Teaching Portfolio

Prof. Papkova Olga A.

Educational philosophy

Teaching is not just a job, it's a way of **life**. I like the dictum:"Own only what you can carry with you; know language, know countries, know people. Let your memory be your travel bag" (Solzhenitsyn Aleksandr, Russian and Soviet novelist, dramatist and historian, 1918 – 2008).

a) One of the aims of my teaching activity is to enhance students readiness for professional life.
b) Another purpose of my activity as a professor is to meet our common responsibility for the greater public good.
c) My purpose as a professor of the University is to develop better policy and governance, also.
d) My next aim is to develop the standing, practices of my profession and the intersectoral mobility.
e) I try to commercialize my intellectual capital.
f) I seek to offer to my students the effective alternative teaching style.

Realisation of the educational philosophy

To put in practice the **Aim (a)** I contribute to student knowledge transfer activities fall outside the formal curriculum. I encourage them to engage in the activity of a court or a legal firm or appropriate state, social organizations to apply the knowledge they are gaining in my lectures, develop the graduates' attributes, allowing them to demonstrate leadership and social responsibility. This prepares master level students for life after university.

Regarding the **Aim (b)**: one of the Children`s Homes in Moscow and the Nunnery, not far from Moscow, frequently call on my expertise to support their work. While the activity itself is not part of my teaching and it is not research, it meets one of my responsibilities, which is to use my knowledge to advance the well-being of poor people or communities, and to represent underprivileged groups or those where equality of opportunity is needed. My students transfer their knowledge with me, also.

To put in practice the **Aim (c)** I discussed with my students the papers I was called on to prepare for the Supreme Court of Russian Federation, the Comparative Law Institution Under The Government of RF, the State Duma, the President Administration on the problems of the new concept of sovereignty of Russian Federation according to Russian procedural laws, judicial discretion, foreign procedural law, history of Russian procedural law. My best students assisted me in drafting. My advices were based on my research or expertise or discussions-live with my students.

Putting in practice the **Aim (d)** I provided professional training for judges on the novels of domestic procedural legislation,protection of human rights, case-law of ECtHR, court discretion, etc. and I invited my best students for the participation. My Chief Professor Dr. M.Treushnikov was one of the main developers of the new Procedural Legislation of RF. To exploit my research results concerning judicial discretion I took part in the debates about the new procedural legislation at the Ministry of Justice of Russian Federation together with Prof. M.Treushnikov from 1995 till 2000. I saw the process of the lawmaking on the inside. Those debates gave me an exceptional chance to participate in the procedure of exchanging ideas between a distinguished group of federal judges and academics about some of the most pressing and controversial subjects facing the courts. Over the course of 5 years, panelists explored a number of ongoing challenges to the judiciary, including threats to judicial independence, the rule-of-law, national security imperatives, exploding caseloads, increasing reliance on scientific and other expertise, and globalization and I used the materials in my teaching practice.

To realyze the **Aim (e)** I provide accredited advice, tailored to particular organisations' needs and the commercial development of my research products and I discussed with my students the drafts of memorandums I wrote on my subjects for the legal firms, located in Moscow, for the Conference calls, for organisations protecting the rights of military persons, of women etc.

To offer to my students the effective alternative teaching style (**the Aim (f)**) I record students' progress by conducting specially designed test, I discuss and probe weaker students about the problems they are facing regarding the subject and help them overcome them.

Also, I arrange student meetings with renowned scientists, lawyers, judges, politicians to create an extra interest in the subject, to inform students about the recent trends in the subject. I organize the discussions with my students regularly. The topics are *inter alia*, Foundations of Justice; The Rule-Of-Law State and Legitimacy; Court Activity and Justice; Legitimacy and Justice (theory, history, practice); Protection of Human Rights in Civil Justice; Judicial Reform in Russia; Novels of Procedural Legislation; Right to a Court Trial; Access to Justice; Legitimacy of Procedure and Politics in modern Russia (political and legal aspects) and so on.

Results and development

The results have been accomplished when applying my educational philisophy in practice:

1- Teaching *Civil (Arbitrazh) Procedural Law*, Moscow State University, Law Faculty.

Year to year my performance as a teacher of procedural law is developed. Following my Moscow students opinion, my courses on civil, arbitrazh procedure add much to their academic education. The precise reasons underlying the students` claim relate to the fact that my courses concentrate on theoretical, historical, political aspects, but don`t focus just on a detailed study of mere technicalities.[1]

My performance as a teacher was developed in different ways:

2- Teaching *Judicial Discretion*,
at Moscow State University, Law Faculty, Russia (for Master stufents);[2]
at University of Ferrara, Law Faculty, Italy (for PhD students);[3]
at Russian School of Private Law (Institute) of the Research Centre of Private Law under the President of Russian Federation, Moscow (for Master students).

To put in practice the dictum of Solzhenitsyn, for ex, I participated in the Call for TEMPUS Scholarship and in 1995 I was awarded with a predoctoral fellowship and did my research at Law School of Leiden University, the Netherlands. Also I followed the lectures at the Faculty of Law, Leiden University. *I saw the unique Holland style of PhD teaching from inside. I experienced it.*

To exploit my research results, to develop me as a teacher I used my findings on *Judicial Discretion* during:

- *the Course* for Master students and on lectures and seminars on "*Civil (Arbitrazh) Procedural Law" for bachelor students of Moscow State University*

[1] as at Law Faculty of Moscow State University we don't have Course evaluations in english, in the **"attachment I"** you could find the Official Evaluations of my work done by Professor M. Treushnikov, the Director of my Department.

[2] The Programme of **the Course** you could find in **the attachment 2.**

[3] The Programme of **the Course** you could find in **the attachment 3**.

- *the Course on "Civil Procedure in the EU" for Master students at Law Faculty of Moscow International University*
- *the Course for Master students at Russian School of Private Law (Institute) of the Research Centre of Private Law under the President of Russian Federation*
- *the Course for PhD students at the University of Ferrara, Italy.*

3- Teaching "*Civil Procedure in the European Union Member States"*, Moscow Iternational University, Law Faculty, Moscow, Russia.[4]

To develop me as a teacher in 1998 (summer term) I was as a researcher at Law School of Leiden University, the Netherlands, for the purpose of research *into European Judicial Procedure* to teach it. That was the addition to my knowledge in European Law, obtained in 1995 at Leiden University.

To exploit my research results, I gave the Course of lectures on the subject *"Civil Procedure in the EU Member States)"* at Moscow International University, supported by the monograph (*Papkova O, (2000), Civil Procedure in the European Union Member States*.[5]

4- My development as a teacher was dealt with the next step:

teaching for foreign Master\PhD students, communicating two languages: English and Italian.

After seeking the opportunities, in 2010 I received the invitation letter from *Professor Pasquale Nappi, the Rector of the University of Ferrara, Italy*, to collaborate with *the Faculty of Law of UNIFE as Visiting Professor*. I accepted the invitation.

It was my first meeting with *the Italian style of teaching, Italian language and the Curriculum of Italian Universities.*

As a Visiting Professor I transfered my knowledge on Russian Law and Politics at UNIFE.

My taught seminars at UNIFE were:

- Law and Politics of Russia;
- Impact of the Convention of Human Rights and the case-law of ECtHR on judicial procedure in Russia;
- Judicial Discretion.[6]

Also, I began to study Italian teaching style and Italian language and Italian legal system.[7]

5- *I continued to develop me as a teacher for foreign students. It was done at the University of Insubria, Italy*.

In 2012 I was among the winners of the Landau Network-Centro Volta Fellowships Programme for full professors and/or scientists of world-wide renown from the Russian Federation (CIS), for cooperation in research and didactic activities. My host organization was Law Faculty of the University of Insubria, Italy. Developing me as a teacher, I took

[4] In the **attachment 4** you could find the Evaluations of my work done by Professor M. Treushnikov, the Director of my Department, and by W.B.Simons, former Professor of the Insitute of East European Law and Russian Studies of Leiden University, the Netherlands, one of the Directors of the TEMPUS Programme.

[5] In the **attachment 5** you could find the Evoluation of my work done by Russian Professor V.Bezbakh and by Professor Carel Stolker, the Rector of the University of Leiden, the Netherlands.

[6] The Programme you could find in **the attachment 3**.

[7] In the **attachment 6** you could find the Invitation Letter and the Evoluation of my work done by Professor P. Nappi.

part in lectures and seminars of Italian professors (in italian) for bachelor students. I studied italian legal vocabulary, also.[8]

6- *My next step was the teaching on CIS regional integration*. It was new experience for me. My development of a teacher was dealt with the fact the the Course was made:
   - at the faculty of Political Sciences at Italian University, UNIPV.
   - in English for Master International students.

In 2012 I received the CICOPS Scholarship for 2013 and realyzed the collaboration with two faculties of the University of Pavia, Italy: the faculty of law (with Professor Carlo Granelli),[9] the faculty of political sciences (with Professor J. Ziller).[10]

7- *Further development of me as a teacher was realyzed during my second PhD study.*

At the end of 2012 I received the invitation from Professor Carlo Granelli to continue the collaboration with the Faculty of Law of the University of Pavia, Italy, and I was selected as one of the PhD students (without scholarship) of *the Programme on Private law, Roman Law, European Legal Culture*.
The PhD Course was done in Italian, but my dissertation was made in English.

I promoted greater knowledge, awareness and understanding of Italian style of teaching on PhD level; and of European, Italian Law, of my subject, also.
I transfered my knowledge:

- on *the compensation for non-material damages in Russia* (makes the part of my monograph on Judicial Discretion) *to PhD Italian students (in English and Italian)*
- *on Italian Private Law to Russian colleagues and students at the People's Friendship University of Russia, Moscow*.[11]

I had the different teaching experience at the same time. The Italian style of teaching has the parcularities. I know them from inside.

Teaching experience

Type of courses I have taught:

Graduate and Post-Graduate Teaching; PhD Supervision, Didactic Activity, Scientific Research in Judicial Procedure, Judicial Discretion, in Legal Theory, Civil Procedure in the European Union, Russian Law, Comparative Law, Social, Political Sciences, Europanization.

I regularly spoke at (international) conferences and seminars and gave courses for legal practitioners.

First and second-cycle courses and study programmes

a) Scope of the teaching experience

- *Since 1997 till January 2011 I was working* as Assistant,Associate Professor of Procedural Law at Law Faculty, Moscow State University, Russia (full time position).[12]

[8] In the **attachment 7** you could find the Invitation from the Professors of the University of Insubria.
[9] The brief introduction to the Russian Judicial Procedure, done for the students of the "School of Specialization for Legal Profession", UNIPV, Commercial University Luigi Bacconi of Milan, Italy, you could find in **the attachment 7.1.**
[10] In the **attachment 8** you could find the Invitation of Prof.J.Ziller.
[11] In the **attachment 9** you could find the Evoluation of the part of my work dedicated to the compensation for non-material damages in Russia, done by Russian Professor V. Bezbakh, PFUR, Russia.

I conducted and coordinated research in the field of procedural law (history, theory, comparative, role of courts in protection of human rights, international litigation, arbitration, mediation, Judicial Discretion, European procedure, Right to a Fair Trial, Access to Justice, Case Management, Impact of ECHR and case-law of ECtHR on national court activity), in the field of legal politics of Russia and have published articles and books on these topics.

b) Level and content

As the full time Professor, at the Faculty of Law, Moscow State University, Russia, I teached bachelor-level students (the third grade) and master-level students.

c) For bachelor level students I gave Lectures and Seminars on Russian Civil Procedure, both (252 a.h.) in the framework of two semesters.

Beside, finally I offered to my bachelor students a moot court programme in the special class-room at the faculty. We choose a civil case, prepare the scenario and play different parts in the script (four hours usually).

d) For Master level students I gave Special Course (lectures-seminars, free speech, discussinons) in two semesters.[13]

Each year about 10-15 master-level students were under my supervision.

e) Forms of examination: Oral exam (for *c*), Credit (for *d*) at the end of the Course.

f) Teaching cooperation with the Department of International Politics. In 2003 the new department of "International Politics" was established at the Faculty of History of Moscow State University. I among my colleagues organized, coordinated and manage the collaboration between Law faculty and History faculty of Moscow State University dealt with transfer of knowledge in the fields of introduction to Russian law, judicial and legal reforms in Russia, judicial discretion, introduction to social sciences, international law, international relations, politics. The aims of knowledge transfer were to foster a partnership that enhances teaching and learning. The partnerships included internships, guest lectures and tutorials by professionals active in an area and student projects working on real issues faced by the partner, where the work is primarily conducted at the partner's premises. I took part in all activities and also I got the training in Modern International Politics (without certificate).

g) The Courses development was realyzed during my collaborations with foreign Universities (Netherlands, Italy)

- During my study\research in the Netherlands, the collaboration was made between Law Faculty of the University of Leiden, the Netherlands, and Law Faculty, Moscow State University, Russia.
- During my collaboration with UNIFE, Italy, the collaboration between UNIFE e PFUR (People's Friendship University of Russia) was done;[14]
- During my collaboration with UNIPV, Italy, the Cooperation between UNIPV, Law Faculty, Italy, and PFUR, Moscow, was initiated (Active).

Activities at other Moscow Universities (part time):

University Courses and Seminars Taught:

[12] In the **atachment 10** you could find the official confirmation of the Faculty of Law, Moscow State University.

[13] See the Course Proggramme in **the attachment 2.**

[14] In **the attachment 11** you could find the Collaboration Programme, signed by Prof Papkova and Prof Nappi.

- **Civil Procedure in European Union Member States (Brussels-Lugano Regime, Civil Procedure of England, Civil Procedure of France)** *(for Master students).*
  Law Faculty, International University, Moscow, Russia –
  1998-2002 (Lectures and seminars).

- **Comparative Judicial Discretion** *(Lectures for Master students);*
  Russian School of Private Law (Institute) of the Research Centre of Private Law under the President of Russian Federation, Moscow, Russia
  1997-1998 (lectures and seminars)

Third-cycle courses and study programmes.

a) Scope and content of the teaching experience: I supervised Ph.D candidates

b) Supervision at the doctoral level:

- *Inter alia,* Melnik, Taras "New Russian Standards: Rights and Law on Bankruptcy. Comparative Analysis With the European Union", Moscow, (2007).
  At the moment Taras Melnik is the businessman in Ukraine

- Ponka, Viktor "Building a New Society: Right and Law on Mortgage in the Russian Federation", Moscow, (1999).
  At the moment Ponka Viktor is the Dean of the Faculty of Law of People's Friendship University of Russia, Moscow

Courses for legal practitioners, teaching experience outside higher education institutions,.

2000-2007 (time to time, at request)	Professional Trainer for **Judges** on the Novels of Legislation *(Truth, Justice, Reasonableness, Good Faith, Activism of a Judge, Adversary System etc*), *Human Rights, ECHR, case-law of ECtHR, Right to a Fair Trial, Access to Justice, Reasonable Term of Trial, Rule of Law, the Judicial Reform in the Russian Federation, Direct Application of the Constitution, International Law by a Judge, Interpretation of Law, Discretion of a Judge, Recognition and Enforcement of Foreign Judgments.*
2000-2010	Expert-teacher to support the work of **the Children`s Home** in Moscow region, using my knowledge to advance the *well-being of poor people or communities*, and to represent underprivileged groups or those where equality of opportunity is needed.
2000	Teacher on the *European Standards of Freedom, Equality, Justice, Fair Trial, Human Rights* of **the Experts Commission of the Ministry of Economic Development of RF** on the preparation of a strategy for social and economic development of Russia.
1997-2008	Teacher on *Women`s Rights in Trial* at home and abroad of **Free Association of Feminist Organizations, Women`s Organization of the United Institution of Nuclear Research in Dubna-city,**

(time to time, at request)	**Moscow Centre of Gender Research, Russian Fund "Women and Democracy**".
1997-1998	Teacher on *the European Standards of Freedoms, Equality, Justice, Human Rights* of **the Experts Commission of the Ministry of Economics of RF on the drafting a new law "On the Minimum Social Standards".**
1995-2007 (from time to time, at request)	Teacher on *National, European, Comparative Procedural Law and Legal Theory*, whose work has appeared in the leading law reviews in the country and been highly influential with commentators, officials, lawyers and courts, including **Supreme Court of RF, Supreme Commercial Court of RF, Institution of Comparative Law under the Government of RF, State Duma, President Administration and some international legal firms, located in Moscow (*inter alia, Clifford Chance*).**
1995-2000	Teacher on *the European Union Standards of Civil Justice, Right to a Fair Trial, Access to Justice, Human Rights, paradigm of Discretion* during the drafting of **the New Civil Procedural Code of the Russian Federation at the Ministry of Justice of RF**.

Internationalisation.

Extended activity periods abroad

- Law Faculty, University of Pavia, Italy - November,1, 2012-February 3, 2017 - PhD Fellow
- Faculty of Law, Faculty of Political Sciences, University of Pavia, Italy,- May 2013- July 2013- CICOPS Fellow;
- Law Faculty, University of Insubria, Como, Italy - 2012, January - 2012, June - Visiting Professor
- Law Faculty, University of Insubria, Como, Italy- 2011 July, 2011 - September -Landau Network-Centro Volta, Cariplo Foundation Fellow
- Law faculty, University of Ferrara, Ferrara, Italy -2010, July-2011, June - Visiting Professor
- Institute of East European Law and Russian Studies, University of Leiden, the Netherlands - 1998 summer term - Infopravo Research Fellow
- Law School, Leiden University, the Netherland - 1995, January - 1995, July - TEMPUS Pre-doctorate fellow

Courses Taught in Foreign Institutions

- *Presentation on Private Law of Russia. The compensation for non-materia damages. For PhD students of UNIPV, Italy, autumn semester, 2016*
- *CIS Regional Integration, University* of Pavia, Italy, November 2013
- *Impact of the Convention on Human Rights and Rulings of ECtHR on Judicial Practice in Russia* , University of Ferrara, Italy, Spring Term 2011;
- *Transitional Russia: Law and Politics*, University of Ferrara, Italy, Spring Term 2011.
- *Judicial Discretion, UNIFE, Italy, 2010-2011.*
- *Making a New Society: Judicial and Legal Reforms in the Russian Federation*, Institute of East European Law and Russian Studies, Leiden University, the Netherlands, Summer Term 1998

Educational leadership

I was the Coordinator of the Course "EU Civil Procedure" at the Moscow International University, Moscow, 1998-2000 (with Professor V.Bezbakh).[15]

Peer-to-peer knowledge sharing

I began to participate in conferences which involve teaching and learning practice or educational development within higher education from 1999. Here you could find the first one and the last one (with publications)

[15] The evaluation of Prof. V.Bezbakh you coud find in **the attachment 7**.

Inter alia,

1- **Publication**:
"Privale law of Italy. The main provisions of non-material (moral) damages and conditions of compensation" in Сравнительно-правовые аспекты правоотношений гражданского оборота в современном мире (Comparative Modern Civil\Commercial Law), Moscva,, 2018; Field: Private law, Roman Law, European Legal Culture.

Conference:
"Comparative Legal Aspects of Civil Legal Relations in the Modern World", January 22, 2016, the Peoples' Friendship University of Russia
The purpose of the conference: study of the experience of foreign countries in the field of civil law and judicial reform, and its application in teaching practice at Russian high schools.

2- **Publication**:
(Унификация Процессуального Законодательства в Европейском Союзе), Unification of Procedural Legislation in the European Union, in Materials of International Seminar of EU Law`s Teaching at Russian Universities, Moscow, 1999.

Conference:
"The EU Law Teaching at Russian Universities", 8-15 November 1999, at the Peoples' Friendship University of Russia.

Teaching awards

I study and teach with great pleasure and inspiration. I gained a good measure of knowledge and success. I was a N1 Publishing House Statut best-giving author, I'd received student acclaim as one of the best lecturers and professors of their grade.

- Outstanding Book Award (2005) of the GARANT Publishers for "interdisplinary research" of social values (Judicial Discretion\Усмотрение Суда).
- Middle Academic Career Award of the Student Organization, MSU, Russia (2002, 2007)
- Early Academic Career Award of the International University in Moscow, Russia (European Union and Civil Justice Course, 1999).

References

Prof. Dr.V.V.Bezbakh, Professor of Civil and Labor Law	+7 903 515 9524	civilrudn@rambler.ru	Law Faculty, People`s Friendship University, Miklukho-Maklaya Str, 6, Moscow, Russia
Prof. C.J.J.Stolker, Prof of Private Law, Rector Magnificus, Chairman of the Executive Board	+31 71 527 31 43	c.j.j.m.stolker@cvb.leidenuniv.nl	Rapenburg 70, 2311EZ, Leiden, Leiden University, the Netherlands,

Attachment I, Teaching portfolio

Official Evaluation of my work done by Professor M. Treushnikov

Letter of recommendation for Olga A.Papkova

Date:

119991,Russia, Moscow, GSP-1,
Leninskie Gori, MSU, 1\ 51, 1st corpus,
Law Faculty, room 747,
Telephone number: +7 495 939 38 80
e-mail: office@law.msu.su

Dear Sir or Madam,

I am glad to recommend you Associate Professor Olga A. Papkova, the brilliant professional, intelligent and uncommon person, whom I have known for more than 20 years, since 1987, when she was my bachelor-level student. I am confident that she has the necessary academic, personal, and teaching ability qualifications to be an excellent teacher or professor in her field.
I am Michael K. Treushnikov, Senior Professor, Dr, Head of Civil Procedure Department, the Faculty of Law, Moscow State University, Honoured Scholar of the Russian Federation; member of the Scientific Advisory Board of the Supreme Court of the Russian Federation; member of the Council for Doctoral thesis of the Faculty. I have been working at the Faculty of Law of Moscow State University, Russia, since 1973; since 1988 I am the Professor of Moscow State University (Russia). I have been Olga Papkova's Professor, Supervisor, Chief and it gives me the opportunity to recommend her to you as a talented perspective teacher, researcher, because of her competence, deep knowledge and experience.
Olga Papkova has been my promising motivate student, assistant, sophisticated fellow of the Department of civil procedure, law faculty, Moscow State University. Talking about any of these periods I can unreservedly name Olga Papkova as a reliable, observant, vigorous person; mature, efficient scholar, academic, truly interested in scientific work. She is with Law Faculty since 1985. Since 2001 she is an Associate Professor of the Department of Civil Procedure.
When I was her Professor and Teacher she was one of my best students, always got high intelligence level, analytical ability and excellent marks. Olga Papkova showed superior academic skills through her attitude for learning, her participation, and her entrepreneurial spirit. I was sure that in a short time Olga Papkova would be a good specialist in our field, but I didn't think that thus much.
Her thesis under my supervision was excellent -- comprehensive, insightful, and well focused, detailing the history of ideas in the interrelationship between civil justice and judicial discretion, showing the significance of major streams of thought in civil procedure and the ways in which they have examined the paradigms of civil procedure and judicial discretion in civil procedure.
A little bit later our joint work, already as colleagues, was successful and fruitful. Participation in conferences, teaching process, administrative activity, speeches on the meetings of the Department permit me to say that Ass. Professor Papkova is a great professional and brilliant researcher (who at the same time perfectly knows English), her academic achievements, her writings are deep and significant. I have never encountered any other scholar that has the interest and passion for research and teaching that Olga Papkova has.
I have read with deep appreciation her book, *Civil procedure in the Member States of the EU*, 2000. As a person who reviewed her another scientific writing (Title: *Court Discretion*, 2005), I can mark with great pleasure that among other scientific works this comparative research of the paradigm of court discretion is important, serious and considerable, it can help civil proceduralists skillfully use such intricate instrument as discretion. Must add, that scientific work gives the valuable information as for judges as for theorists of law. Judges can find in the

monograph answers on lots of questions which appear in time of consideration and settlement of a case, while lawyers – the base for further researches of the court discretion's paradigm. This scientific writing doesn't have any analogues in domestic civil procedure.
Her major accomplishments are:
-1990, defense of the master-level paper with distinction (Title: *Legal Profession in Civil Procedure*, under my promotion);
-1997, defense of PhD dissertation, *cum laude* (Title: *Judicial Discretion: Preliminary Inquiry*, under my supervision);
- *successful scientific activity*: two monographs; publications in scientific journals; participation in conferences; fruitful collaboration with other universities; administrative duties.
- *More than 13 years of fruitful teaching:* Lecture and seminars, bachelor-level, master-level students, supervision on undergraduate, graduate, postgraduate students, of MA theses (approx. 10-15 per academic year), coordination of courses, participation in discussions on the Department's conferences, *inter alia* on the Draft of the new Civil Procedure Code of RF, promotion of PhD students.
Olga A.Papkova is well prepared to teach in areas of Civil Procedural law of Russian Federation, Court Discretion, Arbitral Procedural Law of Russia, International Civil Procedure, European Civil Procedure, theory and history of civil procedure.
Personally, Olga A.Papkova is a very serious minded and diligent scholar. She has wide-ranging interests in history, philosophy, and literature as well as in civil procedure and judicial discretion. Her communicative abilities, tactful and honest behavior, leadership qualities, achievement of any goal give her the opportunity to work as in team as an individual researcher, both. Also an important point is that students are fond of her teaching style, her lectures always are interesting and full of listeners. As a teacher, she brings great depth to her discussions and is concerned with the individual development of each student. To support my recommendation I want to add that for many years our students select Ass.Professor Papkova as the best lecturer, who can make every routing material interesting and accessible.
Her range of personal acquaintance with major scholars in Russia as well as in Europe enhances the vitality of her teaching and builds connections for students and readers which are quite unique.
She is a person that fights for her dreams, never gives up, tries to go further than where she has to (here, I would say, "goes above and beyond"), has a great attitude for life and work, shares her passion with students and colleagues, and always tries to give her best.
In short, Olga A. Papkova is a very knowledgeable, thorough, and reliable scholar, teacher, and writer. I regret on her decision to leave the Department and to research abroad. We will miss her. Therefore, I recommend Ass.Professor Olga A. Papkova without reservation, and tell you honestly she will prove valuable to your programme.

If you need any additional details or information, feel free to contact me.

Yours sincerely,

Professor Dr. M.K. Treushnikov (Треушников М.К.)

Подпись Треушникова М.К.
Удостоверяю Ю.В. Пашенцева
ЮРИДИЧЕСКИЙ ФАКУЛЬТЕТ
"18" МАР 2011 20__ г.

Attachment 2, Teaching Portfolio,

The Programme of the Course Judicial Discretion (for Master students)

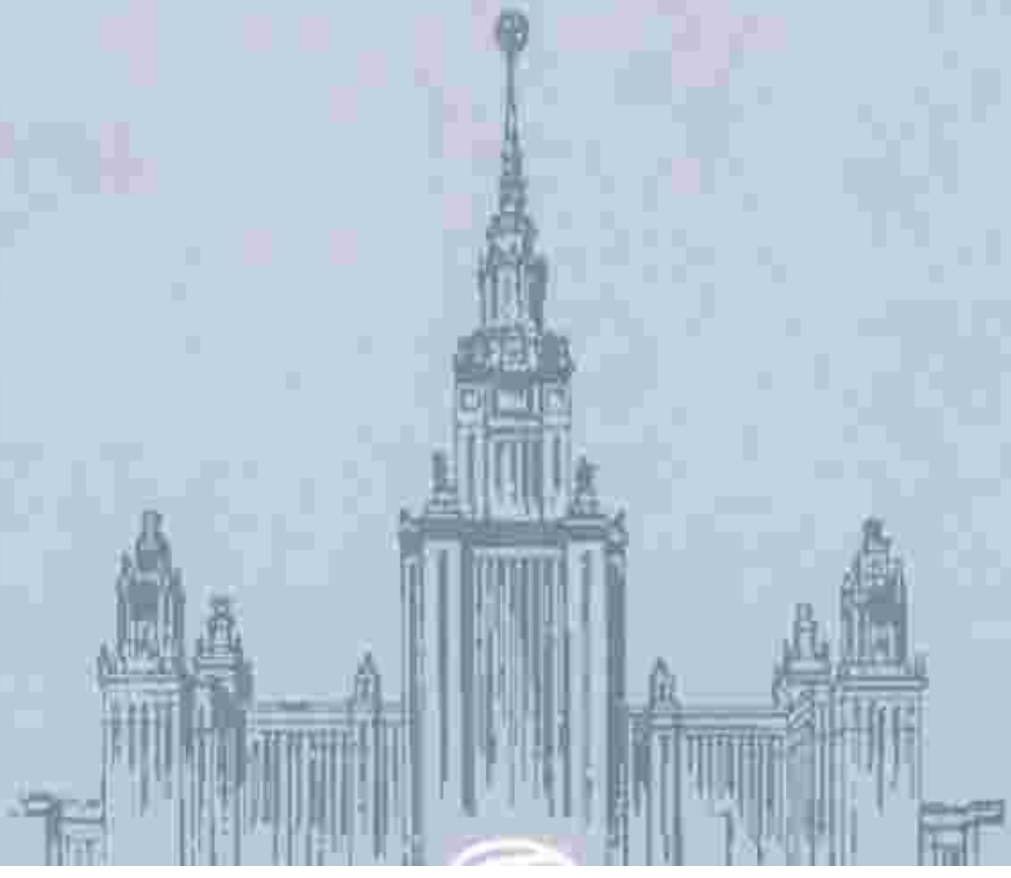
Московский государственный университет им. М.В. Ломоносова

ЮРИДИЧЕСКИЙ ФАКУЛЬТЕТ

Учебно-методический центр

ГРАЖДАНСКИЙ ПРОЦЕСС

УЧЕБНЫЕ ПРОГРАММЫ ОБЩИХ И СПЕЦИАЛЬНЫХ КУРСОВ



WORKING PROGRAM OF COURSE

MASTER PREPARATION PROGRAM

“Civil Procedure (Judicial Activity)”

Name of the course:

Judicial discretion

Field of study: 030900 Jurisprudence

Qualification (degree) of the graduate – Master

1- The goals and objectives of the course:

In the framework of the course "Judicial discretion" students are trained for the following types of professional activity: law-making; law enforcement; expert advice; organization and management; research and education.

The objectives of the development of the course "Judicial discretion" are: the study of judicial discretion by Foreign and Russian specialists; the study of the legislative structures of the choice of a law enforcement act by the court (ways of establishing and limiting); the study of the objectives of judicial discretion, the study of motivation issues during the judicial discretion, consideration of private enforcement problems of the exercise of discretion in the practice of jurisdictional bodies.

To study this course, students must have knowledge in the fields of sociology, psychology, theory of state and law (national and foreign), comparative law, private law, constitutional law (human rights law) and procedural law.

In the course of mastering the Course "Judicial discretion", a student is preparing to perform the following professional tasks:

law-making activity:

participation in the preparation of draft procedural legislation;

law implementation activity:

analysis and interpretation of the rule of law, subject to application, identifying trends in court practice;

law enforcement activity:

ensuring the rule of law, law and order, security of the individual, society and the state; policing; protection of private, state, municipal and other forms of ownership;

expert advisory activity:

implementation of legal expert reviews of normative legal acts containing discretionary procedural rules; preparation of qualified opinions on draft legislative acts of a procedural nature; organizational and managerial activities: the implementation of organizational and managerial functions; research activities: conducting research on legal issues; participation in scientific research in accordance with the profile of their professional activities;

teaching activities:

teaching basic courses (civil procedure, private law, european civil procedure, human rights law).

1. **The place of course in the structure of high education:**

The Course "Judicial discretion ”is included in the professional cycle on the area preparation "Jurisprudence" (qualification (degree) "Master").

2. **Requirements for the results of the development of the course "Judicial discretion":**

After mastering the course “Judicial discretion" a student must possesses the following general cultural, social competencies:

the awareness of intolerance to corrupt behavior and the social significance of his future profession, the manifestation of respectful attitude to the law and law, the possession of a sufficient level of legal consciousness; the ability to conscientiously fulfillment of professional duties, complied with the human rights and dulie and the principles of ethics of a lawyer; the ability to improve and develop their intellectual and cultural, human level; the ability to freely use Russian and english languages as a means of business communication; the competent use of acquired skills in practice, in the organization of research work, in team management.

After the mastering the “Judicial Discretion” Course, the student should have the following professional competencies:

in standard-setting activities:

the ability to participate in the creation of legal norms;

in law enforcement activities:

the ability to apply skillfully legal acts, containing rules governing the civil process, to implement the norms of private and procedural law;

in law protection activities:

the willingness to perform official duties to ensure law and order, security and well-being of the individual, society, state;

in expert advisory activities:

the ability to interpret expertly legal acts containing private and procedural law; the ability to participate in the legal examination of legal act drafts, in order to identify thier provisions that contribute to the creation of conditions for corruption, the ability to provide qualified legal advice on protecting the human rights and freedoms of persons;

in organizational and managerial activities:

the ability to make optimal management decisions; the ability to perceive, analyze and implement managerial innovations in professional activities;

in research activities:

ability to conduct scientific research in the multsectoral field;

in pedagogical activity:

the ability to teach judicial discretion at a high theoretical and methodological level; ability to manage students' independent work; the ability to organize and conduct pedagogical research; ability to implement legal education, effectively.

As a result of studying the Course, a student should

Know:

the main approaches to the judicial discretion in the works of foreign and Russian socilogidts and lawyers;

the theoretical, socilogical, philosophical, legal aspects of judicial discretion;

the ways to establish and limit judicial discretion;

the eqiuty, resonableness, good faith in the judicial discretion;

the objectives of judicial discretion;

the main enforcement problems in the exercise of discretion in the practice of national and European courts.

Be able to:

analyze legal facts and legal relations arising in connection with them in the field of civil procedure;

analyze, interpret and apply correctly the rules governing civil proceedings;

carry out legal expertise of legal norms, regulating the procedure;

carry out legal expertise of legal documents;

provide qualified legal opinions and advice on matters related to the application of discretionary standards.

Develop:

procedural terminology;

skills in working with legal acts;

discretionary analysis skills;

comparative legal skills;

skills in the analysis of judicial practice and judicial precedents.

3. The credits of the Course and types of academic work:

The total complexity of the Course is 2 credits.

3.1 Full-time studies

Type of study	Total hours	In two Semesters
Classroom activities (total)	*22*	*22*
Including:		
Lectures		
Seminars(workshops)	*22*	*22*
Practical Activities		
Laboratory exercises		
Independent work (total)	*50*	*50*
Including:		
Test		
Essay		
Course thesis		
Other types of independent work		
Type of intermediate certification (credit,exam)	*Credit*	+
Total input		
Hours	*52*	
Credit units	*2*	

4. The structure and content of the Course.

4.1 Thematic plan for full-time studies.

Module, section (topic) of the Course	***Types of teaching activities and labor intensity (in hours)***			***Total hours***
	Lectures	*Seminars*	*Independent work of students*	
Module 1 ***Philosophical, legal and sociolgical aspects of judicial discretion***		***6***	***34***	***54***
Topic 1. Judicial Discretion in the studies of lawyes and socilogists.		***1***	***7***	***6***
Topic 2. Choice in judicial discretion (equity, reasonablness, good faith)		***1***	***5***	***12***
Topic 3. The definition of judicial discretion		***1***	***6***	***6***
Topic 4. Motivation in judicial discretion.		***1***	***5***	***6***
Topic 5. Law enforcement and Judicial discretion		***1***	***6***	***12***
Topic 6. Abuse of rights and judicial discretion. Limitations of judicial discretion		***1***	***5***	***12***
Module 2. ***Law enforcement problems of the implementation of discretion in the practice of jurisdictional bodies***		***16***	***16***	***54***
Topic 7. Judicial discretion in national civil court		***4***	***4***	***30***
Topic 8. Judicial discretion in Russian arbitrazh court		***4***	***4***	***8***
Topic 9. Judicial discretion in ECtHR		***4***	***4***	***8***
Topic 10 Judicial discretion in ECJ		***4***	***4***	***8***
Total		***22***	***50***	***72***

5. The content of the Course:

Module 1. Philosophical, legal and sociological aspects of judicial discretion.

Topic 1. Judicial discretion in the studies of lawyes and socilogists.

Judicial discretion in the studies of K.C Davis, J. Handler, D.J. Galligan, R.M. Dworkin, R.E. Goodin, A. Barak; Abushenko A, Chechot D.M., Komissarov K.I., Bonner A.T., Zeider N.B., Katz A.K., Yarkova V.V., Papkova O.A., Berg L.N.,

Topic 2. Choice in judicial discretion (equity, reasonablness, good faith)

Ways to state judicial discretion in legal acts.

Ways to limit judicial discretion in regulations (equity, reasonablness, good faith).

Topic 3. The definition of judicial discretion.

Different difinitions of judicial discretion.

The judicial discretion as law enforcement.

Topic 4. Motivation in judicial discretion.

General issues of motivation in judicial act on the basis of the application of discretionary standards.

Classification of motives.

Matters of the competition of motives.

Topic 5. Judicial discretion and law enforcement.

Judicial discretion and interpretation of the rule of law

Judicial discretion and gaps in the law

Judicial discretion and judicial proof

Topic 6. Abuse of rights and judicial discretion. Limitations of judicial discretion.

Abuse of procedural rights by the parties and judicial discretion.

Abuse of judicial discretion.

Limitations of judicial discretion.

Module 2. Enforcement problems of the exercise of discretion in the practice of jurisdictional bodies.

Topic 7. Judicial discretion in national civil court

Topic 8. Judicial discretion in Russian arbitrazh court

Topic 9. Judicial discretion in ECtHR.

Topic 10. Judicial discretion in ECJ.

6. **Planned results for the modules of the training course:**

Module name	Results of teaching
Module 1 ***Philosophical, legal and sociolgical aspects of judicial discretion***	***Know:*** legal and sociological ways to establish judicial discretion in two legal systems; ways to limit judicial discretion in legal acts; discretionary aspects; classification of goals achieved in the implementation of discretionary norms; classification of law enforcement motives in the implementation of discretionary standards. ***Be able to:*** analyze legal facts and legal relations in the field of civil procedure; analyze, interpret and correctly apply the rules governing civil proceedings; carry out legal expertise of legal acts, governing the implementation civil proceedings using discretionary standards; carry out legal expertise of legal documents; provide qualified legal opinions and advice on matters related to the application of discretionary standards. ***Develop:*** procedural terminology; skills to work with legal acts, containing discretionary norms; skills of comparative legal analysis; skills in the analysis of judicial practice and judicial precedents.
Module 2. ***Law enforcement problems of the implementation of discretion in the practice of jurisdictional bodies***	***Know:*** the main problems of the exercise of discretion in the practice of civil courts; main enforcement problems of the exercise of jurisdictional discretion in the practice of Russian arbitrazh courts; main enforcement problems of the implementation of discretion in the practice of Eueopean Court of Justice; main enforcement problems of the exercise of discretion in the practice of the European Court of Human Rights. ***Be able to:*** analyze legal facts and legal relations arising in connection with legal facts; analyze, interpret and correctly apply the procedural rules; carry out legal expertise of regulatory legal acts, their projects containing discretionary norms; carry out legal expertise of legal documents; provide qualified legal opinions and advice on matters related to the application of discretionary standards. ***Develop:*** procedural terminology; skills to work with regulatory legal acts, containing discretionary standards; comparative legal skills; skills in the analysis of judicial practice and judicial precedents.

7. Evaluation tools for ongoing performance monitoring,

intermediate certification of the development of the Cours (of a module):

7.1 Evaluation tools.

Module name	Evaluation Tools
Module 1 ***Philosophical, legal and sociolgical aspects of judicial discretion***	written / oral tests, finding the solutions in legal cases
Module 2. ***Law enforcement problems of the implementation of discretion in the practice of jurisdictional bodies***	written / oral tests, finding the solutions in legal cases

8.2 Sample thesis topics:

1. A comparative analysis of the legal nature of judicial discretion in the countries of the Roman-German and Anglo-Saxon legal systems.

2. Discretionary standards and issues of legal technology.

3. Judicial discretion in the norms of family law.

4. Issues of judicial discretion in the application of legislation on administrative responsibility.

5. Issues of judicial discretion in applying tax legislation.

6. Judicial discretion in resolving civil law disputes.

7. Judicial discretion in Contract Law (in Law of Obbligations).

8. Judicial discretion in resolving insolvency cases.

9. Evaluation categories as a source of legal discretion.

10. Controversial issues of interpretation of legal discretionary norms by Supreme Courts

11. The role of judicial discretion in resolving issues of securing a claim.

12. Discretionary standards in the proceedings before the European Court of Human Rights.

13. Discretionary standards in the trial procedure in the European Court of Justice.

14. Judicial decisions: the motivation of the judicial acts on the basis of judicial discretion.

15. Judicial discretion in international legal acts.

16. The Role of personalità of a judge in discretion.

17. Discretion and Reasonableness and Equity.

18. Judicial Discretion and Good Faith.

At the request of the student, another topic of the Master thesis can be chosen, involving discretionary analysis within a specific field of law or a specific legal institution or a multidisciplinare fields.

7.3. An exemplary list of questions for Credit:

1. Judicial discretion in the studies of Foreign and Russian specialists.

2. Ways to establish judicial discretion in regulatory acts.

3. Methods of limiting judicial discretion in regulatory legal acts (types of judicial discretion).

4. Objectives of judicial discretion.

5. Law enforcement motives in the exercise of discretion.

6. Judicial discretion and interpretation of a rule of law.

7. Judicial discretion and gaps in law.

8. Judicial discretion and judicial evidence.

9. The Constitution of the Russian Federation as a source of judicial discretion.

10. Judicial discretion in the norms of the Civil Code of the Russian Federation.

11. Judicial discretion in the Federal Law "On Insolvency" (bankruptcy). "

12. Judicial discretion in the norms of the Family Code of the Russian Federation.

13. Judicial discretion in the norms of the Code of Administrative Offenses of the Russian Federation.

14. Judicial discretion in the norms of the Tax Code of the Russian Federation.

15. Judicial discretion in the norms of the Labor Code of the Russian Federation.

16. Judicial discretion in the norms of the Civil Procedure Code of the Russian Federation.

17. Judicial discretion in the norms of the Arbitrazh Procedure Code of the Russian Federation.

18. Judicial discretion in the guidance of the Supreme Court RF

19. Judicial discretion in the guiding rulings of the Supreme Arbitrazh Court of the Russian Federation.

20. Judicial Discretion of ECtHR

21 Judicial Dicretion of ECJ

22. Good Faith and judicial discretion

23. Reasonableness and Equity and judicial discretion

24. Limitations of Judicial Discretion.

8. Educational-methodical, informational support of the Course:

8.1. Basic and additional literature:

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- Gilley, Bruce (2009), The Right to Rule. How States Win and Lose Legitimacy. New York: Columbia Press.
- Graver, Hans Petter (2015) Judges Against Justice On Judges When the Rule of Law is Under Attack
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- Greenbaum, E. H. (2003), Problem solving in legal education’, International Journal of Legal Profession, vol. 10, no. 1, 69-91.
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9.2 Databases:

Electronic libraries: http://www.book.ru/, http://znanium.com/, http://elibrary.ru/, http://e.lanbook.com/

Reference legal system "Consultant Plus". Reference legal system "Guarantor" Reference legal system "Law".

9. Educational technology:

As part of the educational Master process, the teachers of the department apply the following educational technologies in the Course "Judicial discretion":

theoretical seminar-colloquium, during which students' opinions on the topic of the current lesson are heard, and a discussion with the participation of the teacher and students is held;

analysis of specific situations (at each seminar, students analyze practical situations presented in the form of cases);

meetings with representatives of Russian and foreign companies, state and public organizations

master classes led by experts and specialists

9.1. Educational technology: lectures along with seminars.

9.2. Types of active and interactive forms of conducting classes indicating modules (topics).

Name of active and interactive forms of conducting classes	Module, topic on which technology is used	Number of hours
Role-playing games	Module 2, Topic 7	0,5
	Module 2, Topic 8	0,5

Case studies	Module 2, Topic 9	1
	Module 2, Topic 10	1
Practical / seminar classes ***Presentation Classes***	Module 1, Topic 5	0,5
	Module 1, Topic 6	0,5
	Module 2, Topic 7	1,5
	Module 2, Topic 10	0,5
Discussion	Module 1, Topic 1	0,5
	Module 1, Topic 2	0,5
	Module 1, Topic 4	0,5
	Module 2, Topic 8	0,5
	Module 2, Topic 9	1
Test	Module 1, Topic 1	1,5
	Module 1, Topic 3	
	Module 1, Topic 6	
	Module 2, Topic 7	
	Module 2, Topic 9	0,5
Total hours of classroom lessons conducted using active and interactive forms	11	

The proportion of classes conducted in active and interactive forms is 50%.

9.3. Meetings with representatives of Russian and foreign companies, state and public organizations, master classes led by experts and specialists.

A topic on which a meeting or a master class can be held	**Expert, specialist**
Module 2. ***Law enforcement problems of the implementation of discretion in the practice of jurisdictional bodies***	Judge, Lawyer, Advocate

10. Logistics of the course:

The Department of Civil Procedure has a training room for judicial sessions.

In the training room there are:

-multimedia projector;

-Mixer;

-equipment for scoring;

-screen.

Developers:

Department of Civil Procedure,

Law Faculty, Moscow State University, Moscow

Associate Professor

Olga A Papkova, PhD

Attachment 3, Teaching Portfolio

Programme of the Course Judicial Discretion (for PhD students)

Universita degli studi di Ferrara
Professor Olga A. Papkova

SEMINAR

Per PhD students

WHAT IS JUDICIAL DISCRETION?

Number of sessions: 30
Length of each session: 1,5 h
Total length of the module: 45 hours

INTRODUCTION TO THE COURSE
This course in designed as a brief introduction to judicial discretion as an example of individual decision making. Its main objective is to provide the PhD students with judicial discretion theory and practice.
We begin with basic discretion-decision problems. The second and the third part of the course are the core of the subject where the student actually learns how to solve and analyse discretion-decision problems in a courtroom. Once the basic theory is learned, we proceed to some critiques and alternative approaches.

REQUIREMENTS
· Per PhD students

CONTENTS

(I)The Concept of Discretion

I.I. The concept includes: the choice of several legal alternatives, the freedom of the court, discretionary power. Each of these provisions is controversial. In this regard, we will single out the key provisions of the definition of judicial discretion.

I.II. The key elements of the concept of court discretion are:
(1) the legal norms;
(2) procedural form;
(3) motivation;
(4) category of choice;
(5) general and specific limits of choice;
(6) a special court activity (behaviour).[1]

(II) *General and special limits of choice.*

[1] Papkova O.A. Usmotrenie Suda (Court Discretion), Moscva, 2005.p 39-40

WHAT IS JUDICIAL DISCRETION?

II.I. The general limits of choice are embodied in the rule of law.

(1) SUBSTANTIVE LIMITS. Judicial discretion in implementing some of the proceedings can not be extended to other court activities.

(2) SUBJECTIVE LIMITS. Judicial discretion in civil proceedings exercises only by the court conducting the case.

(3) TIME LIMITS. Judicial discretion is limited by the timeframe, which the legislation establishes for considering civil or economic disputes and for resolving certain procedural issues.

(4) TARGET LIMITS. Objectives of civil proceedings limit the judicial discretion.

II.II. Special limits of choice in civil procedure

The special limits reflect the features of case-defined discretion. The special limits of choice are fixed legally:

-List of the conditions set forth by alternative legal norm.

-Special conditions set out in the relatively-definite legal norm: “relevant circumstances”, “valid reasons”, “interests of the child”, “the circumstances relevant to the proper consideration of the case”, “claims and objections of those involved in the case”, “the degree of moral sufferings”,”the other circumstances”, and so e.

-the categories of equity, good faith, expediency, reasonable, morality.

II.III. Justice as a special limit of choice.

The principle of justice as a fundamental principle of the proceedings in the courts. It includes the conditions set forth in Article 6, part1 of the Convention, the equality of the baseline, the motivation of the court ruling.

II.IV. Good faith as a special limit of the choice

Our concern will be limited to fairness in the exercise of discretion of judges.

Our task will be the comparative legal consideration of the following provisions:

- Conscientiousness in civil proceedings .

-Good faith, abuse of right and judicial discretion

-Good faith, abuse of rights by the persons involved in the case and judicial discretion

-Good faith and abuse of judicial discretion

II.V. Good faith, abuse of right and judicial discretion

Our task will be to establish the relationship between integrity, abuse of rights and discretionary justice.

We will consider the following relationship between good faith, abuse of the right and discretionary justice.

- Discretionary justice deals with the category of good faith

- The parties can abuse both procedural and substantive rights. Law deals with the definition of the concepts of "abuse of right" and of "good faith".

- Improper exercise of procedural rights is an abuse of the relevant right. Dishonesty is a form of abuse of substantive law. The subject of this study will not include other forms of abuse of rights (eg, chicane).

- Abuse of the right differs from the improper using of the right. For example, the use of procedural right to appeal to the court without compliance with the rules of jurisdiction means the improper use of the right. Unscrupulous actions of the applicant, indicating the absence of intention to defend his subjective right, caused harm, say on the abuse of the right.

- The problem of integrity has two parts.

One part of the problem is the abuse of the rights by the persons involved in the case in the form of bad faith. Another part of the problem is improper exercise of the rights and the responsibilities by the court. We will consider them on comparative legal ground.

WHAT IS JUDICIAL DISCRETION?

Court sets the following ways of abusing of the rights by the persons involved in:
-Abuse of the right to appeal to the court
-Abuse of the established procedure for initiating, reviewing of certain cases in courts
-Deliberate delay of trial
-Representation of false evidence

II.VI. Good faith and abuse of judicial discretion

Article 17 of the European Convention on Human Rights and Fundamental Freedoms says on the prohibition of abuse of rights. Part 2 of Article 27 of the Convention makes a distinction between the abuse of the right and unreasonable treatment for protection. It establishes that the Commission shall consider inadmissible any petition which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.

II.VII. Expediency as a special limit of choice

Feasibility is a limit of choice in the exercise of judicial discretion. Expediency refers to the selection of optimal solutions of the legal issue in accordance with the goals, the objectives, established by law. Expediency is not associated with the subjective purpose of the judge.

In judicial practice, expediency is often useful for establishing of the facts by the most economical way.

Could the court create free?

II.VIII. Reasonableness as a special limit of choice

Rationality limits the choice of the court. The court assesses the reasonableness of the behavior of the participants of civil procedure. It checks whether the average person can do a concrete action. The court determines the reasonableness of conduct, based on the circumstances of the case, the objective and subjective aspects of the behavior. The court makes reasonable good-faith actions.

Rationality involves the objective side of action of a person. It explains the action the person indirectly, by comparing his behavior with the behavior of the average person in the circumstances.

Interpretation of the category of reasonableness is necessary for judicial practice. We need to examine the practice of the European Court of Human Rights on the application of the category of reasonableness and its impact on the practice of courts of first instance.

II.IX. Morality as a limit of choice

The choice may be limited by the foundations of morality in those cases where the legislator can not fix the exact amount of normative subjective rights and duties, as well as their assessment by the court depends on the morality of conduct. The assessment is based on common criteria for the content of moral rules, in particular, on the categories of fairness, reasonableness and good faith.

Justice is the principal category, common for law and morality. Integrity characterizes the actions of a specific subject. Morality is associated with the rules of conduct in society. These rules represent the average value of good behavior. Reasonable action (acting in good faith of the average person) is connected with the interests of other actors. In this regard, it includes the category of morality. The legislative definition of the category of morality is absent.

Application of the foundations of morality should flow from the law.

(III)Judicial discretion as a freedom. Judicial Discretion as a power. Judicial Discretion as an authority

WHAT IS JUDICIAL DISCRETION?

We will examine judicial discretion as a freedom, a power, an authority on comparative basis.

(IV)The discretion as a special court activity

IV.I. The application of legal norms in the jurisprudence involves three steps: 1) legal analysis of the circumstances of the case, and 2) analysis of legal norms, and 3) the interpretation of the law.

In our opinion the discretion is carried out in two operations: a legal analysis of the circumstances of the case and in the interpretation of the law.

We concretize the exercise of discretion in each of these operations.

IV.II. Legal analysis of the circumstances of the case and discretionary justice

We bind resolving the problem of discretion in establishing of the facts of the case with the answers two questions: 1. Is the court free in determining of the facts of the case? 2. If the court is free, then can this activity be called as judicial discretion?

IV.III. Legal evidence and the court's discretion

In the course of adjudicating a dispute, the court determines the presence or absence of circumstances justifying the claims and defenses of the parties, and other circumstances important for the proper settlement of the case.

We dwell on the following issues: 1. relevance of evidence and the discretion of the court 2. admissibility of evidence and the court's discretion 3. evaluation of evidence and the court's discretion.

Our aim is to determine, whether the judicial discretion is in determining of the actual circumstances of the case.

IV.IV. Interpretation of the law and the discretion of the court

Discretion is carried out in determining of the values of terms and words contained in the rule of law.

(V)Variety of judicial discretion

The classification of judicial discretion may hold for various reasons.

To illustrate how principles can help, consider the variants of the situational judicial discretion. Even though no position here taken depends upon further refinement of the meaning of discretion, the full reality about discretion is somewhat more complex. A decision as what is desirable may include not only weighting desirability but also guessing about unknown facts and making a judgment about doubtful law, and the mind that makes the decision does not necessarily separate facts, law and discretion.

V.I. Alternative judicial discretion

It is implemented in the application of alternative legal rules.

There are two major problems with this approach. First, the efficacy of balancing depends on the judge's ability to acquire and evaluate accurate information about the relevant factors, and this is bound to be difficult given bounded rationality, information access, and strategic obstacles. Second, to strike a sound balance, the judge must assign weights and compare values across the various factors.

Without clear principles to guide this normative task, the resulting process can easily turn into ad hoc weighing that lacks meaningful constraint and jeopardizes principled consistency over the system as a whole. This is especially true when, as is so often the case, the factors listed in a Rule encompass everything conceivably relevant to the decision. While a comprehensive list of factors might restrain judges from relying on illegitimate considerations, it does nothing to

constrain judges who act in good faith, at least not without some normative direction to guide the balancing process.

(VI)Discretionary justice to individual parties

We will carefully examine the efficacy of case-specific discretion, explains why and when general rules can be superior, and urges rulemakers to draft rules to control the exercise of discretion. The argument begins by identifying the primary purpose of procedure, which is to produce a pattern of judgments and settlements that enforces the substantive law's incentive and justice goals optimally. Encouraging quality settlements and producing quality judgments are both important objectives in achieving this overall purpose. These two objectives conflict, however, and balancing them entails complicated quality tradeoffs. This is significant because trial judges are likely to have special difficulties striking an optimal balance on a case-specific basis.

The strategic risks to the rulemaking process are less serious than the risks facing judges who choose procedures for individual cases.

It is no easy matter to decide on the optimal degree of discretion or create rules to achieve it.

(VII)Pressures on the discretion of the court

Discretionary justice is often complicated by pressures. In our opinion in civil proceedings discretion of the court of first instance is pressured by: 1. established legal practice, 2. administrative discretion; 3. Support and training of the judiciary

We will consider these factors.

(VIII)Discretion and nature of a judge

Our main purpose is to set methods for exercising discretion by a judge in more effective manner. The point is the analysis of "Nature of a judge", i.e. the psychological characteristics which play the important role in discretionary behavior.

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Attachment 4, Teaching Portfolio

Evaluations of my work done by Professor M. Treushnikov, the Director of my Department, and by W.B. Simons, former Professor of the Insitute of East European Law and Russian Studies of Leiden University, the Netherlands, one of the Directors of the TEMPUS Programme

TARTU ÜLIKOOL
ÕIGUSTEADUSKOND

To the Fellowship Committee

It is with great pleasure that I write this letter of recommendation on behalf of Dr. Olga A. Papkova in my capacity as Professor of East European Law at Leiden University Faculty of Law (on leave as Visiting Professor at the Center for EU-Russian Studies (CEURUS) and the Institute of Constitutional and International Law of University of Tartu Faculty of Law).

For several years in the 1990s — initially with funding from the European Commission (TEMPUS program) and, later, supplemented by resources from The Netherlands Foreign Ministry (MATRA program) — my predecessor in Leiden F.J.M. Feldbrugge and I facilitated scholarship programs in Leiden (and in Nijmegen and Leuven) for the 'brightest and the best' students and faculty from the CEE/CIS region. Dr. Papkova was one of those selected to participate in this mobility program.

The period of her *Tempus* study and research time in Leiden (1995), when Olga was a Russian PhD candidate, marked the beginning of our scholarly acquaintanceship: she returned to Leiden again in 1998 for a period of further research. This has afforded me a fine vantage point from which to assess Olga's academic capabilities and interests and her relevant personal qualities.

She has been consistent in her desire to broader her academic horizons — what I would, in other terms, characterize as her intense craving for knowledge — and has always taken her scholarly responsibilities very seriously. She has developed her research skills in an outstanding fashion: the way in which she is able to combine the findings of her domestic research with the thoughts and ideas which she distills from English-language (and now other foreign-language) literature is most impressive. Her English proficiency is, of course, critical in this regard and is at an extremely high level for a non-native speaker, something which is not that frequent for good scholars in Russia.

Dr. Papkova is deeply interested in European civil procedure and spends most of her spare time studying the specialized literature in this field. Her industry has led to an admirable level of academic output — two monographs in the Russian language (*Civil Procedure in the Member-States of the EU*, 2000 and *Judicial Discretion*, 2005) — and to a position as associate professor at the prestigious (as you undoubtedly are aware) Moscow State University Law Faculty. I am also extremely pleased and proud to note that she has published in English in a quarterly law journal (*Review of Central and East European Law*) of which I have been the General Editor for several years. I am looking forward to being able to publish more of Dr. Papkova's work in our journal and, hopefully, also as a monograph in our series *Law in Eastern Europe* (both published by Royal Brill Publishers of The Netherlands.)

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At present, she is a Visiting Professor at the Law Faculty of the *Universita degli studi di Ferrara* (Italy). While this is another welcome step in her professional progress, it is typical of Olga that she is eager to continue this process of comparative research and to put more of the results of her work into writing. In particular, she is yearning to further investigate and evaluate the field of European Civil Procedure: The Method and History of Law.

I fully support her plans to continue turning her scholarly dreams into reality. Dr. Papkova is, in my experience, mature and dependable. She is a hard worker, and works well under pressure; as her academic record well reflects, she has become a highly qualified teacher and scholar. These are, to my mind, the qualities — combined with her creativity and intelligence — that will continue to be critical to her in achieving the further success in her profession which she has set for herself as her goal. I firmly believe that these qualities and achievements go into making her of world-wide renown, one of the criteria in your Call for Fellowships. The fact that she is an extremely able organizer and, also, that she has fine leadership skills and a keen spirit of teamwork, are key factors which will help to ensure that her continued research will be productive and also which should enable her to harmoniously interact with those around her.

I have no doubts that Olga will achieve further success in pursuing her dreams and look forward to keeping in contact with her.

It is, thus, that I offer myself as a referee to you and your committee for her application to continue her research and writing. I respectfully request that her application be looked upon favorably so that she may further broaden her understanding of the role and of the rule of law in foreign jurisdictions as well as in the Russian Federation: obviously, crucial issues in our time.

Should you have questions or require additional information, please feel free to contact me.

Yours faithfully,

Prof.dr. W.B. Simons

Tartu
12 April 2013

Letter of recommendation for Olga A.Papkova

Date:

119991,Russia, Moscow, GSP-1,
Leninskie Gori, MSU, 1\ 51, 1st corpus,
Law Faculty, room 747,
Telephone number: +7 495 939 38 80
e-mail: office@law.msu.su

Dear Sir or Madam,

I am glad to recommend you Associate Professor Olga A. Papkova, the brilliant professional, intelligent and uncommon person, whom I have known for more than 20 years, since 1987, when she was my bachelor-level student. I am confident that she has the necessary academic, personal, and teaching ability qualifications to be an excellent teacher or professor in her field.
I am Michael K. Treushnikov, Senior Professor, Dr, Head of Civil Procedure Department, the Faculty of Law, Moscow State University, Honoured Scholar of the Russian Federation; member of the Scientific Advisory Board of the Supreme Court of the Russian Federation; member of the Council for Doctoral thesis of the Faculty. I have been working at the Faculty of Law of Moscow State University, Russia, since 1973; since 1988 I am the Professor of Moscow State University (Russia). I have been Olga Papkova's Professor, Supervisor, Chief and it gives me the opportunity to recommend her to you as a talented perspective teacher, researcher, because of her competence, deep knowledge and experience.
Olga Papkova has been my promising motivate student, assistant, sophisticated fellow of the Department of civil procedure, law faculty, Moscow State University. Talking about any of these periods I can unreservedly name Olga Papkova as a reliable, observant, vigorous person; mature, efficient scholar, academic, truly interested in scientific work. She is with Law Faculty since 1985. Since 2001 she is an Associate Professor of the Department of Civil Procedure.
When I was her Professor and Teacher she was one of my best students, always got high intelligence level, analytical ability and excellent marks. Olga Papkova showed superior academic skills through her attitude for learning, her participation, and her entrepreneurial spirit. I was sure that in a short time Olga Papkova would be a good specialist in our field, but I didn't think that thus much.
Her thesis under my supervision was excellent -- comprehensive, insightful, and well focused, detailing the history of ideas in the interrelationship between civil justice and judicial discretion, showing the significance of major streams of thought in civil procedure and the ways in which they have examined the paradigms of civil procedure and judicial discretion in civil procedure.
A little bit later our joint work, already as colleagues, was successful and fruitful. Participation in conferences, teaching process, administrative activity, speeches on the meetings of the Department permit me to say that Ass. Professor Papkova is a great professional and brilliant researcher (who at the same time perfectly knows English), her academic achievements, her writings are deep and significant. I have never encountered any other scholar that has the interest and passion for research and teaching that Olga Papkova has.
I have read with deep appreciation her book, *Civil procedure in the Member States of the EU*, 2000. As a person who reviewed her another scientific writing (Title: *Court Discretion*, 2005), I can mark with great pleasure that among other scientific works this comparative research of the paradigm of court discretion is important, serious and considerable, it can help civil proceduralists skillfully use such intricate instrument as discretion. Must add, that scientific work gives the valuable information as for judges as for theorists of law. Judges can find in the

monograph answers on lots of questions which appear in time of consideration and settlement of a case, while lawyers – the base for further researches of the court discretion's paradigm. This scientific writing doesn't have any analogues in domestic civil procedure.
Her major accomplishments are:
-1990, defense of the master-level paper with distinction (Title: *Legal Profession in Civil Procedure*, under my promotion);
-1997, defense of PhD dissertation, *cum laude* (Title: *Judicial Discretion: Preliminary Inquiry*, under my supervision);
- *successful scientific activity*: two monographs; publications in scientific journals; participation in conferences; fruitful collaboration with other universities; administrative duties.
- *More than 13 years of fruitful teaching:* Lecture and seminars, bachelor-level, master-level students, supervision on undergraduate, graduate, postgraduate students, of MA theses (approx. 10-15 per academic year), coordination of courses, participation in discussions on the Department's conferences, *inter alia* on the Draft of the new Civil Procedure Code of RF, promotion of PhD students.
Olga A.Papkova is well prepared to teach in areas of Civil Procedural law of Russian Federation, Court Discretion, Arbitral Procedural Law of Russia, International Civil Procedure, European Civil Procedure, theory and history of civil procedure.
Personally, Olga A.Papkova is a very serious minded and diligent scholar. She has wide-ranging interests in history, philosophy, and literature as well as in civil procedure and judicial discretion. Her communicative abilities, tactful and honest behavior, leadership qualities, achievement of any goal give her the opportunity to work as in team as an individual researcher, both. Also an important point is that students are fond of her teaching style, her lectures always are interesting and full of listeners. As a teacher, she brings great depth to her discussions and is concerned with the individual development of each student. To support my recommendation I want to add that for many years our students select Ass.Professor Papkova as the best lecturer, who can make every routing material interesting and accessible.
Her range of personal acquaintance with major scholars in Russia as well as in Europe enhances the vitality of her teaching and builds connections for students and readers which are quite unique.
She is a person that fights for her dreams, never gives up, tries to go further than where she has to (here, I would say, "goes above and beyond"), has a great attitude for life and work, shares her passion with students and colleagues, and always tries to give her best.
In short, Olga A. Papkova is a very knowledgeable, thorough, and reliable scholar, teacher, and writer. I regret on her decision to leave the Department and to research abroad. We will miss her. Therefore, I recommend Ass.Professor Olga A. Papkova without reservation, and tell you honestly she will prove valuable to your programme.

If you need any additional details or information, feel free to contact me.

Yours sincerely,

Professor Dr. M.K. Treushnikov (Треушников М.К.)

Подпись Треушникова М.К.
Удостоверяю Ю.В. Пашенцева
ЮРИДИЧЕСКИЙ ФАКУЛЬТЕТ
"18" МАР 2011 20__ г.

Attachment 5, Teaching Portfolio
Evoluation of my work done by Russian Professor V. Bezbakh

Государственное образовательное учреждение высшего профессионального образования
РОССИЙСКИЙ УНИВЕРСИТЕТ ДРУЖБЫ НАРОДОВ (РУДН)

ЮРИДИЧЕСКИЙ ФАКУЛЬТЕТ

Ул. Миклухо-Маклая, д. 6, Москва, Россия, 117198 Телефакс +7 (495) 433-14-80, E-mail: deanlaw@rudn.ru

№ _____

на № _____ от _____

Letter of recommendation for Ass.Professor Olga A.Papkova

March 24, 2011

117198, Russia, Moscow,
Miklukho-Maklaya Street, 6
Humanitarian Corpus, Law faculty,
Telephone\fax number: +7 (495) 433-14-28
e-mail: civilrudn@rambler.ru

Dear Sir or Madam,

I am pleased to write a letter of recommendation on behalf of Olga A.Papkova, a very special and very talented person. I have known Olga for about 15 years, since she was Assistant Professor of Law Faculty, Moscow State University, and I believe I can offer a unique perspective.

I am Senior Professor, Dr, Head of the Department of Civil and Commercial Law of Peoples Friendship University of Russia, Moscow, Honorary Worker of Higher Education of the Russian Federation (1997), Arbitrator of the International Commercial Arbitration Court at the RF CCI, Member of Advisory Board of Committee on Foreign Affairs under Federal Assembly of Russian Federation. I am a founder of scientific school of comparative research in the basic institutions of private law - property, contract and tort obligations. Prospects for my research are determined by comparative law, private law. The teaching courses are: 1) civil and commercial law of foreign countries 2) legal regulation of trade in the European Union, and 3) History and methodology of private law in Russia. I am at law faculty, Peoples Friendship University of Russia, Moscow, since 1977.

Ass. Professor Papkova is one of the best scholars I have come across, in all aspects of teaching, scientific research and personality.

Students and colleagues often remark that Ass.Professor Papkova is blessed with considerable talent in teaching and scientific research. What many of them overlook is how hard Ass.Prof. Papkova works to cultivate her talent, whether it is the development of her knowledge in civil procedure; giving lectures, seminars or of her writing skills as she works through scientific papers. I know of the effort that she put into the *Course of Lectures on Civil Procedure in the EU* of 2000 because she shared early drafts with me. I also appreciate the time that she put into her

of 2000 because she shared early drafts with me. I also appreciate the time that she put into her analysis of *European Civil Procedure* because she stopped by periodically to share her enthusiasm for the subject and her progress with it.

Ass.Professor Papkova is an outstanding lecturer. We took part in different conferences together. She has given many speeches in the field of European Civil Procedure and Russian Civil Process. Success in these interscholastic activities requires extensive research and persuasive skills.

Few young scholars demonstrate the genuine intellectual curiosity that Ass.Prof.Papkova has exhibited over and over -- a curiosity that is often accompanied by her excitement or enthusiasm for a scientific or teaching subject.

When I decided to invite a lecturer on *European Civil Procedure*, Ass.Professor Papkova was most helpful in giving a course of lectures that led to the appreciation by students.

What I most admire about Olga Papkova is her remarkable ability to interest students in the subject and add personality to the course material. Students can feel as deep knowledge as energy and optimism radiate from her teaching. Her creative teaching style makes students listen attentively to her.

She is also extremely organized; she is always available for students and colleagues. The time she spends to give feedback for the assignments helps everyone understand what the most important points were.

Ass.Professor Papkova does not only teach exceptionally well but she also cares a lot about the level of understanding of each student. She is one of those rare scholars that take the extra effort to make sure all students that need extra help are accommodated, despite her busy schedule. Regarding this third-level students of Law Faculty say that, "Prof. Papkova is the most caring professor that they have ever known. Her lectures are highly organized and very usable, and the level of attention she gives to her students is unsurpassed."

We all have to strive to achieve the best. At universities, the effort of a professor makes all the difference in helping students to reach their full potential. If we would have professors like Ass.Professor Papkova teaching everything, then I am positive that every student will be eager to learn and achieve the most even in a stream as hard as European and domestic Civil Procedure.

Ass.Professor Papkova is likable, enthusiastic, trusting and trustworthy scientist and teacher. On a personal level, she can be described in terms of strong qualities. For a person of such intellect she is remarkably open-minded, willing to see the value in other people's perspective and experiences. She is modest. She has an ability to bring a novel perspective from which the most mundane situations can be seen as refreshingly entertaining.

I consider Olga Papkova to be a person of great knowledge and talent. She is also an engaging teacher. She belongs in the classroom; she belongs in academia. I would very much like her match to our residency program. Even though I hope to see her among our staff, I recommend Ass.Professor Olga A.Papkova for an academic position with great enthusiasm.

Yours faithfully,

Professor , Dr. Vitaly V. Bezbakh

Attachment 6, Teaching Portfolio

Invitation Letter and the Evoluation of my work done by Professor P. Nappi, Rector of the University of Ferrara, Italy.

UNIVERSITA' DEGLI STUDI DI FERRARA

Date:
TO: The Visa Section
The Italian Embassy
10 Yakimanskaya Naberezhnaya,
Moscow 109180
Russian Federation

From: Pasquale Nappi
Professore ordinario
Facolta di Giuriprudenza, preside
Dipartimento di Scienze Giuridiche
44100 Ferrara - ITALY
Phone:+39-0532-45-5688
Fax:+39-0532-200188
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E-mail: pasquale.nappi@unife.it
E-mail: biblio.giuri.rovigo@unife.it
E-mail: bigiro@unife.it

LETTER OF INVITATION

Dear Sirs,

Ms. OLGA PAPKOVA
Position: Associate Professor, PhD
Place of employment: Law Faculty, Moscow State University
119991, Moscow, Vorobjevii Gori
Telephone: +(495) 939 38 80

Date of birth: 21 May 1968
Passport No. 70 4935732

By this communication the undersigned Prof. Pasquale Nappi, Dean of the Faculty of Law, University of Ferrara hereby formally invites according to the current provision of the academic regulations the above-named person as Visiting Professor to Law Faculty of Universita degli Studi di Ferrara, Italy, for the period from **01 JULY 2010 to 30 JUNE 2011 for the purpose of scientific research and giving lectures** in the fields of Access to Justice, Judicial Discretion to take a scientifically grounded approach to evaluate access to

by law or in practice; gender bias and other barriers in the law and legal systems; lack of *de facto* protection, especially for women, children; formalistic and expensive legal procedures (in civil litigation); avoidance of the legal system due to economic reasons, fear, or a sense of futility of purpose.
The scientific research of Prof Olga A.Papkova will focus on the status of access to justice and judicial discretion`s issues in Justice (inter alia, equity, reasonableness, bona fides, appropriateness), looking specifically at:
a) Citizens ability to access a fair, equitable and efficient justice system;
b) The independence of the judiciary to make fair and impartial judgments without interference or pressure from outside pressures.

The main activity will be non- laboratory based and will be based on a theoretical research project prepared by Prof. Olga Papkova in coordination with other colleagues of Law Faculty of Universita degli Studi di Ferrara as well. The project is tailored in order for Prof. Olga Papkova to transfer knowledge to Law Faculty of Universita degli Studi di Ferrara, Italy, and bring knowledge to Law Faculty, Moscow State University, Russia. The project will be shaped in order to develop and widen significanty the competences of Law Faculty of Universita degli Studi di Ferrara, in particular in creating long term collaboration between Law Faculty of Universita degli Studi di Ferrara, Italy, and Law Faculty, Moscow State University, Russia.

Place of research: Law Faculty of Universita degli Studi di Ferrara, Italy

For which we require such person to be granted **proper long-term visa** to Italy.

Prof. Olga A.Papkova must be accompanied by her family members (dependents):

Mr. Saveliy Papkov
Date of birth: 04 October 2002
Passport No: 70 4869443

Mr.Georgy Papkov
Date of birth: 12 Junuary 2008
Passport No: 70 4871412

Reason for their stay in Ferrara, Italy: accompaniment of Prof. Olga A.Papkova

Details supporting visit of Prof.Olga A.Papkova are as follows:

1. Scientific quality of Prof. Olga A.Papkova`s research, originality nature of it, relationship to the "state-of-the-art";

2. Prof. Olga A.Papkova`s research experience is more than 10 years. Her research results include publications, teaching practice, participation in the national and international conferences and other programmes, etc

3. Law Faculty of Universita degli Studi di Ferrara invites Prof.Olga A.Papkova from **July 2010 to June 2011** on a continuing basis, based on the following:

conferences and other programmes, etc

3. Law Faculty of Universita degli Studi di Ferrara invites Prof.Olga A.Papkova from **July 2010 to June 2011** on a continuing basis, based on the following:
- her research will take a comparative and statistically based character to evaluate access to justice in Italy and in European Union. It will need to take **one calendar year** approach minimum if she works full-time on her research without interruption.
- it is neccesary for Prof.Olga A.Papkova to have **two months** to settle into her new host country (in terms of language teaching, obtaining permits, scholls, childcare etc), to get ready for her research.

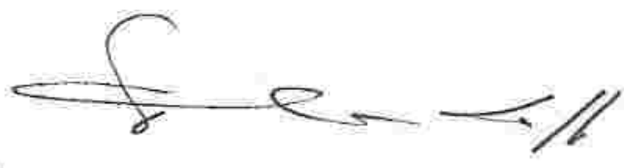
The research aims to widen the comparative approach by juxtaposing Italian and Russian legal systems, and by using statistical data to demonstrate the interdependence between approaches towards costing, the accessibility of justice, the discretion of courts and the interplay between courts and legal practitioners . For these purposes it is neceesary to select proper rules of Italian law and EU law, prepare the material for statistical comparative tables and perform any formalites of preparatory stage for the research.

It is most important that a scientific research and scientific cooperation are conducted in **due full-time course on a continuing basis without of any period of stay away from Law Faculty of Universita degli Studi di Ferrara, Italy,** and we would therefore be grateful if you would grant Prof. O.Papkova and her dependents proper visa pursuant to this invitation.

Finally, to this extent I clarify that this invitation is not a tender or a proposal for a position in the University of Ferrara other than the one specified and it won`t generate any financial or economic obligation for the University.
Prof. Olga Papkova will be responsible for her and Dependents` expenses whilst they are in Italy (research, living, mobility).

During her visit Prof. Olga Papkova shall be domiciliated to all the effects at the Department of Law, Corso Ercole I d`Este, 37 – 44100 FERRARA

Yours faithfully,



Pasquale Nappi
Professore ordinario
Facolta di Giuriprudenza, preside

Ferrara, 23 February 2011

I undersigned Prof. Pasquale Nappi declare that Prof. Olga Papkova was invited by the University of Ferrara, the Faculty of Law as Visiting Professor from 01 September 2010 till 31 August 2011 .

UNIVERSITA' DEGLI STUDI DI FERRARA

Il Rettore

Prof. Pasquale Nappi

UNIVERSITA' DEGLI STUDI DI FERRARA

To whom it may concern,

I am writing this letter to give my recommendation for Ass. Professor Olga Papkova. I am the Rector of University of Ferrara, Professor of Law, member of the Academy of Sciences of Ferrara.

I know Ass. Professor Papkova through our collaboration at University of Ferrara, Law Faculty, in 2010-2011.
Ass. Professor Papkova first approached me a year ago about the possibility of research, transfer of knowledge and cooperation at the faculty of law, the University of Ferrara, for 2010\2011. We described the general outline of the project via mail. I evaluated her proposal highly. I was glad to know about her scientific interest in knowledge on Italian Law and Politics.

During academic year 2010\2011, Ass. Professor Papkova demonstrates the ability to work independently with great creativity and enthusiasm.
Ass. Professor Papkova was introduced to other professors of the faculty of law to cooperate and transfer of knowledge. The cooperation includes giving seminars and lectures (in English) for PhD students on the problems of *Impact of European Convention on Human Rights and Decisions of ECtHR on Judicial Practice in RF, Law and Politics in RF*, debates, discussions. Ass. Professor Papkova excelled in each one of these subjects.

Her interpersonal skills are excellent. The other professors meeting with Ass. Professor Papkova comment favorably about collaboration with her. They say that Ass. Professor Papkova gets along well with everyone, pulls her own weight on the cooperation, and has the ability to compromise with professors and students. At the moment the staff, the professors of the faculty of law note what a pleasure it is to cooperate with Ass. Professor Papkova.
PhD students of the faculty of law comment that Ass. Professor Papkova has excellent teaching skills.

I was especially taken by Ass. Professor Papkova's deep knowledge within Russian Law and Politics and European judicial procedure, creative mind and independent work ethic. She awoke my interest in her close subject "*Judicial discretion*". Ass. Professor Papkova continues to research at the University in the fields of European Law and Politics, the role of a judge, generating interesting hypotheses. By the end of the summer she is going to prepare the scientific paper that will be directly relevant to our cooperation. She is learning Italian language with interest and enthusiasm. These illustrate her high level of motivation.

In summary, Ass. Professor Papkova is clearly one of the best international scholars I have met before. I think she would be an outstanding asset to your program. I give her my recommendation.

Sincerely,
Professor Pasquale Nappi

Attachment 7, Teaching Portfolio

Invitation from the Professors of the University of Insubria, Italy

10/01/2012

UNIVERSITÀ DEGLI STUDI DELL'INSUBRIA

Facoltà di Giurisprudenza

Il Preside

We undersigned Prof. Francesca Maria Ghirga and Prof. Francesca Ferrari declare that Prof. Olga Papkova is invited by Insubria University, the Faculty of Law as Visiting Professor from January, 10, 2012 till June, 30, 2012.

The University will be the host institute and its role does not imply any expenses or costs upon Insubria University.

Prof.ssa Maria Francesca Ghirga _____

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Attechment 7.1, Teaching Portfolio

The brief introduction to the Russian Judicial Procedure, done for the students of the "School of Specialization for Legal Profession", UNIPV, Commercial University Luigi Bacconi of Milan, Italy.

Olga A.Papkova

Judicial Procedure in Russia: Lawfulness and Legitimacy.

Judicial Procedure

The freedom is where rule of law exists,
Where good faith is spread and no fear is.
The lack of freedom is where law does not hold sway,
Where abuse comes true and justice is away.
(Karamzin N.M., Russian writer, poet, historian, critic, 1766-1826)
*(translation – **O.P**)*

Discretio est scire per legem quid sit justum
(Roman Legal Maxim)

THE-STATE-OF-THE-ART.

The judicial and legal reform initiated in 1991 became the natural continuation of the Russian Federation's proclamation of a democratic rule-of-law state. Faced with the situation of a cardinal transformation of the socio-political system and the system of state governance, the functions of the judicial power needed a truly historical revision.
With the beginning of democratic reforms, courts were given a new role: to become an independent arbiter between the citizen and the state, the guarantor in observing civil and political freedoms and human and property rights in Russia. The new Constitution of 1993 was the main legislation. Before that, Soviet courts were regarded as merely an instrument of executive power.
Procedural legislation of Russian Federation was renewed, also. Code of Arbitrazh Procedure of RF (further – CAP) entered into force on 1 September 2002[1]. Code of Civil Procedure of RF (hereinafter – CCP) entered into force on 1 February 2003. The CCP was developed on the base of a combination of adversarial model of judicial process with the mechanism of court discretion in procedure. So, the new Russian CCP established a kind of “golden mean” between the court discretion and the initiative of the parties.
During their drafting the experience of “democratic” procedure regulation of many foreign countries (Germany, France, USA, England) was taken into account. Inclusion in the CCP the chapters on a court writ[2] and judgments *in absentia*, appellate judgments review procedure and determinations of justices of peace; amendment of the whole group of the CCP rules related to jurisdiction, proving, cassation and supervision procedures, etc. - this is a far from complete list of legislative “democratic” novels aimed at enhancement of achieving justice and legitimacy.
Furthermore, the formation of a new element of the Russian judicial system - constitutional justice - meant that the courts would have supremacy over the legislative and rule-making activities of state power in cases where the latter violated the constitution.
However, as certain experts justly remarked, the amendments do not completely solve the problems of quality of justice.[3]
The level of society's discontent with the judicial system detected in mass media publications and public opinion polls of Russians demonstrates that judicial reform has obviously not fulfilled society's hopes for it. The ordinary Russian citizen feels unprotected against arbitrariness: the courts are not able to protect his rights. He has nowhere to complain to. This contributes to the establishment of the so called "authoritarian syndrome" in society: the population ceases to believe in rights and freedoms, does not perceive them as reality and relies only on the political loyalty of the authorities. Famous Russian journalist and writer Leonid Nikitinsky published his novel “Taina Soveshatelnoi Komnaty” (“the Secret of Jury Room“). This very well informed reporter stressed in this book episodes of taping by secret service of the jury room in the court building as well as phone conversation of judges.
The discrepancies between practice and the stated declarations about the priority of the Constitution, the independence and irrevocability of judges and the right of all to a fair trial have become far too visible.

1 Arbitrazh (commercial) state courts should be distinguished from arbitral tribunals, which also exist in Russia. Arbitrazh courts are charged with settling economic disputes, while courts of general jurisdiction handle disputes between individual citizens.. Therefore two kinds of adjudication procedure exist in Russia: arbitrazh and civil procedure. The Arbitrazh Procedural Code regulates arbitrazh and the Civil Procedure Code regulates civil procedure.
2 Vikut M.A, Zaitsev I.M., Grazhdanskii protsess Rossii (The Civil Process in Russia). Text-book, Moscow, 1999, pp. 25-26 (the author of the chapter is Zaitsev I.M.).
3 Shakaryan M. Prinimat li novyi GPK ili podpravlyat staryi? (Is it Necessary to Adopt a New CCP or to Amend the Existent One). Rossiiskaya Yustitsiya (The Russian Justice), 1999, No. 2, p.18.

So, the situation in Russian judicial procedure is far from being perfect. In his "Sudebnay reforma v proshlom I nastoyaschem" ("Judicial Reform, Past and Present"), Deputy Chairman of the Supreme Court of RF V.Zhujkov contemplates advantages and disadvantages of the judicial reform in RF. As of 2011, observers of justice in Russia, including President of RF Dmitry Medvedev, recognized that judicial practice in Russia has a lot of problems. Arguably, the failure to achieve full and authentic independence for individual judges represents the greatest deficit in Russian justice today, a deficit that must be addressed before the courts in the Russian Federation (RF) will be trusted by most of the public. Reforming an old system run by old people is a tricky task. Doing justice in Russia is often complicated by pressures, personalities and politics. Lacking both the political tradition and a real opposition, the executive power in Russia in fact widely uses the legislative rules to establish total control over the courts.

The question is: why haven`t the reforms worked?

To answer the question in the focus of attention of the author will be, *inter alia*, legal conceptualization of the concept of a sovereign democracy. Being released from the ideological gamble, the given concept expresses the aspiration to preservation of the sense of justice as a basis of legal and political life in close future of Russia.

THE AIMS.

Long time the applying of court discretion was criticized in the Russian scientific world and rejected by judicial practice. It was assumed that each legal problem had one legitimate solution. That was the main sense of legitimacy in judicial procedure. Scarcity and unregulated social life, undeveloped market gave rise to the routine legal practice and negated the need of such delicate and complex mechanism as court discretion. Modern Russian judges exercise extremely broad and relatively unchecked discretion over many of the details of procedure. They have extensive power to manage cases, and broad, often unreviewable power to promote settlements. Even when a rule includes decisional standards, those standards often rely on expansive judicial discretion to make case-specific determinations, to interpret legislation, to implement analogy of the rule or law, in certain cases to create law. Indeed, it is only a slight exaggeration to say that court procedure can be largely the trial judge's creation, subject to minimal judicial review. Some federal judges and lawmakers in Russia favor maintaining and even expanding broad case-specific discretion. So, Chief of the Staff of the Supreme Arbitrazh Court of Russian Federation I.Drozdov notes that *"Judicial discretion is a cornerstone of a judge`s job. Judges are the qualified and experienced professionals who have to resolve any legal situation. Judges must be trusted, no other way."*[4]

Now, in the 21 century, the phenomenon of judicial discretion and his place in political and legal systems of Russia has not been examined. There is a cautious attitude to discretion in Russian legal and political literature[5]. First of all this is connected with the danger of arbitrariness, tyranny, abuse and injustice. So, M.S. Studenkina wrote: "Regarding the issue of discretion, we can`t answer the question unambiguously whether the court discretion is purely negative or highly positive phenomenon. What fate should it have in the future?" [6]

There are two monographs that involve discretionary action of a court in Russian procedure, such as D.B.Abushenko, "Sudebnoe Usmotrenie v grazhdanskom I arbitrazhnom processe" (Judicial Discretion in Civil and Arbitral Proceedings) (1999) and O.A.Papkova, "Usmotrenie Suda" (Court Discretion) (2005). The starting propositions deal with my conclusions in the monograph[7]. They are:

(1) Majority of judicial decisions in modern Russia are grounded on the rule of law. They do not contradict with Russian legislation.
(2) Lawful judicial decisions can be at variance with legitimacy as the main point of the-rule-of-law state. They do not lead to justice.
(3) Dichotomy "lawful-legitimate" judicial decisions means that power pressure aims at court discretion, only.

4 Drozdov I. "Sudejskoe usmotrenie – kraeugolnii kamen` sudejskoj rabotii" ("Court Discretion is the cornerstone of a judge`s job") in "Zakon" 2010, №1, p.10
5 See Starykh U.V. Usmotrenie v nalogovom pravoprimenenii (Discretion in tax law application). Moscva, 2007, p.27
6 Pravoprimenenie v Sovetskom Gosudarstve (Application of law in Soviet State). Moscva, 1995, p.47
7 Papkova O.A. Usmotrenie Suda (Court Discretion). Moscva, 2005, p. 21.

(4) Efficiency of justice, stability and dynamic of the-rule-of- law in Russian Federation and the systems are so much dominated by judicial discretion. Why?
(5) My opinion in my book is that there are two answers in Russia: (1) much court discretion is now governed by rules; (2) much discretion is because the Russian lawmaker does not know how to formulate appropriate rules, he is not ready to do this.[8] Why did he do that?
(6) In my study of discretion and justice in Russia I have found that discretion is indispensable (*sine qua non*) to Russian judiciary and that the cure for injustice, illegitimacy can`t be the elimination of discretion.[9] So, we could say on the paradigm "legitimacy-discretion". But I also found that Russian courts are shot through with the exercise of improper discretion, leading to illegitimacy.[10] Let us offer the paradigm "justice democratic foundations-court discretion". My findings were grounded on*, inter alia*, my knowledge on the situation from within as before I worked as a civil judge in the court of first instance in Moscow region and the results of judges interviews.
(7) I also concluded that the foundations, principles, *etc*, of judicial procedure in Russia are stated by the rule of law, and the rule of law gets the meaning of law (legitimacy) through the implementation of judicial discretion or *a contrario.*[11] Further*,* the establishment of court discretion by the rule of law is not a lawmaker`s whim but it should be a result of cultural and historical development of a state and law[12]. In opposite case the implementation of court discretion is *versus* legitimacy in practice*, de facto*. The sample of Russian Federation proves this.

These points need to be developed.

The main point is that we protect the usefulness of judicial discretion as a political and legal concept. Perhaps it is not discretion itself that matters, but rather what judges actually do with the discretion they have, in modern Russia. For example, critics of case management at times of drafting the CCP seem less concerned about trial judges exercising discretion in the abstract than about their using discretion to manage cases and promote settlements, being under the pressure.

There is some merit to this point, but there is also something important to understand about court discretion in Russia, in general. In the strategic (political, legal) environment of process, trial judge discretion to design casespecific procedures can create serious problems for justice and legitimacy. Although these problems vary with context, they have common features, and it is important to understand as what those features are and why, and so how the problems can be resolved.

This paper focuses on the assessment of the "democratic" values and foundations of judicial process, stated by the legislation of Russian Federation, the judicial practice of their implementation, the pressures on court activity, the consequences of judicial system crisis for legitimacy in Russia. The research aims to estimate the Russian judicial reform and the legal content of the concept "sovereign democracy", taking into account the role of judicial discretion in procedure, proving that the efficiency and legitimacy of Russian judicial procedure depends significantly upon the democratic procedure foundations, established by law; the place of judicial discretion in the system; the sense of justice; the history of Russian state and law.

Our tasks will include:

a) the basic analysis of major developments in the field of judicial procedure in Russia, *viz:*

- the "democratic" foundations of the Russian procedural legislation with special attention to the process of designing the draft of the CCP, from 1995 to 2000, and with analysis of the rules, ideas and arguments which inspired, guided the process of drafting;
- the judicial system of Russian Federation with special attitude to differences in the implementation of "democratic" foundations of the legislation by ordinary courts, commercial courts and constitutional courts and in the right to create law;
- the type of Russian judicial procedure with special attention to the role and place of judicial discretion in procedure under the rule of law, analyzing the concept of judicial discretion, the varieties and power pressures on it;
- the work of democratic foundations of judicial procedure in Russia and their purposes to answer the questions about the role and relevance of such 'democratic' foundations of procedure in Russian Federation, taking into account the Russian history of state and law; about the current state- of- affairs of legitimacy in Russian judicial procedure.

The contemporary Russian juristic literature contains a lot of suggestions aimed at introduction of amendments and addenda to the procedural legislation in order to enhance the effectiveness of justice,

8 Papkova O.A. Usmotrenie Suda (Court Discretion). Moscva, 2005, p. 12.
9 Papkova O. Opt. cit. p. 43-44.
10 Ibid. p. 64-199.
11 Ibid. p. 224.
12 Ibid.

the legitimacy. It is suggested, for example, that the rates of statutory duties be reduced depending on the financial status of a claimant (an applicant); reconciliation procedures for pretrial settlement of a dispute be introduced; procedures for consideration of new categories of civil cases (related to emancipation, forced hospitalization of mentally sick persons) be provided for in the CCP; jurisdiction of civil cases be extended; obligatory provision of free legal assistance be stipulated; certain procedural rules regulating proceedings in cases arising from administrative relations,[13] etc.
We suppose that measures for implementation of "democratic" foundations of judicial process by courts in Russia must not be reduced only to adoption of a new, though more accomplished CCP of RF and other legislation. As known, the effectiveness of even very accomplished laws may be reduced to naught by their improper application.
Our research deals with the hypothesis that the democratic foundations of judicial process and judicial discretion, stated by law, mean "democratic" legitimacy only if their establishment by a rule of law corresponds to a standard of cultural and historical development of a state and law. I came to this conclusion in my book[14] and can continue the process of proving it for modern Russia.
b) the basic analysis of the legal *conceptualization of the concept of a sovereign democracy,* its underlying ideas and arguments *in connection with legitimacy in judicial procedure of Russia.* At the heart of this research is the paradigm "democratic foundation of judicial procedure-court discretion-sense of justice", using my conclusions about "legitimacy-discretion" and the concept of democracy of I.A.Iljin, whose ideas about the Russian state and law make the ground of the concept of a sovereign democracy.
Does the sovereign democracy really adopt various attributes of democracy and operate in a decidedly non-democratic manner: aspects of democracy and authoritarianism are being combined or no? We hypothesize that in the case that paradigm "justice democratic foundations-judicial discretion-sense of justice" is taken into account by appropriate state authority, legitimacy is perceived in its natural meaning.
But it is the ideal variant, we should examine concerning the defined paradigm, whether the concept serves another purposes: a declaratory role, a governing function (to rule more effectively) not a legitimizing one.
In this paper, I will side for reasons that have not been fully explored before.

THE METHOD.

Our method will have the following ingredients: (1) on the basis of our general knowledge on theory, philosophy, history, legal and political doctrines, modern international politics, legal rules identifying problems about the-rule-of-law state, legitimacy, judicial discretion, legal and political concepts of modern Russia that seem worthy of study by throwing liberal and sovereign democracy`s light on them; (2) using my own experience of working as a civil judge, interviews with Russian judges of different courts and lawmakers, politicians; (3) inspection of files of courts of first instance in Russia as tools for locating problems about the implementation of "democratic" foundations in judicial procedure, the legitimacy and lawfulness of judicial decisions; (4) using published reports of cases decided by courts in Russia; (5) describing our findings, combining criticisms and ideas with the descriptions; (6) comparing European liberal democratic experience and ideas within legitimacy in judicial procedure with Russian experience and ideas, taking into account the concept of sovereign democracy and the history of Russian state and law; (6) using judgments in producing a mixture of findings and ideas with the emphasis upon ideas.

13 Pastukhov V. Chto lyudyam ne nravitsya v rossiiskom pravosudii? (What do persons not like in the Russian Justice?). Rossiiskaya Yustitsiya (The Russian Justice). 1998, No.8, pp.22-23.
14 Papkova O.A. Opt,. Cit., p.125.

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Attachment 8, Teaching Portfolio

The Invitation of Prof.J.Ziller, Faculty of Political Sciencies, University of Pavia, Italy

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martedì 13 marzo 2012

Dear Professor Papkova,

Having read both your curriculum vitae and the description of your research project on "The role of Supreme Courts in democratic transitions: the cases of Italy and the Russian Federation", I can attest that I would be happy to collaborate with you if you were to get a CICOPS Scholarship for 2013, in the framework of the Dipartimento di Economia, Statistica e Diritto.

(Prof. Jacques Ziller)

Attachment 9, Teaching Portfolio

Evoluation of the part of my work dedicated to the compensation for non-material damages in Russia, done by Russian Professor V. Bezbakh, PFUR, Russia

ФЕДЕРАЛЬНОЕ ГОСУДАРСТВЕННОЕ АВТОНОМНОЕ ОБРАЗОВАТЕЛЬНОЕ УЧРЕЖДЕНИЕ
ВЫСШЕГО ОБРАЗОВАНИЯ

РОССИЙСКИЙ УНИВЕРСИТЕТ ДРУЖБЫ НАРОДОВ

ЮРИДИЧЕСКИЙ ИНСТИТУТ

КАФЕДРА ГРАЖДАНСКОГО И ТРУДОВОГО ПРАВА

Professor Vitaly V.Bezbakh, Dr.Sc. (Laws), Ph.D. (Laws),
Department of Civil and Labour Law

Law Institute
People`s Friendship University of Russia, Moscow, Russian Federation
Review of the scientific research

Author: Olga A. Papkova, PhD.
Title: Non-material damages in the Russian Federation
Reviewer: Professor Vitaly V.Bezbakh, Dr.Sc. (Laws), PhD (Laws)

1. General description
The research is written on 120 pages all together. The structure of the research conforms to principles and requests to the structure of scientific research.
The author has studied and used appropriate number of bibliographic sources (used and quoted in the research). This indicates a deep theoretical knowledge and very good orientation in the publications involving the problem discussed in the study.
The research fulfills the formal requests on excellent level.

2. The topicality of the thesis
The Russian Federation intends to secure the high level of legal protection of rights and freedoms of citizens, the establishment of an effective system of fair and real reimbursement and compensation for damages caused by unlawful acts.
The Russian legislation states non-material damages as one of the types of harm caused to a person, and provides for the possibility of its compensation.
The first study of the monetary compensation for the harm caused to honor and dignity of citizens was made by GF Shershenevich in pre-revolutionary Russia. In the 20 years of XXc the discussion on the compensation for moral damages, thanks to the participation of such Russian legal scholars as I.Braude, K.Varshavsky, A.Zeyts, B.Lapitsky, B.Utevsky and others, had revived. Until the 60s the study of issues related to non-material damages was conducted. Since the 70s, the significant contribution to the development of the principles of non-material damages was made by A.M.Belyakova, S.N.Bratus, N.S.Malein, L.A.Maydanik, N.Yu.Sergeeva, VA Tarhov, M.Ya.Shiminova, K.B.Yaroshenko and others. In recent years, the problem of legal regulation of non-material damages is considered in scientific papers of S.A.Belyatskin, E.A.Mihno, S.V.Narizhny, O.A.Peshkov, I.A.Suharevsky, A.V.Shichanin ,

A.M.Erdelevsky et al. A lot of researchers perceive the non-material damages as the most important problem in the field of the defense of rights and freedom of citizens.
The researcher bases her study also on her own monograph:
Papkova Olga A. Usmotrenie Suda (The Discretion of Court), Moscva, 2005,
which was named as one of the best performances in its field and received the high evaluation not just of the Russian and foreign scholars but also of the State Duma of the RF and of the judges of the Supreme Court of the Russian Federation.

All these studies are taken into account in the research of Dr.Papkova.

The author has performed good orientation and wide knowledge of different parts of legal theory considered in the research: the main provisions of moral damages and conditions of compensation (chapter 1); the concept and the essence of non-material damages; the compensation for moral damages as a way to protect the non-material benefits and the non-property rights.
The author has performed good orientation and wide knowledge of the Russian legislation on the topic: the liability for non-material damages (chapter 2); the terms, forms and methods of the compensation for moral damages; criteria and method of assessing the amount of the compensation for moral injury.
The research is made on the high scientific level.
The topic of the research is current and relevant in the context of up-to-date research in the field of Russian Private Law.

3. Aims and methods of the research
Chapters 1-2 are theoretical background of the research, combined with the relevant judicial practice.
Dr.Papkova has performed the analysis of the theoretical and practical issues of non-material damages, has revealed existing gaps in the relevant Russian legislation and made some concrete proposals to settle them.
The aims, background of the research problem, hypothesis and research methodology are clear, as so the results of research, its` interpretations and offers how to improve the relevant Russian legislation.
The study examines such questions, as:
a) the definition and the nature of non-material damages;
b) the application of the limitation period for claims for the compensation for moral damages;
c) the identification of persons who have reason to demand such compensation and to bear responsibility for this compensation;
d) the determination of the criteria and of the method of assessing the amount of the compensation for non-material damages.

Dr.Papkova points out the following main provisions, which contain elements of novelty:
1. The author offers to state the presumption of the non-patrimonial damages in the Russian legislation. This is especially important in the case of physical and mental sufferings, caused by a committed crime. Referring to the Latin expression *Ei incumbit probatio qui dicit, non qui negat*, I have the opinion, that the commission of any offense is accompanied by non-material damages. If the Russian legislation could be changed, the victims in all criminal cases would have the right to demand the compensation for physical and moral sufferings.
2. The author truly indicates that the presence of a causal link between the non-material damages and offenses, which is one of the conditions of the responsibility for moral harm, is not always obvious. For example, in the case of the non-material damage,

caused to health in the form of disease which was the result of the affect of environmental hazards, first of all the existence of a causal link between the disease and this effect should be established, should be proved.
3. The author proposes that on the claim for the compensation for moral damages should extend the statute of limitations, the use of which should be carried out according to common rules. In my view, this change of the Russian legislation would correspond to and within the meaning of Russian civil law, and human rights.

The chapters 1-2 are nice examples of active research work in theory of Russian Private Law and in the fields of Russian legislation and judicial practice.
The research is inspired from of the theoretical, practical and methodological point of view. Aims and methods are clear; author represents the ideas and knowledge with sufficient theoretical background. The aims were fulfilled, methods of research work are appropriate to the aims and hypothesis formulated in the research.

4. Results of thesis and their benefit
The above said brings to a conclusion that the author is able to undertake and realize profound research works in the field of national and comparative private law, judicial discretion, legal culture.
The theoretical background of the reviewed thesis, as well as the active research work performed by the author is beneficial to existing materials and ideas relating to researches in the field of theory of non-material damage and its compensation.

5. Questions
1. Does it seem appropriate to complement the Protection of business reputation of legal entity, stating it as follows: "A legal person in respect of whom the information discrediting its business reputation was spread, has the right, in addition to the refutation of such information, to claim the reimbursement of damages and the financial compensation for moral damages caused by its spread."?
2. The researcher points out that the determination of the amount of compensation for non-material damages is made by court according to its discretion. However, the problem of the lack of precisely formulated criteria for assessing the amount of compensation for moral damages and of the clear methodology for quantifying the amount of such compensation gives rise to complexity. How could it be settled?

6. Conclusion
In my opinion, the research of **Dr. Olga A. Papkova** meets the high scientific requirements and I recommend it to be presented at the University of Pavia, Law Faculty, Department of Private law.

Professor Vitaly V.Bezbakh,
Dr.Sc.(Laws), PhD (Laws)
Moscow, May 18th, 2015

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Attachment 10, Teaching Portfolio

The official confirmation of the Faculty of Law, Moscow State University

Date June, 29, 2011

CERTIFICATE

This certificate is issued to Papkova Olga Alexandrovna, date of birth: May, 21, 1968, in the fact that she really worked at Moscow State University, Law Faculty:

From November, 15, 1993 till November, 15, 1996 – Postgraduate (PhD) Course, postgraduate (PhD) student;

From Fabruary, 1, 2007 till July, 1, 2007 – Criminal Procedure Department, Junior Researcher;

From September, 1, 1997 till March, 1, 1998 – Criminal Procedure Department, Junior Researcher;

From March, 1, 1998 till June, 30, 1998 – Criminal Procedure Department, Assistant Professor;

From September, 1, 1998 till October,1, 2001 – Civil Procedure Department, Assistant Professor;

From October, 1, 2001 till January, 12, 2011 – Civil Procedure Department, Associate Professor.

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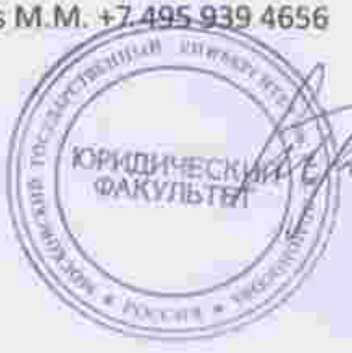

Attachment 11, Teaching Portfolio

The Collaboration Programme, signed by Prof Papkova and Prof Nappi

RUSSIAN, ITALIAN COLLABORATION

IN THE FIELD OF CIVIL PROCEDURAL LAW

13.09.2010

P.Nappi, O.Papkova

ABSTRACT

The Russian, Italian collaboration programme in the field of civil procedural law commenced in September 2010 with the following objectives: to improve knowledge in the field of Russian and Italian Civil Procedure, to prepare scientific writings on the subject in English, Italian, Russian and to stimulate information and scientific exchange between Lomonosov Moscow State University (MSU), People Friendship University of Russia, Moscow (PFUR), Russia and the University of Ferrara (UNIFE), Italy. Civil procedure specialists of University of Ferrara, Italy, and of Moscow State University, Russia, participate in this programme, including Professor P.Nappi and Associated Professor O.Papkova. The total duration of the project is 10-12 months. Methodologies are focused upon the organisation of an effectively functioning collaboration, preparing of joint scientific writings for publishing in Italy (in Italian language), in Europe (in English language) and in Russia (in Russian language). An international quality scientific comparative programme is also developed to allow improvements in the field of quality of teaching Civil Procedural Law. In addition, specific research activities, involving on-line collaboration, the discussion and meeting of partners, are essential for successful cooperation of partners. This project can be considered as an example of successful collaboration between the Universities of two countries. It will not only led to improvements of knowledge in the field of comparative (Russian and Italian) civil procedure, implementation of new teaching or scientific methods, but will also help in establishment of scientific collaboration, information exchange and transfer of knowledge (via visiting scientists programme) between participating Universities of the countries.

INTRODUCTION AND PURPOSE

(A).Courts administer *justice* in all advanced nations of the world. Courts play a central role in both the legal and political processes in many countries. Legal actors have a stake in making sure that legal processes and procedures are perceived as legitimate, both by the general population who might use the legal system, and by the professionals who operate it. A relatively constant series of issues about whether courts provide justice and are fair, efficient, serve to structure alongstanding debate about how courts operate and the best rules of process to determine the best way for resolving of disputes and substantive legal claims.

Our subject will be justice on civil and commercial cases, done by judges, for particular parties. Our concern will be limited to the procedural efficiency and fair trial.

The promise for improving the quality of justice is surely greatest in the areas where injustice is located.

Our emphasis will tend to be much more on injustice than on justice, so the samples of injustice offer the best possibilities for improving quality of justice.

Some typical illustrations will show types of injustice that are now prevalent in Russian discretionary justice.

- B. wrote and published the article in the newspaper that the Judge O. hears cases on behalf of the Mayor of the city. The Judge O. brought the claim for compensation for moral damage *versus* B in a court. The court sought from B. to O. 20 million rubles. According to the Article 1101 Civil Code of RF (hereinafter – CC RF) in determining of the amount for compensation for moral damage, the court must consider the requirements of reasonableness and justice. In the decision the court did not motivate the reasons justifying the full satisfaction of the claim.
- The Small Enterprise (SE) and The Limited Liability Company (LLC) entered into the contract under which the SE should put a line for the production of casein, the LLC must ship the butter. The SE complied with its obligation. The butter was not supplied. The SE brought a lawsuit against the LLC for the performance of the obligation in kind and recovery of the fine specified in the contract (5 percent of the contract sum for each day of delay) in the amount of 2,290,750,000 rubles. The court reduced the fine and recovered 229 075 000 rubles on the ground of disparity between the fine and violation of the

obligations (Article 333 CC RF). The court did not apply the category of equity as a general principle of attribution, set out in the Article 1 CC RF. The result was injustice.

- The Limited Liability Company (the landlord) and the Bank (the tenant) entered into the lease of non-residential premises. The landlord went to court with the claim against the tenant to recover arrears of rent. The court requested the landlord to submit additional evidence, including the deed of transfer, certificates of payment of electricity and utilities. The landlord did not get additional evidence. The court rejected the claim, stating that the plaintiff acted in bad faith and failed to provide evidence to delay the process. However, there won`t such actions in the conduct of the party. The court found a dishonesty in the conduct of the plaintiff incorrectly. The result was injustice.
- The Bank extended the credit to the Closed Joint Stock Company (CJSC) under the credit agreement. Credit was not returned by CJSC in time. The Bank brought a suit for recovery of the credit`s debt, interest for its using, an increased interest rate for credit use, penalties for late payment of the debt on the loan and interest. The court found those requirements valid. That led to injustice, as the creditor used the rights granted by the contract in bed faith, requiring the simultaneous application of named types of liability.
- In conducting the case the court defined that the defendant paid the sum of money for the house on the contract of sale just under the testimony. By virtue of article 162 CC RF, written evidence is admissible in such case. Court did injustice.
- B. brought a claim for the recognition of privatization of the apartment. The sister of B. filed a statement on the privatization and died. Privatization Contract was not designed. The court rejected the claim, stating that the death of B. constituted a waiver of the privatization. Court violated the article 56 Code of Civil Procedure of RF. The court did not specify the circumstances relevant to the case, did not indicate which party must prove them. As a result, the injustice was done.
- Arbitrazh courts, reducing the penalty or the amount of liabilities, refer to the Article 333 of the Civil Code of RF or Article 404, respectively, in the court Ruling not justifying why the amount is decreased.

(B). Judicial systems in most developing countries are perceived to be in crisis: cases take too long, cost too much, and are littered with dishonest judges. Litigants are dissatisfied with the process, creditors rare use bankruptcy laws and shareholders feel it would be impossible to win a case against the controlling investor in a local court. Even though there is little

consensus on exactly what judicial efficiency means or how to measure it, people seem to agree that it is low. As a result, several countries have opted to implement judicial reform in the hope of improving the efficiency of civil procedure. Judicial reform efforts, both in developed and in developing countries, have been varied and have met with mixed success.

This symposium of essays will be concerned with improving the quality of justice on civil and commercial cases that is administered by judges. The central question will be: how can the quality of justice on civil and commercial cases administered by courts be improved?

We agree that the comparative lawyer cannot restrict his field narrowly. More than any other academic, he must be prepared to find new topics for discussion and research.

Of course, an increase of the role of courts in the civil process is occurring globally and impacting most procedural systems. The frontier between the two classical models of civil procedure has blurred, and it appears that a united procedural system is emerging. At the same time, some distinctive and unique procedural systems still exist. The Russian system is one of them. The history of Russian civil procedure through to its current form provides good examples of the legislative efforts to converge both classical systems and to create the best system for Russia.

I am sure that a study of legal systems already mixed can provide valuable lessons for these mixing systems, and the study of how they work is fruitful in the field of justice. In fact, mixed legal systems have always been the ―laboratories‖ of comparative lawyers, our ―vantage point‖. As already alluded to, today such systems have gained a special place in the process of European integration. Jan Smits says that mixed legal systems will provide ―inspiration‖. In my opinion, the experience of Russia is consequently of great importance for the future developments of European law.

Our task will not be to examine the structures of the adversarial process and of the non-adversarial process; instead, we assume that each reader knows it`s conception.

International comparison suggests that several procedural systems are gradually converging towards a similar model. In many cases the problem of an efficient and speedy development of the ordinary civil procedure has been solved by vesting the judge with more power to manage the case to increase flexibility: *a*) he exercises power (especially) in the preparatory phase of the proceedings; *b*) generally, he can exercise power to order inquiries *ex officio*.

One of the steps in our inquiry into how to improve the quality of justice on commercial and civil cases will be to locate justice in legal systems, to establish links between procedural models and justice.

Those location will be in the court of first instance in Russia or in Italy.

Italy was chosen for comparative analysis and also as a place of the host organization on the following grounds:

- The Italian reforms of civil procedure have taken the exceptional place among European judicial reforms. At first, they lack a general reform project. Also, they have gone against the prevailing trend in comparison with the reforms that have been recently enacted in other countries. In fact, in Italy there has not been a choice made between the procedural models, as in Russia. Italy is a very good ground for comprehensive comparative study.
- Italy has the excessive length of civil proceedings and other critical problems which have been the lack of mechanisms to assure that the judge effectively and correctly uses her power in the conduct of the case.
- Italy offers to give new modern meaning to *Corpus Juris Civilis* (inter alia, in the field of civil procedure) to resolve the problem of supranational procedural legislation. It has the importance for my study.
- I would like to learn Italian language to examine Italian jurisprudence literature and literature on Roman law in original in perspective. It is necessary for my teaching and scientific practice to exceed and improve my knowledge in the fields.

The largest clusters of injustice in Russia lie in the exercise of judicial power in the absence of systematic fact-finding, within the reach of previously existing law, beyond the controls of the result. In other words, the most injustice in case involving identified parties probably occurs when judges exercise unrewiered power in conducting the case in the court of first instance and within the kind of procedural protections. This essay will focus on such justice.

In my 2005 book, USMOTRENIE SUDA (COURT DISCRETION), dealing with discretion of Russian judges, I wrote one sentence that now seems to deserve repetition with ever greater emphasis: *"The strongest need and the greatest promise for improving the quality of justice to individual parties in the entire judicial system are in the areas where court decision necessarily depend more upon discretion than upon rules and where judicial review is absent"*.

Our research will learn on a review of the major reforms that have affected judicial procedure at first instance in Russian Federation, from the early 90s and questions – in the light of theoretical analysis and international comparison – their consistency with the main goal of improving the quality of justice on civil or commercial case for particular parties that is administered by the judge.

We are going to identify as the achievements of the judicial reforms as their negative tendencies in the field justice in Russian Federation and in Italy.

THE RESULT HOPED FOR, follows below:

- Scientific writing, publications (researcher\international group) on ―Civil Procedure Reform: Russian and Italian Perspectives‖ or\and;
- Special Course of lectures per students in Russia ―Italian Civil Justice‖ or\and;
- Participation in Conferences, *etc,* on the problem of civil justice (national, international);
- Further development of scientific research on the problem;
- Using of new knowledge in my teaching practice;
- Transfer of knowledge on Russian Civil Justice and Civil Procedure
- Longtime International Collaboration with European Professors, Universities, *etc*
- Knowledge of Italian language

(C).We are going to describe our **PREVIOUS SCIENTIFIC AND TEACHING ACHIEVEMENTS IN THE FIELD OF COMPARATIVE CIVIL PROCEDURAL LAW.** On this basis we are going to start our comparative study. Our findings are:

1).The main achievement is the course of lectures ―Civil Procedure in the Member States‖ (published in 2000).

2).We received the less data on the civil procedure reforms abroad.

Our tasks will include:

a) the basic theoretical analysis of major developments in the field of procedure on civil and commercial cases in mentioned countries, *viz:*

- improvement of the legislation of civil procedure;
- improvement of the judicial system;
- changes of the types of civil procedure
- influence of the European Convention on Human Rights and the Rulings of European Court of Human Rights on discretionary justice (in Russia and in Italy).

b) the initiatives of Transnational Civil Procedure;

In today's **Russia**, judicial reform is a key issue for development of justice in the country.

For the past of 17 years, considerable progress has been made in improving quality of justice on civil and commercial cases in Russia.

Improvement of the legislation of civil procedure is one of the main characteristics of the modern stage of development of Russian law. Code of Arbitral Procedure of RF (further – CAP) entered into force on 1 September 2002. Code of Civil Procedure of RF (hereinafter – CCP)

entered into force on 1 February 2003. The novelty of the Codes, their importance for the improvement of justice require careful consideration of the judicial practice in order to identify and address shortcoming of legal regulation, leading to injustice.

We are going to examine what measures must be taken for fundamental improvement of court activities, in particular, improvement of quality of justice by judges capable of proper administration of justice in terms of their professional and moral qualities, etc.

Improvement of the Judicial System. The main changes of the judicial system of RF are the following: the Constitutional Court of RF and arbitratzh courts have been established, the right to establish constitutional (statutory) and magistrate's courts has been granted to the subjects of the Russian Federation. The court-martial legislation has been adopted that has expressly determined their competence and organizational structure.

In the Russian Federation disputes following from civil legal relationships are given consideration by two types of courts: courts of general jurisdiction and commercial courts. Our task will be the examination whether the aforementioned organizational measures taken for improvement of the judicial system in Russia produced a positive effect on justice. In the course of the discussion on the judicial system reform by Russian professionals many suggestions about establishment of a multi branch system of specialized courts in the Russian Federation have been advanced. For example, it was suggested to establish administrative, land, labor, patent, and some other specialized courts (tax, juvenile, etc.). Article 26 of the Federal Constitutional Law of RF dated 23 October 1996 *On the Judicial System of the Russian Federation 18* gives certain grounds for such suggestions. Some of the authors refer to the experience of other states (Germany, France, the USA), which have developed a large-scale system of specialized courts. Without rejecting, in principle, the idea of establishment of specialized courts in the Russian Federation, we would like to learn how the establishment can influence on justice.

Changes of the type of civil procedure. The Russian Constitution of 1993 proclaimed the principle of adversarial character in civil court proceedings (article 123).

In my opinion, in modern Russia according with the new CCP of 2002 there is a peculiar combination of initiative of the parties and court initiative, which have been established in the law. The expression of this principle in concrete articles is a relatively complex problem for justice. The new CCP (chapter 6) determines in the following manner the authority of the court *inter alia* in the process of obtaining proof. So, the court exercises discretion and establishes which circumstances have a meaning for the case, which of parties should provide the proof. The court has discretion to invite the persons participating in the case to present additional evidence, to verify the relevance of the presented proof to the case under consideration, to make a final establishment of the content of the questions in respect to which a conclusion of experts should be obtained, may at his discretion assign an expert if it is not possible to resolve the case without the conclusion of experts.

So, the new Russian CCP of 2002 established a kind of ―golden mean‖ between the initiative of the court and the initiative of the parties. Our task will be to examine could such situation to improve quality of justice.

However, the situation is far from being perfect. Reforming an old system run by old people is a tricky task. In his "SUDEBNAY REFORMA V PROSHLOM I NASTOYASCHEM" ("JUDICIAL REFORM, PAST AND PRESENT"), 2009, Deputy Chairman of the Supreme Court of RF

V.Zhujkov contemplates advantages and disadvantages of the judicial reform in RF. As of 2009, observers of justice in Russia, including President of RF Dmitry Medvedev, recognized that judicial practice in Russia has a lot of problems. Arguably, the failure to achieve full and authentic independence for individual judges represents the greatest deficit in Russian justice today, a deficit that must be addressed before the courts in the Russian Federation (RF) will be trusted by most of the public.

The question is: why haven`t the reforms worked?

Our task will be to examine what amendments and changes of Russian civil procedure deal with improvement the quality of justice.

The European Convention on Human Rights and discretionary justice in Russia. We will explore ***the judicial practice of application of the Convention***. The modern result is that the impact of the Convention on justice in Russia, in terms of its implementation by domestic courts, is unsatisfactory.

Application of the Convention and of the legal positions of European Court of Human Right (hereinafter – ECHR) by Russian courts of first instance is complicated by a number of problems. At the moment we can identify the lack of uniformity in the definition of the Convention`s space in the system of Russian law, as well as the role of the legal positions of ECHR for the Russian implementation practice.

Now the question is whether this situation exists because the judiciary lacks knowledge on the Convention? Or is it because of the quality of justice? During the comparative jurisprudence research we will find the answer.

Further let us use of the experience of the harmonization in the field of civil procedure already accumulated by the countries.

Initiatives of Transnational Civil Procedure. The human community of the world lives in closer quarters today than in earlier times. As a consequence, there are positive and productive interactions among citizens of different nations in the form of increased commerce and wider possibilities for personal experience and development. There are also inevitable negative interactions, however, including increased social friction, legal controversy, and litigation. In dealing with these negative consequences, the costs and distress resulting from legal conflict can be mitigated by reducing differences in legal systems – so-called ―harmonization‖ – so that the same or similar ―rules of the game‖ apply no matter where the participants may find themselves.

Now Russia gets a unique advantage expressed in the opportunity of generalization and use of the experience of the harmonisation already accumulated by other countries.

For the purposes of our study it is possible to divide all harmonisation mechanisms of national civil procedural legislation into 2 primary groups:

1. Harmonisation mechanism in Russia.
2. Harmonisation mechanisms inside the European Union, in the Member States

Our task will be the examination of their influence on justice.

Harmonisation mechanism in Russia. The largest shortcoming of the ongoing legal reform in contemporary Russia is its lagging behind the emerging tendency in the legislation of civilized countries towards approximation and harmonization of rules and standards.

The Russian Federation is not a member of the European Union; however, this does not by far belittle the significance of the developing relations between the European Union and Russia for both the two of them and for the entire region and the world as a whole.

Our analysis will be highly important to any effective understanding of both Russia's and the EU's future trajectory for improvement quality of justice. Obviously, the indicated conditions dictate the vital need of developing mutual relations between Russia and the Union on a broad range of issues, *inter alia*, in the field of improvement of justice.

For Russia, the creation of a broad legislative package of cross-border procedural instruments within the judicial cooperation in civil matters would be easier since activities aimed at

harmonisation are limited to the Area of Freedom, Security and Justice of the PCA (Partnership and Cooperation Agreement underpinning the partnership between the Russian Federation on one hand, and the European Communities and their Member States, on the other hand, signed on June, 24, 1994 on the island of Corfu, Greece).19

So, this tool will be important for our research because the harmonization of legislation is capable of creating a strong common legal basis for improving of quality of justice on civil and commercial cases in Russia and in the EU.

Harmonisation mechanisms in EU. Unfortunately, the experience accumulated in the framework of the second group of mechanisms is so far practically inapplicable to Russia. Member States directly take part in the establishment of the EU acts to be harmonised with.

In my study of civil procedure in the Member States I found that European civil procedural law does not contain counterpart of the Russian procedural law. Russian legislation on civil procedure also contains no substantial counterpart of the European procedural law controlling the discretionary action of judges; yet some such law is the beginning to develop and may soon become important as for Russia so as for Europe. Those beginnings seems to me to deserve encouragement.

As an illustration of my observation that European civil procedure should be effective, let me point to several modern strands and levels of civil procedural convergence in Europe. One significant strand comprises the national level procedural reforms that are across the civil and common law divide striving towards the same goal of efficiency and fair trial. Another important strand comprises the constitutional reforms on both the intergovernmental and national levels, in particular Article 6 of the European Convention on Human Rights and the case-law of the European Court of Justice regarding the right to a fair trial, which have forged a mutual European standard for discretionary activity of a judge in civil proceedings. A further level of convergence developed in the second half of the past century on the supranational level within the European Union. The European Court of Justice has in a wealth of case-law emphasised the right to an effective remedy, which has influenced particular national procedures in relation to for example time-limits, admissibility of certain forms of evidence, neutrality of expert witnesses or the method for apportioning costs of proceedings. In addition the Storme Group's Report on the approximation of the laws of procedure launched a debate regarding civil procedural harmonisation within the European Union.
The balance between the identified themes of convergence is arguably an important issue within the justice.

The present European civil procedure seems to me exceedingly good. But it has not sufficiently penetrated the areas of unreviewed formal justice, where the quality of justice could be not enough high.
Further, the process of legislative harmonisation in Europe on the basis of the EU law is bringing the modern understanding of the European law. The European Union law becomes a truly European law.
In this respect the legal system of the European Union is quite comparable to the Roman law and its well-known Justinian Code (*Corpus Juris*) adopted in many European countries and having affected among others the legal system of Russia.
In our view, the modern worldwide meaning of Justinian Code could help to define the door to improve quality of justice.
A common language between lawyers of common law and civil law countries is critically important for the quality of justice. This is not purely an academic task. The recent improvement quality of justice movement may be characterized as an amazing effort of the

world legal community to clarify and virtually enforce worldwide through national judiciary the ―ideological‖ and almost spiritual legal concept of justice.

(D).Et sic, now we can describe **TIMELINESS AND RELEVANCE** of the project against the state of the art. Thus:

- Judicial systems in most developing countries are perceived to be in crisis.
- Judicial reform efforts in Russia, Italy have been varied and have met with mixed success.
- The countries make a transition to improvement the quality of civil justice.
- In many cases the problem of an efficient and speedy development of the ordinary civil procedure has been solved by vesting the judge with more power to manage the case.
- Now there are a lot of problems in the area of judiciary in Italy. So, in Italy, on January 31, 2010, hundreds of judges boycotted the beginning of the ―the judicial year‖. Thus they expressed their protest against the planned radical reform of the judicial system in Italy.
- In the last 20 years Italian civil procedure has been reformed several times, with the aim of reducing civil court delays and streamlining the process.
- Procedural legislation of Russian Federation was renewed recently. One of the main features of modern Russian legislation is increasing of the role of discretionary justice.
- My course of lectures ―Civil Procedure in the Member States‖ was published in 2000. In my writing I identified narrow subjects as samples of what Europeans do about justice in various contexts.
- My book ―Usmotrenie Suda *(Court Discretion)*, devoted to discretionary justice in Russia, was published in 2005. In my study I found that discretion is indispensable to modern judiciary and that the cure for injustice can not be the elimination of discretion.
- The course of lectures on Russian Discretionary Justice was given to specialists and students at School For Private Law (under the President of RF), Moscow, Russia.
- The impact of the Convention on Human Right on discretionary justice in Russia, in terms of its implementation by domestic courts, is unsatisfactory.
- Russian judges are convinced that they do not need to possess knowledge on the Convention or with respect to international law in general.
- The Russian Federation undertook positive steps for the impact of the Convention. On 26 February 2010, the Constitutional Court of the Russian Federation delivered the Ruling.

Until today, the opportunity to institute reconsideration of a national case due to a judgment of the European Court of Human Rights has only existed in regard to criminal and commercial cases. The Civil Procedure Code of RF has omitted this issue. Now under the mentioned Ruling the legislator has the obligation to amend the Civil Procedure Code of RF.

- The topic of Russo-European Union (EU) relations is one of the most important security issues in Europe and Russia. The course of the relationship EU - Russia will influence in large measure the extent to which Russia moves toward realizing its historic European vocation and its proclaimed ambition to become a democracy. On the other side, the relationship will influence significantly the capability of the EU to function effectively as a union of European states, possibly including Russia, and other European members of the Commonwealth of Independent States. Admittedly this relationship is in a rather precarious state. But it is essential that scientists, professors understand what the problems are that have impeded Russia's integration with Europe if we and they are to overcome these obstacles.
- Europe witnessed several modern strands and levels of civil procedural convergence in the past century.
- Russia gets a unique advantage expressed in the opportunity of generalization and use of the experience of the harmonisation already accumulated by other countries.
- The Partnership and Cooperation Agreement underpinning the partnership between the Russian Federation on one hand, and the European Communities and their Member States, on the other hand, was signed on June, 24, 1994.
- The concept of creation of four common spaces between Russia and the Union should include real mechanisms of harmonization of the procedural law. Among others, the provisions should concern the quality of justice.
- The process of legislative harmonisation in Europe on the basis of the EU law is bringing the modern understanding of the European law.
- The modern worldwide meaning of EU law as Justinian Code could help to define the door to improve quality of discretionary justice as *Discretio est scire per legem quid sit justum* (Roman legal maxim).

(E).We can outline the **BENEFIT** that will be gained from undertaken the project. Thus:
The researcher can:

- Receive and extend the knowledge in the field of comparative civil procedure
- Start the international collaboration with one of oldest European University, located in Ferrara, Italy

- Use the results of the great experience of UNIFE in international collaboration in the field of scientific (civil procedural law, domestic and international) projects, publications and so on
- Learn the achievements (positive and negative) of Italian Civil Procedure Reform to evaluate the discretionary justice so there are a lot of problems with judiciary in Italy
- Learn Italian Language
- Examine Italian jurisprudence literature in original, taking into account the new meaning of *Corpus Juris Civilis*
- Get enough materials for scientific and teaching practice at home, for publications, projects, lectures per judges and students,*etc*
- Transfer of her knowledge on Russian justice and civil procedure to Ferrara, Italy, Europe.

UNIFE, Italy, EU can:

- Use the results of the research in international collaboration in the field of scientific (civil procedural law, domestic and international) projects, publications and so on.
- Enhance Italian, EU scientific excellence in the field of Russian, comparative civil procedure, improving quality of civil justice, reform of civil procedure
- Develop the initiative of preparing new legislation: European civil procedural law does not contain counterpart of the Russian procedural law, Russian legislation on civil procedure also contains no substantial counterpart of the European procedural law controlling the discretionary action of judges; yet some such law is the beginning and may soon become important as for Russia so as for Europe.

- Preparation of writings on the matter for publishing in Russia (in Russian language), Europe (in English language), Italy (in Italian language).

Of a particular importance, it could be a successful implementation of visiting scientists program allowing the scientists from Italy and Russia to do research in Ferrara and Moscow.

CONCLUSIONS

This project could be considered as an example of successful collaboration between the countries of Eastern and Western Europe because of the following:

- Discussion of the improvements in civil procedure reform in Italy and Russia.
- Establishment of scientific collaboration.
- Information exchange and transfer of knowledge.
- Preparation of scientific writings in English, Italian, Russian.

ACKNOWELEDGEMENT

We would like to thank all of the Italian and Russian colleagues for the future collaboration.