

THE CONCEPT AND IMPORTANCE OF SUMMARY PROCEEDINGS IN CIVIL PROCESS

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ANNOTATION: This article analyzes the concept and significance of summary proceedings in civil litigation. In particular, it examines the unique features of summary proceedings and the process of appealing to appellate and cassation courts. The article addresses existing legislative challenges related to summary proceedings and proposes solutions for improving the legislation.

Keywords: order, appeal, cassation, court application, court order, proceedings, code.

According to Article 55 of the Constitution of the Republic of Uzbekistan: “Everyone is guaranteed the right to protect their rights and freedoms in court, to appeal against unlawful decisions, actions, and inactions of state bodies and other organizations and their officials in court.”

Based on this norm, citizens can protect their violated rights and interests through the courts. This provision is also enshrined in Article 3 of the Civil Procedure Code of the Republic of Uzbekistan. Citizens may apply to civil courts in the following forms as outlined in Article 4 of the Civil Procedure Code:

“Appeals to the court: disputes arising from civil legal relations — in the form of a statement of claim; regarding summary proceedings, cases handled in a special order, and other instances stipulated by this Code — in the form of an application; when applying to appellate and cassation courts — in the form of an appeal (protest). Applications and accompanying documents may be sent to the court in electronic document form.”

Thus, based on the above grounds, we see that based on citizens' appeals, civil court proceedings are carried out in claim, summary, special, and other forms. Today's topic of analysis is the summary proceedings in civil courts.

It is known that one of the effective means of ensuring judicial efficiency in the field of civil litigation is the introduction of new forms aimed at simplifying the process or improving existing ones. The summary proceedings form is an important method for streamlining civil cases.

If we delve into the history of summary proceedings, they can be traced back to ancient Roman law, as well as Austrian, German, and Russian judicial practices. By the 19th century, institutions for collecting debts based on non-disputed documents began to emerge in the procedural laws of some European countries. Sources indicate that summary proceedings, in the form of mandatory enforcement, also existed in early 20th-century Russia.

Although legal literature acknowledges that summary proceedings are one of the relatively ancient institutions, the essence of court orders and summary proceedings remains a contentious issue in the theory of civil procedural law. Notably, scholars like V.I. Reshetnyak and V.N. Polyakov consider summary proceedings as an independent type of civil litigation, while N.A. Chechina and M.A. Cheremin view court orders as a form of "simplified proceedings."

Conversely, V.V. Yarkov argues that this type of proceeding exists outside the procedural framework.

In our opinion, summary proceedings should be seen as a specific type of civil litigation conducted by a judge to swiftly protect the rights of claimants based on whether the claim is disputed or undisputed. However, court orders issued within the framework of summary proceedings significantly differ in structure, content, and essence from judicial decisions considered fair judicial acts. Notably, unlike other types of civil litigation, summary proceedings do not involve substantive hearings in court sessions. Judicial orders issued within summary proceedings hold the power of enforcement without requiring separate enforcement documents.

Summary proceedings were first introduced into the legal system of Uzbekistan through the Economic Procedural Code adopted on August 30, 1997. Subsequently, as a result of judicial reforms, Law No. 568, "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan," dated December 12, 2003, was adopted, and Chapter 201 on "Summary Proceedings" was added to the Civil Procedure Code.

As a simplified and streamlined method of protecting citizens' rights and legitimate interests, summary proceedings play an important role in resolving specific types of civil cases through court orders. At the conclusion of summary proceedings, a court order is issued. Let us now explore what a court order entails.

A court order is a document issued by a judge without a hearing based on an application for the collection of monetary funds or movable property from a debtor under non-

disputed claims. The key feature distinguishing summary proceedings from claim proceedings is the issuance of a court decision without a hearing or the presence of the respondent. Summary proceedings in civil litigation are characterized by the following features:

1. The judge issues a court order or a ruling to reject the application within three days from the date of receipt of the application.
2. Applications for court orders are reviewed in a simplified manner without the participation of parties or other individuals. Neither the applicant nor the debtor is summoned to the court.
3. A court order does not include a reasoning section.
4. There is no procedure for appealing a court order to a higher instance. A dissatisfied party may submit objections to the issuing court within ten days of receiving a copy of the court order, leading to its annulment and the initiation of general proceedings.
5. A court order itself serves as an enforcement document without requiring a separate enforcement writ.
6. No minutes are kept during the consideration of applications for court orders, and the presence of a court secretary is not mandatory.

Doctor of Law M.M. Mamasiddikov distinguishes court orders from court decisions through the following unique features:

Firstly, court orders are issued based on existing written documents without substantively reviewing the case. In such cases, the judge does not examine witness statements, expert opinions, explanations from the parties, or declarations from third parties.

Secondly, court orders regarding the substance of the claim are issued by the judge within three days of receiving the application. Civil cases resolved through judicial decisions must be heard within one month from the date of preparation.

Thirdly, the parties in summary proceedings are recognized as the claimant and the debtor.

Fourthly, a court order is issued solely on grounds specified by law (Article 171 of the Civil Procedure Code) for non-disputed claims and cannot be issued on other grounds.

Fifthly, certain conditions must be met to issue a court order. The first condition is that the claimant must provide the court with documents confirming the debtor's obligations. The

second condition is that the submitted documents must fully reflect the nature of the case. The third condition is the absence of a dispute.

Sixthly, court orders have the power of enforcement documents, and their enforcement is carried out following the procedure established by law.

According to Article 170 of the newly revised Civil Procedure Code of the Republic of Uzbekistan, “A court order is a judicial act issued on non-disputed claims without a court hearing. A court order has the power of an enforcement document. Enforcement on a court order is carried out following the established procedure after ten days from its issuance.” Based on this definition, a court order is a document issued by a judge on non-disputed claims. The definition provided in Article 2381 of the Civil Procedure Code of Uzbekistan, which was in effect until April 1, 2018, described a court order as follows:

“A court order is a document issued by a judge without a hearing based on an application for the collection of monetary funds or movable property from a debtor under non-disputed claims.”

In our opinion, the requirements related to issuing court orders were narrowly defined in this previous definition. This is because the requirements for issuing court orders are expanding in non-disputed situations arising in daily life. Therefore, the procedural definition of a court order in the newly revised Civil Procedure Code, “A court order is a judicial act issued on non-disputed claims without a court hearing,” is more appropriate. In the near future, the scope of requirements related to issuing court orders is likely to expand further based on foreign experience and ongoing legislative changes in non-disputed claims arising from daily life.

If we consider the definition of a court order in the legislation of foreign countries, Article 121 of the Civil Procedure Code of Russia defines a court order as a judicial decision issued by a judge on an application for the collection of monetary funds or movable property from a debtor. Article 175, Part 1 of the Civil Procedure Code of Azerbaijan stipulates that simplified proceedings are permissible for monetary claims or claims for the recovery of property, resulting in the issuance of a court order. Article 134, Part 1 of the Civil Procedure Code of Kazakhstan states that a court order is a judicial document issued by a judge without summoning the debtor and the claimant or conducting a hearing based on an application for recovery.

When comparing these definitions, the definitions of court orders in the legislation of Belarus and Uzbekistan are very similar. Article 394, Part 1 of the Civil Procedure Code of Belarus defines a court order as a judicial act issued by a court without considering the case and without summoning the parties based on an application for the recovery of monetary funds or movable property under non-disputed claims.

In Germany, the definition of court orders differs significantly. Summary proceedings in German civil procedural legislation are defined in Chapter 49 of the German Civil Procedure Code as “Fast-track payment orders.” Article 481 of the German Civil Procedure Code defines this type of proceeding as “A document issued by the court in a fast-track manner based on a claim submitted by the applicant against the debtor for a specified amount.” Moreover, German civil procedural legislation contains specific requirements, deadlines, and forms for issuing payment orders. We will delve into these aspects in subsequent chapters.

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