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THE ADVERSARIAL PRINCIPLE IN THE DISCOURSE OF SIMPLIFIED PROCEEDINGS

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Abstract. *The article is devoted to the current issue of implementation of the adversarial principle of the parties in the consideration of disputes in the framework of simplified procedure. Administration of justice is the cornerstone of any legal system, and the procedure of court proceedings plays a key role in ensuring fairness and equality. In this context, the adversarial principle acts as a fundamental principle that seeks to balance the scales of justice by allowing opposing parties to present their cases before an objective judge. This principle becomes particularly intriguing when viewed in the context of summary proceedings, a procedural framework designed to streamline and expedite legal processes. The authors of the study identify the distinctive features of simplified proceedings and outline the points that allow to determine the sufficiency in the implementation of the mentioned principle.*

Keywords: *simplified procedure, simplified proceedings, order proceedings, adversarial proceedings, principle.*

Nowadays, the topic of simplified procedure of legal proceedings, the most preferred forms of which are simplified and writ proceedings, is relevant and significant from a practical point of view. A distinctive feature of the procedure for consideration and resolution of disputes, which is customary for citizens, is relative simplicity, reduction of time costs in conjunction with the characteristic brevity.

At the same time, in the first half of 2021, 16,945 cases, or 40.3% of the total number of resolved cases¹, were considered by way of simplified proceedings, which directly indicates the demand for this type of simplified procedure as a specific way of unloading the judicial system.

Simplified proceedings is a specially provided procedure of proceedings in civil cases, legislatively regulated and presented in Chapter 21.1 of the Code of Civil Procedure of the Russian Federation (hereinafter — the CCP RF)². A characteristic feature of simplified proceedings we can distinguish through correlation with the order proceedings, in which not only the disputed right itself, but also the prerequisites for its emergence, are absent. The grounds according to which civil cases are considered in the above order are specified in Paragraphs 1, 2 of Article 232.2 of the Code of Civil Procedure of the Russian Federation, and the legislative branch of power represented by its competent bodies provides for the possibility of conducting court proceedings in these categories of cases both by justices of the magistrate and district judges.

In addition to the above-mentioned peculiarities of simplified proceedings, we also consider it important to indicate the characteristic features, the content of which, first, is the failure to appoint a court session, which directly indicates the failure to inform the persons involved in the case about the time and place of the court session, in addition, there is no recording of the course of the court session both in writing and in the form of audio-recording. In this regard, there is a discussion regarding the implementation of the constitutional principle of adversarial proceedings, which, in turn, is reflected in ordinary court proceedings through the expression of the position of the party to the dispute or its change, stated including orally³.

In order to avoid violation of the adversarial principle during consideration and resolution of civil cases in the order of simplified proceedings, the legislator has established a special procedure for the provision of evidence and the possibility of familiarization with them for the persons involved in the case. This procedure is ensured by time intervals provided for various procedural actions.

A good example is the term for the submission of evidence by the parties to the court considering the case, as well as sending them to the second party in the case, a third party who has made an independent claim, is 15 calendar days from the date

¹ July 29, 2021, held a meeting of the Presidium of the Arbitration Court of the Moscow region, which summarized the results of the work of the court staff for the first half of 2021 // Arbitration Court of the Moscow region: [Electronic resource]. — URL: <https://asmo.arbitr.ru/node/16278> (date of address: 08.11.2023).

² The Code of Civil Procedure of the Russian Federation [fed. law of 14.11.2002 No. 138-ФЗ: adopted by the State Duma: 23.10.2002; ed. of 27.12.2018] // The Collection of Legislation of the Russian Federation. — 18.11.2002. — No. 46. — Art. 4532.

³ Sedykh E.O. Realizatsiya prava na sostyazatelnost i ravnopravie v uproschennom proizvodstve [The realization of the right to adversarial proceedings and equality of rights in simplified proceedings] // Vestnik magistratury [Bulletin of the Master's Degree Program]. 2019. No. 7-2 (94). Pp. 157–159.

of issuance of the relevant court ruling. A similar term is also provided for cases of submission of objections to the claimed evidence.

Considering the time period within which the parties have the right to provide the court directly considering the case, a party, a third party who has stated an independent claim, with additional documents, the content of which consists in explanations on the merits of the stated claims, as well as in objections justifying their position, it is a time interval of 30 calendar days. The information relating to the time interval at the middle stage, in particular, between the first and the second term, which should be at least 15 days, should be clarified.

Analyzing in the aggregate the above, it seems possible to say that the legislator provides for the persons involved in the case, the right within 15 days to submit to the court and send to each other evidence and subsequently objections to the stated requirements, as well as the right within the next 15 days to present additional evidence, only after the completion of these procedural actions in the aggregate, the court will make a decision by issuing a resolution or proceed to the consideration of the case in the general order at the discretion of the court. At the same time, simplified proceedings facilitating the position of the judiciary in no way detracts from the existing principles guaranteed by law, in particular, the principle of adversarial proceedings in civil cases.

References

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