

CHIEF EDITOR'S NOTE ON CIVIL JUSTICE IN THE BRICS COUNTRIES

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DOI: 10.21684/2412-2343-2016-3-4-4-5

Recommended citation: Dmitry Maleshin, *Chief Editor's Note on Civil Justice in the BRICS Countries*, 3(4) BRICS Law Journal 4–5 (2016).

The BRICS countries belong to different legal traditions. Brazil, Russia and China have civil law features as the fundamentals of their legal systems. India and South Africa, on the other hand, historically have common law legal systems. At the same time, the civil procedural history in each of these countries has some similar features and tendencies. There are common challenges. The most important is that the dynamics of civil procedural law is similar in the BRICS countries.

None of the BRICS countries has a pure civil or common law system. All of them have some mixed elements. Brazilian civil procedure shows the strong influence of US legislation. The best example is the Brazilian legislation on class actions that made Brazil one of the pioneers in this area in the civil law world. The Chinese legislator has also adopted some common law features. South Africa still has a strong connection with Dutch legislation.

All of the BRICS countries share the reception of aspects of civil procedural legislation from Western countries. The nineteenth century was the most important period for them, because during that time they passed legislation introducing their first civil procedural codes. For example, the Russian Civil Procedure Code of 1864 was the result of the adoption of French, German and Italian legislation of that time. It was one of the best civil procedural codes in Europe then, but within twenty years of its adoption it became ineffective in Russia. During the twentieth century, legislators of the future BRICS countries attempted to introduce their own approach to civil procedure. The best example is the Soviet style of civil procedure in Russia. Mauro Cappelletti called this approach the “radical solution” of inquisitorial civil procedure. In China, legislation was strongly connected with the Soviet style in the

second half of the twentieth century. Likewise, most of the BRICS countries tried to escape from European or North American sources and attempted to elaborate their own style in the twentieth century.

Each of the BRICS countries has a particular legal culture. There is the strong influence of tribal traditions and rules in Brazil and South Africa. In China and India, religion occupies an important position in all spheres of life, including civil justice. Russia is situated between the West and the East and has a cultural mix between individualism and collectivism. These cultural specificities influence civil justice. The problem is that formal legislation and actual practice in such societies are discordant. Similar legislation is executed differently in different societies in relation to the national cultural traditions and rules.

The main question is, what will the twenty-first century bring for these countries with regard to civil procedure? One of the challenges and opportunities is the cooperation between the BRICS countries. Could be useful? Could common features make for a new type of civil procedure, different from civil law as well as from common law? The authors of this special issue which is devoted to Civil Justice in the BRICS Countries attempt to find answers to these questions and predict the future of BRICS civil justice.