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**WRIT PROCEEDINGS IN CIVIL PROCEDURE:
SOME PROBLEMS AND TENDENCIES OF DEVELOPMENT**

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Abstract. *The article considers the writ proceedings as a simplified form of resolution of civil cases in courts of general jurisdiction, aimed at optimizing justice. To date, the issue of the effectiveness of writ proceedings is relevant, as the analysis of law enforcement practice demonstrates a number of problems associated with the procedure of issuing a court writ, its issuance and revocation. The authors have identified controversial aspects of writ proceedings, expressed by insufficient legislative regulation, requiring clarification or amendments to the current norms of civil procedure legislation, and the difficulties of implementation of writ proceedings in practice (procedural activity of courts and bodies carrying out the enforcement of court writ). The advantages distinguishing the court order for the fulfillment of the main objective of justice — the protection of legitimate rights and interests, are considered. The authors have formulated proposals for improvement of the current procedural legislation, allowing to eliminate the shortcomings of the writ proceedings. These include the legislative fixation of the provision that a court writ can be canceled only for a number of clearly defined reasons, the establishment in the legislation of a prohibition to resubmit an application for issuance of a court writ with the same*

requirement if such first requirement was rejected or if the debtor objects to the court writ.

Keywords: *writ proceedings, court writ, problem of court writ revocation, magistrate court, civil procedure.*

The introduction of writ proceedings in civil procedure was associated with attempts to relieve the burden of civil proceedings by reducing the time and material costs of protecting the rights and legitimate interests of citizens. This aim determines the main advantages of writ proceedings: a special form of ruling in the form of a court writ and a reduced amount of state duty.

However, the relevance of the study of judicial writ proceedings is due to the presence of many controversial issues concerning their effectiveness.

The Civil Procedure Code (hereinafter — CPC RF) does not enshrine the concept of writ proceedings, but at the same time, the legislator has formulated the definition of “court writ”. According to Article 121 of the current Russian Code of Civil Procedure, it is a ruling issued by a single judge on the basis of an application for a court writ to claim money or property from the debtor¹. There are two points of view on the character of writ proceedings: the first one considers it a simplified legal procedure for issuing a court writ, the second one — not as a type of civil proceedings, but as a pre-procedural, but at the same time alternative procedure carried out by a judge in order to accelerate the protection of the creditor’s right and to establish the disputability or undisputability of the claim.

Writ proceedings have a number of characteristic features. Firstly, writ proceedings are characterized by a simplified procedure, i.e., a magistrate alone considers the case and makes a decision on it in a short period of time. Secondly, the writ proceedings do not involve the plaintiff and the defendant, it involves the claimant and the debtor. Thirdly, in lawsuit proceedings, a dispute about the right is necessary, whereas in writ proceedings, the plaintiff’s claims must be undisputed. Fourth, writ proceedings are aimed at resolving such issues as the recovery of monetary amounts and movable property. Fifth, the only means of proof is written evidence, in writ proceedings, there is no physical evidence, explanations of the parties, or anything else. And the last feature is that to initiate writ proceedings it is necessary to file an application for a court writ, on the basis of which it is issued.

The issuance of a court writ is a process that is carried out without a court trial, based on the information submitted by the plaintiff. In this case, the court must establish the indisputability of the claim against the debtor on the basis of reliability, admissibility, sufficiency, and relevance of evidence.

¹ Civil Code of the Russian Federation (Part one) of 30.11.1994 No. 51-ФЗ // The Collection of Legislation of the Russian Federation. 1994. No. 32, Art. 3301.

According to statistical data of the Judicial Department under the Supreme Court of the Russian Federation on the work of the courts of general jurisdiction on the consideration of civil cases at first instance, the majority of cases received by the courts in 2022 (13,602,650) belong to the category of other cases of action and writ proceedings. The majority of such disputes are cases involving the issuance of court writs, in particular, to recover debts on utility payments and overdue debts under loan agreements from individuals¹. At the same time, writ proceedings as a modern institution still has many gaps and provisions to be finalized.

One of such issues requiring further study and improvement is the protracted character of writ proceedings, arising from the lack of possibility for the plaintiff to apply for protection of his right in court within the framework of claim proceedings without prior application for a court writ in certain categories of civil cases. At the same time, easy revocation of a court writ within ten days without specifying the grounds for such revocation leads to a loss of time to protect the rights of the plaintiff.

The lack of dispositiveness when applying to the court in writ proceedings and the automatic revocation of a court writ call into question the expediency of certain aspects of writ proceedings. Knowing in advance that the creditor's claims under a court writ are valid, the debtor may file an application for revocation for the sole purpose of delaying the recovery of funds². A simplified revocation of the order is fair in cases of improper notification of the debtor or error in issuing the order, but in other situations, in order to reduce the possibility of abuse of rights on the part of the debtor, it is necessary to define a precise list of grounds for revocation of the court writ.

No less significant is the problem of proper notification of the debtor of the court writ³. The Civil Procedure Code of the Russian Federation provides that the court shall send a copy of the court writ to the debtor within five days. It often happens that debtors find out about the court writ at the stage of its transfer to the court bailiff for execution. The reasons may be incorrect work of the federal telecommunications operator "Russian Post", the secretary of the judicial district due to workload, etc. In such cases, the debtor can no longer protect his rights by appealing the court

¹ The information of the Judicial Department of the Supreme Court of the Russian Federation on the work of courts of general jurisdiction on the consideration of civil cases on first instance [Electronic resource]. URL: <http://cdep.ru/index.php?id=79&item=7645>.

² *Fedorov A.A.* Problemnye aspekty prikaznogo proizvodstva v rossiyskom grazhdanskom protsesse [Problematic aspects of writ proceedings in Russian civil procedure] // *Pravo i upravlenie* [Law and governance]. 2023. No. 1. Pp. 172–177.

³ *Lunegov K.N.* Problema prikaznogo proizvodstva v grazhdanskom protsesse otnositelno otmeny sudebnogo prikaza kak sposoba zashchity zakonnykh interesov so storony dolzhnika [The problem of writ proceedings in civil procedure regarding the cancellation of a court writ as a way to protect legitimate interests on the part of the debtor] // *Vestnik nauki* [Bulletin of science]. 2023. No. 9 (66). Pp. 69–77.

writ, as the term for cancelation has already expired, and it is quite difficult to prove that the term was missed for a good reason. In this regard, the debtor has to pay the debt, undergo restrictions on his rights in the form of a ban on traveling abroad, restrictions on the disposal of his property, arrests on accounts.

The issue of a dispute of right in writ proceedings remains important¹. If from the submitted documents the court finds that there is a dispute about the right, such an application shall be returned. At the same time, the legislation does not contain specific criteria by which the court determines the presence or absence of the above-mentioned criterion. It is necessary to formulate the criteria for the presence or absence of a dispute about the right, as at the moment the court independently determines the presence or absence of the above-mentioned feature.

In order to solve the problems arising in the process of consideration, it is necessary to take a number of measures to improve the Russian civil procedural legislation.

It seems effective to establish in the legislation a prohibition to re-submit an application for a court writ with the same claim if the first claim was rejected or if the debtor objects to the court writ. It is also necessary to establish a legal provision that provides for a judge to refuse to accept a statement of claim if a court writ with the same requirement comes into force.

K. V. Sheyanov proposes to make amendments to the CPC RF in terms of revocation of a court writ. Thus, these regulations should stipulate that a court writ may be canceled only for the following reasons: partial or full payment by the debtor of the debt to the claimant; the debtor is declared bankrupt; the debtor is a minor citizen; the debtor is restricted or deprived of legal capacity; the death of the debtor; the court writ was issued against an improper debtor; and other grounds that may be introduced into the CPC by amendments to federal legislation.

The court should have the right not to cancel the court writ if the debtor does not provide the court with the above-mentioned evidence of the circumstances.

As a consequence, the second problem will also be solved — the problem of the distribution of court costs in cases of revocation of a court writ with the accompanying payment of debts to the debtor, when the latter can no longer file a lawsuit. It seems that if it becomes more difficult to cancel a court writ, the scale of the issue in question will be significantly reduced.

In order to increase the efficiency of the issuance and execution of court writs, it is necessary to reduce the load on the courts by means of securing the right to distribute court cases between judges of nearby districts, increasing the staff of courts of general jurisdiction, and improving the system of document control.

¹ *Filimonkina D. V. Preimushchestva i nedostatki primeneniya prikaznogo proizvodstva v sovremennoy sudebnoy praktike [Advantages and disadvantages of using writ proceedings in modern court practice] // Mezhdunarodnyy zhurnal gumanitarnykh i estestvennykh nauk [International journal of humanities and natural sciences]. 2021. No. 8-2. Pp. 114–117.*

In general, the problems of writ proceedings can be divided into two groups: those related to the shortcomings of the current civil law governing the procedure for the implementation of writ proceedings and the problems of law enforcement practice arising in the process of activity of courts and bodies carrying out the enforcement of court writ¹.

The first group includes the procedure for canceling a court writ, mandatory filing of an application for a court writ before a lawsuit. The second group includes the lack of uniform practice on the issuance of court writs filed by claimants without personal data, notification of the debtor on the issuance of a court writ, and the issue of the existence of a dispute on the right.

Thus, the institution of writ proceedings, designed at first glance to simplify and accelerate the collection of undisputed debt, in fact, has many contradictions and shortcomings that require further study and finalization.

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¹ *Sheyanov K. V.* K voprosu o problemakh i perspektivakh sovershenstvovaniya prikaznogo proizvodstva v RF [On the problems and prospects of improving writ proceedings in the Russian Federation] // Mezhdunarodnyy zhurnal gumanitarnykh i estestvennykh nauk [International journal of humanities and natural sciences]. 2022. No. 12-5. Pp. 150–154.

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