



Recent Developments in Russian Law – IGC, Russia Table, 18 April 2018

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Introduction

- ▶ Purpose of this presentation:
 - ▶ To provide a brief overview of the most important legislative developments in Russia during recent years
 - ▶ Further issues having an impact on Dutch Russian relations
 - ▶ Advantages of Russian court system

Most Important Legal Developments in Russia During Recent Years

- ▶ The most important legislative and legal changes concern:
 - ▶ Business law – updating the Russian Civil Code
 - ▶ Constitutional law – prevalence of the Russian Constitution over international law
 - ▶ Court system

Some Basics of Russian Law (I)

- ▶ Legislative system
 - ▶ Constitution of 12 December 1993 adopted by nation wide referendum
 - ▶ Some 30 Codes, including Civil Code, Tax Code, Criminal Code, etc.
 - ▶ Federal constitutional laws and federal laws
 - ▶ Edicts (Ukazy) of the President – Edicts may also be issued in the event of a gap in the law
 - ▶ Decrees and Resolutions of the Government
 - ▶ Ministerial and other substatutory decrees
 - ▶ Usual legislative principles apply: *lex superior*, *lex specialis*, *lex posterior*

Some Basics of Russian Law (II)

- ▶ State structure of the Russian Federation
 - ▶ Federation with 85 Subjects of the Federation, including
 - ▶ 22 Republics, including Tatarstan, Bashkortostan, Crimea (since 2014)
 - ▶ 9 Regions (krai)
 - ▶ 46 Provinces (oblasti)
 - ▶ 3 Cities of federal significance: Moscow, St. Petersburg, and Sebastopol (since 2014)
 - ▶ 1 Autonomous Province: Jewish Autonomous Province (Birobidzhan)
 - ▶ 4 Autonomous Circuits, including Khanty-Mansy (base of former Yukos)

Some Basics of Russian Law (III)

- ▶ Federation – distribution of powers:
 - ▶ Article 71 Constitution RF: lists all powers of the Federation, including the adoption of legislation on the court system, procuracy, criminal law, civil law, procedural law, intellectual property, etc.
 - ▶ Article 72: lists all powers that within the joint jurisdiction of the Federation and the subjects of the federation, including: protection of human rights, rights of minorities, protection of public order, protection of the environment, principle of taxation, bar (advocacy), public notaries, etc.
 - ▶ Article 73: all remaining powers have been attributed to the subjects of federation

Some Basics of Russian Law (IV)

- ▶ Court system:
 - ▶ Constitutional Court (19 justices): tests constitutionality of federal laws and legislative acts of the President, the Government, Constitutions of the republics, etc.
 - ▶ Supreme Court is the highest body of the judicial system
 - ▶ There are two separate branches of the judiciary: courts of general jurisdiction and economic courts (rather confusingly called *arbitrazh* courts)
 - ▶ Until August 2014, there was also the Supreme Arbitrazh Court but its tasks were assigned to the Supreme Court
 - ▶ In principle, cases can be heard in two instances and subsequently by heard by one of the 9 cassation courts
 - ▶ On top of that, the Supreme Court may also hear cases in a so-called *nadzor*(supervision) procedure

Updating the Russian Civil Code (I)

- ▶ Russian Civil Code (“RF CC”) was adopted and entered into force in the period 1994-2008
- ▶ RF CC consists of 4 Parts dealing with general provisions, company law, contract law, tort liability, private international law, law of succession, and intellectual property.
- ▶ The new RF CC was drafted on the basis of a pre-revolutionary draft CC of 1907, the Soviet RSFSR Civil Code and following consultations with Western civilists, including Dutch lawyers (including the undersigned)
- ▶ The RF CC is of the ‘monist’ model, i.e., covering both civil and commercial law (other than the dualist models, like f.i. the German BGB and HGB)
- ▶ As a result, the RF CC deals with company law, too.

Updating the Russian Civil Code (II)

- ▶ Apart from its monist model, the Russian CC has introduced a number of other Dutch legal phenomena, including:
 - ▶ The legal principle of 'reasonability and justice' ('redelijkheid en billijkheid')
 - ▶ However, unlike under Dutch law, the principle of reasonability and justice (разумность и справедливость) does not have derogatory effect, i.e., it cannot set aside a legal or contractual provision;
 - ▶ It has a supplementary effect only
 - ▶ This is due to the fact that under Russian law, there is no such thing as judge made law
 - ▶ Judges may just interpret and apply a law and not amend or set aside a law

Updating the Russian Civil Code (III)

- ▶ In 2014, a major reform of the Russian CC started, including a thorough revision of Russian company law
- ▶ Article 50 CC distinguishes between commercial and non-commercial organizations
- ▶ Commercial organizations include economic societies and entities, farmers' households, economic partnerships, productive cooperatives, and state and municipal unitary enterprises
- ▶ Non-commercial organizations include, inter alia, associations, foundations, public law companies, religious organizations, and advocates' unions

Updating the Russian Civil Code (IV)

Further novelties as to company law include:

- The right for creditors of a company in liquidation to challenge the liquidation balance
- Cf. Article 2:23a of the Dutch Civil Code – revival of the liquidated entity if new creditors appear
- Termination of a non functioning company – not having filed annual reports during a period of 12 months and not having any transactions on the company's bank account
- Shareholders may challenge on behalf of the company transactions that contradict company law (e.g. with persons having a personal interest)
- Companies can be public (JSC with publicly traded shares) or private (JSC with privately traded shares; and an OOO (LLC))

Ruling of the Russian Supreme Court (I)

- ▶ On 23 June 2015, the Supreme Court of the RF issued its Ruling No. 25 on the application of Part 1 of the Civil Code
- ▶ Purpose of the Ruling (a 46 pages document) is instructing lower courts to apply the revised Civil Code in a uniform way
- ▶ The Ruling deals with many topics of civil law, including
 - ▶ compensation of damages and the burden of proof
 - ▶ reliance of data in the trade register: a person may rely on the correctness of those data, unless he knew or could have known that they were incorrect
 - ▶ Transactions entered into with a view to avoid the law or for unlawful purposes shall be subject to the same provisions the parties sought to avoid (note that we have a similar approach in the case of *fraus legis*)

Ruling of the Russian Supreme Court (II)

- a legal notice
 - may be sent by email, fax or any other means of communication where the sender and recipient can be accurately identified
 - The burden of proof in respect of sending and receiving a notice lies with the sender
- When the body of a legal entity exceeds the restrictions defined by the charter or internal documents,
 - the transaction can be declared invalid by the court
 - based on the claim of a person benefiting from these restrictions
 - only in cases where the counterparty to the transaction knew or should have known about such restrictions.

Constitutional law – prevalence of RF Constitution over international law (I)

- ▶ Under Article 15 (4) RF Constitution, international law shall have priority over Russian law:
 - ▶ “Generally recognized principles and norms of international law and international treaties of the Russian Federation shall be a component of its legal system. If an international treaty of the Russian Federation establishes rules different from those provided for a law [of the RF], then the rules of the international treaty shall apply.”
- ▶ Said provision has always been interpreted and applied in a rather broad sense
- ▶ However, in 2010, the President of the RF Constitutional Court, Zor'kin pointed out that following a 2004 German court decision (BVG 14-10-2004 in re Görülü), decisions of the ECHR (Strasbourg) relating to Russia must also comply with the Russian Constitution

Constitutional law – prevalence of RF Constitution over international law (II)

- ▶ A 2015 Ruling of the RF Constitutional Court went even further requiring that the Constitutional Court verified the constitutionality of ECHR decisions against Russia [Decision of the RF Const. Court of 14 July 2015 No. 21-P]
 - ▶ («Этим не исключается правомочие федерального законодателя - исходя из требований Конституции Российской Федерации и с учетом правовых позиций Конституционного Суда Российской Федерации, выраженных в настоящем Постановлении, - предусмотреть не противоречащий юридической природе Конституционного Суда Российской Федерации и его предназначению как высшего судебного органа конституционного контроля специальный правовой механизм разрешения им вопроса о возможности или невозможности с точки зрения принципов верховенства и высшей юридической силы Конституции Российской Федерации исполнить вынесенное по жалобе против России постановление Европейского Суда по правам человека, в том числе в части мер общего характера.»)

Constitutional law – prevalence of RF Constitution over international law (III)

- In its decision, the Russian Constitutional Court referred to decisions of the Constitutional Courts of Germany, Austria, and Italy, respectively, as well as to a decision of the UK Supreme Court, which all contained critical notes on the ECHR interference in the legal system of their respective countries
- It should be noted that the UK and Italy have also questioned the legitimacy of ECHR decisions against their respective countries
- So far, this has led to some restraint on the part of the Strasbourg Court

Court system reforms

- ▶ Constitutional Court – moved from Moscow to St Petersburg in 2008
- ▶ Quite some criticism on the removal – away from the center of power
- ▶ However, cf. the German Bundesverfassungsgericht, which is based in Karlsruhe – also far from Berlin

- ▶ Supreme Arbitrazh Court was abolished in 2014
- ▶ Its jurisdiction transferred to a new Chamber of the Supreme Court (court of general jurisdiction)
- ▶ The so-called *arbitrazh* courts are state courts dealing with economic and commercial issues, including f.i. bankruptcy

Спасибо за Ваше внимание!

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