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THE LAW OF EVIDENCE IN THE CIVIL PROCESS OF FRANCE AND RUSSIA

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Abstract

The article deals with the problems of the legal nature and legislative consolidation of the norms of evidence law in France and Russia. The purpose of the research was to identify the advantages and disadvantages of legislative regulation of the rules of proof and evidence in French and Russian legislation, as well as proposals for the reception of progressive norms of French evidentiary law in the current Russian procedural legislation, taking into account the peculiarities of the Russian legal system. The main private scientific method of research is the comparative legal method, combined with General theoretical methods of research analysis and synthesis. The author of the article comes to the conclusion that it is more optimal to fix the rules of proof and proof in the evidentiary law of Russia. At the same time, the Russian theory of evidence needs radical reform. In French evidentiary law, the ranking of evidence is legally fixed, which cannot be recognized as its merit. At the same time, the legal regulation of electronic evidence has been sufficiently developed, which can be recognized as an advantage of French evidentiary law. The author concludes that in the current procedural legislation of the Russian Federation it is necessary to fix electronic evidence as an independent means of proof.

Keywords: Law of evidence, proof and evidence

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1. Introduction

The problems of evidence are fundamental in a civilist procedural doctrine, since in the absence of the use of rules of evidence it is impossible to resolve a single dispute in court.

The relevance of the study of evidence is increasing with the intensification of the beginning of competition in the civilized process, the focus on the procedural activity of the persons involved in the case (Reshetnikova, 2013, 2015), the narrowing of the powers of the court to collect evidence on its own initiative, the implementation of the concept of reforming civil procedural legislation.

The integration processes that are characteristic of the Russian legal system, as well as those that take place between legal systems, determine the importance of research on evidence-based law.

The unification of the legal regulation of evidence in various branches of law seems promising for lawmaking, law enforcement and doctrinal research.

In addition, it is necessary to note the undeveloped norms on evidence in the current procedural legislation, as well as the lack of unity of opinion in determining the categorical apparatus of evidence in the civilized process, the need to unify the norms on evidence and the practice of their application.

2. Problem Statement

Currently, the procedural doctrine notes the need for a fundamental reform of the theory of evidence and, in connection with the foregoing, evidence law, taking into account the provisions of the legal doctrine and legislation of foreign countries, both members of the continental legal family, and countries of the Anglo-Saxon system of law.

At present, Russian legislation uses the principle of disclosure of evidence derived from the system of Anglo-Saxon law (Kudryavtseva, 2019). The current legislation also enshrines the rule of procedural estoppel as a principle of loss of the right to object in bad faith and inconsistent behavior (Shemeneva, 2019; Volodarsky & Kashkarova, 2019).

In connection with the above, it seems relevant to study the comparison of the main institutions of evidence of France and Russia in order to identify the advantages and disadvantages of legal regulation in order to develop proposals for improving the current Russian procedural legislation.

3. Research Questions

3.1. Legal nature and legislative consolidation of the rules of evidence in France and Russia

French legal science considers the doctrine of evidence as common to civil law (Medvedev, 2004). The rules of French evidence are enshrined mainly in the Civil Code of France (hereinafter - the CC of France) (Civil Code of France (Zahvatnev, 2012), the Code of Civil Procedure of France (hereinafter - the CCP of France), and the Commercial Code of France. The CC of France contains the rules of evidence relating to the proof of obligation and payment (Articles 1315–1369 of Chapter VI of Section III). The provisions contained in this chapter form the so-called general doctrine of evidence (Medvedev, 2004). The CCP of France defines the technical rules for the administration of evidence related to their collection, presentation, research and evaluation (Medvedev, 2004). The provisions on evidence contained in the CC

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of France and the CCP of France do not fully correspond to each other. French law of evidence is characterized by the presence of special rules that govern the particulars of evidence when challenging the provisions of certain agreements, or establish special rules for proving certain circumstances that differ from the general rules (Articles 1338 - 1340 of the CC) (Givelle, 2013). French evidence law is characterized by two objects, respectively, substantive evidence law and procedural evidence law are allocated (Medvedev, 2004). Material substantive law of France is established by laws. Most of the procedural rules of evidence in France are entrenched in subordinate acts (Medvedev, 2004). Evidence-based law in the Russian Federation as a legal institution of Russian law is cross-sectoral and comprehensive. At the same time, the main set of rules governing the process of evidence is concentrated in three procedural codes (Code of Civil Procedure of the Russian Federation, Arbitration Procedural Code of the Russian Federation, Administrative Procedure Code of the Russian Federation); at the same time, evidence-based presumptions, special rules for the distribution of responsibilities for proving, rules on necessary evidence are entrenched in substantive law. Most of the provisions of evidence in Russia are entrenched precisely in the procedural law. This cannot be said of the law of evidence of France, the norms of which are in most cases formalized in substantive laws; moreover, the substantive provisions of evidence law often contradict the procedural provisions of evidence law. In connection with the above, from the point of view of legislative technology, the Russian version of the legal regulation of the institution of evidence and evidence in civil proceedings is more preferable.

3.2. Evidence process under the laws of France and Russia

Medvedev (2004) notes the lack of identity between the concepts of “administration of evidence” in French law and “evidence” in Russian procedural law. The administration of evidence allows the court to secure the right to defense by managing evidence in accordance with special procedures. The rules of French evidence law are characterized as dispositive, it is possible to conclude evidence agreements between the parties in order to improve the procedural regime, as evidenced by the French judicial practice (Givelle, 2013; Medvedev, 2004). In Russian procedural law, interested parties, in cases established by law, can conclude agreements on factual circumstances, recognize certain circumstances relevant to the case. The bulk of the laws of evidence is mandatory, the legal regulation of collecting, presenting, disclosing, researching, recording, evaluating evidence cannot be violated, otherwise evidence cannot form the basis of a court decision as inconsistent with the law. The French model of evidence can be described as a mixed one, combining the principle of a formal system of evidence and a free assessment of evidence (Medvedev, 2004). In Russian civil proceedings, criteria for assessing evidence are established: relevance, admissibility, reliability of each evidence separately, as well as the sufficiency and interconnection of evidence in their entirety. The French legislator does not establish additional and formal conditions, unlike legal acts of will to prove substantive facts (Medvedev, 2004). Reasonable reliability and legitimization of a judicial act are considered as the goals of French justice, along with the principle of achieving truth. Moreover, the knowledge of facts is aimed at achieving legitimacy by a judicial act (Medvedev, 2004). Russian evidence-based law currently knows the principle of legal truth, the content of which is reduced to a decision by the court on the basis of evidence submitted by the parties. Moreover, facts can be established using one degree of probability or another with the help of evidence-based presumptions and procedural fictions. In French

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law, the qualification of legal relationship proposed by the parties is mandatory for the court. An exception is the disagreement of the parties over qualifications, in which case the court independently determines the applicable rule of law to the disputed relationship (Medvedev, 2004). In the Russian law of evidence, the court determines the circumstances of the subject of proof, taking into account the applicable substantive law and the requirements and objections of the parties, thus, we see a different approach in determining the legally relevant circumstances of the case. In the sense of French evidence, French arbitrators are free to evaluate the evidence presented. Judicial discretion is manifested, for example, in evaluating indirect evidence, etc. (Givelle, 2013). As indicated above, certain criteria apply, established by law, which should guide the court, are used in the assessment in the Russian law of evidence. When choosing between two evidence, that need to be the basis of a decision, the court must convincingly justify its choice in terms of law. Judicial discretion in Russian evidence law is limited by law. Both in Russian law and in French law, the content of the general rule of distribution of duties of proof is identical.

3.3. Evidence of practice under French and Russian law

Chapter VI “On Evidence of Obligation and Payment” of Section III of the Civil Code of France establishes the legal regulation of certain means of evidence, such as written evidence, testimony, presumptions, confessions and oaths (Articles 1315–1369). One of the shortcomings of the legislative technique of the Civil Code of France in terms of the regulation of evidence should be recognized as the lack of fixing of such traditional means of evidence as expert examination and on-site inspection. Rules of evidence are characterized by insufficiency and incompleteness. The legislator in the French Civil Code established two categories of evidence: perfect and imperfect means of proof. With the help of the first, any circumstances can be confirmed; they are binding on the judges (written evidence, confession, “crucial” oath). The second type of evidence cannot be confirmed by legal acts of will, judges are free to evaluate them (rebuttable presumption, material evidence, testimony) (Medvedev, 2004). The rules of proof and individual means of proof are enshrined in the civil procedure law (CCPe of France) in section seven of the “Judicial Administration of Evidence” (Davtyan, 2008). Thus, the legal regulation of evidence is defined both in the substantive law and in the procedural law of France. The Russian law of evidence in civil proceedings contains an exhaustive list of evidence. Advantage of one evidence over another, given their perfect or imperfect form, has not been established in Russian law. Evidence must comply with the law, any evidence that meets the criteria established by law is accepted. French civil law provides the following for evidence that may appear outdated: a) "nicks"; b) a decisive oath; c) confessionts (Givelle, 2013), which is a drawback of French evidence law. According to French law, digital documents are classified as written evidence. The current evidentiary law in the civil proceedings of Russia does not include electronic evidence, electronic documents in the list of independent means of proof, does not mention the terms themselves in the procedural codes, which is a drawback of legal regulation in the evidentiary law of Russia. The relevance of the problem of electronic evidence is evidenced by numerous publications by Russian scientists (Burganova, 2019; Golubtsov, 2019; Zaitseva & Sukhova, 2019; Zarubina & Pavlova, 2019). In the Civil Code of France the concept of electronic (non-materialized) form of documents is not defined. The concepts of written evidence in French and Russian law of evidence are not identical. Written evidence in French evidence law (Article 1316 of the Civil Code) is close to the definition of written evidence in

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Russian legal science. In Russian legislation, electronic documents are written evidence, however, the concept of written evidence is defined in law by listing certain types of written evidence. Within the meaning of French law, a notarized document (paragraph 2 of article 1317 of the Civil Code) can be digitally executed (Law, 2004-575…, 2004). French law establishes the equivalence of a digital document and a paper document (Art. 1316-1, Art. 1316-3 of the Civil Code) (Givelle, 2013). A similar rule on the equivalence of electronic and written documents is entrenched in Russian law, in addition, notarial acts, judicial acts, and separate executive documents can be compiled in electronic form. A Russian notary can certify the equivalence of a written document and an electronic document. In French and Russian legislation, the conditions for the admissibility of a digital document are identical (Article 1316-1 of the CC). Electronic evidence (evidence obtained using the Internet) is acceptable, first of all, if it is possible to establish the sender and recipient of electronic evidence with certainty. According to French law, it is assumed that a notarized document made in electronic form is certified by the electronic signature of a notary and is stored in a central electronic database (MICEN). French civil law regulates the definition of electronic signatures (paragraph 2 of article 1316-4 of the Civil Code of France). Russian law establishes the concept, types of electronic signatures, and the conditions for their use. French law establishes a simple presumption of the reliability of an electronic document (paragraph 2 of article 1316-4 of the CC of France, article 2 of Decree N 20012.72 of March 30, 2001). French law establishes a specific procedure for checking an electronic document. The authenticity of the document in the Russian Federation can be verified by checking the certificate of the electronic signature key by sending a request to the certification center. In the Russian Federation, only the presumption of the reliability of information in state information systems is established. An electronic document under French law is identical to a written document and is the so-called “perfect” evidence (Givelle, 2013). In some cases, indirect evidence may be relevant. Russian evidence-based law digital (electronic) document is known as a form of a written document, as already mentioned above. Provisions regarding the legal regulations of an electronic document are contained in various regulatory acts of the Russian Federation. At the same time, as was already stated above, the legal regulation for introducing, researching, fixing, evaluating electronic evidence into the process code is not fixed in the procedural code, which is a drawback of the Russian law of evidence. It seems correct to conclude that the legal nature of electronic evidence and written evidence is different.

4. Purpose of the Study

The purpose of this study was to identify the strengths and weaknesses of the legal nature, legislative regulation of the rules of evidence and evidence in French and Russian legislation on the basis of an analysis of the points of view existing in Russian and foreign doctrine, as well as proposals for the reception of progressive norms of French evidence in the current Russian procedural law taking into account the peculiarities of the Russian legal system. The objectives of the study are the analysis of the legal nature and legislative consolidation of the rules of evidence in France and in Russia, process of proof, means of proof under the laws of France and Russia.

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5. Research Methods

The research methodology is classic for this kind of work. The main private scientific method is the comparative legal method, in combination with general theoretical research methods of analysis and synthesis.

The listed research methods allow achieving the goal of the study, i.e. to identify the advantages and disadvantages of the legal regulation of the institution of proof and evidence in the civil proceedings of the Russian Federation and France, to compare the content of the main provisions of the theory of evidence in Russia and France.

6. Findings

It seems correct to conclude that it is more optimal to enforce the rules on proof and evidence in the law of evidence of Russia, since most of the rules of evidence are contained in the procedural codes. At the same time, the Russian theory of evidence needs fundamental reform.

The legislative approach is differentiated to the concept of evidence in the legislation of Russia and France. In French evidence law, the ranking of evidence is legislatively fixed, which cannot be recognized as its dignity. However, the legal regulation of certain means of evidence is sufficiently developed.

Although the evidence is still outdated in terms of legislation and judicial practice. At the same time, the legal regulation of electronic evidence has been sufficiently developed, which can be recognized as the dignity of French evidence law.

While the legal regulation of electronic evidence is not fixed in Russian evidence law, we can only indicate the approaches that the judicial practice has developed.

7. Conclusion

It seems correct to establish the concept, legal regulation for introducing into the process, disclosing, fixing, researching and evaluating electronic evidence as independent means of proof in the procedural legislation of Russia. This short story made it possible to eliminate existing disputes from civilistic procedural science regarding the legal nature of electronic evidence (Nakhova, 2015, 2018).

Obviously, there is a need for legislative consolidation of a non-exhaustive list of electronic evidence, which logically include an electronic document, electronic message and other electronic evidence, for example, the log files of the provider's server.

The possibility of identifying the author from whom the electronic evidence is based is proposed to be considered a common feature testifying to the admissibility and reliability of electronic evidence.

The existing rules on proof and evidence in the procedural codes of the Russian Federation should be unified and systematized at present.

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