

Samsonov Nikolay Vladimirovich

**The system of sources (forms) of civil procedural law of the
Russian Federation**

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Urgency of the research.

The national legal thought is moving to a qualitatively new level of development, the characteristic features of which are the refusal of the recognizance from the absolute dominance of the positivist views on the right and of the spread the integrative concepts of legal thinking, national civil procedural law and forms of its external expression are changing considerably. The thesis about the law as the only source of civil procedure law is seriously questioned, more and more scientists recognize the multiplicity of its sources (forms). As a result, there is an urgent need to rethink the system of sources (forms) of civil procedural law.

Without a correct knowledge of this system, effective administration of justice would be impossible, since a proper understanding of whether a phenomenon is a form of law or not, and identifying its place in the system of sources (forms) of civil procedural law, makes it possible to determine its level of obligation and the extent of its impact on the regulation of civil proceedings. Such understanding, in turn, will allow practitioners to correctly assess the legal situation, to seek appropriate ways and means of procedural actions, and the courts to make the right procedural decisions and ultimately to achieve the main purpose of civil proceedings - protection of violated or contested rights, freedoms and legitimate interests of persons whose dispute is to be resolved by the court, and the legislator and other law-making bodies to promptly identify and timely eliminate contradictions arising in this system.

The question of the composition and interior structure of this system, of the correlation and mutual influence the elements of affiliated with its, of their inherent functions, has not received the established solution in national civil procedural science yet, a complete idea of the system of sources (forms) of civil procedural law of the Russian Federation did not formed, which is a significant gap in the doctrine of civil procedure.

Considering the above, the aggregate of theoretical and applied issues related to the system of sources (forms) of civil procedural law of the Russian Federation can reasonably be considered as a major scientific problem which has an important signification for the civil procedural science, lawmaking activities and established practice in applying the law.

The degree of scientific development of the research

The vast majority of research on the problems of sources (forms) of civil procedural law is devoted to individual legal phenomena considered by the authors in this capacity. At the same time, the sources (forms) of civil procedural law do not exist in isolation, but interact with each other, appear not in the form of isolated elements, but in the form of an interconnected totality with the systemic properties. This circumstance does not allow to limit of the study of individual sources (forms) of civil procedural law, but forces to turn to the knowledge of their system as a whole, to explore the whole variety of its systemic signs and properties. The works focused on this approach of A.T. Bonner, J.F. Farhtdinova and O. Ch. Khuskivadze are very useful scientifically, but they were completed quite a long time ago, even during the period of the RSFSR Code of Civil Procedure. Since then, the procedural legislation, the law policy of the Russian government, and the idea of the sources (forms) of law have changed significantly. In addition, science has been faced with new issues related to the unification and differentiation of procedural law. As a result, many problems of the system of sources (forms) of civil procedural law require a new special thesis research.

The purpose of the thesis research is to create a modern theoretical concept of the structure and functioning of the system of sources (forms) of civil procedural law of the Russian Federation, including a complete, logically consummated idea of the real structure of this system, the elements of affiliated with its, as well as identifying the features of the formation and functioning of this system, as well as determining the direction of development and ways of improving this system.

To achieve this purpose, the following **tasks** were set and solved:

- due regard being had to the achievements of the general theoretical teaching on the sources and forms of law, to identify signs that make it possible to determine the range of sources (forms) of civil procedural law of the Russian Federation, to formulate a definition reflecting the most general properties, essence and content of this phenomenon and its place in the mechanism of legal regulation of civil procedural legal relations;

- to determine the elements of the system of sources (forms) of civil procedural law of the Russian Federation, their place and functions in this system;

- to investigate the place and significance of the Constitution of the Russian Federation for the system of sources (forms) of civil procedural law of the Russian Federation;

- to study the legislation of the Russian Federation about the civil proceedings as a subsystem composed of the system of sources (forms) of civil procedural law of the Russian Federation, to determine the levels, place, meaning and co-relation of its individual elements, ways and rules for resolving collisions arising in it;

- to analyze the definitions of "judicial precedent" and "judicial practice", to determine their ability to act as the sources (forms) of national civil procedural law; to reveal the legal nature of the acts of the Russian's Highest Courts and their place in the mechanism of legal regulation of civil procedural legal relations;

- to determine the co-relation the established principles and norms of international law, acts of international law and international customs with the system of sources (forms) of civil procedural law of the Russian Federation, to identify the criterias that allow to include these phenomenas in the system under study, as well as to trace their influence on the development of the national legal proceeding;

- to consider the possibility of the operation of religious norms, the legal doctrine and the legal custom as atypical (non-traditional) sources (forms) of Russian civil procedural law;

- to investigate the structural configuration of the system of sources (forms) of civil procedural law of the Russian Federation, to analyze the system-forming connections existing between its elements;

- based on the analysis of the system of sources (forms) of civil procedural law of the Russian Federation in dynamics, to establish the directions of its further development and the possibility of expansion;

- to develop theoretically good in law recommendations for improving the system of sources (forms) of civil procedural law of the Russian Federation.

The object of the research is a complex of theoretical and applied problems arising in the course of the implementation of social relations associated with the construction, functioning and development of the system of sources (forms) of civil procedural law.

The subject of the research is: the system of sources (forms) of civil procedural law of the Russian Federation, its elements, the main parameters, the structural, the development trends; the norms of Russian civil procedural law, in which the significant properties of this system are enshrined; the relevant norms of civil procedural legislation of other states and norms of international law; the doctrinal views on the system of interest and the prospects for its development; the judicial practice reflecting the manifestations of this system.

The scientific novelty of the research is as follows that it is the first for many years a multi-method research of the system of sources (forms) of civil procedural law of the Russian Federation, which goes beyond the analysis of its individual elements. As a result of the research carried out by the author, the theoretical concept of the structure and functioning of the system of sources (forms) of civil procedural law of the Russian Federation are developed, the theoretical provisions are formulated, which create the complete and complex ideas about this system, also about the essence, types and interaction of the elements that make up it. Theoretical conclusions and provisions expounded and argued in the work fill the existing tangible gap in the science of civil procedural law and have the important legal and socio-economic significance.

In particular, the author's definition of the source (form) of Russian civil procedural law is formulated in the thesis on the basis of modern achievements of the general theory of law and science of civil procedural law; the composition and structure of the system of sources (forms) of civil procedural law of the Russian Federation have been determined; investigated the legal nature of concrete sources (forms) of Russian civil procedural law, revealed their place in the system; the proposals were put forward and motivated to improve the efficiency of both the system under consideration as a whole and its individual elements; revealed the main trends in the development of the system under consideration; the scientifically grounded recommendations for its optimization have been developed, the need for its further expansion has been proved, primarily by translating the implicit status of legal phenomena, which are already actually sources (forms) of Russian civil procedural law, into an explicit one by directly fixing this status in procedural legislation.

The most significant results of the research:

1. The term "the source (form) of civil procedural law" is introduced, by which it is proposed to understand both having legal confirmation of the corresponding status, and not having it, but actually used in the appropriate capacity legal acts, after fixing in one of which the rules defining the procedure of the consideration and the resolution of civil cases by Russian courts of general jurisdiction and the implementation of certain procedural actions in the course of civil proceedings in Russian courts of general jurisdiction acquire the properties of civil procedural norms. The types and the common features of these norms are determined.

2. It is substantiated that the sources (forms) of civil procedural law, in addition to the acts of sectoral legislation traditionally considered in this capacity, should include the normative legal and other legal acts containing the civil procedural norms, or the blanket part of the civil procedural norm, regardless of their sectoral accessories.

Proceeding from the method of fixing the civil procedural norm, the author's classification of sources (forms) of civil procedural law is proposed.

3. The conclusion is formulated that the aggregate of sources (forms) of Russian civil procedural law is a system. The properties of this system and its composition are determined. The elements included in the system are subdivided into stationary and replenishment-corrective (dynamic), the place of these elements in the system is determined.

4. The legislation on civil proceedings is considered as a subsystem within the system of sources (forms) of civil procedural law of the Russian Federation. The composition of this subsystem and the relationships existing within it have been determined. The limitation of the priority of the Code of Civil Procedure of the Russian Federation over other laws is reduced containing the civil procedural norms, in which two groups are distinguished, depending on their affiliation, rules for resolving collisions arising between such laws and the Code of Civil Procedure of the Russian Federation are proposed.

5. The definition of judicial practice and judicial precedent in relation to the civil procedural law is given, their correlation and influence on the development of the civil procedural form is determined.

It is argued that the interpretation of the legal proposition, including using the analogy of law or analogy of right, can be a method of judicial lawmaking, but not a source (form) of law.

6. The form of existence of civil procedural norms created as a result of judicial lawmaking can be exclusively acts of the highest courts, which have the properties of general obligatoriness, finality and immutability, namely: The determinations of the Constitutional Court of the Russian Federation and its definitions with positive content, as well as the determinations of the Plenum of the Supreme Court of the Russian Federation (Supreme Court RF) and the determinations of the Presidium of the SC of RF issued in the order of supervision. In this case, the whole act of the highest judicial body is the source (form) of civil procedural law, including both the motivational and the resolutive parts. It is

proved that the role of these acts is replenishment-corrective in relation to other sources (forms) of civil procedural law, and their place in the system is dynamic.

7. The decisions of the Constitutional Court of the Russian Federation are de facto sources (forms) of national civil procedural law with a special status, in cases where they:

- contains the final conclusions on the recognition of the civil procedural norm as inconsistent with the Constitution of the Russian Federation;
- if the civil procedural norm is formally left unchanged, its constitutional and legal meaning is revealed, which, as a rule, especially different from the meaning given to this norm by the existing law enforcement practice, which actually creates a new general obligatoriness rule of behaviour.

8. The determinations of the Plenum of the Supreme Court of the Russian Federation and the determinations of the Presidium of the SC of the RF are distinguished, issued in the order of the supervision (which relate to supplementary and corrective sources (forms) of civil procedural law, usually secondary, but in the absence of proper legislative regulation, they can become primary), on the one hand, and the reviews of the judicial practice of the Supreme Court of the Russian Federation, approved by the Presidium of the Supreme Court of the Russian Federation, which are not a form of law, on the other hand.

It is argued that in the denoted acts of the determinations of the Presidium of the SC of the RF, issued in the order of supervision, represent a judicial precedent implicitly recognized in the RF, and the determinations of the Plenum of the Supreme Court of the Russian Federation have a special legal nature, since they are adopted outside the civil procedural form.

It is proposed to officially consolidate the status of these acts of the SC of the RF as sources (forms) of civil procedural law, which will allow to solve such problems inherent in judicial law as the determining the moments of the beginning and end of their action in time, the possibility of the retrospective application, the possibility of the overcoming their force by other bodies, the establishing control above the acts of the SC of the Russian Federation in order to limit the possible

arbitrariness on its part, as well as directly fix the supplementary and corrective nature of such acts.

9. The principles of international law and its norms, in spite of their universality, do not belong to the sources (forms) of civil procedural law. In the desired quality, one should consider not the generally recognized principles and norms of international law (content) themselves, but those external forms in which they are fixed.

The criteria are proposed under which (in their totality) the international principles and norms can be used as the regulators of civil procedural legal relations.

It is substantiated that among the forms of international law, only the international treaties can act as sources (forms) of intrastate civil procedural law, without ceasing to be a source of international law.

10. The conditions are formulated, the totality of which makes it possible to include the international treaties in the system of sources (forms) of Russian civil procedural law.

The place of international treaties of the Russian Federation in this system is determined: the rules of civil proceedings introduced by international treaties of the Russian Federation have greater legal force than the rules of civil proceedings established by federal law, but less than those contained in the Constitution of the Russian Federation and federal constitutional law.

11. The conclusion is substantiated that the acts of the European Court of Human Rights should be considered as one of the most significant and meaningful sources of civil procedural law in the meaning of an impelling force for the legislator, which forms the main directions of modernization of the national procedural law; in the meaning of materials that serve as the basis for the changing the national legislation, as a source of "soft law", but not a source (form) of the national civil procedural law.

12. It is concluded that customs, the religious texts and the legal doctrine in the Russian Federation are not forms of external expression of the norms of civil procedural law, but can serve as the basis for the emergence of new legal norms.

The value of the doctrine of the civil procedural law is determined, which is proposed to be considered as a source of knowledge about law, which serves as the basis for the emergence of right in the form of a law, the judicial precedent or other form; as a system-creating phenomenon, which is the theoretical and methodological basis of the legal system; a phenomenon that offers the farsighted models of legal reality, the judicial system and the civil proceedings, the legal regulation of the procedure for considering the civil cases in courts of general jurisdiction; a phenomenon that affects spiritual, mental values, primarily the legal consciousness of the judges, the practicing lawyers and the other participants in civil proceedings.

13. Proceeding from the homogeneity of the type of protective relations realized in the process (civil law), the commonality of the main setting of objectives (the protection of violated or unlawfully contested rights, freedoms and legitimate interests of persons whose dispute is subject to the resolution by the court), the general subject of judicial activity (the resolution of a dispute about the subjective law), the general principles of the implementation of legal proceedings (first of all, the dispositiveness), it is concluded that the civil procedure, the arbitration process and the administrative proceedings are the types of the civil procedural form, which, taking into account the generality of the method of legal regulation (imperative-dispositive), in turn, makes it possible to substantiate the view on the civil procedural law as an integral part of the superbranch - the civil procedural law, which also includes the arbitration procedural law and the legislation on administrative proceedings.

14. Based on the previous position, as a necessary stage in the development of the system of sources (forms) of civil procedural law, it is proposed to create a new act, common to all branches of the civil procedure, in which the norms governing the general provisions of the civil process, the arbitration process and

the administrative proceedings will be fixed as in the courts of general jurisdiction, and in the arbitration courts.

The theoretical significance of the thesis consists that the totality of the conclusions formulated in it represents an integral scientific concept of the structure and functioning of the system of sources (forms) of civil procedural law of the Russian Federation, which correctly reflects the elemental composition and internal structure of this system, allows us to determine the ways of its further expansion and improvement. The provisions put forward for defense deepen the scientific understanding of the sources (forms) of Russian civil procedural law and their system, of civil procedural norms, of the place and significance of judicial lawmaking in the mechanism of legal regulation of civil procedural legal relations, of the correlation of sources (forms) of international law with system of national civil procedural law, thereby contributing to the development of the theory and doctrine of civil procedural law.

The practical significance the results of the research consists in the possibility of applying its provisions and conclusions both in lawmaking activities to improve the mechanism of legal regulation of civil procedural legal relations, and in law enforcement, primarily the judicial activities, as well as in the educational and methodological process. The thesis contains practical, significant proposals aimed at improving the civil procedure laws.