

APPLICATION OF THE ESTOPPEL RULE IN PROCEDURAL RELATIONS

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The subject. The article reveals the concept of “estoppel” as a mechanism prohibiting the change of position depending on the change of circumstances or the passage of time.

The purpose of the paper is to identify is it possible to use estoppel in procedural relations in Russia.

Methodology. The author uses the methods of the analysis of legal literature as well as the formal-legal interpretation of the Commercial Procedure Code, the Civil Procedure Code of the Russian Federation.

The main results and scope of their application. The development of civil and civil procedural legal relations virtually requires the study and application of the doctrinal and practice rules that are new for Russia, but well-known abroad. Among such is the rule of estoppel. It presents a mechanism that prohibits changing of position depending on the change of circumstances or the passage of time. The rule of estoppel attracts the attention of specialists in both civil and civil procedural law, but, despite having the same name, the rule possesses different qualities in substantive and procedural law. Thus, in procedural relations it is necessary to take into account that the court is a necessary participant of any civil procedural relationship. The actions of the parties in themselves do not give rise to any legal consequences; for they must be allowed (sanctioned) by the court.

The main difficulty concerns not with the application of the norms fixing the institute of estoppel, but with the court’s qualification of the case in fact as an estoppel situation. The court should receive a clear and unambiguous position from the party and fix it. Such a fixation is possible, in particular, in a decision that has entered into legal force. The estoppel by judgment used in these cases differs from other kinds of estoppel in that it prevents parties from challenging the circumstances established in a court decision. It is not connected to the actions of the party, which during the whole process defended the position opposite to that which was ultimately put by the court into the basis of the decision. In the future, a party to a new process may reiterate the same facts and circumstances that it asserted earlier. Thus, her position changes in comparison not with her own previous behavior, but rather with a valid judicial decision, which she must observe.

Conclusions. The Russian legislation contains certain provisions allowing for the use of estoppel rule in procedural relations: these are, for example, rules on procedural agreements and rules concerning validity of a court decision. However, considering the specifics of procedural legal relations and the role of the court within them, and taking into account the procedural rights of the parties, the use of estoppel is only possible with the help of legally established methods for the fixation of the participant’s position and his “changing behavior”.

1. Introduction.

The development of civil and civil procedural legal relations objectively requires the study and application of new rules for Russia, but well-known to foreign doctrine and practice. Among such rules—rule estoppel (estoppel).

Estoppel is a mechanism that prohibits changing a position based on changing circumstances or with the passage of time. Estoppel has many varieties [1, p. 67].

The concept of "estoppel" comes from Anglo-American law, but the term itself originates from the Norman-French "estouper", which can be translated as "stop" or even "plug". The estoppel rule means a prohibition for a person to challenge certain facts or to reinterpret them, if such a person has previously expressed by his words or actions a different, opposite position [2, p. 7].

In the English-Russian legal dictionary, the term "estoppel" is defined as "deprivation of the right of objection" or "deprivation of the right of a party to refer to any facts or challenge them" [3, p. 181]. In the works of Russian authors, this term is used in Russian-language writing as "estoppel", "estopel" or "istopl" [4; 5, p. 186-187; 6, p. 135].

Some authors believe that estoppel is known to Russian law and order [7]. A detailed classification of estoppel species is proposed (based on a review of the estoppel doctrine in different countries) [8, pp. 45-51; 9]. The author points to examples of its application in the judicial practice in civil cases, where the estoppel rule is directly related to the principle of good faith, as well as to the principle of equality of participants in civil relations and freedom of contract. In particular, the Russian courts apply the rule of inadmissibility to raise objections on the basis of previous conduct; the rule on the loss of the right to object is applied [10, pp. 212, 214, 216; 8, pp. 57-58]. The opinion is expressed that the court has the right to use estoppel in any case, when it finds contradictory and inconsistent behavior of the participant of legal relations [11, p. 81-88].

In General, it can be stated that in Russian science and judicial practice, the application of the

estoppel rule is in its initial state of development.

2. Is estoppel possible in procedural relations?

Representatives of the science of civil procedural law, as O. N. Shemeneva points out, are also attracted by the trend associated with the strengthening of the importance of conscientiousness of participants in civil turnover and the application of the estoppel principle to civil legal relations. However, the principle under consideration, despite the same name, has a different manifestation in substantive and procedural law [12, p. 344-345].

So, in procedural relations it is necessary to take into account their subject structure and the fact that the court will be the obligatory subject of any civil procedural legal relationship. The actions of the parties themselves do not generate legal consequences, they must be allowed (authorized) by the court.

Since procedural relations are conditioned by the will of the court, then, as Noted by I. I. Chernykh, the illegality of procedural actions of the party is difficult to determine, and it often arises in connection with procedural violations of the court itself. The parties depend on the court, which should facilitate the lawful exercise of their rights by the parties, to prevent the Commission of "procedural torts" [11, p. 81-88].

In the literature, a more radical point of view is expressed: such a trait of civil procedural legal relations as the achievement of a legal effect from the actions of the parties after their authorization by the court, in General, casts doubt on the appropriateness of the study of the category of estoppel in the science of civil procedural law [12, p. 345].

The examples given in the literature illustrate the peculiarity of the "procedural" estoppel: the adverse consequences of bad faith come mainly not as a result of actions indicating a particular logic of behavior, but as a result of inaction of the party. The only exception is the recognition by the parties of the circumstances of the case and the achievement

of agreements on the circumstances of the case [13, p. 346].

However, I would like to note that the inaction of the parties, followed by procedural sanctions; and the consequences entered into by the parties to the agreements (settlement agreements, agreements on the circumstances of the case) have one common feature: the effects and actions (part 2 of 5 of article 70 APC), and omission (part 2 of article 9 APC) is set by law and include procedural design, fixing the positions of the parties on the issue.

I. I. Chernykh reasonably notes that the main difficulty is connected not with application of the norms fixing estoppel, and with qualification by court of the actual party of business as situation estoppel. The court should receive from the party a clear and unambiguous position and fix it. Meanwhile, the party in the case has the right to act in its own interest, to choose its tactics of behavior in court, so the change of position in developing legal relations is not enough for the application of the estoppel rule [11, p. 81-88].

It appears that procedural law (if you follow his orders) well enough adapted for fixing the positions of the parties, starting with the requirements for claims filed and paid, the rules about change of object or of cause of action etc. at present, Therefore, transitional in fact, when the civil and civil procedural relations only learn the rule action estoppel, it must be applied only in cases, when the consequences of a change in the position of procedural law are already established. Gradual additions and changes of the procedural law will allow to introduce new variants of procedural estoppel into the sphere of civil procedural relations.

3. Estoppel and validity of judgments

In Anglo-American law, estoppel has a fairly broad content: it includes the inadmissibility of challenging statements that were included in the contract and sealed, and facts that the party previously recognized as existing, as well as statements that are contained in pleadings or a court decision [4]. Accordingly, the doctrine distinguishes several varieties of this category:

prohibition, based on a certain previously made statement or assurance of the opposite party in some fact (estoppel by conduct/in pais); prohibition based on the committed act and preventing the person who committed certain actions to refer to the nullity of the transaction underlying it (estoppel by deed); prohibition of the person to give a new interpretation to the circumstances that have been decided by a competent court and for which there is a decision that has entered into force (estoppel by record/per rem judicatam or issue estoppel) [13, p. 169].

For the application of estoppel in procedural relations, as noted above, it is necessary to fix, document the position of the party, which cannot be changed in the future. In this regard, at present it can be stated with certainty that procedural estoppel is applicable in Russian courts in the case of consolidation of facts and legal relations in the judicial act. Confirmation of this conclusion is available in the procedural legislation. The facts and legal relations established by the judicial decision which has entered into force, are not reconsidered and are not established anew in other judicial proceedings; it is impossible and new presentation of identical requirements in court (part 2 of Art. 209 GPK). Such attempts are suppressed by procedural means (paragraph 2 of part 1 of article 134; para. 3 of article 220, article 221 CPC). Thus, it can be noted that in civil proceedings, the effect of the estoppel rule will intersect with the validity of the judgment, with such a legal consequence of the entry into force of the decision as a prejudice.

But in relation to the problem of the legal force of the decision, only one of the types of estoppel is important – estoppel by judgment (or by record), the meaning of which is to prevent, in the presence of a previously rendered final judicial act, the secondary presentation of an identical claim, as well as challenging in another process the provisions formulated and fixed by the court [5, p. 186; 6, p. 135-136]. Here, as can be seen, we are referring to the consequences of the entry into force of the decision, such as exclusivity and prejudice.

Estoppel by judgment does not allow to challenge the facts fixed by the earlier rendered decision. Moreover, we note that the impossibility of challenging the facts and legal relations

established by the effective decision, for persons associated with participation in the case: after the entry into force of the decision, the parties, other persons involved in the case, their successors can not re-declare in court the same claims, on the same basis, as well as challenge in another civil process, the facts and legal relations established by the court (part 2 of article 209 of the CPC). Therefore, in such a case, the court decision obliges the persons involved in the case. Persons who did not take part in the case, initiating proceedings to review the decision, are not bound by this restriction.

In connection with the above, it seems interesting the course of M. Z. Schwartz's reasoning regarding such a basis for reconsideration of the decision on new circumstances as the recognition by the court of the invalidity of the transaction that led to the adoption of an illegal or unjustified court decision in this case (paragraph 2, part 4 of article 392 of the CPC). The author, in relation to the operation of the estoppel rule, raises the question of the very possibility of the parties to apply for review under new circumstances in such a situation, because their position is already fixed by the judicial act and they did not say anything to the court about the invalidity of the transaction [14, p. 95-99].

It seems, however, that it is not quite correct to consider the decision which has entered into legal force as fixing of a position of the persons participating in business. The decision sets out the position of the court in the case and the parties are obliged to obey it. With the position of the parties, at least one of them, what is established in the judgment can not completely coincide. Therefore, this situation is hardly an example of the application of the estoppel rule in its pure form. But, at the same time, at coincidence of a position of the person participating in business, with final conclusions of court, in other process with participation of the same persons the rule estoppel in this part is applicable. Currently, this is one of the few cases of application of procedural estoppel. If the person defended in the process a different position than it found consolidation in the decision, she has the right in the next process to bring the same arguments and is not bound by the

rule of estoppel.

4. Estoppel and res judicata

The sign of the presence of an effective decision allows to distinguish between estoppel and such a phenomenon as res judicata. This feature is mandatory for res judicata and applies to subsequent litigation in an identical case. But estoppel is not rigidly tied to the legal force of the decision (only one of the types of estoppel is associated with it). Moreover, res judicata is concerned with the prohibition to re-raise the same issues, and estoppel, on the contrary, does not allow to change the position arbitrarily [15]. In a broad sense, estoppel relates the inability to change a position to different circumstances, and the presence of a valid decision is only one of many such circumstances.

On the other hand, directly related to the validity of the decision is such a variety of estoppel as estoppel by judgment or issue estoppel. The latter does not allow to challenge what was contained in the earlier decision. It is in this form that estoppel partially intersects with res judicata, since the inability to challenge established facts and legal relations (prejudice) is also part of this category [1, p.67]. In fact, estoppel by judgment differs from other varieties of estoppel in that it prevents the challenge of the circumstances established by the judgment. It is not connected with actions of the party which during all process defended the position opposite that as a result was put by court in a basis of the decision. In the future, a party in a new process may restate the same facts and circumstances that it has previously asserted. Thus, its position changes not in comparison with its own previous behavior, but with the held judicial decision to which it must obey.

Thus, the prerequisite of such a variety of estoppel, as estoppel by judgment, is the entry into force of the decision. Estoppel by judgment, in contrast to res judicata, is more a rule and technique of evidentiary law, allowing an adequate assessment of the facts and circumstances on which a person insists. In this regard, it appears in the retrial of the case in court and is intended for procedural protection [10, p. 215]. In the process

that has begun, a person may use against his opponent other varieties of "estoppel" based on a contract or action to prove his case.

5. Conclusion

Estoppel is a mechanism that prohibits changing the position depending on changes in circumstances or with the passage of time. Estoppel has many varieties, including procedural. In Russian legislation, there are currently provisions that allow the application of the estoppel rule in procedural relations: these are, for example, the rules on procedural agreements and the rules of validity of a court decision.

It is obvious that there is an opportunity to speak on the procedural estoppel. But given the specifics of the legal process and the court's role in considering the rights of the parties, which include the right to change the subject or cause of action, the opportunity to submit additional evidence and Supplement the case, it is possible with legislatively established methods of fixation and the position of the party, and "changing behavior."

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