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# PROCEDURAL ANALOGY IN CIVIL AND ARBITRATION OF PROCEDURE OF RUSSIA

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## Abstract

The article is devoted to the problems of applying procedural analogy during the consideration of civil cases by arbitration courts and courts of general jurisdiction in Russia. The presented publication reveals the content of the procedural analogy, denies the existence of an independent construction of the "analogy of law" due to the fact that it has not acquired distinctive characteristics, and its content is completely blocked by the direct action of the principles of the process. The study deals with the correlation of procedural analogy with similar methods of application of law, such as: the application of general and special rules, the use of referral rules, procedural rules, placed in regulatory acts of another branch of law, and various types of interpretation. The publication proposes a specific classification of procedural analogies depending on the industry of the rule to be applied. The authors disclose the role of the persons participating in the case in matters of applying the procedural law by analogy, while noting the lack of the necessary legal resource to have a significant impact on the allegations of the analogy of the law and the mechanism capable of providing retaliatory action by the judicial authority. The central position of the court in the application of procedural analogy is determined, while the work of the courts of verification instances in the formation of a uniform application of the law by analogy is analyzed, the results and forms of such work are given.



*Keywords:* Analogy, arbitration process, civil procedure, court, law, procedure

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## 1. Introduction

The problem of applying procedural rules by analogy has a long history in the science of civil procedural law. However, in the second half of the twentieth century. In our country, the point of view about the incompatibility of the principle of legality in Soviet civil proceedings using a procedural analogy prevailed (Avdyukov, 1970). This view essentially reflected the intentions of the Soviet legislator, who did not directly recognize the possibility of using an analogy in Art. 1 Code of Civil Procedure of the RSFSR.

The situation finally changed with the adoption of the current Code of Civil Procedure of the Russian Federation in 2002, part 4 of art. 1 admitted procedural analogy. Following the civil process, the analogy entered the arbitration process in 2015 (part 5 of article 3 of the APC of the Russian Federation).

However, the normative recognition of analogy is not able to lead to the formation of a highly qualified law enforcement approach, apart from science, to serve as a guide for further improvement of the legislation and its official interpretation.

The difficulty lies in the fact that civil and arbitration processes relate to strict procedural forms, the content of which cannot be established by interested parties, for example, by concluding an agreement, or independently developed by a court. Unlike civil circulation and the arbitration procedure for dispute resolution, which embodies a soft, dispositive form of consideration of cases, legal proceedings in a state court are determined by public law with its characteristic method of legal regulation. The rigorous procedural order is designed to provide participants in the process with guarantees for a fair trial, prevent judicial arbitrariness and eliminate abuses by persons participating in the case. This makes it impossible for any of the participants to arbitrarily change the rules of legal proceedings, including the court. These circumstances, on the one hand, impede the introduction of an analogy in the field of civil and arbitration proceedings, and on the other hand, prevent its misuse, which poses a real threat to the violation of the rights of citizens and organizations.

The use of analogy acts as an adaptive mechanism that allows not only to ensure the stability of established legal regulators, but also their adaptation to changing socio-economic needs.

## 2. Problem Statement

The allegations are aimed at improving the work of the Russian courts by setting clearer borders and identifying the grounds for applying the procedural law by analogy in the consideration and resolution of civil cases.

## 3. Research Questions

To achieve the goal of the study are the answers to the following questions (objectives of the study):

- What similar legal methods of applying the rule of law should a procedural analogy be distinguished from?
- Are there certain types of procedural analogy?
- What is the influence of the persons participating in the case on the decision on the admissibility of the application of procedural analogy?

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- What determines the central role of the court in the application of the procedural analogy?

## 4. Purpose of the Study

The purpose of the study is to obtain deeper knowledge and understanding of the phenomenon of procedural law, such as analogy.

## 5. Research Methods

The consideration of problems associated with the use of analogy is based on general scientific research methods involving industry methods, which together ensured the reliability of the results of the work.

The basis of the study was the method of formal logic, by applying which the authors established the content of the concept of "analogy of the law", the logical relationship between it and related categories, which are not varieties of analogy of the law. Using the aforementioned method, the authors also classified the cases of applying the analogy of the law depending on the industry affiliation of the norm applied by analogy and the purpose of the corresponding field of law.

Supporting methods in the study were the methods of comparative study of the arbitration and civil processes, a systematic analysis of positive legal material.

- A comparative study of the arbitration and civil processes resulted in a search for norms governing similar relations in order to use them to fill the gaps in the relevant branch of law.
- A systematic analysis of positive legal material was used to establish the presence or absence of gaps in the legal regulation of procedural relations. The meaning of legal requirements was established in conjunction with the practice of their application, which was also provided by appeal to the methods of legal hermeneutics.

## 6. Findings

About the content of the procedural analogy. Current legislation establishes a procedural analogy as a way of regulating relations in two forms - as an analogy of law and a statutory analogy.

First of all, the thesis about the use of the analogy of law, which is understood in codes as an action based on the principles of the administration of justice, attracts attention.

Without going into a theoretical discussion about the nature and content of the principles of the process, it can be noted that their definition through the general provisions of the industry, the rules of a wide spectrum of action or the norms of the highest level of the legal system does not cause objections (Sherstyuk, 2017).

The operation of the principles is ensured by the implementation of special procedural rules, the content of which must be subordinate to the meaning of the principle. In the event of a conflict of norms, the principle, usually of a higher level of action, should be applied. A principle that has not found a specific content in the procedural rules turns into a declarative norm and cannot be applied by the court. The content of the principle can be revealed both through the analysis of specific legislative provisions, and through the rules formulated by the doctrine and law enforcement practice. If the content of the principle can be

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established in one way or another, then he himself is able to act as a regulator of specific procedural relations. At the same time, the application of a broad-based norm does not indicate the presence of a legal gap, and the legal relations arising on its basis should be classified as resolved. In this regard, it is unlikely that when applying the principles of the process it makes sense to talk about any kind of analogy, even if it is right. To date, the analogy category does not have other semantic loads.

Thus, the only really existing and applicable in practice way of applying the analogy is the analogy of the law.

However, under the statutory analogy, the modern law enforcer understands such diverse things that have nothing to do with the application of similar rules. To get a clearer picture of the cases of the actual application of the procedural law by analogy, it is worth highlighting a number of situations in which a reference to the application of the analogy can be made erroneously.

First, the use of reference norms cannot be regarded as a statutory analogy. So, for example, part 3 of article 72 of the Commercial procedure code of the Russian Federation stipulates that the provision of evidence is carried out by the arbitral tribunal in accordance with the rules established by this Code to secure the claim. Here we are not talking about applying, by analogy, the procedure established for securing a claim to relations developing in the field of providing evidence. The legislator regulated these relations through the use of a reference norm, not allowing legislative gaps.

Secondly, an appeal to special rules will not be an application by analogy. Art. 13 of the Federal Law "On Enforcement Proceedings" sets out the requirements for enforcement documents. Such rules are absent in the Code of Civil Procedure of the Russian Federation: their application by the court when issuing a writ of execution does not mean that the judge acts by analogy. We are talking about the fact that a special norm, placed in another legislative act, is subject to application.

Thirdly, the application of rules of a higher level or a wider spectrum of action is not an analogy. So, according to Part 1 of Art. 226 of the Commercial procedure code of the Russian Federation, cases in a simplified procedure are considered by the arbitration court in accordance with the general rules of action proceedings, taking into account the features established by Ch. 29 commercial procedure code of the Russian Federation. There is no application of the rules of the lawsuit by analogy, the legislator claims that they, as the rules of a higher level, apply to simplified proceedings.

Fourth, it should not be considered as an analogy the application of procedural rules, placed in regulatory acts of a different industry. The norms of the civil process are often placed in legislative acts of the substantive branches of law - in the Civil Code of the Russian Federation, the investigative committee of the Russian Federation, etc. Thus, the provisions on the inadmissibility of certain evidence (for example, clause 1 of article 162 of the Civil Code of the Russian Federation), enshrined in acts of a formally different branch of law, are cases of using ordinary procedural rules, but not applying substantive law acts by analogy to procedural relations.

Fifth, the application of discretionary norms cannot be confused with analogy. According to the rules of Art. 212 Code of Civil Procedure of the Russian Federation, a court or judge may reverse a court decision for immediate execution if, due to special circumstances, slowing down its execution may result in significant damage to the recoverer or it may not be possible to execute. In each specific case, the court itself decides whether there are grounds for appealing the decision for immediate execution. The discretion

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of the court formed the basis for constructing a procedural rule that was not related to the use of analogy and did not require its use.

Sixthly, an expansive interpretation of the law is not an analogy. So, an indication that under Art. 202 Code of Civil Procedure of the Russian Federation, it is allowed to seek clarification of the execution of a court decision, including on the question of exactly what amount to be recovered from the debtor, should not be interpreted as an analogy of the law, since this is an extensive interpretation of the existing norm. However, the application of this rule in relation to enforcement agencies not specified in Art. 202 Code of Civil Procedure of the Russian Federation, carried out through the application by analogy of Art. 179 agribusiness of the Russian Federation.

Seventh, it is not an analogy to clarify the content of a rule through the application of clarifications from the highest judicial authorities, the use of practice to resolve specific cases or scientific doctrine. By filling out the relevant procedural rule with specific content at the expense of the provisions of the doctrine or judicial practice, the law enforcer remains within the framework of the same rule. Thus, the clarification that the transfer of the right protected in court by universal or singular succession entails the transfer of the right to reimbursement of court costs, since the right to such reimbursement is not inextricably linked with the personality of the participant in the process, and that in this case the court replaces the person participating in the case with his assignee (Article 44 of the Code of Civil Procedure of the Russian Federation, Article 48 of the Arbitration Procedure Code of the Russian Federation), discloses the indicated provisions of the procedural legislation, and does not lead to their application by analogy.

A clear example of resolving the issue by analogy can be considered an indication of the Supreme Court of the Russian Federation that “Chapter 21 of the Code of Civil Procedure of the Russian Federation, which regulates the procedure for drawing up the minutes of the court session, its content, the procedure for familiarizing with the protocol, does not contain a norm according to which, based on written statements and at the expense of persons involved in the case, their representatives can be made copies of the protocols. However, this circumstance ... does not mean that these persons are not entitled to receive a copy of the protocol, since in the absence of a rule of procedural law regulating relations arising in the course of civil proceedings, federal courts of general jurisdiction and justices of the peace apply a rule regulating similar relations (analogy of the law) ... ". By analogy, the provisions of Part 8 of Art. 259 Code of Criminal Procedure and part 1 of article 207 Commercial procedure codeRF.

### 6.1. Types of procedural analogy

Any scientific classification is based on a specific foundation (Ponkin & Redkina, 2017). Depending on the industry affiliation applied by analogy to the norm and purpose of the corresponding field of law, the following varieties can be distinguished:

1) intra-industry analogy (internal) - the norms (principles) enshrined in the codified act of the relevant procedural branch are applied: if the gap is established in the civil process - the Code of Civil Procedure of the Russian Federation, and if in the arbitration - the norms of the Commercial procedure code of the Russian Federation.

So, the court of appeal instance refers to the need to pay the state fee when filing an application for the award of a judicial penalty on the basis of Art. 308.3 of the Civil Code of the Russian Federation was

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recognized as unlawful, since the obligation to pay the state duty rests with the plaintiff when submitting a statement of claim (Article 132 of the Civil Procedure Code of the Russian Federation), which is not an application for the award of a judicial penalty.

In order to apply the analogy of the law, L.'s application for the award of a judicial penalty was subject to review in relation to the rules established by Part 1 of Art. 203 Code of Civil Procedure of the Russian Federation, not involving the payment of stamp duty.

2) inter-industry procedural analogy (external procedural) - the norms (principles) enshrined in the codified act of the related procedural branch are applied: if the gap is established in the civil process - the rules of the Commercial procedure code, and if in the arbitration - the rules of the civil procedure.

So, in one of the cases examined by the arbitration courts, the bank filed a lawsuit against an individual entrepreneur and a commercial organization in collectively recovering debts, interest for using loans, penalties and fines, and for foreclosing a residential building, mezzanine. The courts concluded that the entrepreneur was improperly fulfilling obligations under the loan agreement, on the basis of which they satisfied the plaintiff's claims for the collection of debt, interest, penalties and penalty under the loan agreement in joint amount from the defendants in joint order. At the same time, the courts rejected the bank's claim for foreclosure on real estate pledged under a mortgage agreement. Moreover, the courts referred to paragraph 1 of Art. 446 Code of Civil Procedure of the Russian Federation, in accordance with which the enforcement of executive documents cannot be levied on a dwelling (owned by the debtor citizen) by right of ownership, if it is the only debtor citizen and members of his family living together in the premises a premise suitable for permanent residence, with the exception of the indicated property, if it is the subject of a mortgage and may be levied in accordance with the legislation on mortgages. The courts considered these provisions to be applicable in this case by virtue of an analogy of the law on the basis of part 6 of art. 13Commercial procedure code of Russian Federation.

3) the interindustry material analogy (external material) – substantive law rules governing similar relations in substantive law are applied, if this does not contradict the essence of procedural relations (on calculating deadlines, notice, etc.).

So, examining the issue of proper notification of the parties, the court referred to the fact that in accordance with paragraph. 2 p. 1 Article 165.1 of the Civil Code of the Russian Federation, a message is deemed to have been delivered if it was received by the addressee, but due to circumstances that depended on him, was not delivered to him or the addressee did not familiarize himself with it. In particular, if the addressee evaded receiving correspondence at the post office, and therefore the telegrams sent by the court were returned, the addressee bears the risk of not receiving the received correspondence. By virtue of h. 4 Article. 1 Code of Civil Procedure of the Russian Federation, the court found the rule to be applied also to judicial notices and challenges.

Of course, when establishing a gap in the law, the court should first of all consider the possibility of applying intra-industry analogy, since we are talking about the application of the rules governing the closest procedural relations. The use of intersectoral analogy is permissible only when the norm contained in an act of another branch of law is used to fill in the “gaps” of procedural law while strictly following the requirements: 1) on similarity for the purposes of legal regulation, 2) on similarity in the position of

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participants in the process with the position of participants regulated relations; 3) on the uniform nature of resolved cases.

### 6.2. The role of persons involved in the case

Persons participating in the case may take the initiative in applying the rules of procedural law by the court by analogy. In this case, the court is called upon to draw a final conclusion on the admissibility of applying the analogy.

It should be borne in mind that outside the court session, the persons participating in the case are limited or deprived of the opportunity to participate in the consideration of legal issues, which is most clearly manifested when a lawsuit is filed in court and in the course of preparing the case for trial, although it is these stages of the proceedings that often determine correctness in the choice of procedural rules (checking the conditions of jurisdiction of a case, calculating the amount of state duty payable, determining the subject of evidence in a case, etc.) When judges are doing their desk work, the parties cannot express their opinion on the admissibility of using an analogy when performing a specific procedural action.

For example, when submitting a statement of claim, the plaintiff cannot verbally explain the need to apply certain procedural rules by analogy, even if he knows that a certain issue is not directly regulated in the procedural legislation. The plaintiff has the opportunity in the statement of claim to explain his procedural action (payment of a fee in a certain amount, choice of court), while indicating the use of an analogy. Then the court, acquainted with its position, should check the grounds for applying the analogy and give their assessment of the position of the parties. However, the plaintiff's possibilities appear to be very limited. Even less opportunities at this stage of the process are available to the defendant.

So, the plaintiff, living in St. Petersburg, when filing a claim for the recovery of alimony debts and forfeit for late payment of alimony to the debtor living in Moscow, applied the rules of alternative jurisdiction by filing a lawsuit in one of the district courts of the city of St. Petersburg at the place of residence.

At the same time, both in the Code of Civil Procedure of the Russian Federation and in the Decree of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 No. 56 “On the application by the courts of the law when considering cases involving the recovery of alimony” (hereinafter - the Decision of the Plenum of 12/26/2017 No. 56) there are no provisions and explanations about the possibility of using alternative territorial jurisdiction in filing such claims. In paragraph 3 of the Resolution of the Plenum dated December 26, 2017 No. 56, it is explained only on the application of the rules of alternative jurisdiction of claims for the recovery of alimony and on the establishment of paternity or motherhood (the possibility of filing claims at the place of residence of the defendant or at the place of residence of the plaintiff).

Thus, from a literal interpretation of Art. 28 and Art. 29 Code of Civil Procedure of the Russian Federation, paragraph 3 of the Decree of the Plenum of December 26, 2017 No. 56, it follows that the rule on alternative jurisdiction applies to claims for the recovery of alimony and claims for the establishment of paternity or motherhood. The claimed claim for the recovery of alimony debts and forfeit for late payment of alimony should be brought to court at the defendant's place of residence.

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However, the plaintiff asked the court to apply the analogy of the law and accept the lawsuit in the proceedings at his place of residence. In support of her position, she referred to the practice of the Sverdlovsk Regional Court. The claim was accepted by the court for consideration.

Of course, at the stages of the trial and review of judicial acts, the persons participating in the case have the right to express their opinion, and at the same time in any form and on any issue arising during the consideration of the case, including to indicate their position regarding the possibility of applying the procedural norm rights by analogy. This allows us to talk about the real possibility of a comprehensive discussion of the issue of applying the analogy and, as a consequence, the need for the court to strive for a more reasonable assessment of the legal positions of the parties at these stages of the process. This reduces the risk of judicial discretion becoming arbitrary (Osokina, 2004), and the violation of subjective rights and obligations of participants in the process is prevented: the recognition of the use of the analogy as justified or not affects the possibility of canceling or changing a court order.

### 6.3. The role of the court

The Russian civil process is based on the presumption of "jura novit curia", which involves independent research and application of law by the court (Terentyeva, 2018), which allows us to play a leading role in filling in the gaps in procedural law by applying an analogy to the court.

In accordance with the law, e.g. Art. 6 Commercial procedure code of the Russian Federation, ensuring the correct application of the rules of procedural law and the implementation of the principle of legality are assigned to the basic tasks of the court. Therefore, one can speak not so much about law as about the obligation of the court to use the analogy mechanism in the absence of a rule specifically designed to resolve a disputed legal relationship (Mikryukov, 2016; Sultanov, 2016; Vaipan, 2018; Zhuravlev, 2018).

In the stage of preparing the case for trial, the court coordinates the composition of the procedural actions, which must be performed by the persons participating in the case. The court leadership at this stage of the process determines in many respects the composition of the procedural rules that will be applied in the consideration of a specific case.

In accordance with Art. 148 Code of Civil Procedure of the Russian Federation and Art. 133 of the Arbitration Procedure Code of the Russian Federation, it is the court that brings up the issue of the legal qualification of the legal relationship to determine which rules of law should be applied in resolving the dispute, and determines the subject of evidence in the case, which embeds the evidence-based activities of the persons involved in the case in a certain legal framework.

Within the meaning of Part 1 of Art. 196 Code of Civil Procedure of the Russian Federation and ch. 1 Article. 168 of the Commercial procedure code of the Russian Federation, the court determines which rules of law should be applied to established circumstances. The court also indicates motives for which it did not apply the rules of law to which the persons involved in the case referred, – here we can equally talk about the norms of substantive and procedural law, which especially in matters of evidence form an inextricable legal unity.

Separately, it should be said about the role of higher courts in the application of analogy in the civil process. They not only verify the correct application of the procedural rules by lower courts by analogy,

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but also generalize judicial practice, provide clarification on the admissibility of applying the analogy on certain issues[1].

Moreover, it can be seen that the explanations of the Supreme Court of the Russian Federation, previously set forth in reviews of practice, often acquire a more general character and are later included in the decisions of the Plenum of the Supreme Court of the Russian Federation, which confirms their great legal weight.

So, in the Review of legislation and judicial practice of the Supreme Court of the Russian Federation for the first quarter of 2009it was explained that there was no legal norm in the Code of Civil Procedure of the Russian Federation regulating the issue of reimbursing the defendant for the costs of paying for the services of a representative if the statement of claim was left without consideration in accordance with paragraph 8of 222 Code of Civil Procedure of the Russian Federation (if the plaintiff, who did not ask for the trial in his absence, did not appear in court on a second call, and the defendant does not require consideration of the merits). In this case, in order to apply the analogy of the law, the courts should be guided by part 4 of Art. 1 and ch. 1 Article 101 Code of Civil Procedure of the Russian Federation, according to which, if the plaintiff refuses the claim, the plaintiff reimburses the defendant for the costs incurred in connection with the conduct of the case.

Later, the Supreme Court of the Russian Federation in the Resolution of the Plenum gave a more general explanation that in cases of termination of the proceedings, leaving the application without consideration, legal costs are recovered from the plaintiff. The exception is cases when the proceedings are terminated due to the death of a citizen or the liquidation of a legal entity that was a party to the case, or the statement of claim was left without consideration due to the fact that it was filed by an incompetent person, or due to the failure to appear of the parties that did not request about the proceedings in their absence, to the court on the second call (paragraph 7 of Article 222 of the Code of Civil Procedure of the Russian Federation). In the latter case, the legal costs incurred by the persons participating in the case are not subject to distribution.

The practical meaning of such a generalization of judicial practice on the use of analogy is that in certain cases, judicial precedents in Russia acquire the quality of a source of procedural law, at least if they are expressed in the form of a resolution of the Presidium or a resolution of the Plenum of the Supreme

[1]In addition to the above examples, there are explanations of higher courts on the possibility of applying an analogy of the law, in particular, when deciding on the protection of the interests of the debtor by changing the initial sale price of property in case of changes in its market price (“Review of the judicial practice of the Supreme Court of the Russian Federation No. 4 (2015) ", Approved by the Presidium of the Supreme Court of the Russian Federation on December 23, 2015); the termination of enforcement proceedings in cases based on the law, which was subsequently amended (“Review of the legislation and judicial practice of the Supreme Court of the Russian Federation for the fourth quarter of 2006”, approved by the Resolution of the Presidium of the Supreme Court of the Russian Federation of 07.03.2007); on the possibility of leaving the statement of claim without consideration if there is a valid propogative agreement on referring the dispute to a competent court of a foreign state (Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 09.07.2013 No. 158 “Review of the Practice of Considering Arbitration Courts of Cases with the Participation of Foreign Persons”); on the possibility of the debtor's creditors who have entered into an amicable agreement in a bankruptcy case, apply to the court to issue a writ of execution for the outstanding amount (“Review of the judicial practice of the Supreme Court of the Russian Federation No. 1 (2017), approved by the Presidium of the Supreme Court of the Russian Federation on 02.16.2017); on joining other creditors when applying for prosecution (paragraph 51, paragraph 53 of the Decree of the Plenum of the Supreme Court of the Russian Federation of December 21, 2017 No. 53 “On some issues related to holding persons liable for bankruptcy liability in bankruptcy”).

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Court of the Russian Federation (Samsonov, 2019 a,b). In any case, regardless of the recognition or not of acts of the Supreme Court of the Russian Federation as sources of law, we can talk about providing the judicial authorities with a system of legal regulation while filling in the gaps in law (Kapustina, 2016).

In addition, judicial practice, by virtue of its mobility, is a significant and high-quality source for the formation of legal norms (Ilalutdinov, 2015; Schubert, 2016). Therefore, the results of its generalization can be used to further improve the legislation, especially considering that after the unification of the highest judicial bodies to resolve economic disputes and consider civil cases, it became necessary to develop uniform rules for civil proceedings (Alekseyevskaya, 2015). Timely and systematic work to summarize the judicial practice of applying the procedural law by analogy, its consideration by the legislator, is able to qualitatively improve the future code of civil proceedings. The high quality of the law ensures its long-term effect and eliminates the need for regular amendments and additions to it (Kozhokar, 2018).

## 7. Conclusion

Summing up the narration, we can draw the following conclusions:

1. The only really existing and applicable in practice way to fill in the gaps in law is the analogy of the law. In the case of applying the principles of the relevant procedural branch of law, we can say that they themselves are able to act as a regulator of specific procedural relations. Moreover, the application of a broad-based norm does not indicate the presence of a legal gap, and legal relations arising on its basis should be attributed to the number of settled.

2. The analogy of the law should be distinguished from related situations, when in reality there is no gap in the law (an "imaginary" gap), and the court and other participants in the process turn to other techniques for applying legal norms, in particular, reference norms, special rules, and higher-level rules or more broadly, the procedural rules contained in regulations of a different industry, norms implying judicial discretion, an expanded interpretation of the law, clarifications from the highest judicial authorities, practice in resolving specific cases or scientific doctrine. The erroneous use of improper technology can lead to a violation of the equality of legal opportunities and, ultimately, to arbitrariness.

3. Depending on the industry affiliation, applied by analogy, the norm and purpose of the relevant branch of law, three varieties of analogy are distinguished in the civil process: 1) the intra-industry analogy; 2) the intersectoral procedural analogy; 3) the intersectoral material analogy. The significance of the proposed classification lies in the fact that when establishing a gap in the law of the court, first of all, it is necessary to consider the possibility of applying an intra-industry analogy, since we are talking about the application of the rules governing the closest procedural relations. Intersectoral analogy is permissible only when the norm contained in an act of another branch of law meets the requirements of similarity: in its purpose, in the subject composition and nature of the disputes to be resolved.

4. In the application of procedural analogy, the decisive role is assigned to the court. First of all, these are the courts of first instance, since it is they who are obliged to bring up for discussion the question of the legal qualification of a particular social relationship and determine what legal norms should be applied to established circumstances. Courts of higher instances verify the correct application of procedural rules by lower courts by analogy, as well as summarize judicial practice, give explanations on the admissibility of using analogy on certain issues. The practical meaning of such a generalization of judicial

practice on the application of analogy is that its results can be used to further improve legislation. In other words, clarifications of the Supreme Court of the Russian Federation can serve as a qualitative source for the formation of legislative norms, as a result of which the very basis for applying procedural rules by analogy will be eliminated - a gap in law.

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