ENFORCEMENT PROCEEDINGS IN RUSSIA: DEVELOPMENT PROSPECTS

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ABSTRACT
Russian law is in constant development. Entire legal entities undergo modernization every year. One example of the dynamic development of Russian legislation is the scope of enforcement proceedings. After a collapse of the Soviet Union in 1991, the regulatory framework of enforcement proceedings began to change in connection with the adoption of two Federal Laws dated July 21, 1997 - "On Bailiffs" and "On Enforcement Proceedings" and further strengthened with the adoption of a new Federal Law "On Enforcement Proceedings" dated October 2, 2007. This affected a conduct of active scientific researches and the formation of the doctrine of enforcement proceedings in the main scientific centers of Russia - Moscow, St. Petersburg, Kazan, Yekaterinburg, Saratov and other cities. Since then, the law on enforcement proceedings has become quite extensive and includes more than a dozen major sources. The article is devoted to the development of legislation on enforcement proceedings in Russia and the prospects for its development¹.

Keywords: enforcement proceedings, legislation, prospects, Russian law

INTRODUCTION
The system of legislation on enforcement proceedings.
In accordance with Art. 3 of the Federal Law "On Enforcement Proceedings", the legislation of the Russian Federation on enforcement proceedings is based on the Constitution of the Russian Federation and consists of the above-mentioned law, the Federal Law "On Bailiffs" and other federal laws regulating the conditions and procedure for the enforcement of judicial acts, acts of other bodies and officials.

The norms of federal laws governing the conditions and procedure of the enforcement of judicial acts, acts of other bodies and officials, should comply with the Federal Law "On Enforcement Proceedings".


Consequently, the system of legislation on enforcement proceedings identifies the laws and by-laws containing both general and specific rules that determine the order of procedural activity in enforcement proceedings.

In the sense of Art. 3 of the Federal Law "On Enforcement Proceedings", the rulemaking falls within the competence of federal bodies in the field of enforcement proceedings.

METHODS
The study is based on the following methods: analysis of previous and current Russian legislation and law enforcement practice; methods of legal modeling and forecasting; legal-social method; method of interpretation.

DISCUSSION
In contrast to Art. 2 of the Federal Law "On Enforcement Proceedings" of 1997, Art. 3 of a new Federal Law "On Enforcement Proceedings" expressly states that the legislation of the Russian Federation on enforcement proceedings is based on the Constitution of the Russian Federation. In particular, the recognition, observance and protection of human and citizen's rights and freedoms is the duty of the state (Article 2 of the Constitution of the Russian Federation). This means that it establishes the duty of the state to recognize, respect and protect human rights and freedoms, including in enforcement proceedings. At the same time, the state not only refrains from interfering in the sphere of rights and freedoms - the obligation to comply with them stipulates an active activity of the state in creating conditions for their implementation. The Constitution of the Russian Federation contains provisions according to which the human and citizen's rights and freedoms are recognized and guaranteed in the Russian Federation in accordance with generally recognized principles and norms of international law. This rule is also developed in the law on enforcement proceedings. Thus, if the international treaty of the Russian Federation establishes other rules than those stipulated by the legislation of the Russian Federation on enforcement proceedings, then the rules of the international treaty should be applied (P. 4 of Art. 3 of the Federal Law "On Enforcement Proceedings").

II. International treaties in enforcement proceedings.
The following international acts are important for the enforcement proceedings: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); the Hague Convention on Civil Procedure (the Hague, 1954); the Convention on Settlement the Civil Law Disputes arising from the Relationships of Economic and Scientific and Technical Cooperation by Arbitration (Moscow, 1972); the Agreement of the CIS countries dated March 20, 1992 "On Procedure for Resolving Disputes Related to the Implementation of Economic Activities"; the Convention of the CIS members "On Legal Assistance and Legal Relations in Civil, Family and Criminal Cases" (Minsk, 1993).  

In addition to the mentioned multilateral international acts, the Russian Federation is a party to bilateral international treaties on mutual legal assistance, some of which stipulate recognition and enforcement of judicial decisions. At the same time, it should be taken into account that some of these treaties (with

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7 The list of valid treaties on legal assistance in civil, family and criminal cases (as of May 10, 1995) (annex to the letter of the Ministry of Justice of Russia dated May 30, 1995 No. 03-07-19-95).
Algeria, Yemen, Iraq) stipulate mutual recognition and enforcement of not only judicial decisions but also arbitral awards.


III. Material and Procedural Law - the Sources of Enforcement Proceedings.

The enforcement proceedings are also regulated by the following regulatory acts governing both procedural and material legal relations: the Civil Procedure Code of the Russian Federation, the Arbitration Procedure Code of the Russian Federation, the Civil Code of the Russian Federation, the Family Code of the Russian Federation, the Labor Code of the Russian Federation, the Code of Administrative Offenses, etc.

We can distinguish two groups of norms, to some extent forming the regulatory basis for enforcement proceedings, in the Civil Procedure Code of the Russian Federation (hereinafter - the CPC), which came into force on February 1, 2003. Thus, there is a special section devoted entirely to the enforcement proceedings - Section VII. It consists of 19 articles (Art. 428-446). The second part of the norms of the CPC, which are important for the enforcement proceedings, includes the articles of the Code regulating the following issues: clarification of a decision to be enforced (Art. 202 of the CPC), deferment or installment of a decision, change in the method and procedure for execution of a decision (Art. 203 of the CPC), determination of the procedure and term for execution of the court decision, securing its execution (Art. 204 of the CPC), special aspects of the court decisions on awarding the property or its value (Art. 205 of the CPC) obliging the debtor to take certain actions (Art. 206 of the CPC) in favor of several plaintiffs or against several defendants (Art. 207 of the CPC), decisions that are immediately enforceable (Art. 211 of the CPC).

Unlike the previous civil procedure legislation of the RSFSR, the CPC of the Russian Federation acts without any annexes, and the list of property types that cannot be foreclosed is specified in Art. 446 of the CPC of the Russian Federation; the possibility of restoring the lost executive enforcement is not regulated at all by the CPC of the Russian Federation.

The Arbitration Procedure Code of the Russian Federation (hereinafter - the APC) dated July 24, 2002 includes also separate provisions related to the enforcement proceedings. Section VII of the APC is devoted to general issues of execution of judicial acts issued by the arbitration courts. Many norms contained in Section IV of the APC, supplement the provisions of the Law on Enforcement Proceedings. Such provisions include: the procedure for issuing the writ of execution (Art. 319-323 of the APC), restitution of the execution of a judicial act (Art. 325, 326 of the APC). In the APC, the legislator did not set the goal of detailed disclosure of enforcement issues (for example, Section VII of the APC contains only 15 articles). This approach should be recognized as correct, since the relevant procedural codes should contain only private procedural rules on the procedure for issuing the writs of execution and for resolving certain procedural issues related to the enforcement proceedings.

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The sources of enforcement proceedings include federal laws regulating various "material" legal relations. For example, the Civil Code of the Russian Federation contains provisions on representation, procedure for issuing a power of attorney (Chapter 10), liability for breach of obligations (Chapter 25) as a result of causing harm (Chapter 59), bidding procedure (Art. 447-449) and some others.

The Family Code of the Russian Federation dated December 29, 1995 regulates the enforcement procedure of court decisions on disputes related to the upbringing of children (Art. 79), as well as the procedure for paying and collecting child support (Chapter 17).

The Labor Code of the Russian Federation dated December 30, 2001 stipulates the most important issues related to the procedure for protecting labor rights and resolving labor disputes (Section XIII). In particular, it defines the ways of protecting the labor rights of workers (Art. 352), the powers of the bodies of the Federal Labor Inspectorate (Art. 356), the competence of the Labor Disputes Commission (Art. 385), the procedure for executing the decision of the Labor Disputes Commission (Art. 389), the rules for executing the decision on reinstatement at work (Art. 396). The rule on restricting foreclosure of the amounts paid by decision of the bodies considering individual labor disputes is also essential (Art. 397).

According to P. 3 of Art. 3 of the Federal Law "On Enforcement Proceedings" on the basis of and in compliance with the law on enforcement proceedings and other federal laws, the Government of the Russian Federation can adopt the regulatory legal acts on the enforcement proceedings. Consequently, the subordinate regulatory acts can be considered as sources of enforcement proceedings.

**IV. Judicial practice in enforcement proceedings.**

The judicial power, which plays a special role in the process of forming a legal Russian state, is of great importance for any sphere of law enforcement activities. At the same time, judicial practice is one of the most effective ways to resolve legal conflicts. If the judicial decision is universal and extends to an indefinite group of persons, then it can be attributed to the sources of law.

The examples of judicial acts as sources of law are the decisions of the Constitutional Court of the Russian Federation, the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of the Russian Federation.

There are controversial issues that have been the subject of proceedings before the Constitutional Court of the Russian Federation, in particular the regulations on executive documents, executive fees, order of distribution of the foreclosed amounts of money and some other issues in the field of enforcement proceedings. The principal nature is had by: the determination of the Constitutional Court of the Russian Federation dated July 6, 2001 No. 150-O "On Refusal to Accept the Request of the Oktyabrsky District Court of the City of Izhevsk for Review of the Constitutionality of Paragraph 2 of Article 339 of the Civil Procedure Code of the RSFSR, Paragraph 13 of Article 35, Articles 89 and 93 of the Fundamentals of the Legislation of the Russian Federation on Notary"; the Decision of the Constitutional Court of the Russian Federation dated July 30, 2001 No. 13-P "On the Case on Review of the Constitutionality of Provisions of Subparagraph 7 of Paragraph 1 of Article 7, Paragraph 1 of Article 77 and Paragraph 1 of Article 81 of the Federal Law "On Enforcement Proceedings" in connection with the requests of the Arbitration Court of the Voronezh Region, the Arbitration Court of the Saratov Region and a complaint of the Open Joint-Stock Company "Razrez "Izykhsky", etc. 13

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We can separately distinguish a group of judicial acts, such as information letters of the Supreme Arbitration Court of the Russian Federation and reviews of judicial practice and legislation of the Supreme Court of the Russian Federation.

In the enforcement proceedings, the role of judicial acts as a judicial practice is reduced to a supervisory function, the essence of which is the ability to perform certain procedural actions only in the presence of the court (arbitration court) sanction, as well as the duty of the court to examine complaints against the bailiff's actions and suits arising from the enforcement relations.

In the context of the growing role of international law and the protection of human rights, not only the international acts mentioned above, but also the judicial practice of the European Court of Human Rights, are of particular importance. For example, the cases on implementing the right to access to justice in the civil process: Kovalev v. Russia, Dunayev v. Russia, the cases on protection of property rights: Tuleshov and others v. Russia and Viktor Konovalov v. Russia15. Moreover, in accordance with the established practice of the European Court of Human Rights, the execution of a court decision adopted by any court should be considered as part of a "trial" within the meaning of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (see the Decisions of the European Court of Human Rights "Hornsby v. Greece" dated 19 March 1997).1617

From the point of view of international legal doctrine and practice, the Russian mechanism of legal regulation in the enforcement field is imperfect, since it does not ensure the effective exercise of the right to a fair trial belonging to a particular citizen or organization at present. The Recommendations of the Committee of Ministers of the Council of Europe to the Member States dated September 9, 2003 No. Rec (2003) 17 "On Enforcement" stipulate that it is reasonable to relate the interests of both the recoverer and the debtor, and in some cases, the interests of third parties when carrying out the enforcement. In this regard, optimization of practical activities of enforcement agencies and other participants in enforcement proceedings is of great importance in the enforcement process.

The result of imbalance in Russian legislation was the adoption of the pilot decision of the European Court of Human Rights in the case of Burdov-2 v. Russia (January 15, 2009) and the Federal Law No. 68-FZ dated April 30, 2010 "On Compensation for Violation of the Right to Judicial Proceedings within a Reasonable Time or the Right to Enforce a Judicial Act within a Reasonable Time"18.

**CONCLUSIONS**

Thus, the legislative regulation of foreclosure on executive documents should be implemented on a stable legal basis of balanced regulation of the rights and legitimate interests of all participants in the enforcement proceedings. At the same time, the limits of possible foreclosure should be established by law. On the one hand, the limits should not violate the basic rights of the debtor, and on the other hand, should be in the interests of protecting the rights of the creditor, in order to prevent or reduce the negative consequences of non-performance of the debtor's obligation.19 This provision cannot be properly

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15 The review of judgments and decisions of the European Court of Human Rights in May 2007 (prepared by the lawyers of the Center for International Protection Assistance and the Demos Center) // www.demos-center.ru.
implemented without specifying the rights of citizens and organizations in the current legislation on enforcement proceedings. Therefore, we can assume that the reforming and modernization of legislation on enforcement proceedings is only at the very beginning.

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