
To The Issue of Differentiating the Preservation of the Legitimate Interests and Rights of A Group of Individuals

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Abstract

The Russian civilized procedure doesn't remain still and is totally subjected to inclinations toward transnationalization and internationalization, harmonization and unification, and also inclinations toward convergence of 2 kinds of procedures: adversarial and investigative. The growth of the system of class action is a manifestation of those tendencies.

Until recently, the Russian civilized process was built mainly on a model based on a dispute between one creditor (plaintiff) and one debtor (defendant). Meanwhile, sometimes hundreds and thousands of people are involved in legal conflicts, and the actions of the defendant can violate the rights of both an indefinite circle of people and a fairly large, personified group.

Recently, it has been clearly seen that the legislator, within the framework of the civil process, is following the path of developing the institution for protecting the legitimate interests and rights of a group of individuals. First, the institute of class actions appeared in 2009 in the Arbitration Procedure Code of Russia. And although many scientists criticized quite a large number of provisions of this institute, nevertheless it was generally called historical and even sensational. A class action as a remedy was also incorporated in the CAS of Russia.

Since Oct. 2019, Federal Law Number 191-FZ of 18.07.2019 came into force, which made class actions in civil proceedings in arbitration courts and courts of general jurisdiction a reality.

In fact, the Civil Procedure Code of Russia has included a separate Chapter 22.3. "Consideration of cases on the preservation of the legitimate interests and rights of a group of people", which regulates not only the specifics of filing a class action, but also the specifics of preparing the case and its direct consideration.

Keywords: definitely-class action, indefinite-class action, complicity.

Introduction

A class action is the mere means to submit a dispute to the court about the rights of multiple persons if they are violated or if there is abuse on the part of only one defendant.

The history of a class action in the Russian Federation is quite controversial. Depending on the applicant, there are public (the applicant is a public authority), organizational [1] (the applicant is a public organization) and private (the applicant is a citizen or legal entity) class actions [2]. There are also certain (a large group of defendants can be identified) and indefinite class actions [3].

An organizational class action, or application of a public organization in defense of a particular group of people, appeared in our country with the adoption of the Law of Russia Number 2300-1 dated Feb. 7th, 1992 "On Consumer Rights Protection", Article 45 of which allows an organization to make a claim defending an indefinite circle of consumers.

A public class action in the domestic legislation is represented by a statement of the prosecutor in defense of the freedoms, rights, and legitimate benefits of residents, an indefinite circle of people (Article 45 of the Civil Procedure Code of the Russian Federation).

There was no private class action in Russia prior to the adoption of the discussed novelties, although the discussion about this has been going on for quite a long time, since the mid-1990s. For the first time, a legislative initiative to introduce the institute of private class action in Russia was expressed by V. V. Yarkov and I. V. Reshetnikova in 1996, when they sent to the working group on the development of the CPC relevant proposals and directly draft amendments to the Code, consisting of six articles regulating in detail the procedure for group proceedings. In the Memorandum dated October 28, 1996 "additions to the draft code of Civil procedure of the Russian Federation with the aim of establishing procedural order of consideration of cases on the protection of an indefinite number of persons," the authors as follows described the benefits of the class action: "the Court proceeds from the beginning of procedural economy, when people get rid of the need to treat separate private law claims in court, the court gets rid of the need to consider a lot (as experience shows – and hundreds, and thousands) of cases of identical character" [4].

Methods

The methodology of the study comprises private and general scientific research approaches, among which we can distinguish:

Analysis, synthesis, generalization, analogy, typology, logical and legal methods.

The general scientific dialectical method of research was also used in this work, thanks to which it was possible to gradually trace the development and consolidation of the class action novel. Using different approaches facilitated comprehensively studying the specifics of the claim form for preserving the legitimate interests and rights of a group of individuals as a whole, as well as certain features of its implementation.

Results and Discussion

A new sort of lawsuits emerges in Russian civil proceedings – class actions that previously existed in arbitration proceedings and administrative proceedings (Article 42 of the CAS RF).

Definite-class actions are legitimized in domestic civil proceedings from October 1, 2019, that is, from the moment of entry into force of Chapter 22.3 of the Civil Procedure Code of the Russian Federation, which sets out the specifics of their consideration. This type of lawsuits has become widespread in the countries of the Anglo-Saxon legal system [5]. In Russia, the development and implementation of class actions in civil proceedings, developed by V. V. Yarkov [6] and G. O. Abolonin [7].

Definite class actions are similar to indefinite class actions in that it is impossible or difficult to determine the personal composition of this group at the time of filing a claim, thus they differ from procedural complicity. However, unlike indefinite class actions, by the time a decision is made on a definite class action, the composition of the group has already been specified (other persons from this group identified during the preparation of the case for trial have the opportunity to join the claim). In case of satisfaction of the claim, the beneficiary is not the group as a whole, as in the case of satisfaction of a claim in defense of an indefinite circle of persons, but each of its members who joined the claim, who receives their own, personal benefit, specific material compensation, which brings certain class actions closer to procedural complicity [8].

A claim to preserve the rights and legitimate interests of group members may be brought by a group member if: there is a common respondent. all group members utilize the same approach of preserving their rights. the dispute subject is the prevalent or similar legitimate interests and rights of group members on the basis of alike factual conditions.

Consideration of a case under the rules of Chapter 22.3 of the Civil Procedure Code of Russia is allowed if at least 20 people who are members of the group have joined the requirements of the initiator of the claim at the time of applying to the court. Other members of the group can join the stated requirements before the start of legal arguments (Article 244.20). Depending on the order in which the group member confirms their claim to the respondent, two models differ: "ability to enter" and "ability to exit" ("Opt-in" and "Opt-out", respectively). If the "Opt-out" model assumes that all people meeting the group's conditions and standards are automatically distinguished as the group members, then the "Opt-in" model means that potential members of the group should demonstrate their willingness to join the group.

In Russia, the "Opt-in" model is established, which is less radical, but correct when testing an institution that had no analogues in the domestic legal system before. There are several ways to file an application for joining a class action. First, directly to the court. If the filing is carried out before the court accepts the statement of claim, the application may be submitted to one of the original applicants, who attach these applications for joining the statement of claim. The third option of joining is to fill out a special electronic form on the website of the court or in the state automated system "Justice".

Main procedural features of specific class actions: filing a claim at the defendant's address (Part 4 of

Article 30 of the Civil Procedure Code of Russia);

the presence in the law of additional requirements to the statement of claim (Article 244.21 of the Civil Procedure Code of Russia);

the person conducting the case in the interests of the group has additional rights and obligations (Article 244.22);

mandatory publication in the mass media of a proposal to join the claim (Article 244.26 of the Civil Procedure Code of Russia);

mandatory preliminary court session (Part 8 of Article 244.26); whether a valid court decision issued on the group's claim has the property of prejudice in a case on the same subject, in relation to the same defendant, initiated on the claim of a group member who did not take part in the process of the group's claim (Part 2 of Article 244.28 of the Civil Procedure Code of the Russian Federation).

Besides, the procedural legislation establishes a rule according to which proceedings on claims of persons who have not joined a class action are suspended until the court decision on a class action comes into force.

The need to introduce such claims is caused by situations that often arise in which judicial preservation of the benefits of a sufficiently large group of people affected by the actions of the defendant is required, for example, consumers, including consumers of housing and communal services, participants in shared construction, etc. The introduction of definite class actions in civil proceedings not only corresponds to the principle of procedural economy, but also makes professional representation in claims for recovery of small amounts more profitable and accessible, which allows plaintiffs to more effectively act in court against the defendant, who in such cases, as a rule, has greater economic opportunities than each of the plaintiffs individually.

Summary

We think it is theoretically more correct to refer to class actions as definite class actions. It is assumed that such a name, which emphasizes the certainty of the personal composition of the group, will clearly distinguish this type of claim from claims in defense of an indefinite circle of persons, which, as we believe, in the conditions of the existing legal regulation, it is logical to call indefinite-group.

Conclusions

Until recently, none of the Russian regulatory acts provided for the full possibility of procedural preservation of the property interests of a large group of individuals, numbering in their ranks from several hundred to hundreds of thousands of citizens or more. Now the institution of class actions is fixed in the Civil Procedure Code of Russia in Chapter 22.3 under the title "Consideration of cases on the preservation of the legitimate interests and rights of a group of people". However, the first breakthrough document in this area were of the APC in 2009 it was introduced Chapter 28.2 "Consideration of cases on the preservation of the legitimate interests and rights of people". St. 225.10 APK of Russia, regulating the right to appeal to the arbitration court to protect the legitimate interests and rights of individuals, since 2009, has repeatedly adjusted; the latest amendments made by the Legislative branch on 1 October 2019, along with the changes of other procedural acts, determined the unification procedure codes, and the formation of a single idea from the perspective of the process and the ways to protect the interests of the group. These changes in the legislation reflect a general trend – an increase in the level of information openness between the parties.

Acknowledgements

The current study was supported by the Kazan Federal University Strategic Academic Leadership Program.

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