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PROBLEMS OF CALCULATION OF THE TERMS OF APPEALS OF DECISIONS MADE IN THE ORDER OF SUMMARY PROCEEDINGS

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The subject of the research is the features of the appeal of court decisions in cases considered in summary proceedings.
The methodology. Analysis and synthesis, dialectical method as well as formal legal interpretation of Russian legislative acts.
The main results. The author critically assesses the provisions of the procedural legislation, focuses on the problems that exist in practice. (1) There is a different procedure for notifying a decision adopted as a result of summary proceedings, according to the norms of the Civil Procedure Code and of the Arbitration Procedure Code. (2) It is concluded that the dependence of the beginning of the period for filing an application for drawing up a reasoned decision on the day of placement of the operative part of the decision or on the day of its adoption significantly complicates the timely implementation of such a right. A different construction will be justified and practically convenient: fixing in the law a single moment of the beginning of the period for an appeal against a decision - from the moment a copy of the operative part is delivered (irrespective of the application for drawing up a reasoned decision). (3) If the deadline for filing an application for the preparation of a reasoned decision is missed, the issue of its restoration should be resolved only if the deadline for filing an appeal has not been missed. If the deadline for filing an appeal is missed, then a reasoned decision on the case should be made only if the specified deadline is restored.
Recommendations are offered on the possible improvement of procedural rules on summary proceedings. In particular, the issue of increasing the period for applying for a reasoned decision was raised. It is proposed that the start time for filing an application for the preparation of a reasoned decision be determined from the day a copy of the decision is handed over to the persons participating in the case, or the decision is posted on the court's website.

Conclusions. The identified problems call into question the merits of the summary procedure, show in practice its difficult and complicated order. The existing model of summary proceedings needs to be significantly detailed in order to increase the guarantees of judicial protection.

1. Introduction.

High statistical indicators eloquently evidence the active use of summary proceedings in practice. In 2020, the arbitration courts tried 1509290 cases, of which almost one third- 557 926 cases were under Chapter 29 of the Arbitration Procedure Code of the Russian Federation, and during the first half of 2021 the number was 270 626 of 797 786. In 2020, the general jurisdiction courts tried 20 773 356 cases of which 190 626 under Chapter 21.1 of the Civil Procedure Code of the Russian Federation, whereas during the first half of 2021 the number was 102235 of 13 573 332 [1] cases.

The provisions regulating summary proceedings are enshrined in the Arbitration Procedure Code of the Russian Federation and in the Civil Procedure Code of the Russian Federation, and are predominantly identical. It is rightly noted that the rules of legal regulation of summary proceedings show a tendency towards their unification [1, 2, 3, 4] interpenetration of the norms of civil and arbitration procedural legislation [5]. Common is the "minimalism of organizational-legal and procedural-legal means" [6]. However, despite the positive effects of the well-known benefits of summary proceedings because of the exemption of courts from certain obligations [7], the procedural risks of the parties increase [8, 9]. It is obvious that summary proceedings imply a lower level of procedural guarantees of the right to judicial protection. A special form of the trial, called summary proceedings, should not turn into a "purely formalist one" [10]. According to the apt remark of L.A. Terekhova, when summary proceedings are used... the "insurance" against incorrect conclusions on the merits of the case should be the procedure for its verification [11]. The right to appeal against the decisions made in summary proceedings is directly related to the exercise of the right to judicial protection and is its integral element. Therefore, the issues of appellate review of such decisions are of great practical importance.

According to V.M. Sherstyuk, proceedings in the court of first instance and proceedings on the revision of judicial acts, including appeals, are integral subsystems of civil procedure law and are categories of the same entity [12]. That is why the simplification of the procedure in the court of first instance naturally entails a simplification of the procedure for considering an appeal in the court of second instance. E.S. Smagina, criticizes the "all-instance nature" of establishing simplified procedures in civil proceedings [13]. S.I. Knyazkin also believes that summary proceedings in the court of first instance should not automatically entail a simplified procedure for checking judicial acts [14]. There is absolutely no doubt that simplification and acceleration should facilitate access to justice rather than the other way round [2]. To this end, the provisions of the procedural legislation determining the procedure for calculating the time limits for appealing against the decisions made in summary proceedings will be critically evaluated.

2. Notification of the persons taking part in the case of the decision made in summary proceedings.

Since the entry into force of Federal Laws 45-FZ and 47-FZ dated 02.03.2016, a uniform approach has been introduced at the legislative level to establish the possibility of making an unmotivated decision based on the results of summary proceedings under the norms of the Arbitration Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation. Decisions in such cases are made immediately after the trial by signing of only the operative part by the judge. However, the norms of the Arbitration Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation establish different rules for notifying the persons taking part in the case about the decision made in summary proceedings. Thus, under Part 1, Article 229 of the Arbitration Procedure Code of the Russian Federation the operative part of the decision made on the results of the trial shall be posted under the

[1] Official statistics available on the website of the Judicial Department of the Supreme Court of the Russian Federation. http://cdep.ru/ (date of access 15.03.2022).

[2] Sakhnova T.V. shares this viewpoint. See Sakhnova T.V. «Incomplete» Court Procedures in Modern Civil Procedure. Vestnik grazhdanskogo protsessa = Herald of civil procedure. 2021. no 4. pp. 27–49. (In Russ.). [15].

established procedure in the information and telecommunication network "Internet" no later than the day after the day of its making. Then, by virtue of Part 1, Article 232.4 of the Civil Procedure Code of the Russian Federation, the decision is sent to the persons taking part in the case no later than the next day after the day it is made, and is also posted under the established procedure in the information and telecommunication network "Internet". L.V. Osipova believes that the establishment of different legal regimes regarding informing the persons taking part in the case about the decision made cannot be recognized as a justified one [16]. Sharing this opinion, it seems expedient to unify the provisions of the procedural codes, indicating in the norms of the Arbitration Code of the Russian Federation the obligation of the court to send a copy of the operative part of the court decision to the persons taking part in the case. Now the arbitrazh court sends a copy of only a reasoned decision drawn up at the request of the person taking part in the case (Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation).

Within the meaning of Part 4, Article 229 of the Arbitration Procedure Code of the Russian Federation and Part 8, Article 232.4 of the Civil Procedure Code of the Russian Federation, both a truncated decision made by signing only the operative part and a "classical" reasoned decision can be appealed. Meanwhile, the procedural legislation does not make the right to appeal dependent on the existence of a reasoned decision of the court based on the results of summary proceedings[3]. The same as the submission of an application for a reasoned decision does not oblige the person taking part in the case to appeal the judicial act. The procedure for applying to the court of appeal stipulates the need to attach the copy of the contested decision to an appeal (Clause 1, Part 4, Article 260 of the Arbitration Procedure Code of the Russian Federation). However, a copy of the decision made by the arbitrazh court by signing the operative part is not sent to the persons taking part in the case. The court rarely "turns a blind eye" to this and based on Article 263 of the Arbitration Procedure Code of the Russian Federation suspends the appeal, and then based on Clause5, Part 1, Article 264 of the Arbitration Procedure Code of the Russian Federation returns it. Such an approach is hardly consistent with the objectives of arbitration proceedings.

3. Determination of the date of decision making in summary proceedings.

The date of the decision making should be determined differently, depending on whether it was drawn up in full. This follows from Part 4, Article 229 of the Arbitration Procedure Code of the Russian Federation, according to which "the decision of the arbitrazh court of first instance based on the results of summary proceedings may be appealed to the arbitrazh court of appeal within a period not exceeding 15 days from the date of its making, and in the case of drawing up a reasoned decision of the arbitrazh court - from the date of making the decision in full." Under Part 2, Article 176 of the Arbitration Procedure Code of the Russian Federation, the date of drawing up the decision in full is considered being the date of its making. This is not about the decision made in full but about its drawing up in full. After all, in full, a decision made in summary proceedings is drawn up only at the request of a person taking part in the case. Clause 35, Resolution 10 of the Plenum of the Supreme Court of the Russian Federation states that "the date of issuance and signing by the court of the operative part of the decision shall be considered the date of the decision making." Such an explanation does not determine which day is the day of the decision in case the reasoning is drawn up.

Meanwhile, it follows from Part 8, Article 232.4 of the Civil Procedure Code of the Russian Federation that legislators separate the days of decision making for the case when the decision is made only in the form of an operative part or when it is made in full. It is indicated that "the decision on the results of summary proceedings may be appealed within 15 days from the date of its making, and in case of drawing up a reasoned decision of the court on the application of the persons taking part in the case or their representatives - from the date of decision making in the final form." The wording of the provisions of the Civil Procedure Code of the Russian Federation for determining the decision-

[3] Decree of the Judicial Chamber for Economic Disputes of the Supreme Court of the Russian Federation of 09.10.2017 № 305-ЭС17-8639.

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making date seems more successful, since it makes it possible to determine specifically the moment from which the term for filing an appeal is calculated. This approach is shown in the Resolution 12 of the Plenum of the Supreme Court of the Russian Federation dated 30.06.2020 "On the application of the Arbitration Procedure Code of the Russian Federation in the trials in the arbitrazh courts of appeal" in relation to court decisions made by arbitrazh courts. The term for filing an appeal is calculated from the date of drawing up by the court of the first instance of the judicial act in full or from the date of signing by the judge of the operative part of the decision made in summary proceedings (Clause 12). Consequently, the provisions of Part 4, Article 229 of the Arbitration Procedure Code of the Russian Federation need to be unified with similar provisions of Part 8, Article 232.4 of the Civil Procedure Code of the Russian Federation.

4. Determination of the start of the term for applying for the preparation of a reasoned decision.

Under Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation, the application may be filed within 5 days from the date of posting the decision made in summary proceedings, under the established procedure in the information and telecommunication network "Internet". In its turn, Part 3, Article 232.4 of the Civil Procedure Code of the Russian Federation establishes that such an application can be filed within 5 days after signing of the operative part of the court's decision.

The dependence of the start of the term for applying for the preparation of a reasoned decision on the day of posting the operative part of the decision or on the day of its making significantly complicates the timely implementation of such a right. Summary proceedings imply making the decision in the form of an operative part out of court (Part 5, Article 228 of the Arbitration Procedure Code of the Russian Federation and Part 5, Article 232.3 of the Civil Procedure Code of the Russian Federation). The concerned persons learn about the decision when they have a real opportunity to get access to it, after the actual placement of the operative part of the decision on the court's website on the Internet, or when receiving it by mail. It is with this event that the beginning of the calculation of the term for applying for the preparation of the decision in full should be associated. The existing approach to the determination of the beginning of the calculation of the term creates obstacles for the concerned persons to appeal the decision. This is because a 5-day period is clearly insufficient to implement the right for which it is provided. According to Yu.A. Timofeev, "a situation is artificially created when persons taking part in the case are forced to apply for drawing up a reasoned decision even before familiarizing themselves with the operative part of the decision or to file an unmotivated (brief) appeal within fifteen days which completely neutralizes the effect of accelerating the proceedings, which was laid down by the legislators in the procedural structure under consideration" [17, p. 24].

To solve this problem, it is necessary as a minimum to increase the term for applying for the preparation of a reasoned decision in order to avoid the cases of its omission. At the same time, in order to change the established practice, it is advisable to approach the solution of the problem by determining a different moment for the start of the term for applying for drawing up a reasoned decision, to determine it as the moment of serving a copy of the decision to the persons taking part in the case, or as the moment of posting the decision on the court's website. It is interesting to note that the Arbitrazh Court of the Ural District back in 2016 in its recommendations already indicated such a beginning of the term [4]. Based on Clause 9.5 of the Rules on Proceedings in the Arbitrazh Courts of the Russian Federation (the first, appellate and cassation instances), approved by the Resolution 100 of the Plenum of the Supreme Arbitrazh Court of the Russian Federation of 25.12.2013, "the term established by Clause 2, Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation, for applying for a reasoned decision of the arbitrazh court, by virtue of Part 4, Article 113 of the Arbitration Procedure Code of the Russian Federation, begins to flow the day after the calendar date of placement of the judicial act in the information resource "File cabinet of arbitration

[4] Clause 5 of the Recommendations of the working group on the discussion of issues arising in the practice of application of the Arbitration Procedure Code by the Arbitrazh Court of the Ural District dated 11.07.2016 № 3/2016 (http://fasuo.arbitr.ru/node/15031).

cases".

5. Drawing up a reasoned decision.

The above problem is exacerbated by the fact that it is not possible to apply for a reasoned decision in advance, for example, by including it in the statement of claim or in a withdrawal [18]. Moreover, Clause 41 in the Resolution 10 of the Plenum of the Supreme Court of the Russian Federation states: "the application for the drawing up of a reasoned decision filed before the court issued the operative part of the decision (for example, contained in the statement's text of claim or defence) does not entail the obligation of the court to draw up a reasoned decision (Part 3, Article 232.4 of the Civil Procedure Code of the Russian Federation and Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation)." Some authors reasonably ask whether the person taking part in the case should then duplicate his statement on the drawing up of a reasoned decision [19]. The answer is more likely be positive, since within the meaning of Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation and Part 3, Article 232.4 of the Civil Procedure Code, the application can be filed only after the court has issued an operative part. If a concerned person wants to get a reasoned decision, he needs to apply to the court with a separate application. The presence of a reasoned decision will provide an opportunity to draw up the full text of the appeal and "argue with the motives of the court" [20]. Meanwhile, the law does not prohibit filing the appeal only on the operative part of the decision. Such a situation is possible in case of missing the term for applying for preparing a reasoned decision without valid reasons, but before the expiration of the term for appeal. The arbitration court and the court of general jurisdiction will be obliged to draw up a decision in full (Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation and Part 2, Article 232.4 of the Civil Procedure Code of the Russian Federation).

6. Restoration of the term for applying for the preparation of a reasoned decision.

Clause 40 in the Resolution 10 of the Plenum of the Supreme Court of the Russian Federation states that the term for applying for a reasoned decision missed for a good reason can be restored by the court at the request of the person taking part in the trial in the manner prescribed by Article 112 of the Civil Procedure Code of the Russian Federation and Article 117 of the Arbitration Procedure Code of the Russian Federation. In the event of the request for a reasoned decision when a term was missed and the application for the restoration of this term, the court assesses the reasons and either satisfies the request for the restoration of the term and draws up a reasoned decision, or refuses to restore the procedural period and returns the application.

It is interesting that before the Federal Law No. 451-FZ dated 28.11.2018 was passed, the rules of the Arbitration Procedure Code of the Russian Federation provided for the obligation of the arbitration court to draw up a reasoned decision only on the application of the person taking part in the case. In the absence of a corresponding application, the decision made by signing the operative part was subject to appeal. Until the adoption in 2017 of the Resolution 10of the Plenum of the Supreme Court of the Russian Federation, the question of the possibility of restoring the term provided for in Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation remained open. In several cases, the courts stated that the 5-day period for applying for preparing a reasoned decision is preclusive and cannot be restored, since its restoration and preparing a reasoned decision after the expiration of the specified period will automatically mean an extension of the period for the entry into force of the decision, which will cause the violation of the procedural rights of persons taking part in the case [21, 22]. The same opinion was supported in the legal literature of the [23]. Later, considering the provisions of Clause 39, Resolution 10 of the Plenum, in practice there were cases when, upon receipt of applications for preparing a reasoned decision with a missed term and in the absence of a petition for its restoration, the courts drew up reasoned decisions on their own initiative. Currently, uniformity has been achieved on this issue, and Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation, following Part 2, Article 232.4 of the Civil Procedure Code of the Russian Federation, provides for the obligation of the arbitration court to draw up a reasoned decision in the event of appeal.

Under the conditions of a short period for applying for drawing up a reasoned decision, there

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are a lot of unnecessary court proceedings to consider complaints about the refusal to restore the missed term for filing such an application. If the party, regardless of applying for the drawing up of the full text of the decision, retains the right to file an appeal within the term established by law, then as correctly I. Prikhodko thinks it becomes incomprehensible why to create an artificial caseload on courts, related to the wrangling over whether the term for applying has been missed for valid or insufficient reasons, and the subsequent appeal against the decisions not to restore the term if the summary proceedings are intended to reduce it [18]. Therefore, it is advisable to supplement the existing explanations of the Plenum of the Supreme Court of the Russian Federation that in case of missing the term for applying for the drawing up of a reasoned decision, the question of its restoration is resolved only if the deadline for submitting an appeal is not missed. If such a term is missed, a reasoned decision is made only if it is restored.

7. The date of decision making in summary proceedings.

At the moment, the law does not record the obligation of the court to establish a specific date for the consideration of the application. Considering the shortened time limits for applying for a reasoned decision, as well as for appealing a court decision, as E.B. Makeeva correctly notes, in the period from expiration of the deadlines established by the court for the submission of evidence, until expiration of the two-month term for consideration of the case, the parties to the dispute have to monitor the official website of the court daily to get information about the court's decision on the case [24]. D.A. Fedyaev notes that in practice this leads to uncertainty as to the date when the decision will be made [25]. The only limitation is a general two-month term for the consideration of the case, specified in Part 2, Article 226 of the Arbitration Procedure Code of the Russian Federation. There is no such rule in the Civil Procedure Code of the Russian Federation. According to Clause 35, Resolution 10 of the Plenum of the Supreme Court of the Russian Federation, the decision in the case considered in summary proceedings is made by the court before the expiration of the two-month period. The specified period is simultaneously the term for deciding (Clauses 21, 35 of the Resolution), a decision in summary proceedings must be made before its expiration.

The substantiated proposal of E.B. Makeeva, as well as D.D. Kurenova is to record the court's obligation when accepting an application to indicate a specific date for the court's consideration of the declared demands [24, 26]. Such a date will serve as a guide for the parties and facilitate the fulfillment of the obligation to comply with the deadline for an application to draw up the decision in full.

8. The term for filing an appeal against a decision made in summary proceedings.

The specified period is a shortened one and comprises 15 days (Part 4, Article 229 of the Arbitration Procedure Code of the Russian Federation, Part 8, Article 232.4 of the Civil Procedure Code of the Russian Federation). The beginning of the term for filing an appeal, according to I.V. Reshetnikova, "is of a floating character" [27]. N.A Baturina notes that this is because when determining the date of the beginning of the 15-day period, it is necessary to consider whether the persons taking part in the case or their representatives applied for a reasoned decision [28]. Thus, we can formulate two options for determining the start of the term for appeal: 1) in the case of drawing up a reasoned court decision, a 15-day period for applying to the court with an appeal begins to flow from the date of the decision in final form (Part 4, Article 229 of the Arbitration Procedure Code of the Russian Federation, Part 8, Article 232.4 of the Civil Procedure Code of the Russian Federation); 2) if such an application has not been received, then the term for appealing the judicial act begins to be calculated from the date of the decision.

The traditional approach to summary proceedings as a sped up procedure for considering cases [29, p. 133; 30] practice easily calls into question when analyzing the procedure for calculating the 15-day period for an appeal. The fact is that you can apply for a reasoned decision within 5 days or from signing its operative part (according to the rules of the Civil Procedure Code of the Russian Federation), or from posting the decision in the information and telecommunication network "Internet" (according to the norms of the Arbitration Procedure Code of the Russian Federation). The term for the drawing up of the reasoned part of the decision in arbitration courts is 5 days, and in the

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courts of general jurisdiction from entry into force of Federal Law 451 - increased from 5 to 10 days. In addition, in Part 3, Article 113 of the Arbitration Procedure Code of the Russian Federation and in Part 3, Article 107 of the Civil Procedure Code of the Russian Federation, a provision is fixed that non-working days shall not be included in the procedural time limits calculated in days. By simple mathematical operations, when adding the above terms, more than a month may pass from the moment of drawing up the operative part of the decision made in summary proceedings until the decision comes into force. The situation may worsen even more if, in the event of missing the deadline for applying to prepare a reasoned court decision, the concerned person will use the right to restore it. It should not be ruled out that the parties may intentionally postpone the start of the period for filing an appeal by applying to the court with an application for a reasoned decision, which will inevitably lead to a delay in the consideration of the appeal.

It is possible to solve the problem by refusing to determine the moment of the beginning of the term for filing an appeal, depending on whether the persons taking part in the case applied for the drawing up of a reasoned decision or not. A different construction will be practically convenient: to fix in the law a unified moment for the beginning of the term for appealing the decision from the moment of service of a copy of the operative part, regardless of the application for the drawing up of a reasoned decision.

Otherwise, the possibility of appealing of only the operative part of the decision actually refutes the significance of the 5-day period for applying for the drawing up of a reasoned decision. Moreover, the applicant is not required to give explanations about the reasons for not applying for such a statement. The provisions of Part 2, Article 229 of the Arbitration Procedure Code of the Russian Federation and Part 2, Article 232.4 of the Civil Procedure Code show that the subject of appeal proceedings can only be a reasoned decision of the court. Even if the person taking part in the case did not apply for the drawing up of the full text of the decision, and immediately filed an appeal, the court must give reasons for its conclusions.

9. Conclusion.

When analyzing the procedure for calculating the terms of appeal against the decisions made in summary proceedings, we identified several problems that cast doubt on its clarity, accessibility, and the existence of common principles for civil and arbitration procedural legislation. Several identified problems undermine the merits of summary procedure, show in practice its rather complex and complicated nature. The mass use of summary proceedings inevitably assumes its effective legal regulation in order to achieve the tasks that were set by the legislators when it was introduced into all procedural codes. The current model of summary proceedings is far from being perfect and needs considerable detail in order to provide a solid basis for enforcement and to enhance the guarantees of judicial protection.

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