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INSTITUTE FOR TRANSFRONTIER COOPERATION

**EFFICIENCY OF TRANSBORDER COOPERATION VIA
INTERNATIONAL MONITORING AND COORDINATION
OF ACTIVITIES OF NATIONAL SUBJECTS**

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**CIVIL PROCEDURE RULES OF ENGLAND
AND UNIFICATION IN REGULATING THE CIVIL
PROCEDURE IN THE CONTEXT
OF INTERNATIONAL REQUIREMENTS**

Peculiarities of English civil procedure are reported. Both the most important aspects of Civil Procedure Rules and new unified procedure of legal investigation are analyzed. Attention is paid to the jurisdiction in English legislation. Special features of unification in regulation of English civil procedure in the context of international requirements are given.

Key words: *Civil Procedure Rules, unification in civil procedure, Civil Procedure Reform*

In recent years, in many countries, the long-felt need exists for the reformation of civil procedural legislation and civil process. The most crucial changes in the civil process of England and Wales took place at a period beginning in 1998 when a first consolidated procedural act (the Civil Procedure Rules) was adopted. Attention must be drawn to the fact that the reforms in England's civil process came to be a model to follow in reforming and cardinally updating the civil procedural legislation in other countries of the world (Germany, Spain, France, etc.).

Among external reasons that spurred the need for reforms in the procedural legislation were the problems of unification and harmonization associated with procedural legislations in the EU member states. The Amsterdam Treaty that had taken the effect on May 1, 1999 came to be a starting point to offer and discuss suggestions aimed at developing improved and yet simplified national civil procedural provisions as well as at unifying isolated institutions of law inside the EU. The codification of civil procedural law in the EU member states comes up against certain problems associated with the forms of delivering justice, since these forms are distinct in each individual state. Hence the demand arises that national legal systems are to be brought close together, primarily in the sphere of regulating commercial and procedural

relations in the course of the international commercial turnover. Because if this, two separate methods of bringing national legal systems together may be singled out [1, p.5, 6].

The 1998 Civil Procedure Rules were framed as an act of delegated legislation. At the direction of Lord Chancellor, these rules came to be enforced by English courts ever since 26 April 1999. From this date onward, provisions concerning identical procedural issues, formerly valid rules, and subordinate acts ceased to be in force. The main body of the text of the Civil Procedure Rules is broken down into parts, with practically each part being supplemented with practical instructions. The parts, in their turn, bear a name and contain items and sub-items designated in an alphanumerical manner. It is notable that the Civil Procedure Rules terminate in a *glossary* where definite legal terms are specified. The Civil Procedure Rules are also supplemented with a list of pre-trial records for cases of certain categories. These records, according to definitions set in the Civil Procedure Rules, present intentions of lawyers or other persons in relation to a certain case and a forthcoming suit. For example, the Civil Procedure Rules are supplemented with a list of cases where the parties are recommended to keep pre-trial records. Attached to the Civil Procedure Rules are also basic typical forms of definite procedural documents.

Along with the adoption of the Civil Procedure Rules, a solution was found to the problem of how to identify the role and status of the 1965 Rules enforced by the Supreme Court and the 1981 Rules enforced by county courts. In view of the fact that these both sources of law were not completely cancelled, some of provisions thereof were included in the 1998 Civil Procedure Rules in the form of Addenda 1 and 2, respectively [2].

Thus, 1500 pages of the Civil Procedure Rules took the place of 4000 pages of the 1965 Supreme Court's rules and the 1981 county courts' rules. Because of this, the Civil Procedure Rules can be considered as being a unifier in regulating the civil law procedure [3, p. 26].

The wording of the new Civil Procedure Rules was also updated – it became far much simpler and understandable, with the previous terms being changed for new ones and clarified directly in Law. Lord Wolf who might be believed to be the framer of the new rules hoped that the changes in terminology would also contribute to changes in the attitude towards this legislative instrument in terms of the accessibility of public justice owing to the balance attained by removing the preponderant position of one of the parties who possess more knowledge and information. Notwithstanding the

fact that a considerable body of changes and new institutions have been introduced, the new Civil Procedure Rules do inherit much from the rules enforced by the Supreme Court and the rules enforced by county courts.

A unified character of the new Civil Procedure Rules makes itself evident not only in the terminology changes, but also in “procedurally incorporating” all judicial instances, without breaking down the order of reference to the court (county courts or the Supreme Court) and the order of trying a case into separate procedures, and in creating a versatile mechanism through introducing a unified form of reference to the court (a plaintiff’s statement of claim) to replace the former diversified system. For example, according to the Rules enforced by the Supreme Court and by county courts, it was required that several types of statutory documents be presented to the court, namely, the order for appearance of a defendant before the court, the plaintiff’s prayer, the pretrial notice, the petition to sue. The very procedure for reference to the court has also undergone changes to become considerably simplified [4, p. 481].

Part 7 of the Civil Procedure Rules contains a provision that a plaintiff’s statement of claim is a multi-purpose form to be used both for civil actions with a specified amount of money at stake and for civil actions with an unspecified amount of money at stake as well as for nonmonetary civil actions where the plaintiff may, for example, demand that the court be giving an order in relation to a certain issue [5, p.272].

When framing the Civil Procedure Rules, the law-makers sought the unification of procedures for reference to the court and for trying cases, and a mechanism to achieve this goal was simplification. In contrast to the Rules of the Supreme Court and those of county courts, the 1998 Civil Procedure Rules do not give answers to questions that may arise in each specific case. Instead, they set forth general provisions to be used for a wide variety of cases and present clear and understandable instructions to the court and to the parties in an effort to treat a case in an equitable and fair manner. The lack of detailed information is compensated for by three basic “tools” provided for by the Civil Procedure Rules – the determination of main goal, the mechanism of juridical management and the practical instructions [6, p.3].

It can be noted that the unification, along with the enactment of the Civil Procedure Rules, affected England’s institutions of civil law in terms of the order and procedure for reference to the court. Let us give a detailed characteristic of the changes introduced directly in the above areas.

Worthy of notice is the new unified procedure of trying cases that will be considered in more detail when analyzing a general multi-stage algorithm of the English civil process. *The first stage* is characterized by the presence of activity of the parties aimed at settling the controversy prior to court proceedings and at completing all necessary preparations such as those provided for by pre-trial records that are kept in certain categories of cases. *The next stage* is with the submission of a plaintiff's statement of claim. According to a common rule, trying a specific case both by a county court and by the Supreme Court begins with the submission of a plaintiff's statement of claim (to be more precise, beginning with the date of registration of the above statement with the court). In compliance with the Civil Procedure Rules, a plaintiff's statement of claim has to contain some requisites and a necessary substantial part. As for the requisites, a plaintiff's statement must indicate the name of the court to which it is submitted and information on the plaintiff and defendant. If the plaintiff acts through a solicitor the defendant is to be given information on this solicitor. The substantial part of the plaintiff's statement of claim must comply with Clause 16.2(1) of the Civil Procedure Rules, presenting a summarized character of claim, a remedy that is called for by the plaintiff (e.g. recovery of money or property, keeping from doing certain actions, compensation for a damage to health, etc.[7, p.386]), the amount of money at stake (if money is claimed) and other data that may be provided for by the practical instructions. An appendix to the Civil Procedure Rules contains a typical form for a plaintiff's statement of claim.

In the English civil procedural legislation, it is of interest that a plaintiff's statement of claim must not necessarily contain details of circumstances presented in the case. Such details may be given later (they have to be handed over to the defendant within the 14 days' period after the defendant has received the main plaintiff's statement of claim). A legal innovation of the Civil Procedure Rules lies in validization as a method to verify credibility and truthfulness of information submitted to the court. If a party did not present such a validization this party may refer to facts set in this document as evidence in certain issues. *The third stage* is with the defendant's performance that may be of two types – affirmative performance and negative performance. The negative performance means a lack of action on the part of the defendant, thus providing legal grounds for the plaintiff to demand the court's approval of a judgment by default. The affirmative performance of the defendant lies in choosing a certain form of

reply to the plaintiff's statement of claim. Such a reply may be given in one of the following ways – to agree with the plaintiff's statement of claim in full or partly, to put forth counter-arguments, to submit a counter-claim or to declare an intention to appeal against the competence of the court. The defendant's intention has to be documented by filling out an appropriate special form provided for by the legislation. The defendant is given 14 days to complete this activity, beginning with the moment when he/she received a detailed plaintiff's statement of claim. At *the fourth stage*, the court sends questionnaires to the parties with the aim of coordinating their activity when the case is to be referred to one of three tracks, i.e. with the aim of choosing the order of trying that is directly applicable to this case. Such questionnaires should be filled out and sent to the court by the parties, as a rule, within two weeks. The Civil Procedure Rules (see it.2.3 - part 26 of Practical instructions) encourage the mutual co-operation and consultation of the parties when filling out the above questionnaires in an effort to work out a unified common strategy aimed at coordinating the parties' views. *The next stage* involves the court's activity directed to identifying a procedure of trying the case (when small civil actions are dealt with the procedure of trying may be either fast-track universal). The track of procedure is decided on by the court independently on the basis of documented conclusions and grounds presented by the parties. In the event that the court considers the information presented by the parties as being insufficient to resolve the issue on the allocation of the case, the court may require that the parties be presenting the necessary information or even initiate hearings in relation to involved issues. Upon selecting an appropriate track the court gives the parties relevant instructions and draws up a time plan for them to complete their activity. Thus, the *sixth stage* may be considered as being a cooperative activity on the part of the court and on the part of the parties in an effort to prepare the case for trying. The court gives the parties its instructions depending on the selected procedure of trying the case and on the essence of the case itself. The court also fixes the date to start proceedings in the case in essence. So, the final stage is with proceedings in a case [8, p. 172, 173].

The unification in regulating the civil legal process in England was also considerably affected by the diversification of procedure for trying cases of different categories (trying small cases; fast-track trying; universal trying) because the unification of a form of action, when court procedures are differentiated, presents a dual trend in developing the civil process. The

unification does not imply a regulatory uniformity. On the contrary, reflecting general regularities of process development, it provides a basis on which to develop court procedures that are different in their content. This is consistent with the idea of fair trial (as provided for by Clause 1 of the Civil Procedure Rules). The civil process is constituted by a form of action. The unity of the civil process has also to be based on the essential and functional unity of court activity and on the implementation of unified tasks [9, p.55].

In relation to the general unification of procedure for trying civil cases and to the separation of civil process stages, it is of interest to turn attention directly to the institution of court jurisdiction in the English civil process. An analysis into England's legislation makes it possible to arrive at the conclusion that there exist exclusive jurisdiction and territorial jurisdiction. Within the framework of exclusive jurisdiction, competence is allocated among courts at different levels of the legal system [7, p.199].

Until now, there are three autonomous legal systems in the United Kingdom:

- the common legal system for England and Wales
- the separate legal system for Scotland
- the separate legal system for Northern Ireland

In England and Wales, the court hierarchy is formed by lower courts, including magistrate courts and county courts, and by superior courts, including the Supreme Court and the House of Lords. The above courts deal with cases according to their nature, complexity, and the amount of money at stake.

As far as territorial jurisdiction is concerned, an interested person may, as a rule, apply to any court that is competent in trying cases of relevant categories, which is also a manifestation of unification. According to a common rule, the selection of the court to be applied to is at the discretion of the plaintiff or his/her lawyer. Separate statutory acts require that a plaintiff's statement of claim be submitted only to courts that are assigned by law (e.g., cases whose subject of controversy is a land lot or other real estate may be brought before the court by way of submitting a plaintiff's statement of claim at the location where the real estate in question is situated). A final decision on the competence of the court to be applied to is taken by a governing institution following the receipt of the plaintiff's statement of claim. If, in doing so, it is found out that the interested person intentionally infringed

established prescriptions that are mainly related to jurisdiction in rem this may lead to unfavorable consequences [7, p.203-204].

Based on a doctrinal analysis into the development of unification processes in England's civil procedural law, a general classification of areas of unification may be introduced. Thuswise, it is possible to identify the following kinds of unification: statutory unification (implying the incorporation of procedural acts), procedural unification (resulted from the introduction of a unified procedure for reference both to a county court and to the Supreme Court); terminology unification (associated not only with the terminology ordering but also with assigning unified terms to the basic notions set in the 1998 Civil Procedure Rules); unification of a form of action which seems possible to be considered both separately and in conjunction with the above areas of unification. It is our opinion that the unification of form of action refers to a common notion that comprises the statutory, procedural and terminology unification.

It is worth noting that the problem of legal unification is not a new problem. In theory the unification is thought to be a method of quality improvement in relation to legal rules. Two levels of unification are identifiable – unification at the national level and global transnational unification, with these being interrelated because supranational unification is a possibility only after a definite standardization has been performed in relation to legal institutions through systematizing the legal rules. Here the challenge and the purpose of unification is first of all to single out and refine the most effective procedures and rules that are to be subsequently integrated in a logical manner and brought into a unified system [10, p.401]. Thus, the unification in regulating the England's civil process in the general context of globalization may be recognized as being a fundamental basis for the development of transnational unification processes in view of the timeliness and urgent character of the process aimed at simplifying the procedures for protection of rights and conflict resolution where foreign parties are involved [11, p.16].

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Освещаются особенности гражданского судопроизводства Англии. Анализируются важнейшие аспекты правил гражданского судопроизводства, а также новый унифицированный порядок рассмотрения дел. Обращается внимание на подсудность по законодательству Англии. Раскрываются характерные черты унификации регулирования гражданского судопроизводства в контексте международных требований.

Ключевые слова: Правила гражданского судопроизводства, унификация в гражданском процессе, реформа гражданского процесса

Висвітлюються особливості цивільного судочинства Англії. Аналізуються найважливіші аспекти Правил цивільного судочинства Англії, а також новий уніфікований порядок розгляду справ. Звертається увага на підсудність в законодавстві Англії. Розкриваються характерні риси уніфікації регулювання цивільного судочинства в контексті міжнародних вимог.

Ключові слова: Правила цивільного судочинства, уніфікація в цивільному процесі, реформа цивільного процесу