

«Comparative Procedural Law» Course Syllabus

**Approved by the Academic Council
of the Basic Higher Education Programme.
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1. Course Description

a. Title of a Course

Comparative civil procedure

b. Pre-requisites

- basic knowledge of international law, civil law and civil procedure,
- upper-intermediate level of oral and written legal English

c. Course Type (compulsory, elective, optional)

elective

d. Abstract

Why to study foreign civil procedure?

This is not an easy question to answer since it is not merely a rhetoric one: although the importance of comparative approach in legal education is not put into doubt today all over the world, relevance and utility of comparative procedural law is not always obvious. Indeed, what is a practical effect of learning peculiarities of different procedural systems for a lawyer educated in a national system who, most likely, will not participate as an attorney in a foreign court proceeding? Does such study imply any practical importance or has just informative value?

The course gives answers to these questions proposing not only information on organization and functioning of foreign procedural systems but paying attention to the fundamental similarities and differences between different procedural models. Students learn to identify common issues for all procedural systems and to analyze the best techniques used for deal with them. These techniques hypothetically may be borrowed to improve the national procedural system.

The course gives an overview of different judicial and procedural systems in the modern world. It covers different aspects of courts' organization, types of procedural systems and forms of judicial (and, to a certain extent, of non-judicial) protection of rights. It begins with a historical analysis of the modern procedural systems evolution that explains major differences in philosophy and technique of civil procedure.

The course will be useful for Russian as well as foreign graduate students having interest in the development of European judicial systems and procedures.

The course is taught in English.

2. Learning Objectives

The Course main objectives comprise:

- obtaining knowledge allowing to assess in a correct way the legal environment in which the foreign partners of Russian business actors live and act;
- acquiring the skills of professional evolution of a suit perspective in foreign courts and/or commercial arbitration;
- familiarization of students with the main procedural concepts including those unknown in the Russian legal system;
- learning the trends of development of procedural law in the global context.

3. Learning Outcomes

Students must gain knowledge on:

- general structure and principles of civil procedure in the global context;
- main types of procedural systems and their main features and differences between them;
- the main sources, notions and institutes of foreign countries' procedural law;
- the trends of development and harmonization of modern procedural law.

Skills and abilities:

- to assess the perspectives of civil cases examination by foreign courts;
- to give legal analysis of potential legal issues which may arise in course of examination of the case by a foreign jurisdiction;
- to analyze foreign procedural law and case-law;
- to do legal analysis of particular cases and legal conflicts.

Students should gain the following competences:

- ability to work with judicial information (search, evaluate, use information, necessary for fulfillment of academic and professional tasks, from various sources, including application of the systematic approach);
- ability to carry out professional activities in the international environment;
- ability to search, analyze, and work with legally relevant information by using the juridical, comparative and other specific methods,
- ability to describe legal problems and situations in the field of judicial activities and case-law.

4. Course Plan

Subject 1. Comparative approach in civil procedure

- Comparative method in civil procedure: why? Main functions and objectives of comparative studies in law
- General problems of comparative law and specific problems of comparative procedural law
- Techniques of comparative method: macrocomparison vs. microcomparison

Subject 2. Modern procedural systems: history, typology and main features

- Evolution of Western procedural system: historical overview. Roman and German procedure as the basis for modern civil procedure
- Main types of procedural systems: different approaches. Is the classification «adversarial vs. inquisitorial procedure» still relevant?
- Common law systems and civil law systems: main features, fundamental similarities and differences. General goal of procedure and different means of achieving it. Written and oral element in procedure as a key difference between procedural systems
- Structure of proceedings and organization of courts as main distinctions of procedural models. The role of jury trial in categorization of procedural systems

Subject 3. The Legal profession in the modern world

- Education of lawyers in different procedural systems
- Bar in modern legal worlds: varieties of profession, types of admission and career
- Judiciary in the modern legal systems. Role and status of judges in modern justice and politics. Main challenges for the judge's activities

Subject 4. Organization of the Courts

- The role of judicial organization in the classification of procedural systems
- The importance of instances organization in the modern procedural typology (systems «appeal-appeal», «appeal-cassation», «appeal-revision»)

- General trends of judicial organization in the modern world (differentiated jurisdiction of 1st instance courts, creation of specialized courts, participation of lay-judges; etc.).
- Civil law systems: France and Germany
- Common law systems: UK and USA
- Constitutional courts and their analogues
- Supra-national courts and their place in the modern procedural landscape

Subject 5. Jurisdiction: main issues (case-study)

- Main approaches to jurisdiction determination: common law systems vs. civil law systems
- UK approach: tag jurisdiction, inherent jurisdiction; jurisdiction over foreign parties
- US approach: jurisdiction in rem and in personam
- Jurisdiction in personam: relevant notions (minimum contacts, reasonableness of jurisdiction).
- Forum access: forum shopping, Lis Pendens and Forum non conveniens concepts.

Subject 6. Sources of procedural law

- Hierarchy of procedural law sources: international treaties, European Union law, national law. Case-law of supranational courts (including ECJ and ECtHR) and its importance in the system of procedural law sources.
- Sources of procedural law in civil law and common law countries. Statutes vs. precedents. Trends of approximation and interdependence of different procedural systems.
- Domestic level: constitutions, statutes, by-law acts and national courts' case-law .
- Common law countries: the overview of procedural law sources. England and Wales: unwritten Constitution; modern hierarchy of legal sources. Civil Procedure Rules as an outcome of the Woolf reforms: general characteristics. USA: 51 legal systems. Federal law and law of states.
- Civil law countries: sources of procedural norms. General characteristic of Code de Procedure civile in France and ZPO in Germany.

Subject 7. Commencement of a law suit

- Structure of proceedings: common law vs. civil law systems. Pre-trial and trial in common law systems and preparatory phase in civil law systems: different philosophy of procedure.
- Introductory stage of proceedings: filing a claim, identifying the issues, learning the facts.
- Fact pleading vs. Notice Pleading: the unique American model and the trends of its development.
- Initiating a suit: England. Pre-action protocols and Statement of claims and defense
- American and German commencement of suit
- Notification of the respondent (service of process)
- Joinder (aggregation) of parties and claims
- Learning the facts. Discovery and Disclosure: American vs. English techniques and civil law approaches

Subject 8. Proceedings in 1st instance: The Trial and Analogous Processes

- The jury in common law systems as a key (historical) factor of different procedural philosophy
- The role of judge and parties in the proceedings
- Evidence and presentation of proof

Subject 9. Evidence and Proof

- Types of evidence ; role of testimonies and documents in civil law and common law systems
- Examination of witnesses: direct and cross-examination
- Standard of proof: civil law vs. common law countries.
- Standard of proof: balance of probabilities and preponderance of the evidence. In Re B Children case-study.

Subject 10. Provisional Measures

- Provisional remedies: history and contemporary context . Justification and current problems
- Provisional measures in transnational litigation

- Overview of provisional measures in some national systems. «Mareva" injunctions, freezing and search orders

Subject 11. Judgments and Res Judicata

- Types of judgments in modern procedural systems. Final and preliminary judgments
- Finality and preclusion as key effects of judgments
- Res judicata: main approaches to the concept. Triple-identity criteria in civil law systems. Claim preclusion and Issue estoppel and their variations in common law systems.
- Scope of the dispute and res judicata: common law vs. civil law system

Subject 12. Appeal

- Right to appeal as a fundamental procedural guarantee and the limits to its realization.
- Historical evolution of different systems of review (common law and civil law systems: hierarchical vs. coordinate model).
- Jury trial as a key reason of differences in appeal systems in two main procedural systems.
- The goals of appeal : seeking for a balance of private and public interests
- Different approaches to finality and preclusion (res judicata) in the European countries and USA
- Main systems of review: appeal-appeal (UK and USA); appeal-cassation (France), appeal-revision (Germany)
- The powers of appeal courts : common and different features of courts organization in modern legal systems
- Cassation and revision: modern features. The role of the highest court in different legal systems. Evolution and functioning of Cour de Cassation in France, Bundesgerichtshof in Germany, Supreme Courts in UK and USA
- Other types of review/re-opening

Subject 13. Harmonization of Civil Process: Trends and Prospects

- Common issues of civil procedure in the context of three dimensions of justice: costs-delay-truth (A.Zuckerman, Oxford University).
- Access to Justice as a major goal of judicial reforms. New approaches and problems on the way of increasing efficiency of justice. Liberal or Social Procedure? Public or Private?
- Directions of reforming civil procedure: improving proceedings in 1st instance; reform of legal aid; increasing the role of the court in case-management
- Enforcement of judgments as a global issues;
- Approximation of models of the highest courts' activities
- Harmonization of procedural norms as a major trend of improving civil procedural law and a factor of reforming judicial proceedings in the global context. Levels of harmonization: European Union, Council of Europe, global one.

5. Reading List

a. Required

1. Maleshin, D.Ya. Russian Style of Civil Procedure// Emory International Law Review, 2007. Vol.21, no. 2. (<http://www.law.msu.ru/node/7344>)
2. Blankenagel, Alexander. Legal Reforms in Russia: Visible Steps, Obvious Gaps and an Invisible Hand//https://www.academia.edu/10324814/Legal_Reforms_in_Russia_Visible_Steps_Obvious_Gaps_and_an_Invisible_Hand

b. Optional

3. Reshetnikova, Irina. 150 years of adversarial procedure in Russia//Russian Law Journal, 2013 No 1.

6. Grading System

exam; rating system (incl. written and oral tasks, presentations, Written 60-minute exam (test)

7. Guidelines for Knowledge Assessment

The current and inter-mediate control of knowledge has been carried out on the basis of accumulative system of points gained by the participants for:

- tests written in class (regular control of knowledge),
- presentations,
- reports.

8. Methods of Instruction

- use of interactive educational technologies (case study, work in small groups; conferences);
- use of ratings and accumulative system of control.

9. Special Equipment and Software Support (if required)

Power-point, Internet, video-typing