

## REQUIREMENTS FOR COURT RULINGS IN THE LIGHT OF GUARANTEES OF THE RIGHT TO A FAIR TRIAL

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The subject of the study. The legislator does not establish a list of requirements that the rulings of the court of first instance must meet. The article analyzes the requirements for the rulings of the court of first instance in civil proceedings, in comparison with the requirements for court decisions based on domestic procedural legislation and scientific literature. The purpose of the article is to confirm that the main requirements for court rulings are legality, validity, motivation, and enforceability.

The research methodology includes the formal-logical method, analysis, synthesis, logical-legal method.

Main results. An analysis of domestic legislation and scientific literature led to the conclusion that, based on the requirements that court rulings must meet, the legislator has not correctly defined a list of definitions that must be substantiated, motivated and subject to appeal separately from the final judicial act. The category of protocol definitions should be rather exclusive. Such determinations must be made if it is not required to state the motives for the decision and if it does not affect the essence of the final judicial act.

Conclusions. Court rulings must meet the above requirements by analogy with court decisions. The issues raised in this article have not only theoretical, but also practical meaning in relation to civil procedural law in the Russian Federation. The practical problem is that at the moment the legislator has not correctly defined the list of definitions that must be substantiated, motivated and subject to appeal separately from the final judicial act. Court rulings in civil proceedings subject to appeal must meet the requirements of legality, validity, motivation, and enforceability. Contrary to this, in practice the opposite situation often occurs. The category of protocol definitions should be rather exclusive. Such determinations must be made if it is not required to state the motives for the decision and if it does not affect the essence of the final judicial act. Otherwise, this will lead to a violation of the fundamental right to a fair trial and a restriction of a person's access to justice.

## 1. Introduction

The domestic legislator does not establish a list of requirements that court decisions must meet, in contrast, for example, to the requirements of legality and validity for decisions (Article 195 of the Code of Civil Procedure<sup>1</sup>). Based on the literal interpretation of what is stated in Art. 225 of the Code of Civil Procedure of the Russian Federation requirements for the content of the determination, we can conclude that the legislator imposes requirements of legality, motivation, and validity on the determination of the court of first instance.

According to a number of authors, court decisions are made with the aim of resolving issues that arise during the consideration of a case and determining the procedure for resolving them [1, p.1]. Judicial rulings reflect the administrative activities of the court [2, p. 219].

Creating a definition of definition, L.A. Pakhomova names legality, validity, motivation and enforceability among the main requirements that the ruling of the first instance court must meet [3 – p.12]. However, the court decision, as the final judicial act in civil proceedings, must meet the same requirements. It is therefore necessary to distinguish between those general requirements that apply to all judicial acts and those requirements that relate exclusively to definitions.

Among the general requirements for judicial acts as procedural documents, the following are characteristic: 1) detailed regulation of the issuance procedure; 2) detailed regulation of form and content; 3) special procedure for verification and cancellation; 4) entry into force; 5) special order of execution; 6) transboundary action [4 – p.7].

The literature notes that the universality of the institution of judicial acts is due to at least two factors. Firstly, logically, judicial acts are adopted according to the same rules: the court, when making decisions, analyzes the initial information (premises) and comes to a conclusion (conclusion).

Secondly, in all procedural branches the functions of judicial acts are the same. Judicial acts answer official and main questions so that the parties to the case and other interested parties understand the essence of a particular court decision [5, p. 122].

Failure to comply with both the judgment and determination requirements will result in a violation of the fundamental right to a fair trial.

The right to a fair trial is one of the fundamental rights of humans and citizens; it is provided for in a number of documents at the international and national level, but, undoubtedly, the main role in the implementation of this right has long been played by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, a party to which the Russian Federation was until 2022 [6, P. 297]. It is necessary to proceed from the fact that in order to achieve the goal of a fair trial, the court's decisions must meet the requirements of legality, validity and motivation, and these requirements must completely coincide with the similar requirements for the decision. As for enforceability, there will be significant differences between the decision and the definition: in a decision, enforceability has both substantive and procedural legal components. The enforceability of a determination as an interim judicial act is always of exclusively procedural content, since it serves the implementation of a specific procedural action.

## 2. Methodology

The following methods were used in the work: formal-logical, analysis, synthesis, logical-legal.

## 3. Requirement for the legality of court rulings

The requirement of legality has been developed in relation to judicial decisions. T.V. Sakhnova expresses the following opinion regarding the requirement for the legality of a court decision: a) strict adherence to the procedural form; b) correct application of substantive and procedural law; c) the presence of court conclusions about the rights and obligations of the parties [7, p. 484].

Some scholars say that a decision is legal when it is made in strict compliance with the rules of procedural law and in full compliance with the rules of substantive law that are applicable to a given legal

<sup>1</sup> Civil Procedure Code of the Russian Federation of November 14, 2002 No. 138.CL RF. 2002. No. 46. Art. 4532.

relationship, or is based on the precise application in certain cases of an analogy of law or an analogy of law (Article 1, Part 3 of Article 11 of the Code of Civil Procedure of the Russian Federation) [8, p. 168].

This approach repeats the position of the highest judicial body expressed in paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated December 19, 2003 No. 23 "On a judicial decision": a decision is legal in the case when it is made in strict compliance with the norms of procedural law and in full compliance with the norms of substantive law that are subject to application to a given legal relationship, or is based on the application, in necessary cases, of an analogy of law or an analogy of law (part 1 of article 1, part 3 of article 11 of the Code of Civil Procedure of the Russian Federation). According to paragraph 4 of the Resolution, since by virtue of Part 4 of Article 198 of the Code of Civil Procedure of the Russian Federation, the court decision must indicate the law that guided the court, it is necessary to indicate in the reasoning part the substantive law applied by the court to these legal relations, and the procedural rules that guided the court.

It appears that the requirement of legality also applies to the rulings of the trial court. This is confirmed, in particular, by the practice of the European Court of Human Rights. When analyzing the texts of the ECtHR Decisions and Rulings concerning the requirements for judicial acts, a reservation should be made. The European Court of Human Rights in most cases uses the term "decision" in its acts. However, the term "decision" is used by the Court in the broad sense of the word, covering both interim and final judicial acts, within all procedural branches of national legislation. It makes sense to focus on the practice of the ECHR as a supranational international judicial body on the issue of requirements for judicial acts. One of the rights established by the Convention for the Protection of Human Rights and Fundamental Freedoms is the right to a fair trial (Article 6), and the interpretation of this norm is contained in numerous acts of the ECHR. The concept of "legality" is also considered in various aspects: in

connection with the principle of the rule of law<sup>2</sup>; in connection with the principle of legal certainty<sup>3</sup>; in connection with the assessment of the court itself as "created on the basis of law"<sup>4</sup>. It follows from the practice of the ECHR that when administering justice, national courts, when issuing, in particular, rulings, must adhere to the principles of the rule of law, legal certainty, and carry out their activities in strict accordance with the law.

Russian procedural legislation does not consider the principle of legality in such a broad sense. However, the principle of the rule of law applies to court decisions in domestic civil proceedings, but is considered in a narrower sense and consists in the requirement that the procedural form comply with the norms of procedural and substantive law, and correct conclusions about the rights and obligations of the parties.

#### **4. Requirement for the validity of court decisions**

The validity of a court decision means: 1) determining the facts that are important for the consideration and resolution of the case; 2) the court's conclusions are based on the examined evidence that meets the requirements of procedural law [9, p.63]. A number of authors express the position that motivation is a form of validity of a court decision [10, p. 16]. The content of validity "is formed by the correct establishment by the court of all circumstances relevant to the case, based on the study and assessment of the evidence presented" [11, p. 137]. The validity of the court decision illustrates the connection between the evidence presented by the parties and the court's conclusions, reflected in the operative part of the decision [12, p.

<sup>2</sup> Judgment of the European Court of Human Rights of November 12, 2005 in the case "Okuy and Others v. Turkey" (Complaint No. 36220/97). [https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=\(accessed 04/25/2021\).](https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=(accessed 04/25/2021).)

<sup>3</sup> Judgment of the European Court of Human Rights of October 28, 1999 in the case "Brumarescu v. Romania" (Complaint No. 28342/95). [https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=\(date of access: 04/25/2021\).](https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=(date of access: 04/25/2021).)

<sup>4</sup> Judgment of the European Court of Human Rights of December 11, 2006 in the case "Sokurenko and Strygun v. Ukraine" (Complaint No. 29458/04 and 29465/04). [https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=\(accessed 04/25/2021\).](https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=(accessed 04/25/2021).)

112].

According to L.F. Lesnitskaya recognizes a judicial act as unfounded if the court's conclusions about the circumstances of the case raise doubts or do not correspond to reality [13, p. 173].

Some authors consider the unreasonableness of a court decision in a broad sense, in particular, according to V.M. Sherstyuk, the court's decision is unfounded if: 1) the circumstances that are important for the correct consideration and resolution of the case are incorrectly determined; 2) the circumstances established at the court hearing have not been proven; 3) the conclusions of the court of first instance do not correspond to the actual circumstances of the case [14, p.55].

S.V. Zaitsev considers groundlessness in a narrow sense; his position boils down to the following: a judicial act does not meet the requirements of validity if the circumstances relevant to the case are not proven by the parties [15, p. 29].

As we can see, in general, the authors have the same opinions on what constitutes the validity of judicial acts.

The requirements of validity and motivation (which will be discussed later) are, of course, quite closely related to each other. But it is still advisable to distinguish between these concepts, since validity concerns the establishment by the court of the factual side, and motivation implies the court's indication of its own assessment, the reasons for the adoption of the relevant judicial act with references to laws and other normative legal acts.

Interesting in this context is the position of the European Court of Human Rights in the case of "N. v. Belgium" that the guarantees enshrined in paragraph 1 of Article 6 include the need for sufficient justification of judicial acts in order to demonstrate to the parties that their case was actually considered (para. 53).<sup>5</sup>

The requirement of validity is also applied

to the rulings of the court of first instance in civil proceedings. To a greater extent, this applies to definitions prepared in the form of a separate procedural document and having a clear internal structure.

### **5. Requirement for motivation of court rulings**

The topic concerning the motivation of judicial acts is well developed in procedural science [16, p. 166]. The position of some authors is that motivation and legitimacy are phenomena of the same order [17, p.124]. V.A. Ponomarenko considers the motivation of a court decision as a requirement for the court's conclusions on the assessment of evidence and factual circumstances [18]. The judgments of scientists on this issue are based, first of all, on the legal structures of the current legislation, which make it possible to consider the motivation of a court decision as a requirement that relates to the factual side of a court decision and means the compliance of the court's conclusions contained in the decision with the actual circumstances of the case and those available in the case evidence [19, p.214].

The court of first instance is obliged to carefully substantiate the conclusions, since this duty is directly related to the right of the parties to question these conclusions by appealing judicial acts in higher courts [20, p. 155].

The specified reasons (evaluation of evidence and the possibility of appeal) do not apply to most determinations; therefore, the requirement for motivation of determinations should have a different basis. We believe that all definitions without exception include such a feature as the ability to judge by its content the reason for the court's adoption of such a verdict. Therefore, it is necessary to motivate definitions, but this is a special kind of motivation that demonstrates that the arguments have been studied and evaluated.

By going to court and hoping for justice, the interested party hopes to be listened to and heard, to present his arguments to the court, and to convince him that he is right. A unique mechanism of "proportionality" is assumed here - when arguments are presented to the court, and the court, in turn, must accept or refute these arguments with reason. The lack of motivation in the judicial act does not

<sup>5</sup> Judgment of the European Court of Human Rights of November 30, 1987 in the case of "N. v. Belgium" (Complaint No. 8950/80). <https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=> (date of access: 04/25/2021).

allow us to understand on what the court's conclusions are based and whether the court has at least become familiar with the stated position of the party in the case (oral or written) and the evidence presented [21, pp. 385-389]. In addition, not only the applicant, but also society as a whole, needs to understand what the court's conclusions are based on in order to assess the justice of the latter.

Thus, in the case "Velilyaeva v. Russian Federation", the ECHR found a violation of paragraph 1 of Article 6 of the Convention in connection with the violation of the applicant's right to a fair trial in the form in which it follows from law enforcement practice. The violation was as follows. The applicant brought an action before the domestic court for damages. By ruling, the court left the statement of claim without progress, since the applicant did not pay the state fee, and invited her to eliminate the shortcomings. Since by the same ruling the court rejected the applicant's request for a deferred payment, the applicant decided to file a second, more substantiated request (paragraph 20 of the ECHR Ruling). By ruling, the court rejected the repeated petition without considering the applicant's argument about her difficult financial situation. The lack of a reasoned response prevented the applicant from understanding the reasons for this decision in order to properly pursue existing remedies or, where appropriate, comply with the requirements of the trial court (para. 21). Other courts to which the applicant appealed also did not substantiate their conclusions, but limited themselves only to a reference to the ruling of the court of first instance. The European Court of Human Rights recalled that the mandatory guarantees of Article 6 of the Convention include the obligation to justify judicial decisions. This should not be understood as requiring a detailed consideration of each argument, since the extent of the obligation to give reasons for the decision may vary depending on the nature of the decision, and other circumstances of the case must also be taken into account (para. 18). The position of the ECHR is also important that the justification for the requirement for a reasoned court decision lies not only in the plaintiff's interest to know that his arguments have been duly taken

into account, but also in the interests of all citizens of a democratic society when supervising the administration of justice (paragraph 19).<sup>6</sup>

The European Court of Human Rights has established case law regarding the requirement for motivation of judicial acts in terms of the right to a fair trial. Thus, in the case of *Suominen v. Finland*, the Court notes that, despite the significant margin of appreciation of national courts, they are obliged to give reasons for their actions. One of the purposes of motivation is to give the parties the right to appeal a judicial act. Moreover, the requirement of motivation is a guarantee of the proper administration of justice. In the present case, the applicant was deprived of the opportunity to exercise her right to a fair trial due to the domestic court's refusal to accept the evidence she submitted. The lack of a reasoned decision also prevented the applicant from effectively appealing the refusal. This is evident from the fact that the appellate court rejected the applicant's request to examine her evidence on the grounds that it should have been presented to the district court and that the applicant had not established that she was not allowed or had the opportunity to do so (paragraph 36 of the judgment). ). The ECHR found a violation of paragraph 1 of Article 6 of the Convention in this case.<sup>7</sup>

In case "Hirvisaari v. Finland", the Court stated that the reasons given in the decision must be such as to enable the parties to effectively exercise any existing right of appeal. The proper administration of justice is a statement by the court of the reasons for the adoption of a particular judicial act. In this case, the judicial act must be concise and stated in the light of the factual

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<sup>6</sup> Ruling of the European Court of Human Rights on complaint No. 3811/17 "Velilyaeva v. Russian Federation" dated October 6, 2020. Review of the practice of interstate bodies for the protection of human rights and fundamental freedoms No. 10 (2020) (prepared by the Supreme Court of the Russian Federation) [Electronic resource]. 2020. Access from the legal reference system "ConsultantPlus".

<sup>7</sup> Judgment of the European Court of Human Rights of July 1, 2003 in the case "Suominen v. Finland" (Complaint No. 37801/97). <https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=> (accessed 04/12/2021).

circumstances of a particular case (clause 30).<sup>8</sup>

So, the requirement for the motivation of both judicial acts in general and the rulings of the court of first instance is to provide the parties with the opportunity to become familiar with the legal position of the court for the purpose of appealing in case of disagreement and confirming for the parties a comprehensive and fair consideration of the case by the court.

#### **6. Requirement for the enforceability of court rulings**

The right granted to a person is declarative if it is not provided with appropriate guarantees [22, p.96]. The issued judicial act must be executed; the procedure for execution and its guarantees are established by law.

In the doctrine at the moment there are three positions regarding the enforceability of judicial acts [23, p.76]. Proponents of the first point of view connect the enforceability of a judicial act with the legal force of a judicial decision, saying that the enforceability of a judicial act is a property of its legal force [24, p.56]. Proponents of the second point of view associate the requirement of enforceability of a judicial act with universal binding [25, p.420]. So, N.B. Zeider pointed out that a judicial act that has entered into legal force becomes generally binding for all subjects, which is its main property [26, p.55]. According to a number of authors, enforceability and universal obligatory nature are directly related to each other [27]. Supporters of the third position say that enforceability is an independent property of any judicial act, which means the ability of the act to be enforced, regulated by procedural legislation [28, p. 32].

Enforceability can be considered in two aspects: the requirement that is presented to the judicial act, and the qualitative state of the court order [29, p.28]. The European Court of Human Rights in the case of *Hornsby v. Greece* noted that the right to enforcement of decisions made by any court is an integral part of the “right to a court”,

along with the right of access to justice. The Court notes that the “right to a court” would be illusory if it remained without a guarantee of execution of court decisions (paragraph 40).<sup>9</sup>

The execution of determinations, despite the fact that this is enforceability of a procedural rather than a substantive nature, is fully subject to these requirements.

#### **7. Conclusions**

The courts make a large number of rulings. At the moment, there is a restriction in the legislation regarding the appeal of rulings, which is associated with the delay in the exercise of the right to appeal judicial acts on a number of intermediate issues [30, p.8].

It seems logical that determinations subject to appeal must meet the requirements of legality, validity, motivation, and enforceability. Based on the stated requirements, at the moment the list of rulings that can be appealed separately from the final judicial act is not legally defined correctly.

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<sup>8</sup> Judgment of the European Court of Human Rights of December 25, 2001 in the case “*Hirvisaari v. Finland*” (Complaint No. 49684/99). <https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=> (date of access: 04/12/2021).

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<sup>9</sup> Judgment of the European Court of Human Rights of April 1, 1998 in the case “*Hornsby v. Greece*”. <https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=> (date of access: 04/25/2021).

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