedings of the judicial act review by the Presidium of the RF SCC. The case is subject to consideration by the Presidium of the RF SCC within the three-month time limit from the date of the decision to refer the case to the Presidium. The RF Presidium is empowered to consider the case by way of supervision if the majority of the Presidium is present.

The RF CPC does not directly regulate the issue of the limits for court proceedings by way of supervision, unlike appellate and cassational instances. The court of supervisory instance is not empowered to examine additional evidence, to establish additional circumstances that were not established or proved in the lower court decision or ruling, considering all the materials of the case. If the case is referred to the Presidium of the RF SCC, there must be comprehensive examination of all judicial acts irrespective of the arguments of the claimant and the content of the ruling passed by three judges at the preliminary stage of supervisory proceedings.
Based on the results of the judicial act review by way of supervision, the Presidium of the Supreme Commercial Court of the Russian Federation passes a ruling. It should be said that the powers of the supervisory instance are consistent with the powers of cassational instance, for example, judicial acts may be left without any changes or may be reversed, and the case may be referred for reconsideration, or a new judicial act may be passed.

The increased role of judicial practice in the Russian legal system has required legal regulation of interpretation of rules of law contained in the rulings of the RF SCC passed on the basis of the results of supervisory complaint proceedings in similar cases. In connection with this challenge, in 2010 the RF CPC was amended. In accordance with the amendments, a decision or a change in the Ruling of the RF SCC concerning the practice of application of a rule of law may be seen as a ground for reversal, change or review of judicial acts due to new circumstances on condition that the corresponding act of the RF SCC contains the possibility of judicial acts review owing to this circumstance if these acts have entered into legal force. It is the instruction of the court of supervisory instance concerning the significance of their interpretation of rules of law that is of primary importance. Thus, to give a retroactive effect to the legal view stated in the Ruling of the Presidium of the RF SCC, this Ruling should contain the following:

“Judicial acts of commercial courts (which have entered into force) with similar factual circumstances passed on the basis of legal rules in the interpretation different from the interpretation contained in the current Ruling may be reviewed pursuant to para. 5 Part 3 Art.311 of the RF CPC if there are no other obstacles”\(^95\).

Legal views of the RF SCC stated in a Ruling not containing such an instruction may not serve as the basis for judicial acts review due to new circumstances: however, pursuant to Part 4 Art.170 of the RF CPC, courts should take into account the legal views of the RF SCC from the date of publishing this Ruling when considering similar cases, including judicial acts review in courts of appellate and cassational instances.

Given that, we may conclude that the current procedure of judicial acts review in Russia in the system of commercial courts ensures the implementation of purposes and objectives put before courts of inspecting instances, and generally this procedure conforms to international standards in the sphere of procedural law. The increased number of cases in courts of supervisory instance and the increased role of cassational courts in ensuring the uniform application of rules of law and some other reasons determined by the dynamic development of procedural law confirm

\(^95\) By other obstacles we mean inexhaustible opportunities for resorting to courts of appellate or cassational instances.
the necessity to determine directions of further development of legal regulation in this sphere.

Only if courts of all instances coordinate their efforts in performing their functions in strict accordance with clearly defined powers, can we guarantee procedural rights of all parties to a dispute stipulated by the domestic legislation and a fair outcome of court proceedings.

CONCILIATION PROCEDURES
IN THE ECONOMIC JUSTICE OF RUSSIA

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The judicial form of protecting one's rights and settling disputes through the activity of state commercial courts and courts of general jurisdiction is the most traditional for the legal system of Russia.

However, judicial protection is not the only way of protecting and restoring violated rights. In Russia, like in most countries, there is an opportunity for entities carrying out entrepreneurial activities to resort to conciliation procedures to settle disputes. In recent years, attention to conciliation procedures has been growing.

Classification of conciliation procedures

The Russian Federation legislation makes it possible for parties to a dispute to settle their differences amicably at any stage of conflict development: before going to court, during the court proceedings or after the case is decided.

According to the stage of conflict resolution at which parties turn to a particular dispute resolution procedure, all conciliation procedures can be classified into 5 groups.

1. Pre-trial conciliation procedures can be used by the parties only before applying to the state court for protection of one's interests and violated rights. These ways of resolving conflicts do not depend on the state judicial system and are not subject to judicial control. Conciliation procedures within the given category are very flexible. They can result in entering into an agreement - a novation in the legal relationship.

2. Out-of-court conciliation procedures are the procedures used after applying to the court in order to resolve the dispute amicably without the court's decision. The procedures of the said group do not differ from the pre-trial procedures in the essence, ways and means, yet they still require certain procedural steps made by the court (recess, adjournment or suspension of legal proceedings). This is why these procedures are less flexible compared to pre-trial procedures. The possibility of resorting to these procedures is envisaged by the provisions of the Commercial Procedure Code of the Russian Federation (hereinafter referred to as the RF CPC) (Art. 15). Subsequent to the results of such procedures, the parties can sign an out-of-court settlement agreement which is validated by the court. The said agreement is enforceable.

3. Judicial conciliation procedures are the procedures of resolving a dispute that are used, just like out-of-court procedures, after applying to the court and before the judicial decision is rendered. Their peculiarity lies in the status of the third party facilitating amicable conciliation of the parties to the dispute. The court assists the parties in resolution of their dispute. Being strictly formal, in this case the activities of the court and the parties are regulated by the procedural legislation.

4. Postjudicial conciliation procedures are the procedures resorted to after the dispute has been resolved, judicial procedures are over, a writ of execution has been issued, but enforcement proceedings have not been initiated. At this stage, the parties can also settle differences arising between them amicably. These proce-

\[\text{pravovykh konfliktov}//\text{Dissertatsiya na soiskanie uchenoi stepeni doktora yuridicheskikh nauk}\]
[Conciliation procedures for private-law conflicts// Thesis for the degree of Doctor of Laws].

\[\text{Y.S. Kolyasnikova. Primiritel'nye protsedury v kommercheskom sudoproizvodstve}//\text{Dissertatsiya na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk}\]
[Conciliation procedures in the commercial court procedure//Thesis for the degree of Candidate of Laws].
dures are viewed as a separate group because the parties can come to an agreement about the procedure of executing the court decision before the court bailiff initiates enforcements proceedings. As a general rule, a writ of execution can be submitted for execution within 3 years after the decision entered into legal force (Art. 321 of the RF CPC), so the parties can voluntarily execute the court decision without initiating enforcement proceedings, and, consequently, with no additional expenses on executing the judicial act.

5. **Conciliation procedures during enforcement proceedings.** Under Art. 139 of the CPC of the RF, an amicable settlement agreement can be made between parties during the execution of a judicial act. With the help of conciliation procedures in enforcement proceedings, the parties can agree upon the procedure and time limits for the execution of the judicial act, which is to the advantage of the party that has lost the case.

It should be noted that conciliation procedures (except for compliance with the complaint procedure) are universal, which makes them applicable at any time. In addition, pretrial conciliation procedures are more flexible, compared to other procedures, in dispute settlement. By resorting to them, the parties can settle their dispute not being bound by strictly established time limits or procedures. When opting for an amicable settlement after the proceedings have been commenced, the parties cannot enjoy that much freedom. Judicial proceedings have a strictly defined procedural form, and the parties must comply with the established restrictions. Thus, resorting to out-of-court conciliation procedures, the parties will be faced with time limits stipulated in the CPC of the RF, because for the parties to use them the court will have to either recess or adjourn the proceedings. And under the existing CPC of the RF, there are no other opportunities to do it. Moreover, even if the parties have reached an agreement, they must return to the court either to have their settlement agreement validated or to withdraw the claim, and so forth. Otherwise, the court has nothing to do but pass a judgment, there being no ground to terminate the proceedings.

### Separate Types Of Conciliation Procedures

#### Pre-trial complaint procedure

A traditional Russian conciliation procedure specified in different periods by rules of substantive law and permanently related to judicial proceedings is settling disputes through the pre-trial complaint procedure.

In law books, the said procedure is compared to the procedure of disclosing case materials known in Great Britain, Ireland, Japan, and the USA as discovery.\(^3\)

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party not only demands proper timely performance of contract obligations, but also substantiates the facts on which they are based by appropriate evidence. The opposite party thus becomes aware of the subject-matter of the dispute and evidence that will be presented as the cause of action for a further potential claim.

The procedure of settling disputes through the pre-trial complaint procedure has a number of distinctive features, making it possible to sever it from other alternative dispute resolution procedures. First, it is submitted in an obligatory written (documentary) form. Conciliation is exercised through delivering a complaint to the respondent who writes an answer to it, i.e., the parties communicate to settle differences not in the oral form typical of conciliation procedures. Second, the said procedure can be voluntary or mandatory (if stipulated by federal laws and an agreement). Third, the given dispute resolution procedure pertains to prejudicial dispute resolution procedures because the parties can use it only before applying to the court. Fourth, when disputes are resolved through the pre-trial complaint procedure, the principle of confidentiality does not apply. Compliance with statutory or contractual requirements to the said dispute resolution procedure is one of the prerequisites for initiating a legal action. Consequently, the pre-trial complaint and the answer stating the parties' positions serve as evidence in court. Fifth, under the CPC of the RF, failure to comply with the statutory or contractual requirements to the given dispute resolution procedure entails certain procedural consequences for the parties: provisional deferment of acceptance of a claim (Art. 128 of the RF CPC), leaving of a claim without consideration (Art. 148 of the RF CPC), the court’s obligation to hold the party that has failed to comply with the said dispute resolution procedures (including the requirements to answer a pre-trial complaint within the statutory time period and not to leave the complaint unanswered) responsible for paying legal costs (Part. 1 Art. 111 of the RF CPC).

**Negotiation**

Negotiation is the most common way of resolving disputes in the economic sphere, as this type of conciliation procedures is the most universal. The parties can resort to it at any stage of conflict development due to the key features of negotiation procedure. The parties themselves or via their representatives turn to...
this procedure voluntarily, that is, they realize the necessity of this way of conflict resolution.

In the course of the procedure, the parties exchange the conflict-related information. The parties give their arguments, exchange opinions, provide evidence to support their arguments, receive the opportunity to get acquainted with each other's arguments, which is of utmost importance in developing a further strategy of conflict resolution. Besides, when negotiations result in no agreement, the parties, possessing the information at the contractor's disposal, knowing each other's strengths and weaknesses, can choose not to apply to the court of law and try to settle the dispute by using other out-of-court procedures. Should the parties apply to the court, this will help reduce the time period for considering their case.

In law books, one can come across the opinion that a court hearing is a form of negotiations.6

"When the judge is discussing the possibility for the parties to come to an amicable settlement agreement, he/she inevitably points to the weaknesses of the parties' arguments in cases, thus evaluating some particular circumstances of the case. Provided the negotiation fails to result in settlement of the dispute between the parties, the same judge must adjudicate the case."7

In international practice, there are different approaches to judges' participation in negotiations between parties. In the USA, a similar procedure is known as pretrial settlement conference. Parties can turn to a judge or a neutral person. Parties come to a settlement agreement, the court validates it. If the parties have refused to settle the case amicably, the case will be adjudicated.8 The situation is different in Holland. The judge who conducted negotiations is not allowed to consider the case on its merits if the parties failed to settle the case amicably.9

Mediation (agency)

In modern Russia, the opportunity to turn to such a conciliation procedure as mediation is relatively new. It should be noted that the right of the parties to a

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dispute to use conciliation procedures, mediation in particular, is established in the rules of procedural law (Para. 2 Part. 1 Art 135, Art. 138, Part. 2 Art. 158 of the RF CPC).

At present in Russia, the use of mediation is voluntary. In international practice (for instance, in Argentina), mandatory participation of the parties to a dispute in mediation is established by law.\(^\text{10}\)

Since 2011, the procedure of resolving conflicts with the help of a mediator is regulated by the Federal law "On the alternative procedure of dispute resolution with the involvement of a mediator (mediation procedure)" (hereinafter - the Law).\(^\text{11}\) The provisions of the mentioned law establish general principles relevant for the mediation procedure, major conditions for its application, the order and time limits for conducting the procedure, the procedure of selecting and appointing a mediator, requirements to mediators and self-regulating organizations of mediators, and so forth.

The Law contains provisions with more detailed rules for mediation procedure. Article 2 of the Law defines mediation as the way of resolving a dispute with the assistance of a mediator on the basis of the voluntary consent of the parties in order to reach a mutually acceptable decision.

The Law regulates relationships connected with applying the mediation procedure to disputes arising from civil, labor, and family legal relationships. Meanwhile, the Law specifies that the mediation procedure is not applicable to collective labor disputes as well as to disputes that affect or may affect rights and legal interests of the third parties not participating in the mediation process, or public interests. In addition, the Law is not applicable to relationships connected with the judge's or arbitrator's facilitating the parties’ conciliation in the course of judicial or arbitration procedure.

It should be noted that Article 4 of the said Law governs the mediation procedure for disputes considered in court or in arbitration procedure. Under this article, if the parties have agreed to use mediation without applying to the court of


law or arbitration for resolution of the case that has arisen or may arise between the parties within the agreed time limits, the court or arbitration recognizes this obligation valid until all the conditions of the obligation are fulfilled, except when a party needs, in its opinion, to protect its rights. If the dispute is referred to the court of law or arbitration, the parties can use mediation at any moment before the respective court or tribunal passes a judgment. Adjournment of consideration of a dispute-based case by the court or arbitration instance, as well as performance of other procedural actions, is governed by procedural rules.

The Law envisages the possibility for the parties to apply to both professional and non-professional mediators, and requirements to persons acting as mediators are established by the law\textsuperscript{12}. A person can act as a non-professional mediator if he/she is over eighteen years of age, with full legal capacity, and has no criminal record (Art. 15 of the Law). A professional mediator can act as such provided he/she is over twenty-five years of age, has higher professional education and has completed the mediator skills training program approved in the procedure established by the Government of the Russian Federation (Art. 16 of the Law).

The mediator skills training program providing the framework for the development and approval of specialized syllabi for institutions training mediators was approved by the decree of the Ministry of Education and Science of the Russian Federation in February 2010.

It should be noted that due to judges’ large workload, the development of conciliation procedures, mediation in particular, is of great interest to state judicial bodies.

\textbf{Thus}, for instance, in 2012, in order to acquaint the parties with mediation procedure and the possibilities to settle a part of disputes, referred to the court, amicably in the Commercial Court of the Sverdlovsk Region, as an experiment, "reconciliation rooms” were established \textsuperscript{13}. In these rooms, the parties can meet with mediators who explain the essence of the procedure, its pros and cons. The parties can try, if they prefer, to settle their dispute. It should be noted that, within the framework of the experiment, mediation in the "reconciliation rooms" is conducted on a free-of-charge basis.


\textsuperscript{13} URL: www.ekaterinburg.arbitr.ru
Furthermore, the parties unwilling to mediate their conflict can hold negotiations in the "reconciliation rooms".

**Amicable Settlement Agreement**

Amicable settlement agreement belongs to the group of conciliation procedures governed by the provisions of the CPC of the RF and court proceedings.

Thus, the sequence of actions to be performed by the subjects of an amicable settlement agreement is governed by the provisions of Chapter 15 and other articles of the CPC of the RF, which makes it possible to divide the procedure into the following stages:

1) the court explains the right to make an amicable settlement agreement to the parties;
2) the parties resort to the procedure of an amicable settlement agreement (the court recesses or adjourns a hearing; the parties agree upon the text of their agreement - this can be done with the help of the mediator);
3) amicable settlement agreement is affirmed and validated by the court;
4) the amicable settlement agreement is executed.

The main subjects capable of entering into an amicable settlement agreement are the parties: the claimant and the respondent. The CPC of the RF also envisages third persons as parties to the process. Under Article 50 of the CPC of the RF, third persons submitting independent claims in respect to the subject-matter of the case enjoy the rights and incur the obligations of a respondent, except for the obligation to comply with the pre-trial procedure of submitting a complaint to the respondent or any other pre-trial dispute resolution procedure envisaged for this category of disputes or agreements by the federal law.

In addition, Article 51 of the CPC of the RF stipulates that a third party submitting no claims in respect to the subject-matter of a case can participate in the case if the judicial act to be passed may affect the third party's rights or obligations in relation to one of the parties to the dispute. However, third parties asserting no independent claims in respect to the subject-matter of the case are not entitled to enter into an amicable settlement agreement (Part. 2 Art. 51 of the RF CPC).

Under Article 59 of the CPC of the RF, the parties have the right to participate in commercial court proceedings by themselves or through their representatives. The right to make an amicable settlement agreement is a special right of the parties, hence, this right must be spelled out in the power of attorney given to a party’s representative (Part. 2 Art. 62 of the RF CPC). Failure to include this clause in the power of attorney entails the court's refusal to approve the amicable settlement agreement.

Another subject of importance in making an amicable settlement agreement is a commercial court.
A court is a subject vested with powers of authority. In accordance with the provisions of the CPC of the RF, no amicable settlement agreement can be made without the court's participation, and the court is obliged to perform a control function and observe rights and legal interests of the parties and other persons. Thus, an agreement made between the parties after a claim is filed to the court is invalid until the commercial court reviews it for compliance with the law, confirms that it violates no other persons' rights, and validates it.

Parties can enter into an amicable settlement agreement at any stage of commercial litigation procedure and during execution of a judicial act (Part. 1 Art. 139 of the RF CPC).

Thus, the parties can sign an amicable settlement agreement at any stage of considering a case in the trial court as well as in an appellate, cassational, supervisory instance and at the stage of enforcement proceedings.

Any case can be settled amicably, unless otherwise is provided by the CPC of the RF and other federal laws (Part. 2 Art. 139 of the RF CPC).

Meanwhile, in practice, amicable settlement agreements are more common between parties to cases arising from civil legal relationships. Furthermore, judges point out that amicable settlement agreements are not likely to be made in disputes related to immovable property and disputes over holding a transaction invalid. An amicable settlement agreement is made in writing and signed by the parties or their representatives, provided the latter have the authority to enter into an amicable settlement agreement, which is specifically stipulated in the power of attorney or other document confirming the representative's power and authority (Part. 1 Art. 140 of the RF CPC).

An amicable settlement agreement contains the information upon which the parties agreed (Part. 2 Art 140 of the RF CPC).

Part 2 of Article 140 of the CPC of the RF contains the information to be included in an amicable settlement agreement, and this information is divided into two types: mandatory and optional.

Mandatory information includes information on terms and conditions, amount and deadlines for the fulfillment of mutual obligations or of an obligation of one party to the other. Unless this information is provided, the amicable settlement agreement must not be validated by the court.

Optional information is set out in the agreement at the parties' discretion. It includes provisions on deferred payments by the defendant or payment in installments, on assignment of rights to demand, on the whole or partial forgiveness or acknowledgement of a debt, on distribution of litigation costs and other terms and conditions not contradicting the federal law.
An amicable settlement agreement is validated by the commercial court (Part. 4 Art. 139 of the RF CPC).

When validating an amicable settlement agreement, the court exercises the controlling function and holds the amicable settlement agreement valid.

When checking the amicable settlement agreement, the court must establish whether it meets the following special statutory requirements:
1) it does not contradict the law;
2) it does not violate rights and legal interests of other persons.

When checking an amicable settlement agreement for compliance with law, the court finds out whether such an agreement violates the law. Moreover, the court checks the following:
1) whether the agreement was made between the proper parties;
2) whether the parties representatives having entered into the agreement were authorized to do it;
3) whether the agreement is made in relation to the controversy in dispute;
4) whether the form of the agreement meets statutory requirements;
5) whether the issue of distribution of litigation costs has been settled.

The court also checks whether the agreement affects rights and legal interests of other persons not involved in it.

Subsequent to the results of considering the validation of the amicable settlement agreement, the court issues a ruling (Part. 5 Art. 141 of the RF CPC). After the court issues the ruling validating the amicable settlement agreement, the case-related judicial proceedings are terminated.

Here it should be noted that an amicable settlement agreement is not a pure civil-law agreement, as its legal nature is of a mixed type. The parties having decided to make an amicable agreement refer to substantive legislation and, in fact, draw up a new agreement (agree upon new time limits or deadlines, on execution procedure, etc.) to perform the obligations that have arisen. At this stage, the agreement is substantive in nature. For example, in many foreign states, parties enter into a new civil agreement in order to discontinue the litigation. When

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turning to the court to have the amicable settlement agreement validated, the parties shift from civil relationships to procedural relationships with a new subject vested with the authority to validate such an agreement - the court. Once validated, the amicable settlement agreement can be enforced. Validation of an amicable settlement agreement by the court entails consequences of both substantive and procedural nature.

*Legal consequences of substantive nature* include resolving a disputed substantive legal relationship by transforming rights and obligations of parties to the disputed legal relationship into new rights and obligations agreed upon by the parties.

The court terminates the proceedings in the case, therefore, procedural legal relationships are also terminated. A consequence motivating the parties is envisaged in Article 333.40 of the Tax Code of the Russian Federation: if an amicable settlement agreement was signed before the commercial court passed a judgment, the claimant is entitled to get 50% of the amount of stamp duty back. Another consequence is the impossibility to file a similar claim to the commercial court (arising from the dispute between the same parties and with the same subject-matter and cause of action).

Once validated, the amicable settlement agreement is subject to voluntary execution following the procedure and observing deadlines stipulated in the agreement. If the agreement is not executed voluntarily, the commercial court, upon the recoverer's motion, issues a writ of execution for the agreement to be enforced.

In conclusion, it should be noted that the conciliation procedures in Russia are not as common as in foreign countries so far. However, there are some prerequisites for their growth. The development of economic relations and the existing practice of applying conciliation procedures possible make them more common and help work out new ways of conciliation.