The comparative analysis of the law of evidence in civil proceedings in France and Russia

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The article deals with the problems of the legal nature and legislative consolidation of norms of evidentiary law in France and Russia. The author claims that it is more optimal to consolidate norms of proof and evidence in evidentiary law of Russia. At the same time, Russian theory of evidence needs radical reform. The legal approach to the concept of proof in legislation of Russia and France is differentiated. In French evidentiary law, the ranking of evidence is legally fixed, which cannot be recognized as dignity. However, legal norms regarding some means of proof are sufficiently developed. The means of proof, which are outdated as legislation and judicial practice, are still fixed. 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. Russian evidentiary law does not provide for legal regulation of electronic evidence as an independent means of proof. The following areas of improvement of Russian evidentiary law are highlighted: improvement of the theory of proof, optimization and unification of the legal regulation of the rules of evidence, reception of effective means of regulation from the evidentiary law of foreign countries, and detailed legal regulation of individual means of proof.

Keywords: French civil proceedings, the Russian civil proceedings, Russian procedural legislation, French procedural legislation, the concept of reforming civil procedural legislation, evidentiary law, proof and evidence.

1. Introduction

The problems of evidentiary law are fundamental in the civil procedural doctrine, since it is impossible to resolve any specific case in court without applying the rules of evidence. With the increasing level of competition in the civil procedure process, the focus on the procedural activity of the persons involved in the case, the narrowing of the court's powers to collect evidence on its own initiative, the implementation of the concept of reforming civil procedural legislation, the relevance of the study of evidence law increases.

The relevance of the study of evidentiary law is due to integration processes, both within a particular legal system and between legal systems. Integration of legal regulation of evidence in various branches of law opens up prospects for lawmaking, law enforcement, and research. In addition, it should be noted the lack of rules of evidence in the current procedural legislation and the lack of consensus in the definition of categorical apparatus of the law of evidence in civil process, the need for unification of the rules of evidence and their application. The purpose of this study was to identify, based on the analysis of the

existing Russian and foreign doctrine points of view, the advantages and disadvantages of the legal nature, the 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 features of the Russian legal system. The research methodology is classical for this type of work. The main private scientific method is the comparative legal method, combined with General theoretical research methods of analysis and synthesis. These research methods allow us to achieve the goal of the study-to identify the advantages and disadvantages of legal regulation of the Institute of proof and evidence in civil proceedings in the Russian Federation and France, to compare the content of the main provisions of the theory of evidence in Russia and France.

Currently, the procedural doctrine notes the need for fundamental reform of the theory of evidence and in connection with the stated evidentiary 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. So, at present, the Russian legislation establishes the principle of disclosure of evidence, which is copied from the system of Anglo-Saxon law. Also, the current legislation establishes the rule of procedural estoppel as a principle of loss of the right to object in case of unfair and contradictory behavior. In connection with the above, it seems relevant to study the comparison of the main institutions of evidence law in 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.

2. Basic research

2.1. The legal nature of evidentiary law

French legal doctrine traditionally considers the theory of evidence as common to whole private law (Planiol 1956, 308; Lepointe 1963, 142; Medvedev 2004, 18). The norms of French law of evidence are written mainly in the Civil Code of France (hereinafter — the CC) (Zahvataev 2012), The Code of Civil Procedure of France[1] (hereinafter — the CCP). The CC of France contains rules of evidence concerning proving of liability and payment. In the specified substantive source Art. 1315–1369 of chapter VI of section III are devoted to the evidence. The chapter itself is called "On Evidence of Liability and Payment". It consistently provides for standards for individual means of proving: written evidence, testimony, presumptions, confession and oaths. The rules in this chapter combined to form a so-called general theory of evidence. Among the disadvantages of the regulation of evidence in the CC of France are often noted its insufficiency, incompleteness, there is no mention of such traditional means of proving as examination and on-site inspection. The substantive sources of law of evidence of France also include the Commercial Code, which establishes special rules of proving for the conduct of entrepreneurial activities, when courts review commercial disputes (Medvedev 2004, 23). The CCP of France establishes standards regulating the forms of administration of evidence, providing for

[1] Code de procédurecivile, Version consolidée au 1 juillet 2017. Accessed February 25, 2020. www.legifrance.gouv.fr/codes/id/LEGITEXT000006070716.

essential technical rules of proof and evidence; in particular, it determines the procedure for the presentation and reclamation of various types of evidence, the procedure for their examination and challenge (Medvedev 2004, 24). Thus, I. G. Medvedev notes the inconsistency in the scope and content between French concept "administration of evidence" and Russian "proving". In France, it is mainly concerned with the management of evidence in accordance with special procedures allowing the court to ensure the right to defense. It includes monitoring the "investigation" of the circumstances of the case by the parties and their representatives, the ability to independently elect and apply one or another measure of investigation; the permission of petitions and statements of the parties about reclamation of proofs, interrogation of witnesses, etc. (Medvedev 2004, 305). Unfortunately, the provisions of the CC of France and the CCP of France concerning the issues of proving do not fully correspond to each other. Obviously, in addition to these, there are special provisions that establish distinct verification rules for certain contracts and circumstances, which differ from the provisions of the general articles mentioned above. The considered block of norms does not provide for anything not directly related to the subject of research (Art. 1338–1340 CC) (Givel' 2013, 78–88). French law of evidence can be distinguished as divided into substantive law of evidence and procedural law of evidence (Medvedev 2004, 25). Only laws represent the substantive legislation of France in the field of evidence, but a significant number of procedural norms are introduced by bylaws (Medvedev 2004, 27). Evidentiary law in the Russian Federation is an intersectoral complex institution that combines norms of procedural and material branches of law that regulate the evidentiary activities of interested persons in the process of administration of justice in civil cases. However, the main set of rules governing the process of proof is concentrated in the three procedural codes: the Arbitration procedure code of the Russian Federation[2], the Civil procedural code of the Russian Federation (further — CPC the Russian Federation), and the Code of administrative procedure of the Russian Federation. At the same time of the evidentiary presumption, special rules on distribution of responsibilities for proving and rules about required evidence are embodied in the substantive law. Since civil procedural law is a public branch of Russian law, most of the provisions of Russian evidentiary law are enshrined in procedural law, which is not true of French evidentiary law, the rules of which are in most cases enshrined in substantive laws. In addition, material provisions of evidentiary law often contradict procedural provisions of evidentiary law. In this regard, from the perspective of legislative technology, the Russian version of legal regulation of proof and evidence in civil proceedings is more preferable. Also, the lack of legal regulation of evidentiary law in France is related to the consolidation of rules in bylaws. Standards of evidence in France are dispositive; parties can improve the procedural regime by concluding an agreement on evidence, as evidenced by the judicial practice of the highest judicial body of France (Medvedev 2004, 38–39; Givel' 2013). In Russian procedural law, interested parties may enter into agreements on actual circumstances in cases established by law, and recognize certain circumstances relevant for consideration and resolution of the case. The bulk of the legal provisions of evidentiary law is mandatory. The legal regulations for collecting, presenting, disclosing, investigating, fixing, and evaluating evidence cannot be violated, otherwise evidence that does not comply with the law cannot be used as the basis for a court decision. A mixed model for

[2] Hereinafter all Russian laws and court decisions are given in connection with the inquiry system "ConsultantPlus". Accessed November 17, 2021. http://www.consultant.ru.

constructing an evidential system was developed and adopted in practice in France. It involves two modes of proving: one based on the principles of the functioning of a formal system of evidence and proving, and the other, based on a free evaluation by the court of evidence, when none of them has a predetermined strength, i. e. moral system of evidence (Medvedev 2004, 44). In Russian civil proceedings, rules for evaluating evidence based on internal conviction are established, based on a comprehensive, complete, objective, and direct examination of evidence in the case. No evidence has a pre-determined force for the court. The court assesses the relevance, admissibility, and reliability of each piece of evidence separately, as well as sufficiency and mutual relationship of evidence in its totality. French legislation does not establish additional and formal conditions for the cognition of material facts, as in the case of legal acts of expression of will (Medvedev 2004, 45–46). The developers of the French Civil Code classified the means of proving in two categories: 1) the so-called perfect means of proving — they are admissible for confirming any legal facts, regardless of their nature, volitional (action) or non-arbitrary (event), and link the judge's beliefs. These include written evidence, confession, and a "decisive" oath; 2) imperfect means of proving that are unacceptable for the confirmation of legal acts of will expression and in no area are binding on a judge free in their assessment. As such means of proving, it is customary to consider witness testimony, material evidence, and refutable presumptions (Medvedev 2004, 46).

2.2. Institution of proving and evidence in the Civil process of France

Section seven of CCP of France, on "Judicial Administration of Evidence", describes rules of proving and specific types of evidence: statements of the parties and third parties (Art. 184–199 of CCP); written statements of the parties and witnesses (Art. 200–203 of CCP); testimony (Art. 204–231 of CCP); inquiries made by an expert in three forms (inspection, consultation, and examination) (Art. 204–231 of CCP); written evidence (Art. 285–316 of CCP); and oaths (Art. 317–322 of CCP) (Mirzoian 2008). Thus, legal regulation of evidence is defined in both the substantive law and the procedural law of France. Russian evidentiary law in civil proceedings contains an exhaustive list of means of proof, which includes explanations of the parties and third parties, witness statements, written evidence, physical evidence, audio and video recordings, and expert opinions. Russian legislation does not establish any ranking of evidence based on its perfect or imperfect form. No evidence for the Russian court has a pre-established force, evidence must comply with the law, and any evidence that meets the criteria established by law is accepted. The French civil law establishes the means of proving, which may seem obsolete: 1) "notches"; 2) a decisive oath; 3) acts of confession (Givel' 2013). The notches on the samples constitute evidence in the relations between the parties, usually confirming that delivery was completed and accepted properly. It is about two wooden bars (one for the supplier, the other for his client), which were once used as evidence: at each delivery, the same notches on two bars were made. Proof in the form of an oath is mentioned in Art. 1357–1369 of the CC. It is not about oaths-promises, but oaths-confirmations. Oaths-confirmations (serments-affirmations) should not in principle be accepted by the court, since they constitute evidence of fact by a party relying on this fact as beneficial to it (as opposed to confession). However, the religious overtones, the negative consequences of a false oath, and, in particular, the necessary solemnity in giving an oath, are supposed to

level out this disadvantage. A generally accepted requirement is the use of the expression "I swear", pronounced loudly or submitted in writing in the case of a pathological defect of an individual. The oath must contain a statement of the facts. A false oath (devoid of truthfulness and sincerity) no longer entails God's punishment, but it is punishable by criminal responsibility, i. e. the force of the oath is supported by separate sanctions in case of lies. In French law, there are two types of oaths-confirmation. A suppletory oath (serment supplétoire), according to Art. 1357-2 of CC, is "The one which is tendered by the judge of his own motion to one or another of the parties". Such an oath serves as a supplement when evidence is insufficient. In addition, French law provides for decisive oath (serment décisoire), which has far more specific legal consequences. According to Art. 1357-1 of CC, it is the oath "which a party tenders to the other in order to make the judgment of the case depend upon it". One party asks the other to confirm by oath that its demands are justified. The judge, after verification, decides on the request for the oath. If the party from whom the oath is required refuses to oath, it loses the case. If the party from whom the oath is required agrees to swear that her demands are justified, it wins the case. Another option is also possible: the use of a so-called reference. This procedure involves the party, from whom the oath was originally required, without expressing one's opinion, to submit a response request to the opposite side. If the second party swears, then it will win the case, otherwise it will lose. There are no other alternatives — the case must resolute. If the party from which the oath was originally required (or the one to whom this request was redirected in return) refuses to swear, it is defeated (it is often said that such a refusal is equivalent to a confession). Thus, the decisive oath is an unusual tool: it is a mean of proving and a decision-making tool in the case, an agreement between the parties, and a mean of decision by the court at the same time (Givel' 2013). Art. 1337 and 695 of CC provide for acts of recognition and have not changed since the approval of the CC. From a legal point of view, a recognition act is primarily a recognition of the authenticity of the content of the preceding document; it is "a written document, also called a new act, by which a person recognizes the existence of rights already confirmed by a previous act called a primary document". There are no mandatory requirements for the form of a recognition act. Interest in the use of recognition act is due to its ability to interrupt the period of statute of limitations. In addition, this tool can be used at the risk of disappearance of the primary act or simply to ensure safety (Givel'2013). As a general rule in the French evidentiary model, in order to prove a legal act, it is necessary to submit a written document in the form prescribed by law that expresses it. However, civil law provides for six exceptions for this principle, and the priority of written evidence can be bypassed in the following cases: 1) in small cases, where the price does not exceed 800 euros; 2) when there is a so-called "preliminary written evidence"; 3) when there is a "true and strong" copy, replacing the original document; 4) when it is impossible to present a document (immunities); 5) to confirm the conditions of commercial transactions; and 6) when the parties in their agreement allow for the confirmation of a legal act not only a written document, but also any other (or certain) means of proof (Medvedev 2004, 104–105). French legislation successfully embodied the achievements of progress, the recognition as evidence of digital documents (ecrit numérique), but it is worth criticizing for the establishment of a new, incomprehensible and problematic mode of copies (copies) (Givel' 2013).

Current evidentiary law in civil proceedings in Russia does not include electronic evidence or electronic documents in the list of means of proof, which is a lack of legal regula-

tion in Russian evidentiary law. An unmaterialized form of documents is not defined in the CC. The very concept of a written form was revised, taking into account new digital means. Now, Art. 1316 establishes that a written proof as "consisting of a collection of letters, signs, numbers and any other symbols and that have an attainable value, regardless of the means and methods of transmitting them". It also includes cases with a notarized document (part 2 of Art. 1317 of the CC), when the digital form will be accepted even if the written form is required ad validitatem (Law 2004-575 of June 21, 2004, Art. 1108-1 CC). Article 1316-3 establishes that a document in digital form has the same evidentiary value as a paper document. A similar provision is reflected in Art. 1316-1 (Givel' 2013). A similar rule on the equivalence of electronic and written documents is enshrined in Russian legislation in addition, notarial acts, judicial acts, other procedural acts, and separate Executive acts can be drawn up in electronic form. Under Russian law, a notary can certify the equivalence of a written document and an electronic document. Repetition is used by the French legislator due to the revolutionary nature of the introduced provision and fears that the norm will not be understood or will be violated in practice (nonuse is the worst thing that can happen with the law). Of course, the legislation has determined the conditions for applying the digital form of the document: it is necessary that the person from whom the document emanates can be properly identified and that the form ensures the safety and completeness of the act (Art. 1316-1 CC). The notarially certified act, compiled using digital means, presupposes its preservation in the central digital base (MICEN) and certification of the electronic signature of the notary with the help of a private key (REAL). Paragraph 2 of Art. 1316-4 of the Civil Code establishes that an electronic signature "consists in the use of a reliable means of identification that guarantees a direct link to the act on which it is situated". Russian legislation establishes the concept, types of electronic signatures, and conditions for their use. Paragraph 2 of Art. 1316-4 CC presumes (simple presumption) that this act is reliable as the signature is placed, the identity of the signatory can be established, and the document's fidelity is supported by its compliance with the established conditions (Art. 2 of Decree No. 20012.72 of 30 March 2001). The Decree of 2001 establishes an extremely complex verification system, which guarantees interests of the parties. In this case, reaching agreement on the termination of the contract is not enough, because it is necessary to refute the presumption under Art. 1316-4. If the electronic signature is not "safe" within the meaning of the above provisions of the CC, then this presumption of reliability is not applicable, general evidentiary law applies.

The authenticity of a document in the Russian Federation can be verified by verifying the certificate of the electronic signature key by sending a request to the certification center. In the Russian Federation, only the presumption of reliability of information in state information systems is established. A digital document that meets requirements is "perfect" proof, like a document on paper. A digital document of the wrong shape, or incorrectly compiled documents that do not possess the power of a digital document, can only be considered a basis for proving a digital document (e-mail) or circumstantial evidence (documents obtained by using modern means of remote electronic communication or information: fax, telegraph, facsimile, Internet, network bank cards, various computers, and other evidence, in particular electronic, of committed transactions) (Givel' 2013). In Russian evidentiary law, a digital (electronic) document is a form of written document, as noted above. Provisions relating to legal regulation of an electronic document are contained in various laws of the Russian Federation (in the Federal laws "On information, information

technologies and information protection", "On electronic signature", "Fundamentals of legislation on notaries", etc.). However, as stated earlier, legal regulation of introduction of the process, research, recording, and evaluation of electronic evidence is not fixed in the procedural code, which is a disadvantage of Russian evidentiary law. It seems correct to conclude that electronic evidence has a different legal nature than written and physical evidence. The adversarial principle guarantees a fair trial and is provided for by Art. 14 and 17 of the French CCP and paragraph 1 of Art. 6 of the European Convention on Human Rights. The Constitutional Council qualifies this principle, as the right to protection and as the fundamental right of the constitutional order. The adversarial principle has a dual function: protection of the parties and assistance to the judge in understanding the points of view of the parties (Malan, Sitkareva 2018, 480). In France's evidentiary law, the principle of attaining truth exists in a limited sense. It was in opposition to other goals of justice, based on the study of the social role of the judiciary, that new approaches were developed: 1) reasonable certainty; 2) legitimization of the decision, giving the latter a form in which it will have power, authority, social effect, etc., when the cognition of facts is subordinated to obtaining a legitimate decision (Medvedev 2004, 88). Russian evidentiary law is currently aware of the principle of legal truth, the content of which is reduced to making a decision by the court on the basis of evidence presented by the parties. In this case, the facts can be established using a certain degree of probability with the help of evidentiary presumptions and procedural fictions. During legal qualification of the legal relationship, the French court is bound by the legal qualification of the legal relations given by the parties, and only in the case of disagreements between them does it independently carry out the choice of the applicable norm (Medvedev 2004, 94). In Russian evidentiary law, the court determines the circumstances of the subject of proof, taking into account the applicable rules of substantive law, and taking into account the requirements and objections of the parties.

Thus, we see a different approach in determining the legally significant circumstances of the case. In French evidentiary law, when considering a case on its merits, judges are absolutely independent in assessing the evidence presented. Judicial discretion shows in the analysis of written evidence, in assessing the time of creation and authenticity of a copy, in accepting or refusing to take commercial evidence, in making a decision on the impossibility of presenting written evidence, in assessing the value of circumstantial evidence, in taking into account an expert opinion, in request to give an affirmative oath, and so on (Malan, Sitkareva 2018, 477–480). The Court of Cassation in most cases is limited to minimal supervision (Givel' 2013). As mentioned, certain criteria established by law apply to evaluation in Russian evidentiary law, which must be followed by the court. When choosing between two pieces of evidence that should form the basis of a decision, the court must convincingly justify its choice from the perspective of the law. The judicial discretion of the court in Russian evidentiary law is limited by law. In both Russian and French legislation, the General rule for the distribution of evidentiary duties is the same: each party must prove the grounds for its claims and objections. In the course of judicial activity, in order for a fact to be proved during the administration of justice, it must combine two qualities: 1) to be controversial; 2) be attributable. In support of their claims, the parties need to indicate the facts on which they are based (Medvedev 2004, 96–97). Concerning the burden of proof, we note that, even if the judge is vested with real powers to establish the circumstances of the case (Art. 10 of the CCP), the procedure

remains prosecutorial: with the exception of legislative presumptions and presumptions arising from practice, the plaintiff has the duty to present evidence in support of his claim (Art. 9 CCP), and on the defendant has to prove own statements (Givel' 2013). Thus, the presented evidence must come from the opposite side or even have an external source, as a general rule they should never come from the person himself basing his demands on them (no one can independently create a proof for himself). It should also be noted that the judge has no right to use the information received by him in his personal capacity. Furthermore, it should comply with the adversarial principle, fundamental for the whole of the legal system (Givel' 2013).

2.3. Institution of proving and evidence in the Russian civil process

Laws of evidence in the Russian Federation are a comprehensive institution of Russian law, which combines procedural and substantive rules of areas of law governing evidentiary activities of stakeholders in the administration of justice in civil cases. Evidence law is a set of rules of a procedural and substantive nature, regulating procedural relations arising between the court (arbitration court) and persons involved in the case, and in the process of proving the circumstances relevant to the proper consideration and resolution of the dispute, as well as a set of rules of a procedural nature governing the procedural relations arising between the court (arbitration court) and individuals contributing to the process of proof (arbitration court) in civil proceedings and administrative proceedings. The general part of evidentiary law is formed by the rules of evidentiary law that regulate the goals and objectives of proof, the concept of evidence, the obligation to prove and present evidence, the relevance and admissibility of evidence, the assessment of evidence, the provision of evidence, court orders, and means of proof. The special part of evidentiary law consists of special rules regulating the evidentiary activity of persons participating in a case and their representatives in certain categories of cases and in certain types of legal proceedings and at certain stages of civil and administrative proceedings. Many provisions of the theory of evidentiary law are debatable: the concept of proof and evidence, subjects of proof, general and specific rules for the distribution of responsibilities for proof, the subject of proof, etc. Most of the concepts of the theory of evidence are not fixed in the current procedural legislation, which creates discussions of the provisions of the evidentiary law of Russia.

The sources of evidentiary law are normative legal acts containing procedural and substantive rules governing the activities of persons participating in the case and representatives to justify their legal position before the court in order to obtain a favorable result in the case under consideration The hierarchy of sources of evidentiary law by legal force has the following structure: the Constitution of the Russian Federation, norms of international treaties of the Russian Federation, procedural codes of the Russian Federation, material and legal sources of evidentiary law (Civil code of the Russian Federation, Commercial Navigation Code of the Russian Federation, Air Code of the Russian Federation, Family Code of the Russian Federation, Transport Charter of Railways of the Russian Federation, Tax Code of the Russian Federation, federal laws), and legal positions of the Constitutional Court of the Russian Federation. It seems that the rules of evidence and the evidence contained in the relevant chapters of the Arbitration procedure code of the Russian Federation, of the Civil procedural code of the Russian Federation (hereinafter — CPC of the Russian Federation), and of the Code of administrative

procedure of the Russian Federation need harmonization and uniform application by courts of general jurisdiction and arbitration courts, similar to the goals and objectives of these proceedings. The chapters of procedural codes define the concept of evidence, and the law sets the burden of proof for persons involved in the case and rules of presentation and taking of evidence, including assisting the arbitral Tribunal in obtaining evidence, inspection and examination of evidence at the location, rules of relevance and admissibility of evidence, grounds for exemption from the proof, order of evidence provision, rules of evaluation of evidence, as well as provisions for a separate means of proof. At the same time, rules of evidentiary law governing certain rules for the distribution of evidentiary duties are fixed in the rules of substantive law, for example, evidentiary presumptions. The procedural codes contain almost identical regulation of other procedural institutions, so the doctrine suggests the creation of a unified Civil procedure code of the Russian Federation.

This study covers the analysis of evidence and evidence only in civil proceedings. Articles 174–188 of the CPC of the Russian Federation establish the procedure for examining individual means of evidence in a court session. Article 196 of the CPC of the Russian Federation regulates the procedure for a court to make a decision. Article 12 of the CPC of the Russian Federation establishes the principle of the administration of justice on the basis of competition and equality of the parties. Article 35 of the CPC of the Russian Federation establishes rights and obligations of persons involved in the case, including in proving. Articles 131–132 of the CPC of the Russian Federation define the actions of interested persons to form evidence at the stage of initiation of civil proceedings. Articles 149–150 of the CPC of the Russian Federation define the actions of interested persons to form evidence at the stage of preparing the case for trial, as well as the actions of the court to assist in the formation of evidence in the case and the cognitive activity of the court at this stage. Articles 229–232 of the CPC of the Russian Federation establish requirements for the form and content, as well as the procedure for submitting comments on the minutes of the court session, which is one part of written evidence in the case. Article 267 of the CPC of the Russian Federation establishes requirements for the content of the application, as well as a list of necessary evidence for establishing facts of legal significance. The norms of Art. 270–272 of the CPC of the Russian Federation establish requirements for the content of the application, the list of necessary evidence, and the right of the court to request necessary evidence of its own initiative in cases of adoption. Article 278 of the CPC of the Russian Federation grants the court the power to request the necessary evidence in cases of recognition of a citizen as missing or declaring a citizen dead. Article 283 of the CPC of the Russian Federation regulates the procedure of examination to determine the mental state of the citizen in cases of limitation of capacity, recognition of a citizen as incapable, and restriction or deprivation of a minor aged 14 to 18 years of age of the right to independently dispose of their income. The norms of Art. 292 of CPC of the Russian Federation establish the right of the court to obtain, on its own initiative, necessary evidence in cases of recognition of a movable thing as ownerless or recognition of ownership of an ownerless immovable thing. Article 314 of the CPC of the Russian Federation establishes a list of necessary evidence and requirements for the content of the application in cases of restoration of lost judicial proceedings. The norms of Art. 325, 327, 327.1 of the CPC of the Russian Federation establish the rules of evidentiary activity of interested persons in the court of appeal. Article 411 of the CPC of the Russian Federation establishes requirements

for the form and content of a request for enforcing a foreign court's decision, as well as a list of necessary evidence. Norms of Art. 419, 420 CPC of the Russian Federation establish requirements for contents, the list of necessary evidence, and powers of the court in the recovery of materials to the arbitral proceedings on the application for annulment of the arbitral Tribunal at the request of interested persons. The norms of Art. 424 and 425 of the CPC of the Russian Federation establish the requirements for the content, the list of necessary evidence, as well as the powers of the court to request materials of arbitration proceedings in the case of an application for issuing a writ of execution for enforcement of an arbitration court decision at the request of interested persons. In view of the above, the rules of proof and evidence need to be systematized in the code of procedure.

In the CPC of the Russian Federation, evidence is determined through information on facts. The CPC of the Russian Federation establishes a strict list of means of proving: explanations of the parties and third parties, testimony of witnesses, written and material evidence, audio and video recordings, and expert opinions. At the same time, the CPC of the Russian Federation does not provide a separate rule for establishing the legal regulation of electronic documents. The norms of the CPC of the Russian Federation establish that personal means of proof can be investigated by using videoconferencing communication. The general and particular rules for the distribution of responsibilities of proving are detailed in Art. 56 CPC of Russian Federation. The principle of disclosure of evidence is described in the CPC of the Russian Federation. As per CPC of Russian Federation, interested parties initiate the demand for evidence and assistance by the court. Federal Law No. 409-FZ of December 29, 2015 "On Amending Certain Legislative Acts of the Russian Federation and Recognizing the Invalidation of clause 3 part 1 Art. 6 of the Federal Law 'On Self-Regulating Organizations', in connection with the adoption of the Federal Law 'On Arbitration (Arbitration Proceedings) in the Russian Federation'" from September 1, 2016, brings into being in the CCP of the Russian Federation the norm (Art. 63.1 of the CPC of the Russian Federation) of establishing a legal procedure for sending an arbitration court request for assistance in obtaining evidence. The rules for the admissibility of evidence are detailed in Art. 59–60 CPC Russian Federation. Admissibility of evidence is determined through the requirements of the law to their form. Under Art. 61, part 2 of Art. 68 of the CPC of the Russian Federation grounds for exemption from proof are: established well-known circumstances, pre-established circumstances, recognized facts, and circumstances confirmed by a notary in the performance of a notarial act, if the authenticity of a notarized document is not disproved in application of the rules for falsifying evidence, or if the notarial act was not repealed in the order established by civil procedural legislation for the consideration of applications for notarial acts or for its refusal. The order of securing evidence is provided for in Art. 65–66 CPC of Russian Federation. The legal regulation of certain means of proof is established Art. 68–87, 170–188 of the CPC of the Russian Federation. The parties and third parties are not criminally liable for knowingly giving false explanations. Witness testimony is given only verbally, and a witness in testimony can use written materials in cases where the testimony is associated with any digital or other data that is difficult to keep in memory. These materials are presented to the court, to persons participating in the case, and can be attached to the case because of a court ruling. By part 3, 4 of Art. 69 of the CPC of the Russian Federation, respectively, absolute and relative witness immunities are established.

In the CPC of the Russian Federation there is a separate norm on the procedure for considering an allegation of forged evidence, an expert examination on the initiative of the court may be appointed to verify the allegations of forged evidence or the parties are invited to provide other evidence. In the CPC of the Russian Federation, cases where the court appoints an expert examination on its own initiative are not detailed, except for cases stipulated by Art. 283 of the CPC of the Russian Federation. CPC of the Russian Federation provides for the possibility of appointing an examination of the following types: comprehensive, commission led, additional, and re-examination. Part 3 of Art. 79 of the CPC of the Russian Federation establishes a procedural and legal fiction. Legal fiction can be defined as the method of legal techniques (in the form of a special version of the semantic statement, not having a connection with empirical facts), the essence of which lies in the establishment by federal law of legal consequences that are the result of deliberately non-existent facts in order to overcome uncertainty in the legal regulation. In the case of evasion of the party from participation in the examination, failure to submit necessary documents and materials to experts for investigation, and in other cases, if due to the circumstances of the case without the participation of this party, the examination cannot be carried out; the court, depending on which side evades the examination, and also how important the examination is for this party, has the right to recognize the fact, for the clarification of which the examination was appointed, established, or refuted. The law establishes the duty of the court in the case of rejection of any issues proposed by persons participating in the case, to determine the appointment of an expert examination to indicate the reasons for which these issues are rejected (part 2 Art. 79 of the CPC of the Russian Federation). If, during the expert examination, the expert (expert commission) establishes the circumstances in respect of which he was not asked questions, but which, in his opinion, are important for the proper consideration of the case, he is entitled to draw conclusions about these circumstances (part 2 Art. 86 of the CPC of the Russian Federation). Article 67 of the CPC of the Russian Federation establishes criteria for assessing evidence. In general, the regulation of the institution under study in the CPC of the Russian Federation should be considered sufficiently developed, at the same time, many doctrinal problems of evidentiary law at the level of the current civil procedural legislation have not been solved.

3. Conclusions

It seems correct to conclude that it is optimal to fix the rules of proof and evidence in Russian evidentiary law, since most of the rules of evidentiary law are contained in procedural codes. At the same time, the Russian theory of evidence needs fundamental reform. The legal approach to the concept of proof in Russian and French legislation is differentiated. In French evidentiary law, the ranking of evidence is legally fixed, which cannot be recognized as its dignity. However, legal regulations for certain means of proof are sufficiently developed, although the means of proof that are outdated from the point of view of legislation and judicial practice are still fixed. At the same time, the legal regulation of electronic evidence has been sufficiently developed, which can be recognized as a virtue of French evidentiary law. While Russian evidentiary law does not provide for legal regulation of electronic evidence, it is possible to specify only the approaches that have been developed by judicial practice. In total, the regulation of the institution under review

in the CPC of the Russian Federation can be defined as sufficiently worked out, but at the same time, many doctrinal problems of evidence law at the level of the current civil procedural legislation are not resolved. It is necessary to fix electronic evidence in the current procedural legislation as an independent means of proof, to determine their types, the order of introduction into the process, fixation, research, and evaluation, thus eliminating lengthy discussions from procedural doctrine about their legal nature. It seems correct to establish a non-exhaustive list of electronic evidence in procedural law, providing for their definition through a list similar to written evidence, namely an electronic document, an electronic message and other electronic evidence.

It seems that the law should fix the concept of "electronic document as documented information presented in electronic form", i. e. in a form suitable for human perception using electronic computers, as well as for transmission over information and telecommunications networks or processing in information systems, which is important for the consideration and resolution of a case. In this case, an electronic message is understood as information transmitted or received by the user of the information and telecommunications network that is important for the consideration and resolution of the case. The provider's server log files should be considered as other electronic evidence. It is proposed to consider the possibility of identifying the author from whom the electronic evidence originates as a common feature that testifies to the admissibility and reliability of electronic evidence. In our opinion, electronic evidence is subject to evaluation according to the general rules for evaluating evidence in terms of its relevance, admissibility, sufficiency, reliability, and relationship to other evidence.

We have proposed changes to current legislation regarding certain means of proof in Russian evidentiary law. At the same time, it is necessary to specify directions for improving evidentiary law in civil proceedings. The first steps for improving the law of evidence should indicate the processing of the theory of evidence, categories of evidence not sufficiently mature to be procedural doctrine, as the main ones are not enshrined in legislation; in the procedural codes of some foreign countries, that consolidation is present. The absence of the main categorical apparatus of the theory of evidence in current procedural legislation leads to the debatable nature of many provisions. For example, the French CC in Art. 1349 establishes the concept of presumption (Herzog, Weser 1967, 313).

The second direction for improving evidence is its systematization (structuring) in a different order than that provided in procedural codes. The relevant chapters of procedural codes that regulate evidence should be restructured as stages of proof in general provisions on evidence, and so rules will be more understandable for law enforcement officers. Features of proof in individual proceedings, by stages of legal proceedings (first instance, appeal), must also be structurally arranged in the general provisions of the institution of proof and evidence. After that, it is necessary to fix the legal rules of evidence: general issues, procedures for collecting, presenting (disclosure), research, and evaluation (chapter "The proof and evidence": § 1. The general provisions on evidence; § 2. The evidentiary activity of persons participating in the case; § 3. The means of proof).

The third direction for improving evidentiary law is the unification of rules of evidence in the procedural codes, since the regulation of the institution of evidence in the procedural codes differs slightly. In addition, the analogy of procedural law is provided for, and judicial practice knows cases when the court of the relevant branch of the judicial system applies procedural rules that are not "its" procedural code. The above circum-

stances are also due to the unity of tasks of all types of civil production, as well as the unity of the theory of knowledge. The above provides an opportunity to discuss the unity of legal regulation at the level of creating a single CPC of the Russian Federation. At the same time, the concept of judicial law and the judicial code are actively discussed in the pre-revolutionary doctrine and modern science of civil procedure law. Currently known bold practices of arbitration courts, when the latter adopt the conclusions of psychophysiological examination of inadmissible evidence with reference to the norms of the criminal procedural law, define the concept of evidence to establish the identity of definitions of evidence in arbitral procedure and criminal procedure legislation, and make the general conclusion that the conclusion of psychophysiological examination is not valid proof.

The fourth direction for improving Russian evidentiary law should be attempts to activate the reception of proven judicial practice of subinstitutions of evidentiary law in foreign countries. Currently, there is a cautious consolidation by the legislator of legal forms enshrined in the legislation of individual States, which cannot be considered a positive phenomenon. For example, the principle of disclosure of evidence is fixed in a more "soft" form than in the Anglo-Saxon system of law. Fixing this principle in this form deprives it of the procedural purpose for which this principle should be enshrined in current legislation--respect for the right to a fair trial, namely, the reasonableness of the terms of consideration of the case, the prevention of abuse of the right, the principle of objective truth, and competition and equal procedural opportunities in the implementation of the rules of evidence law. Current legislation also establishes the rule of procedural estoppel as the principle of loss of the right to object in the event of unfair and contradictory behavior. In connection with the above, it is relevant to study the comparison of the main institutions of evidence law in France and Russia in order to identify advantages and disadvantages of legal regulations in order to develop proposals for improving the current Russian procedural legislation.

The fifth direction for improving evidentiary law is detailing legal regulations of individual means of evidence. In our opinion, evidence from electronic media is an independent means of proof, the concept of which needs to be legislated. It seems correct to conclude that electronic evidence has a different legal nature than written and physical evidence. A common feature that indicates the admissibility and reliability of electronic evidence is the possibility of identifying the author from whom the electronic evidence originates. It seems correct to establish in the law a non-exhaustive list of electronic evidence, providing for their definition through enumeration by analogy with written evidence, namely an electronic document, an electronic message, and other electronic evidence. It seems the law should fix the concept of "electronic document as documented information presented in electronic form", i. e. in a form suitable for human perception using electronic computers, as well as for transmission over information and telecommunications networks or processing in information systems, which is important for the consideration and resolution of the case. At the same time, an electronic message is understood as information transmitted or received by the user of an information and telecommunications network that is important for the consideration and resolution of a case. Log files of the provider's server should be considered as other electronic evidence.

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