
Procedural Legal Order and Consequences of Termination of Proceedings in The Form of Leaving a Claim Without Consideration in Civil Cases in Courts of General Jurisdiction

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Abstract

In law, the end of the proceedings is a stage of the proceedings. According to the civil procedure law, this phase of the proceedings is realized when the court has completed all its procedures and actions and is ready to issue a final verdict. According to this article, after announcing the end of the proceedings, if possible, the court will make a decision in the same session and announce it to the litigants. Otherwise, he will compose and announce the vote within one week at most. As a result, the proceedings end if the issuance of a final decision does not require any other proceedings or actions, but the results of the previous proceedings and proceedings of the court are also specified and available in the file. Procedural legislation provides one of the possibilities to terminate proceedings by leaving a claim/application/complaint (hereinafter referred to as "application") without consideration. Such possibility is foreseen in cases when there are no conditions for resolution of dispute on merits and there are no grounds to stop proceeding on case, as it is not excluded the possibility to continue proceeding on dispute. Grounds for leaving an application without consideration are stipulated in article 222 of the Code of Civil Procedure of the Russian Federation (hereinafter - CPC) [1]. The article considers the form of completing proceedings without resolving it on the merits, i.e., without making a court decision, by leaving a statement without consideration. The order, grounds, consequences of the termination of court proceedings by leaving the application without consideration are studied. Procedural-legal and substantive-legal consequences of leaving the application without consideration were considered. The problems of legal regulation and law enforcement practice have been revealed.

Keywords: Law; application; determination; civil procedure; court of general jurisdiction; judicial practice; court expenses; limitation of actions; appeal; private complaint; notification; persons involved in the case; plaintiff; defendant; court of the first instance.

Introduction

In the scientific literature the analysis of termination of court proceedings by leaving a statement of claim without consideration is carried out either in the context of the procedure of court proceedings as a whole [4,6,8], or peculiarities of consideration of certain classes of common cases [5], or with regards to the technique of computation of constraint periods [7].

Administering on leaving an application without thought is given by the court as a different demonstration recorded as a hard copy and should consent to the necessities laid out by Part 20 of the Common Methodology Code. In the content of the determination in addition to the information established by article. 225 of the CPC,

the court shall indicate the ways to eliminate the circumstances listed in Art. 222 of the CPC that hinder the consideration of the case and serve as grounds for leaving the claim without consideration. This provision is an important addition to the guarantees of equality of parties in civil proceedings and a real possibility for the parties to exercise their procedural rights. According to the CPC, the court must specify to which jurisdictional body it is necessary to apply for a preliminary resolution of a dispute, the terms of such application, who has the right to be a representative of an incapacitated person and to file a claim on his behalf, how the claim should be drawn up, etc.

The court must also explain the consequences of leaving an application without consideration for the persons involved in the case.

In the operative part of the ruling on leaving an action without consideration, the court may resolve issues on the distribution of court costs and the refund of the paid state fee, if the basis for the ruling is Paragraph 2 of Article 222 of the CCP. 2 of Article 222 of the Code of Civil Procedure. This provision is of particular importance since the court proceedings in the case are terminated by the issuance of this ruling.

At the same time Art. 223 of the CPC leave unspecified the procedure for informing the interested parties in the process about the outcome of the civil case, in which they are parties. Art fills this gap. 227 of the CPC according to which copies of the court ruling on leaving the application without consideration are sent to the persons involved in the case if they did not appear at the court hearing not later than three days from the date of the court ruling.

However, neither Article 223, nor Article 227 of the CPC specify the method of sending. Part 1 of Article 227 of the CPC specifies only the form - "shall be sent on paper" - of the sent decision.

Within the meaning, in this case it is correct to apply by analogy the norm of Article 236 of the CPC on sending an absentee decision to the plaintiff and the defendant by a letter with the notification of receipt. This construction is supplemented by the Order of the Ministry of Communications of Russia from 31.07.2014 № 234 "On approval of the Rules of postal services" (hereinafter - the Rules of postal services) [2], in addition to which by the Order of FSUE "Russian Post" from 07.03. 2019 № 98-p "On approval of the Procedure for acceptance and delivery of internal registered mail" [3] contains the definition of "mail with notification of receipt (simple/ordered/electronic) - registered mail, at the submission of which the sender instructs the postal operator to inform him or the person he specifies, when and to whom the mail is delivered".

So, the decision to leave an application without consideration is sent to the persons involved in the case, if they were not present at the court session in which the decision was made, by mail of the category "Court" with notification of receipt no later than three days from the date of the decision.

Methods

A review article is a type of article that reviews the background of a scientific topic. In review articles, the results presented in scientific writings about a specific topic are summarized and evaluated. This type of article may examine anything, it is designed to summarize, analyze and evaluate information that has already been published. In such articles, experimental and new findings are rarely reported. Review articles have a well-defined narrative, are usually critical, and should provide theoretical and emerging interpretations. The important role of review articles is to guide original scientific writings. For this reason, it is essential that the citations provided are accurate and complete. The particularity of the point prompted the utilization of formal lawful and relative legitimate strategies for the exploration. Consequently, the formal lawful technique was utilized in deciding the strategic parts of the foundation under study. The similar lawful strategy was utilized in the examination of government regulation.

The exact premise of the review was essentially comprised of regulating lawful demonstrations of the Russian League, as well as logical investigations of Russian researchers.results and discussion

The essential difference between abandonment of an application without consideration and termination of proceedings on a case, along with the bases of application of procedural procedures is expressed in the legal consequences of application of these institutions.

Legal consequences of leaving an application without consideration is expressed both in procedural and substantive legal consequences.

The procedural-legal consequences may include:

1. The possibility of re-appealing to the same defendant, about the same subject and on the same grounds or resumption of proceedings on the case.

Leaving an application without consideration does not prevent an interested person from reapplying to the court with an application in the general order after elimination of the circumstances that served as the basis for leaving the application without consideration. Termination of proceedings on the case prevents a person from reapplying to court on a dispute between the same parties, about the same subject and on the same grounds.

In this case, a decision that has entered into legal force on leaving a claim without consideration, on the grounds provided for in paragraphs 2-6 of the CPC, will not serve as an obstructive fact, and such a decision is overcome by a repeated appeal to court in the general order.

2. The possibility to reopen the case only on the grounds stipulated by paragraphs 7 and 8 of Article 222 of the CPC. 7 and 8 of Article 222 of the CPC.

The plaintiff or defendant has the right to petition the court to set aside the ruling to leave an action without consideration, if it was made on the grounds specified in par. 7 and 8 of Article 222 of the Code of Civil Procedure. The Court is not empowered to raise this issue on its own. The parties must, however, state in the petition the validity of the reasons for missing the court hearing, provide evidence to support these allegations, and confirm the impossibility of notifying the court of this at the time of the missed court hearing.

In this case, it should be borne in mind that the possibility of applying to the court of first instance with a petition to repeal the ruling to leave an application without consideration is not limited by any procedural term. At the same time, there is no legal mechanism of the procedural order of consideration of such a petition (for example, the term of consideration and resolution of the petition, participation of the parties) [8, p. 284].

Applied petitions are resolved by the court in the general order, about which the persons involved in the case are notified. Based on the results of the consideration of received motions the court may cancel the earlier ruling on leaving an application without consideration if it recognizes the reasons for the failure to appear of the party as valid. Otherwise, the court refuses to grant the applications. The court's ruling denying such petition may be appealed by filing a private complaint to a higher court.

Thus, an appeal of a ruling to leave an application without consideration is possible in general order in the appeal instance in accordance with the current procedural legislation, since this ruling prevents the movement of the case.

The CPC speaks about two ways to cancel a ruling on leaving an application without consideration: 1) by filing a petition to the court that issued the ruling on leaving an application without consideration, by the persons who did not appear at the court session; 2) by filing a private complaint to the court of appeal instance.

At the same time in law enforcement practice, the courts have difficulties in resolving the issue of how to use both methods.

For example, the question has arisen about the possibility for a defendant who has appeared to file directly a private complaint against the ruling on leaving an application without consideration in case of repeated failure to appear of a plaintiff.

The following case can serve as an example:

GSC "L" filed a lawsuit against G., B. on the recognition of the interest-free loan agreement as unconcluded.

By an order of the district court on June 23, 2010 the statement of claim of GSC "L" was left without consideration in connection with a failure to appear in court on a secondary call of the plaintiff's representative, duly notified of the time and place of the court hearing, who has not requested to hear the case in his absence.

Ruling of the District Court on June 28, 2010 left unchanged the definition of the Judicial Board for Civil Cases of the Sverdlovsk Regional Court on August 12, 2010, private complaints are returned to the applicants in connection with the wrong choice of procedure for appealing against the decision to leave the statement of claim without consideration.

However, the Presidium of the Sverdlovsk Regional Court reversed the determinations of the courts of the first and second instances due to a material violation of procedural law, stating the following: the court leaves an application without consideration, provided that the defendant does not request consideration of the case on the merits.

The requirement of part 3 of Article 223 of the Civil Procedure Code. The Russian Federation Code of Civil Procedure, Art. 223, Part 3, a special, different from cassation, procedure for appealing against decisions to leave claims without consideration on grounds of failure to appear in court by a defendant or plaintiff on a secondary summons may not affect the rights of other persons who appeared in court to appeal directly to the cassation court against the decision of the trial court, since the above rule provides for this procedure only by parties who failed to appear in court.

A respondent whose assertion of case was left without thought on the grounds of the offended party's optional inability to show up in court, demanding that the case be viewed as on the merits, can't fall back on the methodology laid out by Article 223 § 3 of the Russian League Code of Common Technique. In this way, to deny him of the chance of a cassation allure would be an infringement of the right to legal security.

Thus, from the analysis of the provisions of part 3 of article 223, part 1 of article 371 of the Code of Civil Procedure of the Russian Federation follows that persons who have appeared in the court hearing and requesting to consider the case on the merits in the absence of the plaintiff, have the right to appeal against the court decision to leave the claim without consideration in general order to the cassation court, if the decision prevents the further movement of the case [14].

Consequently, the appearance of the defendant insisting on consideration and resolution of the dispute on the merits, if the plaintiff fails to appear, does not deprive the defendant of the opportunity to file a private complaint against the ruling on leaving an application without consideration.

In those cases where the courts of higher instance found that a private complaint is filed against the rulings to leave an application without consideration without a petition to the court that issued this ruling, then such private complaints remain without consideration already in the court of higher instance [15].

It should be borne in mind that the possibility of appeal to the court of first instance with a petition to repeal the ruling to leave an application without consideration is not limited by any procedural time limit [16], and the deadline for a private complaint is set in article 332 of the CPC and is, as a general rule, 15 days.

Analysis of law-enforcement practice gives examples when courts link the possibility of accepting an application of a party to repeal the ruling on leaving an application without consideration with the fact of compliance with procedural deadlines [17].

Unlimited period of application to the court may lead to situations like the following:

On April 6, 2001 Ostankinskiy District Court of Moscow issued a ruling to leave without consideration in connection with the secondary failure of the parties to appear in the court session.

On June 16, 2005 the plaintiff applied to the court for annulment of the above determination of April 6, 2001, which by decision of the Ostankinskiy District Court of Moscow dated July 18, 2005, was returned to the plaintiff without consideration due to expiry of the term for appeal to the court (over 4 years) and absence of application for its restoration.

On April 18, 2014, the plaintiff filed an application in which he requested that the ruling of April 6, 2001, be annulled, that the case be considered on the merits and that the procedural term he had missed be restored. By ruling of May 7, 2014 the court issued the above ruling, which on the grounds of a private complaint B. asks to cancel.

In this case it can be stated that paragraph 4 of clause 18 of Resolution No 13 of the RF Supreme Court Plenum "On application of the Russian Federation Code of Civil Procedure during consideration and resolution of cases in the court of first instance" of 26 June 2008 does not achieve its purpose in terms of clarification - "...it shall be taken into account that the opportunity to apply to the court of first instance with a request to set aside a determination to leave an application without consideration is not limited by any procedural deadline".

If the decision to leave an application without consideration is cancelled by a higher court, then the case is transferred for reconsideration to the court of the first instance on the merits [13].

Here it is appropriate to pay attention to the following. What actually is the object of appeal to the court of appeal? On the one hand, from the content of part 2 of article 223 of the CPC it appears that the object of appeal is the decision of the court of first instance on the rejection of a petition to repeal the ruling on leaving an application without consideration. At the same time in part 3 of Article 332 of the CPC it is a special order of consideration of a private complaint against the decision of the court of first instance exactly about abandonment of the statement of claim without consideration, not about the refusal to satisfy the petition to repeal the ruling to abandon the statement of claim without consideration. At the same time in paragraph 4 of paragraph 18 of Resolution of the Plenum of the Supreme Court of the Russian Federation of 26.06.2008 № 13 "On the application of the rules of the Russian Federation Code of Civil Procedure for consideration and resolution of cases in the court of first instance", it is explained that the definition made in accordance with paragraphs seven and eight of Article 222 of the CPC RF, cannot be challenged in the court of appeal (appeal) instance. Thus, the procedural law is clearly two objects of appeal. Law-enforcement practice proceeds from the fact that in the case of validity of the arguments of a private complaint, the court of appellate instance reverses both determinations of the court of first instance [11].

2. Decision on reimbursement and distribution of court costs.

According to paragraph 1 of article, 88 of the Code of Civil Procedure court costs shall consist of state fees and costs associated with consideration of the case.

In accordance with subparagraph 3 of paragraph 1 of Article 333.40 of the Tax Code of the Russian Federation the plaintiff may reimburse the paid state fee in case of leaving the application without consideration by the Supreme Court of the Russian Federation, the courts of general jurisdiction or arbitration courts.

Neither chapter 7 nor chapter 19 of the CPC has resolved the issue of the distribution of costs between the persons involved in the case, if the proceedings are terminated by leaving the application without consideration.

Here it is necessary to specify at once - reimbursement of court expenses is provided to the party in whose favour the court decision was made (Part 1, Art. 98 and Art. 100 of the CCP). The definition by which the application is left without consideration does not refer to final, i.e. resolving the case on the merits, as for example, on cases of contestation of decisions of arbitration courts, issuing of writs of execution of decisions of arbitration courts, the decisions made in accordance with Chapter 45 of the CCP.

The ruling to leave the application without consideration is more favorable for the defendant than for the plaintiff, and it is quite reasonable that he can raise the question of compensation of court costs incurred in connection with judicial protection.

The court practice has so far developed a mechanism of justification of reimbursement of court expenses to the defendant, if the court left the application without consideration in accordance with paragraphs 7 and 8 of Article 222 of the Civil Procedural Code.

This position is affirmed by the arising legal practice and clarifications of the High Court of the RF [12]. For instance, contained in the reaction to address #1 of the Survey of Regulation and Legal Act of the High Court of the Russian Organization for the main quarter of 2009, endorsed by the Declaration of the Presidium of the High Court of the Russian Alliance of 3 June 2009.

Some courts proceed from the fact that the operation of civil procedural legislation does not provide for the possibility of recovery of court costs in the case of leaving an application without consideration [9], others satisfy applications on the distribution of court costs, even if the application is left without consideration and on the grounds provided for in paragraphs 2-6 of article 222 of the CPC [10].

Thus, there is an obvious gap in the regulation of such a procedural consequence of leaving an application without consideration, as an opportunity for the defendant to recover the incurred court costs from the plaintiff.

Summary

The legal consequences of leaving an action without consideration also relate to substantive legal relations - the running of limitation periods. The issue of limitation periods is not a matter of procedural, but of substantive law. According to item 2 of item 204 of the Civil code of the Russian Federation (further - CC) if the claim is left without consideration, then begun before presentation of the claim term limitation presented and left without consideration the claim is not interrupted and continues to flow in the general order.

However, the legislator, implementing legal regulation of the issue of consequences of leaving an application without consideration, at the junction of substantive and procedural law left this construction incomplete. For example, the question of the moment of resumption of the period of limitation for leaving an application without consideration remains open. This is indicated by the emphasis in paragraph 2, point 2 of Article 204 of the Civil Code, where the resumption of the period of limitation is associated with the entry into force of the judgment, which left the application without consideration.

In addition, cl. 3 Art. 204 of the Civil Code establishes a significant limitation with respect to the plaintiff who contributed by his actions (inaction) to the abandonment of the application without consideration - in this case, when leaving the application without consideration if the unexpired part of the period of limitation is less than six months, it is not extended to six months.

The dispute itself, which prompted the recourse to a judicial form of protection, remains unresolved.

Conclusions

Thus, the analysis of the norms of the current CPC and established on the basis of the application of its norms practice gives reason to speak about the incompleteness of the procedural design of the institute of leaving a statement of claim without consideration. Judicial practice contains not identical approaches to resolving procedural issues, which are not directly regulated in the norms of the CPC and have not been explained in the guidelines of the Plenum of the Supreme Court of the Russian Federation, for example, on the distribution of court costs.

Acknowledgements

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

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