Development And Problems of Applying a Class Action

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Abstract

Article 46 of the Constitution of the Russian Federation guarantees everyone judicial protection of their rights and freedoms (The Constitution of the Russian Federation (adopted by popular vote on 12.12.1993). At the present stage of development of the Russian economy, due to the complexity of the developing social relations, new situations of violation of law are taking place. At the same time, the problem of liability for offenses committed by economic entities, in cases where illegal actions violate the interests of a wide range of individuals, remains poorly developed both in science and at the regulatory level.
For quite a long time, Russian legal theorists and practitioners have been discussing the idea of creating a class action institute in Russia. The main advantages of the class action were judicial economy, prevention of conflicting decisions, as well as the possibility of carrying out the most complete and high-quality consideration and resolution of the case. Its use not only protects the private interests of the group members themselves, but also, due to the massive nature of the consequences of violations committed by the defendant, leads to the fact that the case becomes public, public significance (Latysheva et al., 2018).

Keywords: civil procedure; class action; complicity; Anglo-Saxon law, Romano-Germanic law.

1. INTRODUCTION

In the classic version, a class action involves protecting the rights of persons who may not be identified in civil proceedings. This is the meaning of the institution and its key difference from complicity, where there can be an infinitely large number of participants, but they must all be co-authors, i.e., identified. In our procedural codes, before the adoption of the discussed novelties, a different principle was first reproduced, when, in fact, any production with more than five participants was called a group one, and all of them had to be identified before the process began. Data that are no longer valid are more than ambiguous (Tumanov, 2015). Some authors have come to call this approach to group proceedings an original feature of the Russian civil procedure. For example, S. A. Kurochkin writes that "a feature of a class action in Russia is the basic requirement to identify each member of the group..." (Aboznova et al., 2021). However, it is hardly correct to call such a procedure a group production. It is not the same in content. It was more likely to be described as a kind of complicity model than a class action. This legal regulation did not establish any procedural advantages of a class action.

Therefore, in practice, there was a fair question about the appropriateness of such rules. Why do we need a special procedure if it is practically no different from traditional complicity? In fact, such a legal regulation with the name "class action" only discredited the institution of class action, which is successfully applied in the countries of both Anglo-Saxon and Romano-Germanic law.

2. METHODS

The methodological basis of the research is made up of both general scientific and private scientific research methods, among which we can distinguish: analysis, synthesis, generalization, analogy, typology, historical and legal analysis, as well as comparative legal and logical-legal methods.

3. RESULTS AND DISCUSSION

A class action is one of the criteria for separating models of civil procedure systems, a distinctive feature of civil procedure in common law countries (Maleshin, 2010). At the same time, in the modern period, a class action is not only applied in the countries of Anglo-Saxon law, but also actively used in the states of Romano-Germanic law (Abolonin, 2015).

The institute of class action has a long history, which began in the XII century in England in the form of lawsuits for recognition of rights (Kolesov, 2004). Classic group lawsuit is currently considered a rule 23 of the Federal rules of civil procedure of the United States (as amended by amendments in 1966), adopted in 1938, its Essence boils down to the fact that the defendant infringed the rights from many of the plaintiffs, one of them, the most wealthy and interested, is responsible for all costs associated with filing a claim to the protection of all parties, the conduct of litigation, and the court, filing the cases for this class sets the number of group members, adopts a decision to award a certain amount of property indemnity then after deduction of court costs, the amount of the legal fees will be split between all members of the group in proportion to the stated requirements (Abolonin, 2010). In common law countries, this institution is used in various areas of public relations: consumer protection, mass harm to health, abuses in the securities and financial markets, violations of antimonopoly legislation, etc (Silvestri, 2013).

The introduction of the institute of class actions in our country is a positive factor. Traditionally, the authors of Russian codes of procedure have rejected this idea, citing Russia's commitment to the ideals of the Romano-Germanic legal system. However, first of all, it is incorrect to consider the absence of a class action as a "watershed" between continental and Anglo-Saxon law, since its appearance in the United States at the beginning of the last century was due to absolutely subjective reasons and had nothing to do with the specifics of Anglo-Saxon law. This is not a jury trial and not a judicial precedent, which served as the reasons for the formation of the Anglo-Saxon process as an original type. With the same success, a class action could appear not in the United States, but in a country of Romano-German law, without violating the legal system of this country. Secondly, many countries in continental Europe and Latin America have been implementing this institution quite successfully since the end of the last century. Therefore, the defense of the "guardians" of civil proceedings against the "overseas" institute of class actions, which was quite long – since the mid-1990s, had no valid arguments.

What is the indisputable advantage of this institute? A class action allows you to protect the violated rights of not one or several citizens (complicity), but a large number of people or an indefinite circle of people. Is it bad to have such an institution in the arsenal of procedural remedies? We believe that there is not a single serious argument against it. Usually, conservatives, in addition to the ideals of Romano-German law, refer to the allegedly negative experience of the United States, where there are really often abuses on the part of lawyers who initiate group proceedings not for the purpose of actually protecting the rights of victims, but for the purpose of obtaining a success fee. This obvious abuse of the right takes place not only in group proceedings, but also in other areas, and it is hardly correct to assess the effectiveness of the entire institution by this criterion alone. The novelties establish similar rules for group proceedings in civil and arbitration proceedings. A citizen has the right to appeal to the court in defense of the interests of a group of persons if there are conditions concerning the criteria of the group. Such conditions, according to Article 244.20 of the Civil Procedure Code of the Russian Federation, are: 1) a common respondent in relation to each group member; 2) common rights of group members as a single subject of dispute for all; 3) similar factual circumstances of the case based on the subject of the claim; 4) the same method of protecting rights.

A claim can be filed by both citizens and legal entities. In other words, both private and organizational class actions have been implemented. Group members are defined as individuals and organizations that meet the criteria set out in the law and described above, regardless of whether they join the class action claim. Thus, even those individuals who have not yet joined the lawsuit become members. This is a key difference between the established class action model and previous legislation.

The decision on the case is of a prejudicial nature when the court considers another case at the request of a group member who has not previously joined the group. The operative part of the decision should contain conclusions regarding each member of the group.

Despite the generally positive nature of the accepted novels, there are some obvious shortcomings (Benor, 2014).

First, the legislator did not regulate the specifics of the execution of decisions in cases of group proceedings. Obviously, the execution of this category of cases will have specifics. If the claim is satisfied, the following questions arise: who should be considered as the group's representative in enforcement proceedings? Is it only the plaintiff representing or all the members of the group that is claiming? The novels ignore these questions. Therefore, in such cases, the law will have to be applied by analogy. Bearing in mind that joining a class action is permitted prior to the commencement of the judicial debate and that the operative part of the decision must specify the conclusions to be reached on the claims of all group members. All persons who have joined the group should be considered as claimants in the enforcement proceedings.

In fact, the specifics of group proceedings do not apply to the scope of enforcement proceedings. The court must issue writ of execution to each of the group members, which are indicated in the decision. After receiving the writ of execution, they present it to the bailiff service. They may not present them, because this is the subject of their will. Therefore, all group members who have submitted a notice of execution should be considered as claimants. The second option is to try to resolve the issues of transferring the powers of group members in enforcement proceedings to the plaintiff-representative by means of an agreement concluded between them. But such an approach is unlikely, as it is difficult to determine the legal status of such a «single» claimant in enforcement proceedings. The legal basis for a "single" claimant could be a special provision in the law similar to the provisions on the plaintiff-representative, but at the moment there is no such norm.

Secondly, there is a question of collecting the performance fee in case of refusal of voluntary performance. Obviously, a general approach should be applied, but this is practically impossible if there is not one representative on behalf of the group in enforcement proceedings, but many claimants. Therefore, the legislator should follow the second path and grant the plaintiff-representative the appropriate powers in enforcement proceedings, similar to what he has in court proceedings. Otherwise, the presence of a large group of claimants in one enforcement proceeding may paralyze the work of the bailiff. All the advantages of group production, saving time and court costs can be eliminated with this approach.

The institution of a class action introduced in Russia has significant features in comparison with its analogues in other countries of continental law (Waller & Popal, 2015). In most European countries, the use of class actions has various restrictions. For example, in Germany, a class action is only possible in cases involving disputes on the securities market, and since 2018-in the field of consumer protection. It cannot be used in other areas. In France, only organizational class actions are allowed, not in all areas of public relations. In Russia, there are no restrictions on the scope of a class action. A class action is possible in any area: from protecting the environment and consumer rights to protecting the rights of investors and rights in the securities market. The Russian legislator refused to regulate the scope of the class action. Moreover, all three types of class actions are possible in Russia: private, public, and organizational. Therefore, the institute introduced in Russia in 2019 is significantly ahead of its European counterparts, and it can be described as a radical model of a class action for the countries of continental law (Pelenitsyna & Pleshkova, 2020).

4. SUMMARY

Despite the doubts of many processualists that the changes will be invalid, we believe that it is in our country that the institute of class actions has every chance to show its best side and show the greatest effectiveness. One of the distinctive features of the Russian civil procedure is due to the general paternalistic approach of the state in the Soviet period, when social obligations of the state were recognized in the field of not only substantive, but also procedural law (The Constitution of the Russian Federation (adopted by popular vote on 12.12.1993; Latysheva et al., 2018; Tumanov, 2015). The modern Russian civil procedure is also imbued with the idea of a peculiar concern for the procedural rights of the so-called socially unprotected groups of citizens. The ever-increasing activity of the prosecutor, the "love" for the principle of objective truth are examples of such "care". This is a kind of manifestation of the paternalistic principles of the state in the civil process, and it is more common in societies with a collectivist socio-cultural type. The institution of a class action is ideal for the paradigm of this type of civil procedure. Not only a prosecutor or a public authority can now file a claim in defense of socially unprotected groups of persons, but also any applicant who is active in civil proceedings. Therefore, the institution of a class action can be considered, as a guarantee of the social state.

5. CONCLUSIONS

The institution of a class action will be used in our country as the most effective means of protecting the rights of a group of persons: first, it is possible violations by monopolies serving the public: various «water channels» and

other organizations, In this situation, a class action is more effective than a prosecutor's defense of a group of persons, not to mention the institution of complicity; Secondly, it is the defrauded shareholders.
Third, the traditional branches of group production use in Anglo-Saxon countries: construction, environmental, automotive. Violation of building regulations and norms is quite common in our country. They are allowed in the construction of both residential premises and roads, water supply, sewerage, communications and other components of public infrastructure. Cases of man-made disasters as a result of obsolescence of urban and industrial infrastructure occur frequently in recent years. Disputes related to the "recall" of not only foreign cars, but also Russian manufacturers. All of these are potential areas for applying a class action in Russia. The threat of using a class action can lead to qualitative improvements in these areas, increased competitiveness and rapid economic development of the country. These facts indicate the potential demand for group legal proceedings in Russia.

The novelties adopted in 2019 set completely new rules. Of course, it is important to discuss the details and individual provisions that may not be perfectly spelled out in the law, but the main thing is that, finally, the institution of a classic class action has appeared in our country. The key wording concerns the definition of the group's composition: "group members are defined as citizens and organizations that meet the set of conditions specified in Part one of this Article, regardless of whether they join the requirement to protect the rights and interests of a group of persons" (Article 244.20 of the Civil Procedure Code of the Russian Federation, Article 225.10 of the Agribusiness Code of the Russian Federation). It is this phrase that indicates the end of a rather long period (since the mid-1990s) of absolute rejection of a class action by the domestic legal system and the introduction of this institution in its classical sense in Russia.

ACKNOWLEDGEMENTS

This paper has been supported by the Kazan Federal University Strategic Academic Leadership Program.

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