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OPTIMIZATION OF CIVIL PROCEEDINGS AT THE PRESENT STAGE OF SOCIETY DEVELOPMENT

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Abstract

Optimization of civil proceeding has been an urgent problem at any stage of judicial reform for a long time. The variations of the optimization category have also determined the variations of its manifestation in various areas of ensuring the optimal course of administering justice in civil cases. In this aspect, optimization criteria and the limits of its implementation are of great importance. In the practical aspect it is most effectually to refer to the optimization of the civil form of action as an optimization of the procedural order of administering justice in civil cases. The following requirements for democracy, the viability of the procedure for administering justice, science-based schemes are of great importance for determining the directions for optimizing civil proceedings. In this regard, the problem of increasing the efficiency of justice by the power enhancement of the court for self-control becomes urgent. While analyzing them we can distinguish a limited number of the norms of civil procedural law that regulate the powers of the court for self-control. Therefore, if there are reasonable grounds, the trial court is prevented to correct procedural irregularities committed by this court. In the aspect of ensuring the optimization of civil proceedings, the issues of the optimal using evaluation categories are becoming increasingly important. The availability of a great number of evaluative categories in a normative act does not allow one to take a proper assessment of the circumstances of a civil case.

Keywords: Civil procedure, civil procedure form, evaluation categories, optimization, powers court, self-control

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1. Introduction

The effectiveness of the settings of objectives of civil legal proceedings is largely predetermined by the optimality of administering justice in civil cases. Regarding civil proceedings, optimization should be considered primarily in relation to the civil form of action. It is the civil form of action that reflects the essential feature and specifics of civil proceedings and civil procedural law in general.

The judicial self-control institution of the trial court and the optimization of using evaluation categories in the normative model of civil proceedings have been the current trends of optimization of civil proceedings.

The variations of regulating controversial real-life situations by means of evaluative categories allow the courts to approach each contentious or other legal relation in a differentiated way. Therein the courts take into account the specifics of the dispute, the personality and mutual behavior of the participants of legal relations and other circumstances.

2. Problem Statement

Optimization of civil proceedings should also be aimed at solving the general tasks reflected in Art. 2 of the Civil Procedure Code of the Russian Federation, which implies the timely elimination of judicial errors, including from the court of first instance.

The judicial reform of the Russian civil procedure, carried out in 2018 - 2019, mainly optimized the activities of the courts of verification instances. At the same time, separate control powers of the courts of first instance were indirectly affected. Thus, the power of the court of first instance to eliminate the error that had been made when initiating a civil case was secured by regulation. In particular, the civil case is transferred by jurisdiction to the arbitration court. In turn, the main role in the protection of civil rights is assigned to the court of first instance. However, the legislation has not taken this provision into account.

Within the framework of the problem of the civil procedural form, the problem of using evaluative categories remains debatable. If we turn to the provisions of the Code of Civil Procedure of the Russian Federation and the Arbitration Procedure Code of the Russian Federation, it can be noted that the legislator uses in each of them about three hundred evaluation categories. They significantly simplify the law enforcement practice of the courts. Replacing evaluative categories with rigid structures in the text of a normative act will lead to an increase in the number of legal norms and the need for more detailed regulation of the provisions of legal proceedings.

3. Research Questions

The subject of the article is the study of individual issues of ensuring the optimization of civil proceedings in the aspects of improving the civil procedural form, self-control of the court of first instance, optimization of the use of evaluation categories.

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3.1. Optimization of the civil procedural form

In the etymological meaning, optimization is the choice of the best option in relation to a given moment in the development of society. It is necessary to take into account the specifics of the implementation of social and legal relations in society. Optimization of civil proceedings is the choice of the optimal model, first of all, the civil procedure form. Currently there is a number of trends in the development of the normative model of civil procedure. First of all, this is failure to require a clear detailed regulatory itemization of the civil form of action. In turn, this allows the court and other participants to carry out their procedural actions based on evaluation categories and judicial discretion. Another trend is the priority of fictions and presumptions over code-prescribed clearness when hearing civil cases. And, finally, the idea of refusing the active position of the trial court in administering justice in civil cases and entrusting most duties on legally interested subjects is being actively implemented. At the same time, the court has been active only in case of evidentiary activity in evaluating evidence. The tendency of active using information technologies in the civil form of action together with a transfer to electronic document exchange in the future is becoming increasingly important (Anosov, 2013; Golubtsov, 2019; Valeev & Nuriev, 2019). Perhaps, it is this position that is worth notice and great prospects in its development. The departure from the requirements of optimality is quite obvious. And the question of necessity arises - to what extent such deviations are permissible and whether they correspond to the goals of civil proceedings and the interests of the subjects in general.

It seems as a set of objectives, the optimization of civil proceedings will be achieved if the civil form of action corresponds to its fundamental principles and specific features. One of the most striking specific features of the civil form of action should be considered its democratism. Due to this feature, concerned parties obtain a real opportunity to participate in the process in person in a court hearing or through video-teleconferencing or using other technical means.

These requirements are expediency, ease and rationality of the procedure for administering justice. The expediency of the civil procedural form presupposes its construction in accordance with the goals and objectives set both for the process as a whole and for its individual stages and actions. The ease of the procedural form means the availability of judicial protection of the violated, disputed rights of subjects. The rationality of the civil form of action is expressed in the consolidation by law of only procedural actions necessary for the implementation of the tasks of justice. However, both the workload of the procedure and its oversimplification will exclude the optimal result of justice. One of the mandatory requirements for the civil form of action is its up-to-dateness. This means developing a science-based civil form of action, taking into account use of technological solutions. This requirement ensures the efficiency and despatch of administering justice in civil cases. As a result, the set of principles, features and requirements of the civil form of action allows determining the trends, methods and means of optimizing civil proceedings. This means guaranteeing the support of rights and interests of the trial participants and ensuring the optimality of civil proceedings in general.

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3.2. Certain issues of the exercise of powers by the court of first instance in the manner of self-control

The control powers of the court of first instance are most clearly manifested in the form of the court's right in exceptional cases to review and overturn its own court decisions (Art. 241, Art. 280, Art. 393 of the Code of Civil Procedure of the Russian Federation).

The main court empowered to overturn and amend the ruling of the first instance court has traditionally been the appellate court. Among the grounds for canceling a judicial act by an appellate court, unconditional grounds associated with procedural violations are of particular importance. They entail the annulment of the judgment in any case regardless of the arguments of the appeal (presentation). Such grounds should also include grounds for terminating proceedings on a case or leaving an application without consideration. If unconditional grounds are identified, the court of appeal proceeds to the consideration of the case according to the regulations of the court of first instance without taking into account the specifics of Chapter 39 of the Code of Civil Procedure of the Russian Federation. Thus, it exercises the powers to resolve the case on the merits, thus replacing the court of first instance. In turn, these powers are not inherent in the court of verification.

The appeal procedure is implemented by the persons concerned through the court that issued the decision. The Court of First Instance is empowered to conduct a number of proceedings prior to submitting the case to the Court of Appeal. These include dismissing an appeal, rectifying mistakes and arithmetic errors, making an additional decision, and others. Some of them are committed only during the court session. This provides an opportunity to identify procedural violations during such court hearing. Rectifying a miscarriage of justice without referring the case to a higher court will contribute to solving the problems of civil proceedings, especially in cases where such procedural violations will be indicated in the appeal (submission).

3.3. The role of evaluation categories in civil procedure law

Besides using rigid constructions in the texts of a normative act, the specificity of the construction of civil procedural (as well as arbitration procedural) norms is that the legislator uses evaluative categories. Their use is determined by the need to make the provisions of the law more flexible. If evaluative categories are excluded from the norms of procedural law, the activity of a judge will be reduced to the mechanical application of the norms of law. The subjective assessment of the court as a law enforcement agency may go beyond the assessment that the legislator established when adopting a rule of law containing evaluation categories.

By fixing evaluative categories in the text of the normative law, the legislator seeks to provide the court with the opportunity to make decisions on its own in complex conflict situations. Strict normative regulation does not allow considering the changes taking place in society (Kozhokar, 2020). Evaluative categories allow you to optimize and not overload the text of a normative act with dispositions that govern different models of social relations.

In order to optimize civil proceedings, legislative regulation should be carried out with the help of rigid structures of the rules of law and evaluative categories. Together with the use of flexible evaluative categories, such structures allow the norms to be adapted to various external factors.

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The use of evaluative categories in procedural legislation is intended to have a positive impact on law enforcement. The issue of using evaluative categories is directly related to the issue of judicial discretion and the personality of the judge himself, his ability to interpret and apply such categories (Opalev, 2008). The judge must be highly professional, independent and must feel responsible for the actions in the process of applying the evaluative categories (Zubarev, 2019).

4. Purpose of the Study

The study is aimed at identifying problematic aspects in the legal regulation of the civil procedural form in general, as well as individual issues of self-control of the court of first instance and evaluation categories, in particular.

5. Research Methods

In preparing the article, general scientific methods (analysis, synthesis, comparison) and specific scientific methods (formal legal, modeling, interpretation of legal norms) were used.

6. Findings

The result of the article was the identification of problematic aspects in the activities of the courts of first instance, related to the regulation of evaluation categories, as well as the powers to cancel court decisions. The implementation of the proposed recommendations for improving legislation will help to optimize the activities of not only courts of first instance, but also courts of appeal.

Currently, regarding the model of legal proceedings, one should focus on the fact that this model is mobile, with a minimum of normative regulations. The optimal model of civil proceedings should fully allow the use of information technology. Such examples are the judicial reforms not only within our country, but also in the CIS states. In particular, the reforms of the arbitration system of the Russian Federation (Sasso, 2020) and innovations in the current civil procedural form are one of the confirmations of the implementation of the course to optimize civil proceedings.

The judicial reform of the Russian civil procedure is being further developed (Alekseevskaya, 2020). Undoubtedly, most of the novels of the civil procedure form will be focused specifically on the optimization of the process. But as a priority position, the observance of the interests of the subjects of civil proceedings should remain. It seems that the directions of optimization of civil proceedings are as follows. Firstly, this is increasing the active role of the court in the administering justice in civil cases when resolving a civil case on the merits. Secondly, it consists in strengthening the implementation of the institute of self-control of the court of first instance. Thirdly, this is minimizing the use of evaluative categories, legal presumptions and legal fictions in civil procedural form; fourthly, reasonable introduction and use of information technologies for all subjects of civil procedural activity. At the same time, it is quite obvious that procedures using such technologies should not exclude the possibility of using the classical model for the implementation of a particular order, for example, the model of a court session.

In order to optimize civil proceedings, it seems possible to vest the court of first instance in additional self-control powers to overturn a court decision. Such power can be exercised by the court of first instance when it is indicated in the appeal (submission) on the illegality of the court decision. The grounds are procedural violations, which undoubtedly entail the cancellation of the court decision, specified in Part 4 of Art. 330 of the Code of Civil Procedure of the Russian Federation and clause 3 of Art. 328 Code of Civil Procedure of the Russian Federation. At the same time, the subsequent referral of the case to the court of appeal is not required to resolve the case on the merits in a new court session.

The conclusion is made that the personal qualities of the judge undoubtedly influence the use of evaluative categories. However, there must be external boundaries for such law enforcement activity. Such a limitation may be the guidelines set by the higher courts on the basis of the analysis of the law enforcement activity of the interpretation of the evaluati**ve** categories. Thus, using evaluative categories in the norms of procedural law, the legislator stabilizes and balances various and multifactorial social relations, which find their regulation and protection within the framework of procedural branches of law.

7. Conclusion

The study made it possible to determine the directions for optimizing civil proceedings and civil procedural forms. Namely, the court of first instance can implement the self-control powers, which ensure the achievement of the goals of civil proceedings and optimize the activities of the courts of appeal (Sukhova & Babikova, 2020). This will enable the latter to correct other miscarriages of justice committed by the courts of first instance more effectively.

The positive effect of using evaluation categories can be obtained with an optimal ratio in the text of the normative act of evaluation categories and clearly regulated provisions. As a result, this will allow the legislator to optimize certain norms, regulations and institutions of civil procedural law. The result of the application of such a regulatory structure will be an improvement in the quality of legal regulation in this area.

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