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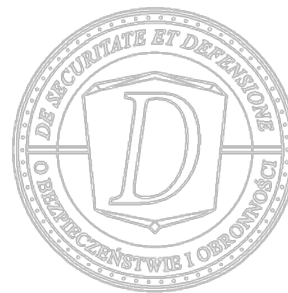
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JUDICIAL ACTS AND JUDICIAL LIFE IN MODERN SOCIETY

ABSTRACT: This article discusses the problem of determining the categories of judicial acts in procedural law. The authors suggest that the adopted legal acts are the means of implementation of the judicial life in modern society. Judicial life takes consistent and logical due to adopted by higher courts enforcement of judicial decisions. Authors provide an overview of statistical data on the performance of the Supreme Court of the Russian Federation for civil affairs, affairs of for settling economic disputes, cases of administrative offenses and others.

KEYWORDS: court decisions, the judiciary, judicial reform, the judicial life

AKTY PRAWNE I AKTYWNOŚĆ SĄDOWA W NOWOCZESNYM SPOŁECZEŃSTWIE

ABSTRAKT: Artykuł ten przedstawia problem określania kategorii aktów prawnych w prawie procesowym. Autorki sugerują, że przyjęte akty prawne są sposobami realizacji życia sądowego w nowoczesnym społeczeństwie. Aktywność sądowa jest spójna i logiczna, ze względu na przyjęte przez sądy wyższej instancji orzeczenia sądowe. Autorki zapewniają w artykule przegląd danych statystycznych na temat wydajności Sądu Najwyższego Federacji Rosyjskiej do spraw cywilnych, spraw do rozstrzygania sporów gospodarczych, spraw wykroczeń administracyjnych i innych.

SŁOWA KLUCZOWE: orzeczenia sądowe, sądownictwo, reforma sądownictwa, życie sądownicze

At the present time the problem of determining the category of “judicial act” is devoted to a sufficient number of specialists in the field of procedural law.

For a start the authors will pay attention to the peculiarities of the judicial acts of arbi-

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tration courts. Article 15 of the Arbitration Procedure Code of the Russian Federation (the APC) says that the arbitral tribunal shall deal with judicial acts in the form of decisions, resolutions, definitions. The judicial act adopted by the arbitration court of the first instance when considering the merits of the case, called the judgment.

Judicial acts adopted by courts of arbitration appellate courts and courts of cassation, formed in accordance with the Federal Constitutional Law of 28 April, 1995 N 1-FKZ “On arbitration courts in the Russian Federation”, on the consideration of appeals and cassation instance are called decrees. Judicial acts handed down by the Supreme Court of the Russian Federation on the results of consideration of appeals submitted in accordance with Articles 291.1–291.15 of the APC, are called definitions.

All other judicial acts of arbitration courts, taken in the course of the proceedings, are named the definitions.

However, of the APC does not define what is a “judicial act”. Although the meaning of the Article implies that the legislator gives a restrictive interpretation of the judicial act.

Thus, according to S.K. Zagaynova, the judicial acts are not only the expression of my fore-court procedural activity, but also shape the relationship between the courts of different subsystems within a civil case³. Under the judicial acts in the arbitration proceedings established by the above-mentioned author understands the arbitration procedure of the form of expression of the will of its judiciary, which is directly aimed at ensuring the effective rights, freedoms and legitimate interests of participants in civil commerce⁴.

Y.A. Tikhomirov and I.V. Kotelevskaya identify the concept of “judicial act” and “judgment”, which, in their opinion, “is divided into two groups – which came into force regulations and legal treatment (orders, claims, orders, calls, etc.)”⁵. It is impossible to do with the private identification. Common in this case are the legal acts in all their diversity (law enforcement and interpretive, final and ancillary, core and non-core, etc.), and “judgment” merely acts as a type of judicial decisions. However, the authors rightly point out that “all decisions of courts can embrace the concept of ‘legal acts’ in the broad sense, because of their inherent features”. For the same reason, consider unacceptable use as synonymous with the term “judicial act”, “judgment”, “the court ruling”⁶.

It should be noted that in the federal legislation there is a single use of the term “judicial act”. For example, the Federal Law “On providing access to information on the courts of the Russian Federation” dated December 22, 2008 № 262-FZ under the court decision refers to the decision made in the form established by the relevant law on the merits considered in the constitutional exercise, civil, administrative or criminal proceedings or proceedings in arbitra-

³ S.K. Zagaynova, *Place of judicial decisions to ensure the unity of the judiciary: some aspects of the problem*, “Proceedings of the universities. “Jurisprudence” 2007, № 2, p.113.

⁴ S.K. Zagaynova, *Court acts in the mechanism of implementation of the judicial authority in civil and arbitration process*, Moscow 2007, p. 90.

⁵ Y.A. Tikhomirov, I.V. Kotelevskaya, *Legal acts. Educational and practical and reference manual*, Moscow 1999, p. 228.

⁶ *Ibidem*, p. 229.

tion court. It also includes acts of judicial decisions of the courts of appeal, cassation and reviewing instances, rendered in the form established by the relevant law on the consideration of appeals or appeals (representations) any review of decisions of the court of reviewing instance. This concept does not cover the whole essence of the category of a judicial act, as judicial act is not only a judgment made in the form established by the relevant law on the merits, as well as the ruling and resolution. In this case, the legislator gives a narrow understanding of the judicial act.

The order of consideration of civil cases by courts of general jurisdiction is governed by the rules of civil procedure and is reflected in the Code of Civil Procedure of the Russian Federation. In the science of civil procedural law it is traditional that the generic concept used the term “court order”. This tradition continues in the current art. 13 Code of Civil Procedure of the Russian Federation, entitled “Obligation of court rulings”. In Part 1 of Article 13 of the Civil Procedural Code of the Russian Federation the legislator pointed out that the ordinary courts take judicial decisions in the form of court orders, decisions, decisions of the presidium court of the review instance.

If the appeal is to the Federal Constitutional Law “On the Judicial System of the Russian Federation”, then it uses the generic term “judicial decisions”. Thus, the specific concept is replaced by the concept of a common, generic, that, in our view, is unacceptable⁷.

Thus, within the framework of various types of proceedings there are different generic concepts: judgment, decisions, judicial acts.

Some scientists hold the view, according to which judicial acts recognized exclusively procedural judicial acts. For example, S.K. Zagaynova believes that “judicial acts in civil and arbitration process – is established by the civil procedure, arbitration procedure of a form of expression of the will of its judiciary, which is directly aimed at ensuring the effective rights, freedoms and legitimate interests of participants in civil commerce”⁸. This approach reduces the content of the judicial act.

Judicial act in most general terms is a kind of a legal act having a formal, written form and containing the legal provisions of the court, aimed at the performance of the functions and the achievement of the goals and objectives of the proceedings.

So, under the judicial acts of arbitration courts need to understand the kind of legal act received by the arbitration court in the established procedural order, available documentary form containing the state-power requirements on the settlement of the civil case related to the business and economic activities aimed at the implementation of the functions and achievement goals and objectives of the arbitration proceedings.

In the authors’ opinion, in this context, it should be said about the judicial life, which is hard to imagine without the acts taken by the judiciary. In recent times it is markedly enhanced by their legal significance and the impact on social relations.

⁷ S.K. Zagaynova, *Court acts in...*, op.cit., p. 91-99.

⁸ *Ibidem*, p. 90.

E.M. Muradyan believes that the judicial life “entered” into the life of society and man. Judicial life is to check of the viability of the court, its ability to maintain its vitality, develop, evolve. Judicial life as the life of man and society, it is checking for viability, that is ability to withstand adverse circumstances, the ability to withstand a change, renovation and reconstruction⁹.

From the above it can be assumed that the court life as a phenomenon is a special form of legal life, which can be expressed in legal acts and directly showing the features and quality of the judicial and legal development of the society, the corresponding ratio of subjects of the judiciary and the degree of judicial protection of the participants.

Absolutely it ought to be noted that judicial life tends to change, to respond to the various reforms.

It is known that the new trend of the Russian judicial reform was the abolition of the Supreme Arbitration Court of the Russian Federation (further – SAC) and its transfer to the newly established office of the Supreme Court of the Russian Federation. Because of this, it should be noted that the current Supreme Court is the highest judicial body for civil cases, cases of economic disputes, criminal, administrative and other cases under the jurisdiction of the courts. The new Supreme Court of the Russian Federation to ensure that the basic function of the unity of jurisprudence can really perform judicial board on economic disputes. Court statistics prove the possibility of implementing such an approach. Thus, according to the Survey of statistical data on the performance of the Supreme Court to review civil cases, cases for settling economic disputes, cases of administrative offenses and criminal cases for 2014 year to claim 6 refers to a review on the judicial collegium on economic disputes the Supreme Court of the Russian Federation, complaints and on cassation instance¹⁰.

In accordance with the procedural legislation of the Judicial Board on Economic Disputes, established as the second appeal, it shall check the legality of judicial acts of arbitration courts. During the period from 6 August to 31 December 2014 the Supreme Court of the Russian Federation received 10,606 appeals on economic disputes to judicial acts adopted by arbitration courts of the Russian Federation. Investigated 379 cases, issued 112 determinations to transfer the appeal to be considered in court. The cassation instance session was examined in 70 cases. In 11 cases the complaint was dismissed on 59 cases – complaints satisfied with the abolition of judicial decisions. In 35 cases the courts overturned the judgment of the first instance, one of which was accepted by the court for intellectual property rights. It canceled 27 decisions with the judgment for a new trial, 6 – adoption of a new judicial act, 2 – with the termination of the proceedings. In 6 cases defining the first instance courts was cancelled. In 5 cases the appellate court reversed the ruling, 3 of them – leaving in force the courts of first instance, one – with the adoption of a new judicial act, one – with the direction for a new trial. Totally 40 rulings of arbitration courts of appeal were cancelled, including the 36 – simultaneously with the cancel-

⁹ E.M. Muradyan, *Court rules*, “SPb.” 2007, p. 64-65.

¹⁰ <http://www.eg-online.ru/document/adjudication/276141/>.

lation as judgment and ruling of the cassation instance.

In 13 cases the courts overturned the ruling of the cassation instance leaving in force and (or) the judgment of appellate courts. In addition, 45 cases ruling of cassation were cancelled simultaneously with the abolition of judicial decisions first and appellate instances. Totally 58 appeals rulings were cancelled, 3 of which were adopted by the Court on intellectual property rights as a court of cassation. Based on a review of arbitration cases on cassation instance judicial collegiums on economic disputes of the Russian Federation for 2014, we can conclude that the second cassation instance started to work successfully.

At the same time it made to date and review the judicial practice of the Supreme Court in 2015 year¹¹. Judicial board on economic disputes of the Russian Federation has developed jurisprudence on the following issues: the resolution of disputes relating to the protection of property rights and other proprietary rights; the resolution of disputes arising from the debt relationship; enforcement; disputes relating to the application of customs legislation. Thus, the practice of the Judicial Collegium on Economic Disputes of the Supreme Court plays a huge role in the development of the judicial life. Although the Presidium SAC and considered somewhat less cases than Judicial Collegium of the Supreme Court, however at the SAC now has a weighty advantage in a large array of “abandoned” definitions that are publicly available, and also to a certain extent form and send jurisprudence on economic disputes. It is also necessary to provide access to the “abandoned” cassation and reviewing definitions of judges of the Supreme Court, which will further increase the transparency of justice and the formation of the unity of judicial practice.

So, it can be said that the judicial system is important gradual changes and reforms. In addition, any reform rests on the question of the sources of financing, which is also an important limitation of the various proposals to improve the judicial system. Ultimately, the judicial organization should be adequate to the needs of society and the economy, provide guarantees accessibility and usability of judicial protection for those for whom it was created and functions. Therefore, as rightly stated in the legal literature, that the question of the optimal organization of the judiciary needs to be very serious discussion¹².

However, the main vector of development of the judicial system of the Russian Federation is not aimed at the mechanical unification of the two highest judicial subsystems or subordinate the judiciary, and to a fundamentally new construction system of the Russian justice, the Court, the principles of independence of the judiciary in the area of finance, the legal sphere, in the sphere of human resources, etc.¹³. With the aforementioned proposition one should agree to disagree.

According to V.F. Yakovlev, it was required to ensure the uniformity of jurisprudence on

¹¹ *Review of judicial practice the Armed Forces №1* (2015) (approved by the Presidium of the Supreme Court of 03.04.2015), Reference legal system Consultant Plus.

¹² V.V. Yarkov, *Combining superior courts: expectations and consequences*, “Zakon” 2014, № 3.

¹³ G.T. Ermoshin, *Combining the highest courts: the reorganization of the judiciary at the present stage of development of the state*, “The Russian Justice” 2014, № 1, p. 45-48.

the interpretation and application of the same law two higher courts – the Supreme Court and the Supreme Arbitration Court. In this sense, the union and what is happening in its result – a positive point. The new Supreme Court of the Russian Federation is currently working to identify differences in the jurisprudence of the two judicial subsystems. Once this work is completed, presumably, it will be taken to resolve the contradictions. Supreme Court of the Russian Federation needs to work in the existing form¹⁴.

In this situation, it can be assumed that any change in the judicial system are reflected in the judicial life, while the latter takes on the consistency and consistency due to taken by the higher courts of enforcement of judicial acts, which give explanations on the various issues that arise in practice and thereby contribute to the implementation of effective protection of violated rights and legitimate interests of subjects.

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¹⁴ http://www.rapsinews.ru/judicial_analyst/20141209/272738807.html#ixzz3MB5MdE8t.