CHIEF EDITOR'S NOTE ON GROUP LITIGATION LEGISLATION IN BRICS COUNTRIES

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BRICS countries belong to different legal systems: civil law as well as common law. This makes it interesting to compare the group litigation legislation of these countries.

Brazil was one of the first civil law countries to introduce class action. The Brazilian class action system aims to protect the environment, consumers, cultural patrimony, economic and antitrust rights.

The first Brazilian act dealing with class action was the Public Civil Suit Act, enacted in 1985. In 1988 the new Constitution created the '*mandado de segurança coletivo*,' a type of collective action. In 1989 and 1990, three statutes for the protection of handicapped people, investors in the stock market, and children were enacted. In 1990, the Consumer Code was enacted. The new Civil Procedure Code of 2016 establishes another proceeding to solve numerous pending claims that involve the same issue of law and require a unanimous court decision. This proceeding commences with the selection of one or more pending lawsuits involving the same issue of law and requiring a unanimous decision. After this selection, all other pending lawsuits involving the same issue of law will be suspended until the judge issues a decision.

The Model Code of Collective Actions for Ibero-America, approved by Ibero-American Institute of Procedural Law in 2004, was drafted by Brazilian scholars. It is a model code, but is a source of inspiration for legislators in several South American countries.

In *Russia*, only public and organizational group actions are possible.

Public group litigation has existed in Russia since the Soviet period. The 2003 Civil Procedure Code (CPC) provides for special regulation. According to Art. 45

the attorney-general can go to court to defend the interests of an indefinite group of persons. Organizational group actions are regulated in the same manner. For example, the Consumer Protection Law of 1992 (Art. 46) and the Securities Law of 1999 (Art. 19) contain similar rules designed to protect consumer rights. The problem is that the law simply stipulates the right for the attorney-general or organizations to sue. Specific (procedural) rules are not provided.

At the same time, there is a vibrant academic discussion regarding the introduction of private group actions. This discussion was conducted along with the beginning of judicial reform in the 1990[5]. The need to improve the group rights protection mechanism, or mechanism of protection of an unspecified number of persons is accepted by the majority of procedure scholars.

Several steps are required to introduce private group actions in Russia. In July 2009, amendments to the *Arbitrazh* (Commercial) Procedure Code were enacted and they introduced *quasi* private group actions. Special provisions (Ch. 28.2 'Consideration of Cases of Protection of the Rights and Legal Interests of a Group of Persons') regulate the proceedings in such cases.

Unlike the classical Anglo-Saxon model of the private class action where the participants of the group do not always have to be specifically defined during the hearing, the Russian *Arbitrazh* (Commercial) Procedure Code establishes a necessary condition – formation of a group prior to judicial proceedings – at the preparatory stage. Such regulation changes the nature of the classical construction of the class action.

Therefore, on the one hand, the established procedure makes it possible to create a group, but, on the other hand, the participants of this group have to be listed prior to the case hearing. The differences between this system and joinder of parties are minimum. The established rules of formation of a group do not contradict the norms of joinder of parties. Therefore, this procedure is not an innovation of the *Arbitrazh* (Commercial) Procedure Code.

The new Russian Administrative Procedure Code was adopted in 2015. Such a code has never existed in Russian legal history. One of the things it introduces is regulation of group litigation. The Code consists of special Article 42 'Collective Administrative Claim.' According to this article, a court should initiate group proceedings if at least 20 persons have joined the claim. They must indicate a person will participate in the proceedings on behalf of a group. If somebody has filed a similar claim with a similar subject-matter and grounds, the court shall propose such person join the collective claim. This procedure cannot be defined as group litigation because it requires an exact number of parties. It should be considered as a joinder of parties.

Therefore, Russian current legislation only consists of organizational and public class actions. There have been a few attempts to introduce private class actions, but they failed.

In *India*, class actions are presented mainly in the form of Public Interest Litigation and Representative Suits. The Civil Procedure Code of 1908 regulates Representative Suits. Similar provisions are set out in several acts: the Consumer Protection Act of 1986, the Industrial Disputes Act of 1947, and the Competition Act of 2002. Public Interest Litigation is based on the Constitution and decisions of the Supreme Court. The Companies Act of 2013 introduced 'pure' class actions but only in relation to the affairs of companies. It operates the concept of 'specialized class actions' by company shareholders and depositors. Class action lawsuits must be initiated before the National Company Law Tribunal (NCLT).

Class actions in *China* are regulated by the Civil Procedure Code of 1991. China borrowed its class action system from both the Japanese type of representative action and the US model of class action. Similar provisions are set out in several acts: the Environmental Protection Law of 1989 and the Consumer Protection Law of 1994.

In *South Africa* the Constitution of 1996 provides that any person can act as a member of a class in approaching a court. Apart from the Constitution, the class action system is set out in several acts: the Companies Act of 2008, the Consumer Protection Act of 2008, and the National Environmental Management Act of 1998. Moreover, in 1998, the South African Law Reform Commission (SALRC) proposed the draft 'Public Interest and Class Actions Act,' but this act has not yet been enacted.

Therefore, all BRICS countries have regulations on class action litigation. There are different types of such litigation, but all of them recognize class actions as an effective form of protection of collective rights.