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THE INTERACTION OF THE TASKS OF PREPARING A CASE FOR TRIAL WITH THE COURT'S JUDICIAL AND EVIDENTIARY ACTIVITIES

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Abstract. *The article considers and establishes the interaction between the proper fulfillment of tasks aimed at the judicial authority at the preparation of the case for trial; issues considered by the court in the court session; issues resolved by the court in the deliberation room when making a court decision; the motivation part of the court decision and the grounds for its annulment. The author deserves special attention for consideration in the study of the tasks, the resolution of which is associated not only with the judicial activity of the court, but also with the evidentiary activity of all participants in the process: the task of determining the circumstances relevant to the case, in other words — the correct definition by the court of the subject of proof in the case; the task of determining the necessary evidence, as well as assisting in their collection to the parties who need it.*

Keywords: *stage of civil proceedings, preparation of a case for trial, aims and tasks of civil proceedings, aims and tasks of the stage of preparation of a case for trial, subject of proof in a case.*

The stage of preparation of a case for trial is mandatory in all processes, referred recently as the so-called "civilistic"[1] process: civil proceedings, arbitration

[1] See more: *Zagidullin M. R.* O soderzhanii ponyatiya "tsivilisticheskiy protsess" [On the content of the term "civilistic process"] // Zhurnal Rossiyskogo prava [The Journal of Russian Law]. 2020. No. 5. Pp. 120–130; *Ganicheva E. S.* K voprosu o soderzhanii ponyatiya "tsivilisticheskiy protsess" [To the question of the content of the term "civilistic process"] // Obrazovanie i pravo [Education and law]. 2022. No. 4. Pp. 134–140.

proceedings, administrative proceedings. Realization of the stage of preparation of a case for trial is associated by the legislator with the performance by the court of certain tasks to achieve the nearest procedural aim at this stage. It should be pointed out that all these aims and objectives are set by law just before the court, because the parties to the case in this, previous and subsequent stages, have only their own, independent aims and objectives, conditioned by personal interests, and not always coinciding with the above-mentioned aims and objectives of the legislator and the judiciary.

The general aim of civil proceedings in general and court proceedings in particular, in our opinion, is to eliminate the legal conflict in society, about which it was initiated and conducted. In order to achieve this general aim, the court needs to fulfill the tasks standing before all civil proceedings (Article 2 of the Code of Civil Procedure of the Russian Federation, Article 2 of the Arbitration Procedure Code of the Russian Federation, Article 3 of the Code of Administrative Procedure of the Russian Federation)[1]. In addition to the general aim, procedural theory and legislation formulate the nearest (local) aims covering the actions of the participants at each of the distinguished stages of civil procedure (more precisely, civil procedure in its broad sense), first — for the stage of initiation, preparation and trial, covering the consideration of the case in the court of first instance and being mandatory in any civil case (except for accelerated types of proceedings of consideration of the case — for example, order, simplified). Despite the proximity in content of the terms "aim" and "task", we consider it necessary to clarify that the aim is a generic concept in relation to the task. Therefore, the achievement of the aim, a more general term, is possible through the solution of each of the separately taken tasks (a generic term).

However strange it may seem, the immediate procedural purpose of the stage of preparation of a case for trial, formed in scientific theory and reflected in the educational legal literature, is enshrined only in more "recent" existing procedural codes — the Code of Administrative Proceedings of the Russian Federation and the Arbitration Procedural Code of the Russian Federation — and in general, is not available as legally defined in the Civil Procedural Code of the Russian Federation.

Article 132 of the Code of Administrative Court Procedure of the Russian Federation, following Part 2 of Article 133 of the Arbitration Procedural Code of the Russian Federation, establishes that preparation for court proceedings is

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[1] See more: *Degtyarev S. L.* Realizatsiya sudebnoy vlasti v grazhdanskom sudoproizvodstve: teoretiko-prikladnye problem [Realization of judicial power in civil proceedings: theoretical and applied problems]. — M.: Volters Kluver, 2007. — 364 p.

mandatory for each case and is conducted *in order to ensure the correct and timely consideration of an administrative (arbitration) case.*

However, the tasks standing before the court at the stage of preparation of a case for trial in administrative proceedings, on the realization of which depends on the achievement of the above-mentioned procedural aims, are not available in the Code of Administrative Proceedings of the Russian Federation. But all these tasks are fixed in the Civil Procedural Code of the Russian Federation (see Article 148) and in the Arbitration Procedural Code of the Russian Federation (see Article 133), but, once again we emphasize, are absent in the normative field of the Code of Administrative Court Procedure of the Russian Federation. Whether it is a mistake or a deliberate "ingenious" choice of legislative technique on the part of the legislator in relation to legal phenomena of the same order — aims and objectives at the stage of preparation of a case for trial, in relation to the Civil Procedure Code, the Arbitration Procedure Code and the Code of Administrative Proceedings of the Russian Federation, it is difficult to say, but the possibility of application of procedural law by analogy allows the law enforcer, and first the court, to overcome these difficulties within the framework of the Civil Procedure Code and the Code of Administrative Proceedings of the Russian Federation.

The tasks of preparing a case for trial are themselves formulated in Article 148 of the Civil Procedure Code of the Russian Federation as follows:

1) clarification of factual circumstances relevant for the correct resolution of the case;

2) determination of the law to be followed in resolving the case and establishment of the legal relations of the parties;

3) resolving the issue of the composition of the persons involved in the case and other participants in the process;

4) submission of necessary evidence by the parties and other persons participating in the case;

5) reconciliation of the parties.

It should be pointed out that the importance of the tasks performed by the court at the stage of preparation is difficult to overestimate, because, strange as it may seem, we meet them repeatedly throughout the civil process. For example, the tasks formulated in Article 148 of the Civil Procedure Code of the Russian Federation, become at the stage of trial issues that are discussed within the framework of the ongoing court session, because without their resolution it is impossible to consider and resolve the case on the merits.

In the future, they also become issues that are discussed by the court in the deliberation room when making a court decision: "When making a decision,

the court evaluates the evidence, determines what circumstances relevant to the consideration of the case are established and what circumstances are not established, what are the legal relations of the parties, what law should be applied in this case and whether the claim is subject to satisfaction" (see Part 1 of Article 196 of the Civil Procedure Code of the Russian Federation).

After that, we find their reflection in the motivation part of the judgment: "The motivation part of the court judgment shall specify:

1) factual and other circumstances of the case established by the court;

2) the conclusions of the court arising from the circumstances of the case established by it, the evidence on which the conclusions of the court about the circumstances of the case and the arguments in favor of the adopted decision are based, the reasons on which the court rejected this or that evidence, accepted or rejected the arguments of the persons involved in the case in support of their claims and objections;

3) laws and other normative legal acts, which the court was guided by when making a decision, and the reasons why the court did not apply the laws and other normative legal acts referred to by the persons participating in the case" (Part 4 of Article 198 of the Civil Procedure Code of the Russian Federation).

But this is not all, in the case of appealing a court decision to a higher court instance, they (tasks on preparation of a case for trial) can become grounds for annulment or modification of a court decision — see, for example, Article 330 of the Civil Procedure Code of the Russian Federation. Similar is the case with the tasks of preparing a case for trial in the Arbitration Procedure Code of the Russian Federation and in the Code of Administrative Proceedings of the Russian Federation, although they are not emphasized in the latter, as noted above.

Two tasks deserve attention, the resolution of which is associated not only with the judicial activity of the court, but also with the evidentiary activity of all participants of the process. This is the task of determining the circumstances relevant to the case, in other words, the correct determination by the court of the subject of proof in the case. The second is related to the first — the task of determining the necessary evidence, as well as assisting in its collection by the parties who need it.

First, the presence of the first task under consideration allows us to conclude that the court is an active subject in evidentiary activity, along with the plaintiff and the defendant.

Secondly, the obligation of the court to actively participate in evidentiary activity, primarily in the correct determination of the subject of proof in the case,

indicates the absence of pure adversarial character in the model of administration of justice in civil cases in the Russian Federation. Along with the proclaimed and increasingly implemented principle of adversarial character of the parties in the evidentiary activity, the element of the court's obligation to correctly determine the subject of proof in the case, allows us to speak only about a mixed model of civil proceedings in Russia (simultaneously there are elements of both adversarial and investigative model).

Thirdly, the failure of the court to correctly determine the circumstances relevant to the case (the subject of proof in the case), threatens the court with unfavorable consequences. As such unfavorable consequences may be the annulment of the court decision under Paragraph 1, Part 1, Article 330 of the Civil Procedure Code of the Russian Federation, where "the grounds for annulment or modification of the court decision on appeal are: incorrect determination of the circumstances relevant to the case".

Therefore, from the conscientious fulfillment of tasks by the court at the stage of preparation of the case depends on not only the achievement of the immediate procedural aim — timely and correct consideration of the case, but also guarantees the issuance of a correct court decision that meets the requirements of legality and validity, as well as the active participation of the court in the evidentiary activity at its stage of formation of the subject of proof in the case. Moreover, all this is carried out under the threat of annulment of the court decision, in case of improper fulfillment by the court of the tasks we are considering.

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