

## TERMS OF CONSIDERATION AND RESOLUTION OF CIVIL CASES BY GENERAL JURISDICTION COURTS (RUSSIAN EXPERIENCE)

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One of the objectives of modern civil proceedings is consideration and resolution of cases within an appropriate time. According to item 1, article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, judicial proceeding is fair, when, among other things, the right to trial within a reasonable time is ensured. The Committee of Ministers of the Council of Europe has drawn attention to the need for member States of the Council of Europe to take measures aimed at accelerating proceedings. Thus, Recommendation No/R (81) 7 of the Committee of Ministers to member States on measures facilitating access to justice stipulates as follows:

“C. Acceleration

8. All measures should be taken to minimise the time to reach a determination of the issues. To this end steps should be taken to eliminate archaic procedures which fulfil no useful purpose, to ensure that the courts are adequately staffed and they operate efficiently, and to adopt procedures which will enable the court to follow the action from an early stage.

9. Provisions should be made for undisputed or established liquidated claims to ensure that in these matters a final decision is obtained quickly without unnecessary formality, appearances before the court or cost.

10. So that the right of appeal should not be exercised improperly or in order to delay proceedings, particular attention should be given to the possibility of provisional execution of court decisions which might lead to an appeal and to the rate of interest on the judgment sum pending execution”.

Enforcement of conventional rules on fair judicial proceedings is exercised by ECHR. ECHR stated violation of judicial proceedings periods of time by many member States of the Council of Europe. Russia is no exception. In a number of ECHR resolutions, “Kormacheva v. Russia” (2004), “Plaksin v. Russia”(2004) “Marchenko v. Russia”(2006), European court came to the conclusion about violation of the right to fair judicial proceedings by the Russian Federation in conjunction with long terms of consideration and resolution of civil cases.

In 2010 Russia took a number of measures for acceleration of judicial proceedings.

1. The adoption of the federal act of the Russian Federation “On compensation for violation of the right to legal proceedings in reasonable time or the right to execution of judgement in reasonable time” and establishment of the order of consideration and resolution of citizens addresses with claims for just satisfaction for long terms of judicial proceedings in the Russian Federation CCP (since September 15, 2015 this proceedings is regulated by the Code of Administrative Procedure of the Russian Federation).

Claim for just satisfaction for violation of the right to legal proceedings in reasonable time (claim for just satisfaction) may be submitted by interested person within six months from the date of coming into legal force of the last judicial act adopted in a case, which violation is committed in.

Filing of claim before the completion of proceedings is possible if disposition time exceeds three years and interested person has previously lodged an application for consideration of case acceleration as prescribed by the law.

Claim for just satisfaction may be filed to the supreme court of the republic, territorial, regional court, court of the city with federal status, court of the autonomous region, court of the autonomous area, district (naval) military court (court of the second level) or the Supreme Court of the Russian Federation.

Considering claim for just satisfaction the court shall establish facts of violation of the right to legal proceedings in reasonable time, proceeding from arguments stated in the claim, contents of judicial acts resulting from the case, case papers and taking into account the following circumstances:

- 1) legal and factual complexity of the case;
- 2) behavior of the plaintiff and other participants of judicial proceedings;
- 3) sufficiency and efficiency of court or judge operations, performed for the purpose of timely consideration of the case;
- 4) total duration of legal proceedings.

Compensation for violation of the right to legal proceedings in reasonable time is awarded by court in monetary form. The amount of compensation is defined by court proceeding from applicant's claims, facts in the case, which a violation was committed on, duration of violation and importance of its effects for the applicant, and significance of its consequences for the applicant, as well as taking into account the practice of ECHR, amounts of compensations awarded by this court for similar violations.

Compensation for violation of the right to legal proceedings in reasonable time is awarded at the expense of the federal budget.

According to statistical data, in 2014 approximately 900 applications were lodged to the court; 339 claims were considered by the court, 102 claims were settled. In 2015 about 2000 applicants turned to the court; 102 claims were considered and 28 claims were settled.

2. In the same 2010 the Russian Federation CCP was added with regulations on reasonable time of legal proceedings and criteria of its determination, based on ECHR interpretations.

3. The positive role in ensuring consideration and resolution of civil cases in reasonable time was played by new regulation about the address to a court chairman with a motion to accelerate a case consideration. As a general principle, motivated order of the court chairman becomes the result of such an address. The order sets out the term of conducting court session and (or) actions which should be performed for trial acceleration (for example, to check the course of carrying out expert examination, date of getting reply to the court request, existence of the grounds for revival of proceedings). For example, in 2015 2296 motions to accelerate a case consideration were submitted to courts.

4. The compliance with deadlines of judicial proceedings was provided by development of simplified legal proceedings as well. Writ proceedings since 2002 (year of CCP adoption) shows a high demand. In 2014, 2015 writ proceedings cases reached 70–71 % of total number of the cases considered by small claim court.

The number of cases considered in absentia has been growing. In 2014 10, 2 % and in 2015 – 12,1 % of total number of civil cases (or 1 900 000 civil cases) were considered and resolved in absentia.

5. Changes in Russian system of judicial review of civil cases affected total duration of judicial proceeding. As a result of reforming procedures of review instead of three (3) judicial supervisory instances was organized the one (1) – Presidium of the Supreme Court of the Russian Federation.

Appeal proceeding provided an opportunity of reconsideration aimed at rendering of legal and reasonable decision. The Court of Appeal has no power to revoke judgement and to remand the case for a new trial.

In the amended cassation proceeding the mandatory requirement about exhaustion of appellate procedure before resorting to the court of cassation was established. Recommendations of the Committee of Ministers of the Council of Europe concerning the role and function of the third instance court were apprehended, among them are as follows:

“c. Appeals to the third court should be used in particular in cases which merit a third judicial review, for example cases which would develop the law or which would contribute to the uniform interpretation of the law. They might also be limited to appeals where the case concerns a point of law of general public importance. The appellant should be required to state his reasons why the case would contribute to such aims.

f. States which do not admit a system of leave to appeal to the third court or which do not admit the possibility for the third court to reject part of an appeal, could consider introducing such systems aiming at limiting the number of cases meriting a third judicial review. The law could define specific grounds which would enable the third court to limit its examination only to certain aspects of the case, for instance when granting leave to appeal or rejecting, after a summary consideration of the case, some parts of the appeal”.

As a result the judge of cassation court exercises preliminary control of the appeal regarding occurrence of significant breaches of substantive and procedural provisions of law.

6. The held measures were bound to affect terms of consideration and resolution of civil cases.

The system of general jurisdiction courts includes small claim courts, district courts, courts of territorial entities of the RF, the Supreme Court of the Russian Federation and military courts.

The Russian Federation CCP establishes one (1) month for consideration and resolution of civil cases by small claim court and two (2) months (with some exceptions) for consideration and resolution of civil cases by other courts.

In 2013 on the first instance courts considered 12 000 903 civil cases. From them small claim courts heard 9 004 000 cases; district courts considered 3 840 000 cases. In 2014 the total quantity of cases increased by 8 % and reached 13 000 935. From them small claim courts tried 9 629 000 cases, district courts presided 4 184 000 cases. In 2015 the number of civil cases considered by courts increased by 21 % and reached 15 819 942. The tendency of constant growth of number of applications to courts has been observed for the last 20 years and averages 10 %.

Despite the growth of applications to the court, the bulk of cases has been considered in the last 5–6 years within the time limits set by the Russian Federation CCP. Thus, approximately 98% of all civil cases are considered within procedural terms by *small claim courts*. With violation of procedural periods in 2013 62 800 cases (0,7 % of total number of cases terminated by adjudication), in 2014 59 400 cases (0,6 % of total number of cases terminated by adjudication) were tried by small claim courts.

On the average 77 % of civil cases are considered within procedural terms by *district courts*. Statistical data about operation of district courts show that with violation of procedural periods:

- within 3 months in 2013 were considered 393 800 cases or 10,4 % of total number

- (3 840 000) of cases terminated by adjudication. In 2014 – 444 000 cases or 10,7 % from total number 4 184 000 of civil cases;
- more than 3 months up to 1 year in 2013 465 600 cases or 12,3% were considered; and in 2014 – 510 100 cases or 12,3% of total number of civil cases;
- more than 1 years up to 2 years in 2013 13 100 cases or 0,3 % were heard, in 2014 – 11 500 cases or 0,3 % of total number of civil cases were considered;
- more than 2 years up to 3 years in 2013 – 700 cases or 0,02 %, in 2014 – 500 cases or 0,01%;
- over 3 years in 2013 136 cases or 0,004 %, and in 2014 – 112 cases or 0,003 % were considered.

In 2015 the total duration of civil cases handling in *judicial system of the Russian Federation* (i.e. all courts on the first instance) reached: from 1,5 to 3 months – 1 442 484 (~ 9 %); 3 months up to 1 year – 669 591 (~ 4 %); 1 years up to 2 years – 19 649 (~ 0, 1 %); 2 years up to 3 years – 1 766 (~ 0,01 %); over 3 years – 524 (~ 0, 003 %) civil cases.

Data of judicial statistics show constant reduction of quantity of cases considered and resolved with violation of procedural periods.

7. This tendency will be kept. The reason for that is further improvement of the Russian Federation civil procedural legislation.

Since June 1, 2016 the simplified (written) proceedings for a number of category cases is established, for example, on claims up to 100 000 rub (~ €1 400).

Since September 1, 2016 the latest technologies using in civil process becomes more active: complaint, claim, petition, other documents enclosed to the application, judicial notice, decision, order can be prepared in electronic form.

The ideas of legislative rules fixing and order of their application about disclosure of evidence, about the compulsory pre-judicial procedure of mediation on a number of category cases (for example, domestic proceedings), about conciliation procedures are being developed.

These and other measures will allow to guarantee most fully the right to a fair trial, which element is the right to reasonable time of judicial proceedings.

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