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**PRINCIPALS PECULIARITIES OF PROCEDURAL LAW IN
SUMMARY PROCEEDINGS**

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Abstract

Summary proceedings in civil processes in the Civil Procedural Code (CPC) take place in the section on claim proceedings. The proceedings are based on the filing of a lawsuit, in contrast to writ or special proceedings. Action proceedings are made by the same rules with the exceptions provided by the law. The decision is canceled exclusively on appeal. The court order is canceled as soon as the debtor writes a statement in time about its cancellation.

In the process of action development, which provides the improvement of summary proceedings, the author focused on the stage of initiating civil proceedings. The primary task at the stage of accepting a claim or other statement is the correct type determination of legal proceedings, the solution of which shows ambiguity in providing the civil process participants with the freedom to change the type of proceedings independently. According to the author, the controversy is not caused by the number of criteria that determine the possibility of summary proceedings, but by the quality of the rights and duties realization of the participants in the process when initiating an application of summary proceedings for case consideration and solution.

Defining the procedure for consideration and solution of civil cases in the form of summary proceedings, which are proposed to be truncated, the author discloses the topic of evaluating the effectiveness of procedural means of minimizing temporary resources, the purpose of which is to improve the quality of justice and reduce the burden on arbitration and general jurisdiction courts.

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Keywords: Civil procedure, administrative procedure, summary proceedings, trial participant, time saving, manner of proceeding.



1. Introduction

On March 2, 2016, Chapter 21.1 “Summary Proceedings” was introduced into the Civil Procedural Code [2, p.193]. The goals and tasks that the legislator sets before the new procedure for the claim proceedings were formulated by the author in his explanatory note to the draft law - the Supreme Court of the Russian Federation. First of all, the Supreme Court pointed out the need for further approximation of the court systems of general jurisdiction and arbitration courts, as well as ensuring uniformity of legal cases, rules and procedures used in cases solution. It was proposed to implement this task through the introduction of institutions successfully used by arbitration courts in recent years, in particular, summary proceedings, using the example of Chapter 29 of the Arbitration Procedural Code of the Russian Federation (Civil Code, 2002). Another reason for the establishment of this institution in civil processes is the need to reduce the burden on the courts. It is the workload of courts with claims, that are not difficult to be solved, but the judges are forced to consider them in a general manner. It contributes to the workload of the courts and the time spent on their consideration.

2. Problem Statement

With the help of summary proceedings, every citizen has his right’s protection timely and his case consideration in the court. But due to the fact that this chapter has appeared relatively recently, there is still no general statistics on summary proceedings. It can be assumed that in addition to the problems identified earlier in the procedure itself, the reason for a small number of disputes solved in this order is low legal literacy of the population, which is expressed in fear of all sorts of innovations. This problem can be solved by active work of state bodies, in particular courts, providing information and explanation of all emerging issues to the citizens. One should not forget about the possible deliberate commission of one of the parties to relegate the case into the usual lawsuit procedure, for example - a statement of the counterclaim, with the aim of process delaying. But even without it, if it is impossible to establish a true position of the party (or parties), the judge is forced to make a determination on the case consideration according to the general rules of action proceedings in order to avoid making the wrong decision. At its core, summary proceedings are proceedings in cases in which it is possible to consider lawsuits without summoning the parties, that is, only on the evidence submitted within the established deadlines.

It is necessary to consider what peculiarities are inherent in the consideration of cases in summary proceedings. The first thing is that the general rules of jurisdiction are applied in summary proceedings. The second thing is that when accepting a case within summary proceedings, the court gives at least 15 days (from the date of the determination) to the parties to present evidence and objections, as well as to send them to the parties in the case. Nevertheless, there is a possibility of accepting evidence and other documents after the expiration of the indicated periods, if there are valid reasons for their omission. However, the question arises about the rights of the other party to provide its explanations and objections to the evidence, which were not submitted on time for valid reasons. The legislator does not solve this issue any way, while this situation can significantly delay the trial, and most importantly - violate the principle of adversarial proceedings. In addition, these two periods - the provision of evidence and provision of other documents - look rather ambiguous. Since the parties are obliged to send each other all available evidence and have the rights to give their explanations and objections, it would be more logical to allocate separate

terms for these groups of actions, while the reasons for the differentiation of evidence and other documents are not completely clear. The following important peculiarity can be called the fact that the court also sets a deadline for the parties to provide explanations and additional documents on the merits of the case, which must be at least 30 days from the date of the determination. It is also a peculiarity if the evidence and other documents on the case were in the court after the expiration of the established deadlines, the court accepts them in case of valid reasons for missing the deadline for their presentation. In other words, if the operative part for some reason does not reach the party within 5 days, the right to demand the drafting of a full court decision is lost, which means that in case of disagreement with the decision, the citizen will have to appeal it on appeal without any information about the court decision's justification.

Unfortunately, the speed of the postal service in Russia leaves much to be desired, and not everyone has access to the Internet either. As a result, such situations will arise quite often. However, such documents should not contain references to evidence not previously submitted. One more peculiarity should be noted, the court considers the case without summoning the parties, the protocol is not kept, and the preliminary court hearing is not held (Kameneva, 2017).

In our opinion, the issue of introducing mandatory pre-trial conciliation procedures when filing a claim to the magistrate is relevant. The Civil Procedural Code of the Russian Federation declares one type of conciliation procedure – it is a settlement agreement. Part 1 of Article 39 of the Civil Procedural Code of the Russian Federation provides the parties with the rights to “terminate the matter with an amicable agreement”. To exercise this right, the parties of the dispute are provided with a number of procedural options: 1) to enter into a settlement agreement in a lawsuit; 2) to submit it for court approval and apply for termination of the proceedings. (Arbitration Code, 2002) One can only talk about the parties' realization of the rights to terminate a case with a settlement agreement when the court approves this agreement in the determination approving a settlement agreement and proceedings termination. The experience of using this institution in arbitration proceedings in the Russian Federation proved its viability. The magistrate has jurisdiction over petty civil disputes arising from economic relations. For example, these are disputes arising from contractual relations, the recovery of overdue debts. The practice shows that the social relations listed above and the disputes arising from them have great conciliatory potential. There are cases when the price of the claims is low and is within a few thousand rubles. In such cases, the resulting debt is often formed due to some temporary factors or even ignorance, when it turns out that the defendant agrees with the claims, while there are often questions why the claimant did not notify the defendant of the actions taken by him before filling the statement. In this case the trial is usually delayed for a month; the burden on the judge is increasing. After accepting the application, it initiates the mandatory procedure of the preliminary court hearing, searches for and notifies the parties. All of this could have been avoided if the claimant would have made a complaint to the defendant on the merits. Statistical analysis of the cases load on the courts of general jurisdiction suggests that a magistrate may have up to several dozen cases in a month similar to the above dispute. As an option, to solve this problem it is possible to vest the judge with the authority to leave claims on certain categories of disputes, where evidence of pre-trial settlement of the dispute was not provided (Cholak, 2018).

To confirm the above, let us turn to the statistical data provided by the judicial department at the Supreme Court of the Russian Federation. In 2013, the magistrates in the Russian Federation examined

1869532 cases, the subjects of which were the recovery of mandatory payments for services rendered, 2861843 cases of collection of various tax arrears. (Isaenkova, 2015) In our opinion, to solve this problem, it is possible to study the question of relegation the authority to collect tax payments, which are indisputable in their essence, to the tax authorities. Despite the fact that this type of dispute is considered by the judge in the order of court proceedings, the entire volume of the court proceedings, which are held by one magistrate at the same time, is overestimated. It makes sense to fix in the Civil Procedural Code of the Russian Federation the definition that it is possible to appeal to the magistrate to enforce tax payments only in the dispute case.

3. Research Questions

Summary proceedings as well as absentia, and opposed to writ proceedings, are not an independent, separate type of civil proceedings, but a variation of the claim proceedings.

The following characteristics of summary proceedings are distinguished: a shortened period for a case, which does not exceed two months from the date of the claim entry in the court; it is used in cases that do not cause difficulties in solving them in the arbitration process; the principle of procedural economy is implemented, which contributes to the speedy case consideration; perhaps, if the claimant's claims were violated, admitted by the defendant or a lawsuit was filled for a small amount summary cases are considered by the judge alone; when case consideration of summary proceedings, the court session is held without calling the parties, the parties follow the court decisions on the website of the arbitration court and others (Kameneva, 2017).

It is also worth paying attention to some shortcomings in summary proceedings. They are the truncation of legal proceedings, which is revealed in the following points. The absence of parties discussion, in which participants give speeches, present evidence, state their position on the case, enjoy all procedural rights, fully implement the principle of adversarial proceedings. One should focus on the end of summary proceedings, namely, the decision and its procedural execution. At the end of the proceedings, the court signs the operative part of the decision. In this form, the decision exists if the party did not file a petition for the production of the reasoning part or did not exercise the right of appeal.

According to the rules of summary proceedings, you can consider the following order of case consideration. To begin, a claim is filled with the obligatory observance of general rules of jurisdiction. After that, the court makes a decision with reference to the consideration of the case in summary proceedings, and also sets deadlines for the provision of evidence and a number of objections. Deadlines are not allowed to miss, except the cases where the reason for the permit was valid (Gromoshina, 2016). Since a court decision in summary proceedings is drawn up only in the operative part, persons are entitled to appeal the court's decision within 5 days from the date of the signing of the operative part. We must apply to the original jurisdiction with a petition for drawing up a reasoned court decision, as we said above; it is made within 5 days from the date of receipt of the application or the filling of the appeal. In 2016, the Arbitration Procedural Code of the Russian Federation (hereinafter referred to as APC RF) underwent changes in terms of the introduction of a separate chapter devoted to the institution of writ proceedings (Chapter 29.1 of the APC RF), and the Civil Procedural Code of the Russian Federation (hereinafter referred to as CPC RF) introduced Chapter 21.1 of the Civil Procedural Code of the Russian Federation about

summary proceedings. The Supreme Court of the Russian Federation, by the will of which these changes were made, outlined its position in the rapprochement of the systems of courts of general jurisdiction and arbitration courts that are rigorous and relevant today, and therefore the unification of legal proceedings is necessary (Kameneva, 2017; Gromoshina, 2016)

The concept essence of summary legal proceedings implies the possibility of civil cases consideration by the court, without resorting to summoning the parties with reduced time and costs. When comparing the historical formation and development of the institute of legal summary proceedings in civil and arbitration processes, it can be observed that each of them passed its own individual independent path. Namely, the Civil Procedural Code of the Russian Federation regulated the rules on issuing a court order in the established categories of cases, and, in turn, the Arbitration Procedural Code the Russian Federation regulated the procedure of summary proceedings, which was introduced in 2012 and showed its effectiveness in practice. When comparing the rules of consideration and resolution of cases in summary proceedings, provided for today in the Civil Procedural Code of the Russian Federation and the Arbitration Procedural Code of the Russian Federation, the following similarities can be identified. Firstly, filling a lawsuit in accordance with the general rules. Secondly, a court ruling establishes a period in which the parties must submit evidence and objections to the claims (less than 15 days from the date of the determination) and additional documents that contain explanations on the claim merits and objections in support of the position (at least 30 days from the date of the determination). The time interval between the final dates of two periods listed above must be at least 15 days. As a result, upon the expiration of the time limits, the court considers the case.

Despite the similarities and convergence of summary proceedings for consideration and resolution of civil and arbitration case processes, there are a number of differences: participants in the arbitration process, unlike participants in the civil process, have the opportunity to submit documents via the Internet; in the arbitration process, in contrast to the civil process, non-working days are not included in the deadlines; the range of cases to be considered and resolved in summary proceedings differs (Articles 227 of APC RF and 232.2 of CPC RF); the term of consideration of the case in summary proceedings in CPC RF is one month, in APC RF - two months (Koshcheeva, 2017).

Today, there is no consensus among legal scholars on the unification of civil processes. At the beginning of the 21st century, a scholar E.V. Vaskovsky said that depending on how short a time interval between the claim filling and the court decision is, the judicial procedure is more effective. Professor N.A. Gromoshina expressed the opinion that the unification of civil processes is a modern trend (Markin, 2016). The opposite point of view was expressed by professor T.V. Sakhnova, who expressed skepticism about the “simplification” of the judicial process and arguing that the process model is a priori not subject to unification. There are opinions that the procedural legislation as a whole should exist in the form of a single CPC, the norms of which should have a single interpretation. However, when introducing the process of procedural norms unification, it is necessary to take into account the norms of the Constitution of the Russian Federation on the consideration of the case by the court, to which jurisdiction it refers by the law (Article 47 of the Constitution of the Russian Federation) and equality before the law and the court (Article 19 of the Constitution of the Russian Federation). Thus, in accordance with the existing CPC RF and APC RF, an owner who protects his property rights on the basis of Article 35 of the Constitution of the Russian

Federation and the Civil Code of the Russian Federation has the right to use different procedural possibilities in courts of general jurisdiction and arbitration courts (Civil Code, 2002).

On the one hand, the institute establishment of summary proceedings was a good practice in local procedural law, reducing the judicial burden on the courts of general jurisdiction and improving the quality of justice, which would have, presumably, even a greater effect in unifying the summary proceedings, combining the norms of CPC FR and APC RF, and, in general, the rules governing court proceedings in courts of general jurisdiction and arbitration courts. But, on the other hand, at the moment there are still some unsolved problems related to the application of summary proceedings. In particular, at the moment, the rules of CPC RF on the summary court procedure have not been presented yet with a streamlined mechanism for controlling the party's familiarization with the evidence submitted by the other party.

Control is also needed to prevent arbitrariness of judges in the formation of the parties' will to consider the case in summary proceedings (Soynikov, 2016). Another problem of the institute of the accelerated procedure of legal proceedings is the lack of settlement of the issue of the possibility of suspending the proceedings. CPC RF does not provide a reference to the inadmissibility of the application within the framework of a summary legal procedure of Articles 215-216 of CPC RF. In addition, in Chapter 21.1. of CPC RF there is no rule that would allow to appoint a court hearing in the framework of the consideration and solution of the case in a summary manner, without going to the consideration of the general rules. In order to identify additional circumstances that may indicate the presence or absence of grounds for suspension of the proceedings, legal scholars in this case give logical advice to begin the consideration of the case within the general rules of the claim proceedings, by holding a preliminary court hearing or by conducting pre-trial preparation to schedule the trial (Article 148-153 CPC RF). But it contradicts the fact that in Part 6 of Article 232.2 of CPC RF, it is indicated that holding a preliminary court session is unacceptable in the framework of summary proceedings (Arbitration Code, 2002). There is a risk of abuse of the right if, in the framework of summary proceedings, participants in the process who initially declared their intention to enter into a settlement agreement, either refuse it or the court refuses to approve a settlement agreement. In this case, the process is delayed, since the consideration of the case according to the general rules of the claim proceedings in accordance with Part 5 of Article 232.2 of CPC RF begins from the very beginning.

It is also necessary to take into account that if the parties refuse to conclude a settlement agreement or the court refuses to approve a settlement agreement, the case should be continued according to the rules of summary proceedings (Isaenkova, 2015; Vaskovskiy, 2017). In accordance with the rules of the consideration of cases in summary procedure, the trial ends with the court passing the operative part of the decision. A motivated decision on the case, considered in the summary order, the court is at the request of the persons participating in the case, their representatives or in the case of an appeal, the submission within five days from the date of signing of the operative part of the court decision. The legislator has not established the time limit for making a decision on the case by the court of first instance in summary proceedings, and therefore, the judge must make a decision within a reasonable time (according to Article 154 of CPC RF) for at least 30 days referred to in Paragraph 3 of Article 232.3 of CPC RF (Arbitration Code, 2002).

Thus, it can be concluded that with the practical advantages of the summary court procedure, there are problems and gaps in the regulation of this institution that need to be addressed, and the rule-making in this area requires improvement. At the same time, modern local legal trends accompany the unification and rapprochement of summary legal proceedings in civil and arbitration proceedings. In the age of developing technologies and a constant lack of time, the topic of “speeding up” and “simplifying” court procedures, including reducing the costs of a case, is relevant. The creation of unified standards regulating legal proceedings in courts of general jurisdiction and arbitration courts, in my opinion, would increase the efficiency of these structures, and the introduction of the institute of summary legal proceedings is only the first step towards their unity.

4. Purpose of the Study

The purpose of the study is to identify the principal peculiarities of procedural law in summary proceedings.

The article analyzes the problems of summary civil proceedings, with the help of such methods as analogy, comparison, generalization, comparison of consideration rules and resolution of cases in the framework of the summary procedure of the judicial procedure, provided for today in local civil and arbitration proceedings; the author identifies the problems and contradictions in the functioning of the institution of summary legal proceedings as a step towards the unification of civil processes.

In the modern type system of civil proceedings, a summary procedure appeared which, along with such forms as writ or absentia proceedings, should solve time problems spent on carrying out the process by truncating the complex of procedural processes.

The provision on summary proceedings is fixed in Chapter 21.1 of the Civil Procedural Code of the Russian Federation (hereinafter referred to as CPC RF), through the Federal Law No. 45-Φ3 of March 2, 2016 “On Amendments to the Civil Procedural Code of the Russian Federation and Arbitration Procedural Code of the Russian Federation”. Thus, in accordance with Chapter 21.1 of CPC RF, cases are considered in summary proceedings in accordance with the general rules of legal proceedings. The legislator singled out cases with such requirements as collecting money or claiming property if the claim price does not exceed 100000 rubles, recognizing the ownership right, on the basis of documents submitted by the claimant, monetary obligations that the respondent acknowledges, but does not fulfill, the existence of a confirmed debt under the contract with the exception of cases considered in the order of writ proceedings.

The prevailing opinion for the consideration of such disputes, the conduct of all actions inherent in the stages of civil proceedings, is not necessary. At the first stage, the parties present indisputable evidence in support of the claim or its denial, which greatly facilitates the process of making a fair decision by the court. In this regard, the classical form of the trial in the form of a court hearing does not seem necessary; however, the absence of a real adversary process may affect the substantive resolution process.

The competitive start excludes the active role of the court in proving the case, finding out the true legal relations of the parties to the dispute based on the results of only one independent procedural activity of the claimant and the defendant is often impossible. Consequently, the “correct” solution of a dispute does not at all mean such a solution, which will make it possible to reveal the objective truth. (Isaenkova, 2015) Meanwhile, the legislator no longer sets a similar task before the court proceedings, instead of

achieving the truth, a correct and timely consideration and resolution of a civil case is assumed. A proper case solution implies making a court decision on the basis of the establishment of facts by the court that are relevant to the case, using evidence obtained from sources admissible by law in strict accordance with the procedure established by the procedural law.

The optimally formed rules for choosing the type of legal proceedings should guarantee the possibility of exercising the constitutional rights of citizens to protect and challenge subjective rights, freedoms and legitimate interests, and the judicial authorities should facilitate the proper resolution of the case in the process. To determine the type of legal proceedings, local civilists, the introduction of auxiliary classification is proposed. The main criteria will undoubtedly be the criterion of material and the legal nature, as well as the criterion of the presence in the case of a dispute about the law. N.A. Gromoshina proposes to add a criterion for determining the goals and objectives of justice. (Arbitration Code, 2002) The representatives of the administrative law Yu.B. Nosov and N.V. Novikov (Kameneva, 2017) refer to the Letter of the Supreme Court of the Russian Federation of November 5, 2015, which explains the existence of a criterion of the nature of legal relations. The criterion of the nature of legal relations provides for its use, both in lawsuit proceedings and in administrative cases, and assumes that the participants of such legal relations do not have equality, one of them is vested with authority over the other (Gromoshina, 2016). Mikhailova, on the contrary, argues that it is necessary to develop a criterion for dividing civil proceedings into specific types (Isaenkova, 2015).

In our opinion, within the framework of the civil procedural law, all types of lawsuit and non-lawsuit proceedings are regulated, which regulate the procedure of the judicial process in the consideration of cases by the courts on the merits and not related to the consideration of the cases on the merits.

On the basis of Articles 232.1, 232.2 of CPC RF, cases are considered by a court according to the general rules of action proceedings in summary proceedings. The list of cases to be considered in summary proceedings is contained in the first part of Article 232.2 of CPC RF. The legislator also provides a list of cases that is not able to qualify for consideration in a summary procedure. It is also enshrined in the third part of the 232.2 Code of CPCRF. The initiator of the adoption of the definition of the shift to summary proceedings can be both the court and the parties. According to the established rules, the procedure for selecting a summary form of production can be implemented by the court, at the stage of initiating civil proceedings at the time of the decision on the issue of accepting a claim. In accordance with the normatively fixed list, having revealed a formal confirmation of the signs of a summary type of legal proceedings in the documents submitted by the applicant, the court makes a decision on the acceptance of the claim and the shift to a summary procedure for dispute solution on the merits (Markin, 2016). Since the participants in legal proceedings are legally allowed both the shift to summary proceedings from the claim proceedings, and in the reverse order, the question of choosing the type of legal proceedings at the stage of preparing a case for trial is not a crucial moment for them. And if the parties make a procedural error or the inability to fulfill their duties, while preparing for the solution of the case in a summary procedure, you can always start first in the lawsuit.

As a result of the possibility for the parties to choose the type of legal proceedings, the circumstances preventing the case consideration in summary proceedings may appear both at the time of the adoption of the claim proceedings and in the process of consideration of the case. Consequently, when such

circumstances are revealed, the court makes a decision on the consideration of the case according to the general rules of action proceedings or according to the rules of proceedings on cases arising from administrative and other public legal relations, indicating the actions to be taken by the persons participating in the case and the timeframe for these actions (Pogromskaya, 2017) As a result, if they wish to turn to summary proceedings, applicants and/or their representatives will not be able to provide admissible, relevant, accessible and formally correct evidentiary materials, a response to a statement of claim and a response to objections. Thus, the court will not be able to investigate the submitted materials properly and will be forced to call the persons involved, to give explanations or at all will consider the submitted materials not appropriate for the implementation of the summary procedure. The next step, as the legislator prescribes, is a reverse transition to the claim proceedings, which means the next determination of the court, and the conduct of the process from the very beginning. The documentary formal work is doubled due to the fact that the parties, after accepting the claim for consideration, considered it possible to submit proper documents. This technique eliminates the additional workload of the judicial apparatus. If a written component of the case file is submitted by the parties within the prescribed timeframe, fixed by Article 232.3 of CPC RF, the case goes into summary proceedings by the court ruling and is solved according to the rules established by Chapter 21.1.

Thus, the court excludes the commission of a procedural error of a hasty change in the type of proceedings. The proposed approach to the consideration of the formal documentary component of the summary process can help in the implementation of the actual implementation of summary proceedings in judicial practice and make this type of legal proceedings really effective and economical.

5. Research Methods

Research methods are comparison, description, observation

6. Findings

Referring to part 8 of Article 2232.4 of CPC RF, the parties are entitled to appeal the decision on appeal within 15 days immediately from the date of its adoption in the final form.

The case in the court of appeal is considered by the judge alone - without summoning the parties, but they can be called on the basis of the nature and complexity of the issue being resolved.

As for the additional evidence, they are not accepted in the appeal, but there are cases when they were submitted to original jurisdiction by the party after the deadline for this period expired, despite the fact that the reason for the omission was unfoundedly disrespectful. A court decision upon the expiration of 15 days after its adoption comes into force. However, the original jurisdiction act enters into force from the date of adoption of the appeal ruling, if the court decision was the appeal object, despite the fact that the court of the appeal did not change it and did not cancel it.

Persons dissatisfied with the decision of appeal proceedings, have the right to appeal in cassation. This complaint is subject to review in accordance with Article 386.1 of CPC RF in the court of cassation without the persons participating in the case of the court hearing, to give its explanations in the case to be appealed (Arbitration Code, 2002). If necessary, the court may summon persons for a personal explanation at the court hearing/

7. Conclusion

To sum up, it is possible to highlight a number of advantages of innovation in civil procedural legislation.

Firstly, time and financial costs are the main factors of innovation, as summary proceedings will significantly reduce them.

Secondly, the terms established by the legislation for the provision of evidence will reduce the opportunity for trial delay, which is again an advantage.

Thirdly, the burden reduction of the courts of general jurisdiction and, consequently, an increase in the efficiency of justice in the Russian Federation is guaranteed.

The innovation considered by us will make it possible to realize not only the main tasks of local legal proceedings, but also to optimize the consideration and solution of civil cases on the merits. This will definitely have a positive impact on the efficiency and quality of civil justice in the Russian Federation.

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