

Svirin Y.A.

DOCTRINE OF CIVIL PROCEDURE RUSSIA

Monograph

SCIENTIFIC WORLD

Riga
2020

UDC 347
BCB 67.404
S24

Author:

Y.A. Svirin, Doctor of legal Sciences, Professor of Department of Civil Procedure Law and Organization of the Bailiff Service of the All-Russian State University of Justice, Academician of the Russian Academy of Natural Sciences, Honorary Lawyer of Russia

Transfer:

R.V. Pekov, post-graduate student of the department of civil law and process of the Academy of Labor and Social Relations

S24 **Svirin, Y.A.** Doctrine of civil procedure Russia : monograph / Y.A. Svirin. — Riga : SCIENTIFIC WORLD, 2020. — 240 c.

ISBN 978-9934-8833-7-8

This monograph is devoted to the study and description of theoretical problems of the science of civil procedure law.

In the monograph the author investigates not only normative prescriptions, but also doctrinal views of Russian processionalists from a historical perspective.

The book is written in English and will certainly be interesting for foreign scientists and students studying foreign civil procedure.

UDC 347
BCB 67.404

ISBN 978-9934-8833-7-8

© Svirin Y.A., 2020
© SIA Biom.lv, 2020

Abbreviations:

CPC - Civil Procedure Code of the Russia.

APC – Arbitration Procedure Code of the Russia.

CAP - Code of Administrative Procedure of the Russia.

FC - Family Code of the Russia.

CC – Civil Code of the Russia.

Table of contents

Abbreviations	3
Table of contents	4
Foreword.....	7
CHAPTER 1 The concept of civil procedural law	9
1.1. Justice and the judiciary	9
1.2. Forms of protection of subjective rights	15
1.3. The concept, subject and method of civil procedural law	23
1.4. Civil procedural law system	25
1.5. Civil procedural form	26
1.6. The concept of civil procedure	28
1.7. <i>Stages of the civil process</i>	31
1.8. Types and brief description of the judicial proceedings	32
CHAPTER 2 Civil procedural law as a branch of law, science and academic discipline	35
2.1. Civil procedure law in the system Russian law	35
2.2. Civil procedural law as a science and academic discipline	38
CHAPTER 3 Sources of civil procedural law	40
3.1. Concept of citizen law process and their types	40
3.2. Action norms of civil procedure legislation.....	49
CHAPTER 4 Principles of civil procedure	52
4.1. Concept and significance of the principles of civil procedure	52
4.2. System Principles of the Civil Procedural Law	56
CHAPTER 5 Civil procedural relationship.....	80
5.1. The concept of civil procedural relationship	80
5.2. Background of civil legal proceedings	84
5.3. Civil procedural capacity	86
5.4. The object of legal proceedings	87
5.5. Content of civil procedural legal relations	88
5.6. Subjects of civil procedural relations	89
CHAPTER 6 Persons involved in the case	92
6.1. The composition of the persons involved in the case	92
6.2. The parties in civil proceedings	94
6.3. Procedural rights and obligations of the parties	97
6.4. Procedural complicity.....	99
6.5. Replacing the wrong side	102

6.6. Civil procedure succession	104
CHAPTER 7 Third Parties in the Civil Proceedings	107
7.1. The Concept and types of third parties.....	107
7.2. Third parties claiming to be independent subject matter requirements.....	109
7.3. Third parties not claiming independent subject matter requirements	111
CHAPTER 8 Prosecutor in the civil procedure	115
8.1. The tasks of the prosecution in civil proceedings	115
8.2. Forms of participation of the prosecutor in civil proceedings	117
8.3. The rights and obligations of the prosecutor as a person involved in the case	121
CHAPTER 9 Participation in civil proceedings government agencies, local governments, organizations and citizens, to protect the rights, freedoms and legitimate interests of others	123
9.1. Background and purpose of participation in the subjects, protecting the interests of others	123
9.2. Procedural forms of participation of subjects of protecting the interests and rights of others	124
CHAPTER 10 Judicial representation institute	131
10.1. The concept of judicial representation	131
10.2. Types of judicial representation	135
10.3. Powers of judicial representatives	140
CHAPTER 11 Competence of courts of law	143
11.1. The concept of the competence of courts of general jurisdiction	143
11.2. Types of judicial competence	149
11.3. Jurisdiction of the court of claims	152
11.4. Competence of the court of general jurisdiction in non-claims cases.....	153
CHAPTER 12 Institute of Jurisdiction.....	155
12.1. The concept of jurisdiction	155
12.2. Types of jurisdiction	156
12.3. Jurisdiction transfer rules	166
CHAPTER 13 Institute of proof in civil procedure	168
13.1. The concept and purpose of legal proof	168
13.2. The concept of forensic proof	171
13.3. Classification of proof	172
13.4. Subject of proof.....	173

13.5. Grounds for exemption from proving	175
13.6. Distribution of duties of proof	178
13.7. The relevance and admissibility of evidence	180
13.8. Evaluation of evidence	182
13.9. Sources of evidence	184
13.10. Securing evidence	198
CHAPTER 14 Claim	200
14.1. The concept and essence of claim proceedings	200
14.2. The concept of claim and a statement of claim, elements of a claim	201
14.3. Types of Claim	205
14.4. Right of claim	208
14.5 Procedural protection of the defendant against the claim	214
14.6. Disposal of remedias	215
14.7. Security for a claim	218
CHARTER 15 Conciliation procedures in the Russian civil process	222
15.1 General provisions on conciliation procedures in Russia	222
15.2 Types of conciliation procedures	227
List of references used.....	236

Foreword

Russian law consists of various branches of law, which are in turn combined into three groups: physical, procedural and executive branches of law.

Civil Procedural Law, along with the arbitration procedural law, administrative proceedings and criminal procedural law has procedural rights of the industry, being the most important element of the Russian legal system. In addition, the civil procedural law is a fundamental and legal science, which studies the procedural form of recovery in the courts violated the substantive law to protect a legitimate interest, or the establishment of a legal fact.

Civil proceedings as an academic discipline is studied in Russian students of all law schools as the main basic discipline. The value of civil procedure is that it sets in motion the substantive law, mediates the process of restoration of the violated rights and legitimate interests of citizens and organizations. This is due to the fact that without the implementation of a mechanism of civil procedure, the substantive rules are often lifeless rules of conduct.

This monograph, prepared Doctor of Law, Professor of the Department of civil process and the organization of the All-Russian Bailiff of Justice State University, Academician of the Russian Academy of Natural Sciences, Honorary Russian lawyer Svirin Yuri Alexandrovich.

Prepared Professor Yu. Svirin monograph is a good example of a logical and sequential study of the doctrine of the Russian civil process.

The monograph is written in English and is primarily intended for foreign readers exploring foreign civil proceedings. Studio in Russia-cients Faculty of Law is also being studied such subject matter as "foreign civil procedure", in which students study the U.S. civil process, the U.K., Germany, France and some other European countries.

German, French procedural law act as a historical source of Russian procedural law, but the latter has its own national characteristics and original features.

The study of foreign proceedings in any country provides a better understanding of domestic procedural institutions, allows to apply the experience of other countries, where any legal institutions have found a more perfect development due to the active development of market relations and technical progress.

Increasing the contact legal systems has led to an increase in the share of public relations with a foreign element. Against the background of the existing differences in national law, subjects entering into a legal

relationship, should be aware of the conditions of their judicial protection of rights and interests outside of their own country.

It seems that the book will be interesting to scientists and students to study law. This book aims to familiarize students and legal scholars of foreign countries with one of the autonomous areas of comparative jurisprudence, which is a comparative study of the rules of civil proceedings in the various legal systems of our time.

Gureev Vladimir Alexandrovich -Doctor of legal Sciences, Professor, Head of Civil Procedural Law and bailiff organization Department All-Russian State University of Justice.

CHAPTER 1

The concept of civil procedural law

1.1. Justice and the judiciary

Legal conflict has arisen in the substantive law, as well as the rights and status of material uncertainties or legal fact, must be overcome by means of the court's judicial acts, the most important of which is the decision. In making the decision, the court thus dispenses justice.

The administration of justice in any country is a necessary attribute of state sovereignty. Therefore, all the decisions of the Russian courts of the Russian Federation makes a name. No other institution, including state other than the court has no authority to administer justice, i.e., to decide the name of the Russian Federation. In addition to the existing system in the country federal and municipal courts in accordance with the provisions of the Federal Law "On arbitration (arbitration)" in Russian arbitration courts and arbitration institutions are also allowed legal conflict (settle disputes) and make decisions, referred to arbitration awards. However, note that the arbitration courts and arbitration institutions are not heard by justice, and carry out arbitration administration. Arbitration, in turn, is the process of how to resolve the dispute by the arbitration court (arbitration institution) with the award is made. Arbitration and the arbitration proceedings are currently synonymous legal categories that should be distinguished from the arbitration process.

Thus, to decide the name of the Russian Federation can only courts acting within the law "On the Judicial System in the Russian Federation", and on the basis of procedural law.

In the Russian Federation justice functions independently from the legislative and executive authorities. Article 118 of the Russian Constitution contains a provision according to which the justice of the Russian Federation only by the court. The trial is carried out by means of criminal, civil, administrative, arbitration and constitutional proceedings.

Unsuccessful confusingly statutory language "arbitration" and "arbitration court" creates a false impression of the unity of those categories as the form and content. Category "Arbitration Court" and "arbitration proceedings" refer to a system of state courts and governed by the Arbitration Procedural Code, while the term "arbitrage" the essence of the activities of the arbitration courts, regulated by the law on arbitration (arbitration).

Of the total number of cases before the courts of general jurisdiction, the majority of cases falls on civil cases. In 2018, the courts of general jurisdiction was considered about 18 million civil and administrative cases that were decided.

Justice is also viewed by some protsessualistov and as a specific function of the state. In the XVIII century French philosopher Alexis de Tocqueville rightly observed that justice meant to "replace the idea of violence right idea.

In ancient times, the Roman jurists were developed the basic principles of justice. As claimed by the Roman lawyers, justice must be free, for nothing is more unjust than the corrupt justice. Justice must be swift, since the delay has the kind of failure. Justice must be complete, i.e. It should not stop halfway.

In 1910 T.M. Yablochkov wrote: "The task of the court - to solve the question of the right, of course, his decision not to remain a dead letter, it can be enforced, but the performance of actions to implement the right is a consequence, but not the content of the court's operations. Not a sword, scales of justice are in the hands of the judge"¹.

Generalizing the above, we note that Justice - is a form of state activity, which consists of consideration and resolution by the court referred to its competence cases, carried out in the established procedural order. Justice at the same time are a function of the state and a particular type of legal activity.

As rightly observes A.A. Mokhov doctrine often are tempted to combine such definitions as "justice" and "judicial proceedings", because we are talking about the same subject - court².

In connection with this very interesting position on this issue expressed the Constitutional Court in its judgment of 15 January 2001 on its review of the provisions of paragraph 2 of Article 1070 of the Civil Code. As pointed out by the Constitutional Court, the provisions of paragraph 2 of Article 1070 of the Civil Code, in its constitutional and legal meaning of the evidence that relates to the implementation of justice, not all legal proceedings, but only that part which takes judicial acts, shall decide the dispute on the merits. Thus, all the other issues that are resolved in the judicial establishment of his co-workers on a daily basis do not apply to a court (for example, work of office staff in civil cases can not be considered justice). In other words justice is narrower concept than trial and should be considered as part of and integrally.

¹Yablochkov T.M. Textbook Russian civil proceedings. Yaroslavl: Book publishing I.K. Hasanov. 1φ910. 36 p.

²Mokhov A.A. Civil proceedings - a form of justice // The rule of law. 2018. № 3. 34 p.

However, in science there are other opinions. For example, the A.V. Tsikhotsky sharing justice and legal proceedings indicates that the subject of justice is only a trial, whereas in the proceedings there are several subjects: the court and other participants in the process³.

Such legal category as justice and the judiciary are not identical to each other, are heterogeneous legal concepts and relate both form and content. As rightly pointed N.I. Bogacheva: "Justice - an important manifestation of the judiciary, but not the only one. The judiciary in addition to justice carries out the constitutional control, control of the legality and validity of decisions and actions of public authorities and local self-government, enforcement of sentences and other judicial acts, explanations cottage on judicial practice, participate in the formation of the judiciary"⁴.

The judiciary is a special kind of state power delegated by the State specially authorized bodies - the courts, implemented specific officials - judges (federal, international). Thus, the carriers of the judiciary can only be the judge.

In accordance with Article 1 of the law "On the Judicial System in the Russian Federation" dated December 31, 1996 - the judiciary is independent and operates independently of the legislative and executive authorities.

In the doctrine there are different opinions about the functions of the judiciary. For example, you can select the following functions:

- a) the resolution of the dispute on the merits;
- b) judicial review of the legality and validity of court acts;
- c) the interpretation of legal norms;
- d) identification of the facts having legal value (for example, the recognition of the deceased);
- e) the restriction of constitutional and other legal capacity of citizens (such as deprivation of legal capacity);
- f) judicial supervision over the decisions of courts.

N.A. Kolokolov justice allocates such functions as: law enforcement, law enforcement, political, ideological, diagnostic, preventive and other functions⁵.

According to V. V. Skitovitch to the functions of the judiciary should be attributed not only to justice, but also jurisdictional control

³Tsikhotsky A.V. Theoretical Problems of effective justice in civil cases. Novosibirsk.: The science. 1997. 76 p.

⁴Law enforcement / textbook edited by R.V. Shagieva. M.: Norma Infra-M. 2015. 109-110 pp.

⁵Kolokolov N.A. The judiciary as a general legal phenomenon: the author's abstract of the dissertation of the doctor of juridical science. Nizhni Novgorod. 2006. 16 p.

(constitutional, administrative), the formation of the judiciary, the management of the judicial practice. However, we can not agree with the distinguished author, as the judiciary is implemented directly in the process (including in the performance of judicial review), therefore the judiciary is not inherent in the function of the formation of the judicial corps.

In any case, A.A. Mokhov rightly observes that the number of judicial functions may vary depending on a variety of economic and political conditions, factors, which operates the judiciary itself, but can be considered indisputable guarding justice function⁶.

The procedure for forming the judicial authority in the Soviet period was significantly different from the existing order. Thus, in accordance with the Regulations on the Judicial System of the RSFSR Central Executive Committee adopted a three-tier system of judicial institutions was formed in 1922. The first link - the people's court which included people's judges and their competence extended to the county or metropolitan area. The second link - the provincial courts, directs all the people's courts in the provinces and administer justice in complicated cases. The third link - The Supreme Court of the RSFSR (the successor of the Supreme Tribunal at the Central Executive Committee).

According to the basics of legislation of the USSR and the Union Republics on the judicial system in the USSR, adopted in 1958, the judges elected to the position of the respective councils and the Congress of Soviets, is an executive body. Thus the model of the judicial system is determined by the state, depending on the stage of historical development and is the result of historical development.

At present, on the basis of the law on the judicial system in the Russian Federation are federal courts and the courts of the Russian Federation. Depending on the subject of the formation of a federal courts include:

1. Russian Constitutional Court.
2. The Supreme Court of Russia.
3. The courts of general jurisdiction: nine appeals courts; five courts of appeal; supreme courts of republics, territorial, regional courts, courts of federal cities, courts of the autonomous region and autonomous regions; district courts.
4. Arbitration courts: courts of arbitration districts, appellate courts, arbitration courts of the Russian Federation.
5. Court for intellectual property rights - the only specialized court in the territory of Russia.
6. Military courts.

⁶Mokhov A.A. Civil proceedings - a form of justice // The rule of law. 2018. N 3. 32 p.

The courts of the Russian Federation include:

1. Constitutional (charter) courts of the Russian Federation.
2. Justices of the Peace.

Based on the analysis of Chapter 7 of the Constitution, we can conclude that the judiciary in the Russian Federation exercised by the Constitutional Court, as well as a system of common and arbitration courts operating in the administrative-territorial formations. However, it should be borne in mind that the Constitutional Court as the highest judicial authority for the protection of the constitutional system of justice in individual cases does not carry out, which corresponds to Article 125 of the Constitution.

Order of Rosstandart on April 26, 2011 N 60-st All-Russia approved classifierbodies of state power and administration. In accordance with the law should distinguish the following groups of federal public authorities: a) the President of the Russian Federation (including the Russian Security Council and the Russian President's Administration);

b) The Federal Assembly of the Russian Federation (including the Federation Council and the State Duma of the Russian Federation);

c) The executive authority of the Russian Federation (RF Government, federal ministries, state committees of the Russian Federation, Russian federal committees, Federal Service of Russia, Federal Agency of Russia, federal oversight Russia, other federal executive bodies, such as the Office of the President of the Russian Federation);

d) The judicial authorities of the Russian Federation (RF Constitutional Court, Supreme Court, the Judicial Department under the Supreme Court of the Russian Federation, the system of federal courts of general jurisdiction, the system of federal arbitration courts of the Russian Federation Prosecutor's Office system, the Investigative Committee of the Russian Federation).

Thus, based on this classifier in addition to the Constitutional Court of the Supreme Court is an independent entity of state power.

Creation of an independent system of arbitration courts in 1992, instead of a pre-existing arbitration, expanded judicial function in civil cases. Currently, arbitration courts and courts of general jurisdiction are independent judicial system in the Russian Federation. The system of arbitration courts of their own competence, they administer justice but to economic disputes or other matters related to business activities (Art. 127 of the Constitution). This constitutional provision is consistent with Article 4 of the Law "On arbitration courts in the Russian Federation", which provides that the arbitration courts administer justice by resolving

economic disputes and other cases referred to their jurisdiction by the Constitution of the Russian Federation, the Federal Law and the Arbitration Procedure Code.

August 7, 2014 the Plenum of the Supreme Court by its decision № 2 approved the Rules of the Supreme Court. In accordance with current regulations, the Supreme Court consists of: Plenum, Presidium Board of Appeals, judicial board on administrative, civil and criminal cases; as well as against decisions on economic disputes in cases of military and disciplinary board. Plenum of the Supreme Court shall have the right to give explanations on issues of judicial practice, to make inquiries to the Constitutional Court. Plenum approves part of the judicial boards, shall elect the Chairman of the Supreme Court panel of judges.

In accordance with current legislation in Russia was created and operates the court for intellectual property rights, which considers disputes related to intellectual property rights, according to the rules established by the arbitration procedure legislation.

It should be emphasized that the structure of the court system of a given state is part of the procedural system and can not be seen and studied in isolation from the process.

In countries judicial structure Romano-German type is quite extensive. Almost all European countries other than the courts of general jurisdiction of separate administrative courts are created. In Germany, there are 5 independent judicial systems: general courts, administrative, financial, labor and social courts. However, the solution to all the specialized courts may be appealed to the Supreme Federal Court of Germany. In France, there are two separate legal systems: general and administrative courts. However, in the system of general courts set up specialized courts (social courts in cases related to the lease of agricultural land). In Portugal, in addition to the general courts, there are family and labor courts. In Cuba, for civil, administrative and labor courts.

The system of courts in common law countries is also quite extensive. For example, in the U.S. federal court system consists of three levels: district courts, courts of appeal and the Supreme Court. The jurisdiction of the federal courts referred the consideration of all matters not within the competence of state courts. Also Claims Court, the Tax Court of acts in the United States. But there are number of cases is small. In some states, there are courts for small claims courts on inheritance and guardianship of minors in cases courts, bankruptcy, family relationships.

It should be noted that in Russia, both among scientists and among practitioners there are judgments about the need to create specialized courts. Some researchers proposed as measures to improve

the judicial system to expand the number of specialized courts and in addition to the court for intellectual property rights to create a court of bankruptcy, according to the area of financial market disputes in corporate conflicts. However, lack of funding the judicial system does not allow to fully implement this proposal.

The doctrine with the 90s of the last century to make judgments about the need to adopt a normative act regulating administrative proceedings. In 2015 it was adopted the Code of Administrative Procedure, however, created special courts were not and cases arising from administrative legal relations are considered by the rules of the Code of Administrative Procedure of courts of general jurisdiction.

According to statistics in Russia has been a steady annual growth of civil cases handled by district courts and, consequently, increase in the load on judges. Unfortunately, this trend significantly increases the time of each case individually and adversely affects the quality of decisions. For comparison, the district courts considered 2,587,050 civil cases in 2002. The average load on judges was 15.2 in the month of the case. And in 2015 the courts considered 4,722,058 civil cases, and the average load was 24.8 cases per month. In 2016, the average load on judges has already reached 28.5 cases per month. This snowballing the load on the Court highlights the issue of optimization of justice in the Russian Federation.

1.2. Forms of protection of subjective rights

In case of violation of the rights of citizens or organizations from other persons, if any threat to the existence of rights in the future, and in the absence of voluntary redress the victim is always the objective need for the use of certain protection measures (ways of protection) in relation to the obliged party.

*Collec protection rights*It is a category of material (regulatory) law. Article 12 of the Civil Code lists the ways to protect the rights, which include: recognition of the right; restore the situation which existed before the violation of rights and suppression of acts infringing or threatening to infringe; recognition of avoidable transaction as invalid and applying the consequences of its invalidity; application of consequences of invalidity of a void transaction; invalidation of an act of a public authority or local government. Law № 302-FZ of December 30, 2012 of the civil code changes, in particular, Article 12, supplemented by a new way of protecting the right: invalidation of the decision of the meeting.

In addition to the remedies, there is also a form of protection of rights, which is a category of procedural law.

Under the form of protection of rights in civil proceedings, as opposed to a method of protecting the rights defined by the law should be understood activities of the competent authorities for the protection of rights is to establish the facts of a civil case, the application of the relevant law, the definition of ways to protect the rights and adjudication. Application to the offender listed in the law to protect the rights of ways can be not one but several forms of protection rights.

Russian legislation establishes various forms of protection of rights, such as: pre-judicial and judicial, public, administrative, executive, notary and other forms of protection of rights, giving priority to the judicial form. The variety of forms of protection of the rights explains the legal tradition, the specifics of rights to be protected, the complexity of restoring the violated rights, etc.

Protection of violated or disputed civil rights in court is carried out by interested persons in accordance with the competence of a court established by the procedural legislation.

The court considered the dispute *on the right*, which this is an individual legal conflict of individuals or organizations. Moreover, the legal conflict can arise not only from civil, but also because of public relations, and in this case it is also a dispute about the law, but only an administrative, rather than subjective. In a dispute, the participants are opposed to each other, but as they are equal, the conflict can not be eliminated and will desire one of the entities. Of course, the conflict can be resolved by joint efforts of the parties in court, and if a compromise is found then later in court.

This form of protection of rights as self-defense, is characterized by the fact that the person concerned has their own take appropriate measures to curb crime (Article 14 CPC). This is the most ancient form of legal protection. It is most simple. However, in self-defense is great risk of misconduct on the part of the defender of the subject, which is not true assessment of the situation or protect the rights, he does not belong, or to apply measures that are not prescribed by law. That is why Article 14 of the Civil Code expressly stipulates that methods of protection should be proportionate to the offense. However, self-defense is legitimate in certain cases provided by law: in the case of self-defense (Article 1066 CC) And emergency (Article 1067 CC). The law also established a kind of self-protection in the form of direct debiting the lender from your bank account the amount of debt the debtor (Sec. 2, Art. 854 CC).

For self-defense is characterized by the fact that human rights action makes the interested party itself. In September 2012, the Plenum of the Supreme Court took an important, in our view the decision № 19

"On application by the courts of the necessary defense and hurting the law during the arrest of the perpetrator." This decision specified certain legal concepts used in the application of self-defense. In particular, it is specified how socially dangerous encroachment, involving violence should be considered dangerous to life and health, what constitutes an immediate threat of violence in order to face, in relation to which you are or are ready to carry an attack, could use self-defense, without fear of exceeding the limits of necessary defense.

Independent form of protection of rights is a pre-trial form, designed to resolve the conflict that occurred prior to going to court. This form is divided into subspecies: claim form, mediative form negotiation.

The essence of the claim form is the joint action of the disputing parties to eliminate conflicts that arise. According to A.A. Vlasov claim form to protect the right is called "settlement of the dispute on the right"⁷. However, it is unlikely such a position of revered author can agree, because all forms of pre-trial rights of the defense have the aim to resolve the conflict without recourse to a court.

Sometimes in the literature there are judgments of the identity claim form and a form of pre-trial rights of the defense. However, this conclusion can hardly be justified, because the claim form is a form of pre-judicial forms of protection of rights.

Claim Form contains provisions regarding the complaint procedure of dispute settlement by 24 February 1992, and in respect of labor disputes by the Labor Code of the Russian Federation. When the claim form, settlement of the disputethe person whose rights are allegedly violated or did in writing shall make its claim to the counterparty with the relevant documents. Counterparty, having considered the application, must at some time or satisfy a claim or send a reasoned refusal. When settlement of the dispute interested persons can exchange telegrams, faxes, letters via the Internet. The leaders of the contending parties and their representatives have the right to meet to develop economically viable and economically appropriate solution.

When considering the labor dispute in the pretrial order involved: the workers concerned, the company's administration and a representative of the trade union organization. At a meeting of the Labor Disputes Commission shall decide the dispute.

The dignity claim form, as a means of legal protection, is the ease and speed.

Required preliminary (non-judicial) procedure for dispute resolution is provided by Article 5, paragraph 101.2 of the Tax Code. In

⁷ Vlasov A.A. Civil proceedings. M. Yurayt. 2003. 21 p.

accordance with this provision of law, before go to court and challenge the tax authority's decision, you must first challenge the tax authority's decision to a higher tax authority.

In addition, in accordance with paragraph 2 of Article 452 of the Civil Code, a mandatory pre-trial procedure for settling disputes provided for in the event of a claim for termination of voluntary insurance of property of citizens of the contract.

Parties to the agreement may, at its discretion, provide in the contract a condition requiring the contracting parties in case of legal conflict before going to court to resolve it in the complaint procedure.

By pre-trial form should also be included and the resolution of a dispute involving a mediator. Mediator - a disinterested person who is specially invited to the disputing parties to work out a certain consensus between the disputing parties. Law on Mediation № 193-FZ entered into force on 1 January 2011. Mediation procedure is carried out with the mutual will of the parties, based on the principles of voluntariness, confidentiality, cooperation and equality of the parties, impartiality and independence of the mediator. This procedure can be applied to disputes arising out of civil relations, including in relation to business and other economic activities; in disputes arising out of work and family relationships, as well as in other cases stipulated by federal laws.

However, the practice of application of the law in Russia has shown its ineffectiveness. Disputing parties rarely resort to the help of a mediator. So, in 2017 the courts considered 17 million civil cases, including through mediation to settle a dispute on 1115 cases, is 0.007 percent, a settlement agreement entered into only 916 cases.

Despite this, the pre-judicial form of dispute settlement is an important part of resolving the dispute without bringing him to trial. The load on the judicial year is increasing annually. Which directly affects the quality of the cases and handed down judgments. Despite the small number of mediation agreements, yet it reduces the load on judges. So in Moscow burden on magistrates per month is approximately 80 civil cases, 3 criminal and 68 administrative cases. The load on the district judges per month is approximately 54 civil cases, criminal 5 and 18 cases of administrative offenses. A similar situation with the load on judges takes place in other legal systems. Therefore, in all countries, such as continental Europe, and the U.S. government to take various measures to promote and stimulate extrajudicial procedures for the settlement of the legal conflict. In these conditions it is only natural that the Russian legislator also taken measures to encourage disputing parties to resolve their legal conflict without resorting to court. So the law № 123-FZ "On the Commissioner on human consumers of financial

services" on June 4, 2018 is provided with a June 1, 2019 a mandatory procedure for appeals to the Court of the financial manager in disputes relating to insurance contracts prior to the presentation to the insurer on the roster, the claim on not exceeding 500 000 rubles. or claim arising out of a breach of the order by the insurer of insurance compensation. Service consumers as a general rule In these conditions it is only natural that the Russian legislator also taken measures to encourage disputing parties to resolve their legal conflict without resorting to court. So the law № 123-FZ "On the Commissioner on human consumers of financial services" on June 4, 2018 is provided with a June 1, 2019 a mandatory procedure for appeals to the Court of the financial manager in disputes relating to insurance contracts prior to the presentation to the insurer on the roster, the claim on not exceeding 500 000 rubles. or claim arising out of a breach of the order by the insurer of insurance compensation. Service consumers as a general rule In these conditions it is only natural that the Russian legislator also taken measures to encourage disputing parties to resolve their legal conflict without resorting to court. So the law № 123-FZ "On the Commissioner on human consumers of financial services" on June 4, 2018 is provided with a June 1, 2019 a mandatory procedure for appeals to the Court of the financial manager in disputes relating to insurance contracts prior to the presentation to the insurer on the roster, the claim on not exceeding 500 000 rubles. or claim arising out of a breach of the order by the insurer of insurance compensation. Service consumers as a general rule So the law № 123-FZ "On the Commissioner on human consumers of financial services" on June 4, 2018 is provided with a June 1, 2019 a mandatory procedure for appeals to the Court of the financial manager in disputes relating to insurance contracts prior to the presentation to the insurer on the roster, the claim on not exceeding 500 000 rubles. or claim arising out of a breach of the order by the insurer of insurance compensation. Service consumers as a general rule So the law № 123-FZ "On the Commissioner on human consumers of financial services" on June 4, 2018 is provided with a June 1, 2019 a mandatory procedure for appeals to the Court of the financial manager in disputes relating to insurance contracts prior to the presentation to the insurer on the roster, the claim on not exceeding 500 000 rubles. or claim arising out of a breach of the order by the insurer of insurance compensation. Service consumers as a general rule obliged to submit the dispute to the financial commissioner. However, even before the referral to the authorized financial must to apply to the insurer. And only then, if the consumer does not receive a response to his application by the insurer or its resulting response is not satisfied, he may submit an appeal to the authorized financial. However, if the insurer

is not included in the register of the Bank of Russia or scroll financial institutions, organize the interaction with the financial authorized on a voluntary basis, the consumer can express their demands in court without a referral by an authorized financial.

October 1, 2019 in the Russian procedural law, the rule according to which the observance of the pre-trial order is binding only if it is stipulated by law, not contract.

Administrative form protecting the right is that in the cases stipulated by law, bodies of state administration or local government can not call the interested parties to the decision to restore the violated right or to eliminate any legal uncertainties.

Thus, the Central Bank of Russian Federation and its affiliates the right to use direct debit the outstanding amount from the bank account of the debtor in carrying out banking supervision. Provisions of the Code of Administrative Offenses defined the competence of more than eighty different organs that have the right to involve both administrative responsibilities of the various entities, and establishes the right of these entities to appeal the actions of officials of the superior official

Code of Administrative Offenses fixed administrative form of protection of rights. In addition to the above-mentioned Code, administrative forms are also regulated and other regulations. For example, the order of the Ministry of Internal Affairs of Russia on August 23, 2017. № 664 "On approval of the Administrative regulation of the Ministry of Internal Affairs of the Russian Federation on the implementation of the state functions of the federal state supervision over the observance of road users Russian legislation in the field of road safety." Paragraphs 316-318 of the Administrative Regulations expressly provided for pre-trial, administrative forms of protection of the violated rights.

Notarial form of protection of rights. In the Russian Federation to protect the rights and legitimate interests of citizens and organizations in accordance with the Constitution and legislation of Russia is entrusted to notaries - specially authorized officers of the Russian Federation on behalf of the perpetrators provided by regulations of notarial acts in the interests of individuals and legal entities.

The activities of notaries, in contrast to the judicial activities, has as its subject only indisputable case. Until 1993 in Russia there is only the state system of notaries - public notaries. February 11, 1993 the Supreme Soviet of the Russian Federation were adopted "Fundamentals of Russian Federation legislation on notaries", which entered into force on 11 March 1993 and radically changed the organizational foundation for the construction of notaries in Russia, to legislate the creation of the

institute of "free" notaries. August 30, 2017 the Russian Federation Ministry of Justice issued Order № 156, which approved the Regulations of the commission notarial acts notaries, sets the amount of information required by the notary for notarial acts and ways of fixing it.

Trial form It is the most common form of protection of rights. Any decision taken in an administrative procedure may be challenged in court (Art. 2, Art. 11 CC), as the Civil Procedure the procedure for consideration and resolution of the dispute is the most perfect form of protection of rights. Trial form has advantages over all other forms of protection of rights. Features judicial forms:

1. Protection by a special state body - the court created only for consideration of the right to dispute.

2. Court resolves the stated requirements on the basis of norms of civil, family, labor and other material rights in the civil or administrative proceedings.

3. Circumstances of the case investigated by civil or forensic procedural administrative forms. Both forms ensure the legality and validity of dispute resolution are standard fastening.

4. The protection is carried out independent and impartial judge.

5. In the proceedings before actively participating parties to the dispute and other interested persons.

Given the versatility of the judicial form of protection of the rights of the Constitutional Court in its decision number 20-P of 11 July 2017 noted that as a universal legal means of state protection of rights and freedoms of man and citizen, the right to judicial protection performs a security-reduction function in relation to all the other constituent rights and freedoms, which is predetermined by the special role of the judiciary and the consequences of articles 18, 118 (part 2), 120 (part 1), 125, 126 and 128 (part 3) of the Constitution.

All combine to increase the efficiency of the judicial recovery procedures violated rights. Consideration of civil cases in courts is carried out in the established procedural form.

Judicial civil procedural form It is defined by rules of civil procedure law, based on the principles of civil procedure law, the stepwise procedure for the consideration and resolution of civil cases, including certain safeguards system. Compliance with the procedural form is a necessary condition for the legitimacy of judicial decisions.

For judicial procedural form is characterized by the following features:

1. Constitutional guarantees, first of all: independence of the judiciary and its subordination only to the law, transparency, the national language of the proceedings and others.

2. The presence of the norms of civil procedure law, which together form the civil procedural form.

3. The court's decision must be based only on facts proved and established by a court of ways provided for by law in court.

4. Those interested in the judgment shall be entitled to participate in the proceedings to protect its interests. The court may not render the decision without hearing and without discussing the arguments of the parties who appeared on the notice of the court at the hearing.

Remedial action to protect violated or disputed right is governed by the civil procedure legislation.

We consider it necessary to allocate another form of protection rights - form the executive. For the first time in the form of an executive protection rights he has in 1924 V.A. Krasnokutsky. In several of his works, V.A. Krasnokutsky substantiate the independence of the judiciary and the executive form of protection of rights. Said author has rightly pointed out that "the right to a judicial decision has a right to demand from the civil protection of the state in the form of a decision. This is a form of protection of rights. Another form of protection of rights is the enforcement of "⁸. However, in science over the next decades, the executive form identified with the judicial form of protection of rights. At the same time, the executive form of protection of the right exercises is not the judiciary, and the executive, in the person of the Federal Bailiff Service of Russia. The executive form of protection of rights takes place when already there is no dispute about the subjective right, but the right to be restored in fact, not nominal, as in judicial form. Before the civil procedural law faces challenges: optimally resolve the dispute about the subjective right to establish legal facts, etc. To the executive the right to face challenges: as soon as possible to perform executive actions and execute measures of enforcement. On the independence of the executive also pointed out form T.M. Yablochkov, who wrote in 1910: «The task of the court - to solve the question of the right, of course, its decision does not remain a dead letter, it must be executed and the commission of actions to implement the right is the investigation, but not the content of the court»⁹. Therefore, the enforcement proceedings should be regarded as the next step pravorealizatsii, followed by civil proceedings.

In addition to these forms, protsessualistov isolated as judicial and non-judicial forms of protection of rights. Originally alternative dispute

⁸Krasnokutsky V.A. Essays on the Civil Procedural Law: the experience of systematization of legislation of the RSFSR and the USSR Judiciary and civil proceedings. Kineshma: Publishing House of the Ivano-Voznesensky gubsoyuza. 1924.

⁹Yablochkov T.M .Textbook Russian civil proceedings. Yaroslavl. Knigoizdat of I.K. Hasanov. 1910.

resolution is most prevalent in the United States. Currently, non-judicial form is also the most in demand in the United States, Britain and Japan. For example, 99% of all disputes related to traffic accidents, are settled in Japan in special centers for the settlement of transport conflict. In the Romano-Germanic law non-judicial forms of dispute resolution are less popular. In our country, there are practically no preconditions for the development of non-judicial forms of protection of rights. The value of legal costs in Russia is small, has a negative impact on the development of non-judicial forms of protection of rights. For example, in the US the legal costs are very large,

1.3. The concept, subject and method of civil procedural law

Civil Procedural Law is one of the branches of Russian law, without which it would violate the organic integrity and unity of the whole legal system. Civil Procedural Law is the totality of civil procedural rules governing the enforcement activities of courts of general jurisdiction for the protection of violated or disputed the subjective rights of citizens, including foreign citizens, persons without citizenship, as well as organizations such as enjoying and not enjoying the rights of legal persons.

During the Soviet period of Russian history, the doctrine of civil procedure law gave too much expansive interpretation. Thus, M.K. Yukov believed that the family of civil procedure law is made up of: the rules of civil proceedings, the rules of notary's activity, the rules of arbitration activity, the rules of arbitration courts and other bodies of public jurisdiction, therefore, the civil procedure law is a fundamental branch of law¹⁰.

Civil procedural rules in a certain way are grouped into institutes and institutions, in turn, form the two branches of law (general and special).

Social and legal value of civil procedural law is determined by the fact that it provides the protection and preservation of civil, family, housing, labor, inheritance, corporate and other rights.

Like any other branch of law, civil procedure law is characterized by the originality of the subject and method of legal regulation, as well as the specifics of civil procedural rules.

The subject of the civil procedural law are public relations arising in the field of civil justice (process) between the court and other participants in the process, by virtue of which such social relations are

¹⁰ Yukov M.K. Theoretical problems of the civil procedure law system (in Russian) / Under edition of V.V. Zaitsev. M. Statute. 2019.173 p.

relations of civil procedure. This is due to the fact that in the field of public relations is unthinkable justice, the pending rules, because they all have the legal form and exist in the form of civil procedural relations. This provision is common to all branches of procedural law.

Origin, development and completion of the procedural relations are determined by the rules of civil procedure law. It is necessary to distinguish the subject of civil proceedings on the subject of civil procedural law. Thus, the subject of civil proceedings as the court for the implementation of justice, flowing to some procedural form are specific civil cases. While the subject of the civil procedural law are the procedural relationship.

The object of the civil procedural law as a branch of law is itself a civil action, ie. e. the activity of the court and other participants.

Method legal regulation of any branch of law is usually defined either as a set of legal means by which the regulation is provided by public relations or as a system of legal regulation techniques that create a specific legal regime in the field of justice.

For civil procedural law method of legal regulation is characterized by two features. First, the emergence of civil process and its development, the transition from one stage to another is always dependent on the will of the interested parties, not the court (judge). Second, binding and conclusive subject of civil procedural legal relationships is the court (judge), which takes the name of the state authoritative legal decision enforceable.

Consequently, in the law of civil procedure used two methods: the imperative and dispositive in which power relations are equally combined with the freedom and equality in the outcome of the case concerned persons.

Imperative method of legal regulation is determined by the fact that all the civil procedural relations are relations of power and subordination. Such relationships form a vertical structure of the links.

Optionality, in contrast, reflects another direction effects of the law in a free implementation of the granted rights, but, of course, within the law. Equality of rights and responsibilities, to guarantee the rights and obligations of the parties - all these features characterize the optionality of the method of civil procedural law.

In legal practice optionality manifested in the fact that the court (judge) shall not be entitled to initiate on its own initiative, a civil case. Such right (right of initiative) granted only interested in the procedural and material sense subjects. In addition, the development process, the transition from one stage to another, the appeal of judicial decisions and their execution also depends only on the will of the specified subjects.

1.4. Civil procedural law system

In the world there are many different social systems. Under the system of social S.E. Krapivensky understands orderly, self-managing the integrity of a variety of different social relations, which is the carrier of the individual and social group in which it is included. social system is a kind of legal system¹¹.

In the theory of State and Law under the legal system to understand the totality of the branches of law. In addition, the D.Y. Maleshin considers it necessary to allocate a separate civil procedural system. As elements of the civil procedure system in the opinion of this author featured four components: a source of law, the right structure of the industry, the practice of, the legal doctrine¹². Most protsessualistov believe that there are two procedural systems: the Anglo-Saxon (classical) and Romano-Germanic (continental). The main source of the classical system of law is a legal precedent. The main source of the Romano-Germanic system is the law. In science, there is a point of view that the statutory system (continental) is preceded by the development of the right case (general) system of law. According to this perspective, the development of the legal system of any country goes through three stages: the custom-precedent-law.

Currently, the two legal systems, according to experts at the University of Ottawa, prevalent in 62% of countries. On the basis of civil law legal systems are built around 90 countries, and based on the common law in 42 countries. However, in the world there are countries with mixed legal systems: Thailand, South Africa, Scotland, Malta, Cyprus, the Philippines, South Korea, Tunisia, Algeria, Indonesia, Kenya and other countries. The type of legal system determines the type of procedural system.

Another common classification of the civil procedural law system is to divide it into the investigative and adversarial processes. For the Roman-German process typical investigative process. And for the Anglo-Saxon law - a controversial process. Such division depends on the role of the court in the process of proof. In the continental system, active role of the court, so it is presumed that the process has investigative features. In contrast, in common law countries - always active side, therefore, the process is adversarial in nature. Both systems also differ in the order the examination of witnesses. The continental system of

¹¹Krapivensky S.E. Social system. Volgograd. Publisher University of Volgograd. 2000. 186 p.

¹²Maleshin D.Y. Civil procedural system.M. Statute. 2011. 119 p.

witnesses "appoints" the court, in the Anglo-Saxon - the court has no such right.

In common law countries, preference is given to oral evidence, while in continental system - written evidence. Hearings in the Anglo-Saxon system, similar to staging the show, while in the Roman-Germanic by hearing different formalism and less colorful, here the principle *forma legalis est essentialis* (lat. Legal form is an essential form). In civil law countries, the judge is equivalent to a civil servant with a modest salary. In common law countries, the prestige of the judges is very high. In the U.S., they are often called "guardians of democracy". However, it seems to us, it is now a clear division process on the investigative or controversial does not exist.

All the rules of civil procedure law, regardless of the source of the expression are interrelated and form a strict logical system. In this system can detect rules of general and special purpose, which during the interaction and interconnection form a system procedure.

Among the entire set of procedural rules stand out rules common to all types of proceedings and litigation stages. These standards define the tasks of civil proceedings; enshrine the principles of civil procedure; set number of persons involved in a civil case, evidence, procedural deadlines, calls and notices, etc.

Norms of the general level of action applicable to the consideration and resolution of civil cases of all types of proceedings and at all stages of the process are highlighted in section 1 of the CPC RF as "General Provisions". With some degree of conditionality of this section, we may speak of the "General Part" of Civil Procedure Code.

Since the civil process is the movement (transfer) business from one stage to another, the procedural rules are grouped: the production of the first instance court; proceedings in the court of appeal; proceedings in the court of cassation; proceedings in the court of supervisory instance; review of decisions, definitions of newly discovered or new circumstances. The above process steps form a special part of the procedure.

Each of the branches of law consists of individual institutions. The Institute is a set of procedural rules, both general and specific, concrete the nature of governing a small but stable group of procedural relationships differing in their unity.

1.5. Civil procedural form

Civil procedural form It is established by law, which is based on principles consistent, ordered by stage of optimal order of justice in civil matters including certain safeguards system and aimed at achieving the

ultimate goal - the restoration of the rights or the protection of legally protected interest.

Civil procedural form fully set forth and enshrined in the Civil Procedure Code and has three species. It can be called the first of them orally, since many steps in the process affect the oral trial (e.g., questioning witnesses). On the other hand, all made in the course is reflected in the record of the hearing, some of the evidence are writing. The third kind of procedural form clothed in digital format. Moreover, the rapid development of digitalization process actualizes more electronic digital procedural form. In some countries (eg, Belarus) have valid e-justice.

Written procedural form is still mandatory in the process and is reflected in the record of the hearing. This form also establishes the composition of the procedural documents presented to the court actors, indicating the details of written documents, determines the sequence in the presentation of the text, as well as the conditions under which procedural documents are left without movement, or returned to the applicant or revoked by a higher court.

All of these kinds of procedural form in their dialectical unity form a single procedural form of proceedings in civil cases.

It should be noted that the civil procedural form applies only to the procedural activities of its subjects. It does not apply to intellectual activity (eg, the interpretation of applicable law). The doctrine holds judgment that paperwork, carried out in preparing the case for trial does not constitute a procedural form. But it is unlikely to agree to such a proposition can be as in the field of e-justice office functions will play a significant role.

Each enforcement authority has its own, its intrinsic procedural form and can not use another form of body work. Civil procedural form of course has its own individual characteristics.

V.V. Yarkov identifies the following features of the civil procedural form:

1. The presence of constitutional guarantees.
2. The legislative regulation.
3. Detailed development of all legal proceedings.
4. Versatility.
5. Imperativeness¹³.

It should be noted that at the present time in Russia there is a discrepancy between the civil procedural and arbitration procedural form. They are two separate procedural forms. However, many

¹³Yarkov V.V. Civil proceedings. M. Wolters Kluwer. 2006. 119 p.

protsessionalistov justify the need of convergence and integration into a single procedural form. On convergence processes and specifies the law adopted in December 2018 on amendments to three Russian procedural code (CPC, APC and CAP).

1.6. The concept of civil procedure

Civil process has a long history. Historians believe that the emergence of the Roman-Germanic law and the process begins in the era of the Roman Empire. The first legal act is considered Twelve Tables (450 BC). Romano-Germanic or continental inquisitorial process is considered. His classic features were formed in France and Germany in the XVIII-XIX centuries. To date, the main features of the inquisitorial process, of course lost. Nevertheless, the process in the Romano-Germanic family of law is the investigative process. Modern process in Russia has mixed features of both the Roman-Germanic system and the Anglo-Saxon system whereby it can be called mixed. The court's role in the gathering of evidence is one of the characteristics of the civil procedure system of a country. Thus, in the Soviet period of our history in the civil procedure act investigative principle of civil procedure, which meant that the court took a very active part in the collection of evidence. Initially, the investigative process originated in France in the ecclesiastical courts, and then penetrated into secular courts, both Germany and Russia.

Process on ancient law was not investigating, he differed adversarial. For the first time Peter 1 replaced the adversarial questioning of the parties in the process. The judge has the duty to reveal the truth of the participation in the collection of evidence. In the period from 1864 to 1917 the court activity was reduced, and vice versa activity of both parties in the gathering of evidence has been improved. However, after 1917 the judge again became more active in the process. A distinctive feature of Soviet civil process was that in the interests of establishing the truth in the case, the court was obliged to take all measures for a comprehensive, complete and objective clarification of the case. The Court takes an active role in gathering evidence.

After 2002, the court's role in the process was again reduced. It appears that such cyclicity in the regulatory process is not dictated by objective reasons and subjective views of the legislator on civil proceedings, not always based on scientific justification.

Civil procedure (Civil court proceedings) represents a set of procedural rules are settled civil action by all subjects in the implementation of the process of justice in civil works. Thus, civil process encompasses various actions, not only the court, but the parties and

other participants in the process, however, all of these actions are the ultimate goal - the timely and proper administration of justice in a particular civil case (Article 2 CPC).

O.H. Golmsten in 1913 of the so defined civil process "Civil process as positive science can treat the phenomenon in two ways: static and dynamic. With the first - the process is considered as a specific legal relationship. With the second - the process is regarded as a historical fact, being investigated outside his story"¹⁴.

The procedural doctrine says that justice must be correct, ie, lawful, reasonable and fair resolution of the dispute on the right.

Civil process inherent in two basic functions:

1. Consideration and resolution of the merits.
2. Judicial review of acts of lower courts.

The administrative proceedings can be divided into two further functions of the court - it is the judicial normative control and supervision of public authorities.

Prof. Y.S. Qambarov pointed out that the ultimate goal of the process is to the right not only to exist, but to act as a state by the process itself leads to the implementation of the right, exercising coercion against anyone who acts contrary to his orders¹⁵. E.A. Nefed'ev, defining the essence of civil procedure, wrote that it is normalized law, the activities of his subjects, among which he singled out the plaintiff, the defendant and the court¹⁶.

Civil process in Russia has passed several stages in its development:

- a) prior to the adoption of the Charter of Civil Procedure (up to 1864);
- b) from 1864 to 1917;
- c) from 1917 to 1964;
- d) from 1964 to 2002;
- d) from 2002 to 2018;
- e) from 2018 to the present.

The purpose of civil proceedings is one of the key categories of civil procedural law. In modern Russia, the scientific understanding of the purposes of civil proceedings has changed in comparison with the Soviet period. Article 2 of the Civil Procedure Code of 2002 refers only to the protection of the violated rights of citizens and other subjects. Protecting the public interest is not legally enshrined as an objective of civil procedure. If previously (before 2002godu) process the main purpose was

¹⁴Golmsten A.H. Textbook of civil proceedings. St. Petersburg. 1913. 1 p.

¹⁵Gambarov Y.S. Civil procedure: a course of lectures. M . Gorodets. 2005. 93 p.

¹⁶Nefed'ev E.A. Textbook Russian civil proceedings. M. Tip. Emperor. Mosk. Univ. 1909.

to protect the public system, it is now a goal is to protect the rights of the individual subject. The goal is so important, allowing the target process to carry out the separation of the Romano-Germanic family law and Anglo-Saxon (Anglo-American) family. So, D.Y. Maleshin indicates that the common law of civil procedure purpose is to resolve the dispute between the parties. While in the civil law system the aim is not only to resolve the conflict, but also the actual restoration of the right¹⁷.

British scientist Lord Jacob identified two goals of civil procedure: recognition of the rights and dispute resolution. And according to Professor Yolovicha purpose of civil proceedings is the only settlement of disputes.

In civil law countries, prevailing view, according to which the purpose of civil proceedings is the protection of the infringed right itself. However, we note that the protection of the infringed right is broader than the resolution of the dispute on the right. This understanding of the purpose of civil procedure as the protection of the infringed right is typical of Roman law and takes roots in antiquity, Defining goals is very important, because it is directly related to the role of the court and with the degree of activity. When the court is an inactive participant, his role is reduced to an arbitrator in the dispute. He just settles the dispute and does not carry out an investigation. His goal in this case does not reach the truth and solve the case. Although in common law countries, in recent years more and more under the objectives of the civil process is meant to achieve the truth. Also in the US over the past decade to achieve the truth it came to be regarded as the purpose of civil procedure. For example, the US Supreme Court has just ruled in 1966 that the main purpose of the hearing is to reach the truth.

E.V. Vas'kovsky in 1917 pointed out that the purpose of civil proceedings is to restore the violated rights¹⁸. Also M.K. Treushnikov notes that the purpose of civil proceedings is a real restoration of the right¹⁹. While Alexander Hamilton remarked that the judiciary has neither the power nor the will, and makes a judgment only, and ultimately dependent on the help of executive power to implement them.

We believe that the purpose of civil proceedings is rated restoration of human rights and freedoms, the rights of a legal entity. The actual restoration of the rights and freedoms takes place in the executive production executive. Although the idea of protecting the rights and freedoms is quite contradictory. The concept of human rights and freedoms is one of the results of the Renaissance, embodied the basic

¹⁷Maleshin D.Y. Russian civil procedural system. M. Statute. 2011. 127 p.

¹⁸Vas'kovsky E.V. Litigation: a textbook. M. Mirror. 2003. 25 p.

¹⁹Treushnikov M.K. Litigation: a textbook. M. Gorodets-izdat. 2003. 128 p.

postulates. humanism principle underlying all the conquests of the Renaissance, has, along with the positive aspects also negative features, has a negative component. Achievements of the Renaissance, many authors are compared with the rampant passions, self-will, and promiscuity. This is what we have unfortunately today. Disrespect for the rule of law in Russia began to appear with age B.N. Yeltsin and intensified during the presidency of Vladimir Putin. It was in the last 20 years to update such proverbs as: the law of that pole, which turned back and came out; Law - web, bumblebee fly, the fly gets stuck; before God lighting a candle in front of a judge bag. According to a survey conducted in 2002, 34.9% of young Russians believed that by law can not live in Russia. In 2009, it was also found that a third of young Russians are willing to step over the law to achieve their goals. Fund "Indem" estimated that 45% of law students feel justified in breaking the law in certain circumstances of life, 41% believe that intelligent people will always find a way to circumvent the law. In this regard, prophetic words of Academician O.E. Kutafin: "We have never been so far away from the rule of law as it is now".

1.7. Stages of the civil process

Civil proceedings in a particular case in its development goes through several stages in series, called stages of the process.

Under the stage of civil process, you need to understand the totality of the proceedings, united by a common goal not just of legal proceedings, and the purpose of the particular stage of the proceedings.

Stages of Civil Procedure describes the movement of the case during the trial. The purpose of proceedings can be achieved if as a result of the conditions necessary for the transition from one stage of the case will be set up in other proceedings.

However, from the stages in civil proceedings must be distinguished procedural "institutions" that are irrelevant to the movement of the case do not have. For example, one can identify such institutions: principles, to ensure the claim, taps and recusals, default judgment, and others.

Russian Civil Procedure Code provides a basis to distinguish the following process steps:

1. Excitation of the proceedings. The very first step of the process, in which the interested party goes to court with a claim, but the judge, taking it begins to procedural activities (bring a civil case).

2. Preparation of the case for trial. During this stage, the judge clarifies the stated requirements, helps the parties and third parties to collect the necessary evidence and involves stakeholders in the process

as well: experts, interpreters, witnesses. In the cases referred to in the law preliminary trial may be carried out at this stage. Recognizing business prepared, the judge appoints the case for trial.

3. The trial is the most primary (main) stage of the process. At this stage, the court (judge) hears the case in a court session, examines the evidence, listens caused by those investigating the circumstances of the case and decide the case on the merits by a decision or terminates the proceedings without a judgment.

4. The revision does not come into legal force of court decisions on appeal. At this stage, the court of second instance on the complaint of the person concerned to re-check the validity of a judicial act by re-examination of the case.

5. The revision entered into force court acts on appeal. In this stage of the process the court of cassation after the decision came into force on the complaint of the person concerned or the prosecutor checks the legality of a judicial act.

6. Revision of judicial decisions by the court of supervisory authorities, is that the law will come into force court rulings is checked only in the Russian Federation Supreme Court. This step of the process is extraordinary, and may occur in a particular process only in the cases directly specified by law.

7. Step revision entered enforceable decisions and definitions of newly discovered or new circumstances is an exception to the general rule. In the cases mentioned in the law, the court decided the case, check the validity of an act of self-detection of special circumstances, referred to as "newly discovered" or "new circumstances".

Each stage of the process takes place in its separate process. All process steps follow each other in sequence, whereby it is not inherent randomness. Each stage in the process has its limits, it is set apart in time, always begins and ends with the procedural documents.

1.8. Types and brief description of the judicial proceedings

In addition steps, depending on the object and the problems facing civil process, court proceedings divided into certain types: the claim; special; correspondence, writ proceedings, proceedings concerning the protection of the rights and legitimate interests of a group of persons, proceedings in the consideration of applications for return of the child or on the implementation of the child rights of access on the basis of the Russian Federation, international treaty.

In connection with the adoption in 2015 of the Code of Administrative Procedure, these types of production, such as:

production, arising from public relations and production to recover compensation for the violation of reasonable terms of proceedings and execution of court decisions within a reasonable time are not the views of the civil process, but are independent judicial administrative proceedings (administrative proceedings).

Action proceedings is a trial to resolve disputes disturbed by the subjective right of action. It is intended for the protection of violated or disputed the subjective rights of citizens and organizations.

Of the Civil Procedure Code, by securing the civil procedural form, practically equates it with the claim form of protection of rights. Civil proceedings is the main civil proceedings, regulated in detail by the Code. Civil cases of other types of legal proceedings dealt with by rules of action proceedings, but with a few exceptions and additions, caused by the nature of such cases, as well as the challenges faced by the court. Civil proceedings instituted by filing a claim. The adversary proceedings, there are always two parties with opposing interests, referred to as the plaintiff and the defendant. When the coincidence of the plaintiff and the defendant's civil proceedings can not exist. In said manufacturing side have equal status in pravootnoshenijah material.

Special proceedings deal with cases where there is no need to protect subjective material rights. The purpose of proceedings in special proceedings is to protect the legitimate interests of citizens, as well as to establish a fact of legal significance. This type of proceedings include cases: the establishment of facts having legal value; adoption, adoption; recognition of the citizen is unknown absent and others. Cases of special proceedings are initiated by filing an application. In the absence of a dispute and two parties with opposite interests. Consequently, the applicant acts as an active party in the process. The person concerned is also involved in the case. Among some proceedings, there is a view that in special proceedings, there is still a dispute, but not about the law but about the fact. It seems to us that there is no doubt that this is a prudent conclusion.

Writ proceedings is an independent and simplified view of civil proceedings in which the protected legal right, based on indisputable documents (evidence). The task of the court is to meet this right without a trial by a court order, which is both an executive document.

Production Review of applications for return of the child or on the implementation of the child rights of access on the basis of an international treaty of the Russian Federation. Said production of a novel type of civil process. In 2014, the Civil Procedure Code of the Russian Federation was supplemented by a new Chapter 22.2 of the same name. Given the special importance of protecting the rights of minors,

the legislature has provided such entities additional guarantees for the protection of their rights.

Summary procedure. The 2016 of the Civil Procedure Code has been supplemented by a new Chapter 21.1, which provides special rules for consideration of cases by summary procedure. Cases dealt with by way of summary proceedings, are matters of character claim, by virtue of which such proceedings should be regarded as a subspecies of claim cases.

In civil proceedings should also highlight such distinct types of production, such as: production with the participation of foreign persons; proceedings in matters relating to the functions of assistance and control in relation to arbitration; Production associated with the execution of judgments and decisions of other bodies.

CHAPTER 2

Civil procedural law as a branch of law, science and academic discipline

2.1. Civil procedure law in the system Russian law

Russian law is a system in which the isolated individual units, such as Public Law (Constitutional Law); substantive law (criminal, civil, family, labor, administrative, international (private and public), business, finance, and others.); procedural law (civil procedure, criminal procedure, arbitration procedure, legal administrative and procedural); executive law (penal, civil enforcement). Such a construction is not abstract right fabrication scientists or practitioners, as follows from the objective being legal matter and is a logical construct rights internal structure. All branches of law dictate the location of the standards within the legal system in a very specific order. G.F. Shershenevich rightly observes²⁰.

Every State on a separate stage of development has its own system of law, however, as the legal system. Since the system of law applies to the superstructure phenomena, it must effectively regulate primarily the basic relationship. If you change the basic relationships or ineffective regulation of the right system is changing. So, the USA has the right system consists of the legislation of 50 states and one federal law and despite that the USA system of law is more dynamic, it adjusts more quickly to change public attitudes than say in Russia.

System of law Roman-Germanic family is different from the common law, but in the context of globalization of legal forms is affected by convergence, is closer to the common law. Transforming processes are constantly taking place in the legal matter on the one hand lead to the appearance of related (complex) branches of law, to the blurring of lines between the existing branches of law, and on the other the emergence of new branches of law. So, for example, is now gradually blurred the boundaries between civil procedural law and arbitration law. But there are such new rights as the medical industry, air-transport, sports.

Civil Procedural Law as part of the Russian legal system relate to each branch of the law, but interact with them in different ways.

In accordance with the Russian Constitution (Ch. 7), an independent branch of the government in Russia proclaimed the establishment of the Constitutional Court of the Russian Federation and the Supreme

²⁰Shershenevich GF General Theory of Law. M. 1995. V.2., Issue 4. 446 p.

Court of the Russian Federation, as well as established principles of judicial power. The Constitution establishes the requirements for judges at their destination, their independence, security of tenure and immunity.

The law "On the Judicial System of the Russian Federation" defines the units of the judicial system, as well as the powers of the various courts.

These norms of constitutional law are of fundamental importance for the civil procedural law, in particular, the legal regulation of civil proceedings going on with the obligatory account of these standards. For example, the existence of an independent judiciary is one of the factors contributing to effective court decisions and his objectivity. In accordance with the established system of courts is based tribal jurisdiction over civil cases and types of review of judicial acts.

Civil procedure law is closely correlated with the material branches of law, as a whole representing the ratio of the inextricable link content (the material) and shape (procedural) law in their philosophical understanding. therefore nor civil procedural law, no material branch of law not exist and function without each other.

The impact of the civil procedural law in the civil and other branches of the substantive law due to the fact that civil procedure provides enforcement violated or disputed subjective civil rights, family, employment and other material rights of individuals and legal entities. Civil Procedural Law defines the shape of the protection of rights, ways to attract civil liability.

In a civil proceeding may consider the possibility of criminal liability of some subjects, for example, unscrupulous witnesses and experts, as well as translators, criminal conduct which prevents timely and rightful decision of judicial acts. Conversely in criminal proceedings can be considered a civil suit. Therefore, civil procedure sometimes is related to criminal law and criminal procedure.

Civil procedural law is also closely correlated with executive law. Executive law by transgression in the early 21st century spun off from a procedural right to form an independent branch of law. By means of civil procedure law nominally it restored the violated legal status of legal entity. A rule violation by law enforcement actually recovered, i.e. really. Thus, the executive law is a logical continuation of the civil procedural law.

D.Y. Mareshin remarks: "Identity Russian civil process is characterized by unique components in a civil proceeding". The uniqueness of the Russian civil process is determined not only by the presence of special procedural institutions and other components of the procedural sys-

tem, but also the specifics of the domestic law in general. Many authors propose to call it the Eurasian Slavic or Eastern European legal family²¹.

The history of the civil process in the country dates back to the middle of the first millennium, with such sources of law, as the Russian-Byzantine treaties 911 and 944 years.

Analysis of ancient Slavic mythology shows that in that period had already formed the basic concepts related to justice and legal proceedings. As a historian V.O. Klyuchevsky, the first written sources of law combine original interpretation of customary law with the borrowed from Byzantine law rules²².

Contracts with Byzantium, the law Judgment of Prince Vladimir, and the Russian True not only contain some form of justice, but also uncharacteristic for other countries procedural institutions. In particular, the Russian process began with a complaint, which was called slander, and then went steps such as "zaklich" and "code". Zaklich is to declare in public about violation of any rights of the claimant. Arch entitled proof procedure.

Proceedings in the Novgorod and Pskov Judicial Charter differed from Russian Pravda. Thus, Novgorod Judicial Charter included beginning investigative process. In the Pskov process was provided bratchiny court in which judicial functions assigned to a particular association of craftsmen. But almost before Sudebnik 1649 process developed in the Russian original. The Council Code of King Alexei Mikhailovich many procedural rules have been borrowed from the Lithuanian Statute.

The transformation of Peter I in the field of justice and judicial reform of 1864 was largely due to the reception of legislation of the European countries, so from now on Russian civil process was developed by the rules of civil law.

Unlike the civil process, which has a long history, civil procedural law, as a branch of law it was formed much later. The origin of the domestic science of civil procedural law connected with the activities of the first university in Russia. For the first time the science of civil procedural law has been the subject of study in the works of the first law professor at Moscow University F.G. Dilteya (1979 g). For a long time at the university was one department of civil law, criminal law and procedure. It was a joint Department. Independent chair of civil procedure at the University was established only in 1868. However, after the revolution of 1917 was abolished and re-established only in 1944.

²¹Maleshin D.Y. Russian civil procedural system. M. Statute. 2011. 119 p.

²²Klyuchevskii V.O. Works in 9 volumes. V.1. Russian course istorii. Ch.1. M. 1997. 158 p.

2.2. Civil procedural law as a science and academic discipline

Russian Science civil procedural law in accordance with the traditions of the Roman-Germanic legal system gives preference to the study of legislation, not judicial precedents in common law countries. Although, as we believe it is more of a disadvantage of our science than her dignity.

Also, not enough attention is paid to the study of civil procedural law doctrine itself the right, by virtue of which the doctrine is not recognized in Russia the right source. Despite this, Russian scientists have traditionally played a key role in the preparation of the reform and the adoption of new legislation. It is necessary to emphasize the role of M.M. Speransky, K.P. Pobedonostsev in judicial reform in 1864. The author of the first decrees of the court in 1917 was P.I. Stuchka. Civil Procedure Code in 1964 was developed under the direction of A.F. Kleinman. The current of the Civil Procedure Code prepared by the working group led by Professor M.K. Treushnikov. Unfortunately, currently many innovations are made without scientific justification, thereby reducing the level of legislative technique, there are many inconsistencies and contradictions in the law. In this regard, the former Chairman of the Supreme Arbitration Court of the A.A. Ivanov pointed out that the particular situation with the views of scientists who considered little. He offers to carry out legislative work only for specific research teams, giving them a kind of "right of veto" on the legislation introduced by changes in case they conflict with the scientific concept²³. Unfortunately this initiative and was only initiated.

Civil Procedural Law have devoted their labors researchers such rights as: D.B. Abushenko, S.S. Alekseev, A.T. Bonner, E.V. Vas'kovsky, M.A. Vikut, A.A. Vlasov, V.M. Gordon, M.A. Gurvich, A.A. Dobrovolsky, V.M. Zhuikov, I.M. Zaitsev, N.D. Zuider, O.V. Isaenkova, A.F. Kleinman, V.A. Krasnokutsky, D.Y. Mareshin, E.A. Nefed'ev, G.L. Osokina, P.I. Stuchka, Yu. A. Svirin, G.D. Uletova, M.K. Treushnikov, N.A. Chichin, V.M. Sherstuk, K.S. Judelson, T.M. Yablochkov, V.V. Yarkov and many others.

Civil proceedings in law schools, along with civil law is one of the main subjects of the course, without which it is impossible to prepare highly qualified specialists in the field of jurisprudence.

Teaching the civil process is aimed at:

- the study of the civil procedural doctrine, combined with the current civil procedural law and judicial practice;

²³Ivanov A.A. The quality of laws and the activities of the arbitration courts // Journal of Russian law. 2005. N 4. C.7.

- mastery of the civil procedural form for the commission of a skilled civil proceedings in the manner prescribed by law;
- development of skills of drawing up procedural documents (applications, rulings, decisions, orders, complaints, representations);
- skillful use of civil procedural rules for the resolution of conflicts arising in civil circulation;
- mastering the skills of interpretation of procedural rules.

The study of the doctrine is impossible without knowledge of the scientific literature. In the countries of the educational process of the Anglo-Saxon system of law is largely confined to the study of judicial decisions and regulations. While in civil law countries, including in Russia, the training process is aimed at the study of theoretical problems, and therefore the A.A. Starchenko noticed that American jurisprudence is characterized by dogmatic analysis of judgments, statutes and other materials with rare access to the philosophy, sociology, and other sciences. In the Romano-Germanic system, on the contrary, the theory dominates practical analysis.

Action rights is not possible without understanding its meaning. Therefore, the purpose of discipline is to teach students correctly interpret the will of the legislator. As rightly pointed R.V. Shagieva: "Some of the traditional problems of legal science for a long time concerns the interpretation of law"²⁴.

Interpretation of law takes place both in the scientific and academic in the analysis and understanding of the law. Without interpretation of law is not carried out any type of legal action. F.K. Savinyi has rightly pointed out that the interpretation has a different use and leads to very useful results: the scientist - to the development of science, the judge - to judgments²⁵.

Since the meaning of the norm not be understood with the help of the senses or of different devices, there is always the interpretation of human mental activity. For the purposes of uniform application of the procedural rules of law is important to teach students in the study of discipline a precise clarification of the meaning and content of the legal norm. The ultimate goal of education is to prepare students for professional practice of law in civil proceedings as a judge, a prosecutor or a legal representative (lawyer, legal adviser).

²⁴Shagieva R.V. Interpretation of the law as a legal activity: historical and theoretical problems of understanding // Scientific works of the Russian Academy of lawyers and notaries. 2017. N 2. 38 p.

²⁵Savinyi F.K. The system of modern Roman law. Vol.1 / per. with it. G. Zhigulina; ed. O. Kuteladze. M. Statute. 2011. 387 p.

CHAPTER 3

Sources of civil procedural law

3.1. Concept of citizen law process and their types

The problem of the sources of Russian procedural law doctrine has always paid a lot of attention. Their works of procedural law sources dedicated researchers such as: S.N. Abramov, M.G. Avdyukov, M.A. Gurvich, G.A. Hajjiyev, V.M. Zhuikov, N.B. Zuider, B.B. Zaitsev, A.F. Kleinman, Yu.A. Svirin, M.K. Yukov, V.V. Yarkov and other authors. Despite this far in the legal literature, there are different views of the authors about the epistemological nature of a source of law. source of law in the opinion of some researchers have law-making decision; others consider the source as the seat of the rule of law and in this sense the source is the carrier of legal norms, ie, form the right of existence. The source also regarded as a historical legal document the importance of which is in compliance with the right of succession. In legal doctrine has long been studied and proved such sources of law, as a normative act authorized by custom, judicial precedent, an international treaty normative content, generally recognized principles and norms of international law, the legal doctrine.

Some researchers (Judgement of the Constitutional Court G.A. Hadjiev) is isolated as an independent source - the legal position of the Constitutional Court of the Russian Federation and the legal position of the Human Rights Court, which form in his opinion the judicial doctrine.

Some authors also draw attention to such an independent source of law, as a local regulation. In particular, I.S. Shitkina, Yu.G. Leskov in his scientific writings explore corporate acts as a source of law²⁶. However, in legal literature, research local rulemaking is not paid too much attention.

In the history of procedural law in Russia both before 1917 and after, no one researcher, as well as practicing lawyers did not stand a source of procedural law, as the order of the Chairman of the Supreme Court of the Russian Federation. In this context, it is impossible to identify them with the jurisprudence. However, the November 29, 2016 order of the President of the Supreme Court number 46-P was approved "The procedure for filing in the Supreme Court of documents in electronic form,

²⁶Leskov Y.G. Corporate acts as a source of law // The journal of business and corporate law. 2016. № 4. 15-19 p.p ; Shitkina I.S. Local regulation of the Company // State and Law. 1999. № 10. 100 p.

including in electronic form of a document." Since this order contains essentially legal proceedings, it is certainly a source of procedural law, although that the form of the document is contrary to the doctrine of law and causes at least bewilderment the very possibility of granting the Chairman of the Supreme Court, the right to establish a normative act. The court is not a body of any legislative or executive power. Court any jurisdiction, including the Supreme Court has the right to only apply the law.

At the same time, the court as a carrier of the judiciary in his legal practice with a view to the uniform application of the rule of law could create legal norms. This authority of the court is justified by many researchers both in Russia and abroad. But the President of the Supreme Court, making the normative content of the order, did not act as a judge, implements judicial power, but as the head of a state institution, so this order is not a judicial act and can not contain any legal norms. Therefore, we believe the Chairman of the Supreme Court went beyond the powers granted to him.

The law of civil procedure, not all sources of law grounded in the doctrine of the general theory of law are. The following sources of Russian procedural law should be highlighted: regulation, international treaty normative content, judicial precedent, the universally recognized principles and norms of international law.

The Supreme Court, in paragraph 5 of the Resolution number 8 on October 31, 1995 as amended February 6, 2007 provides that the courts in administering justice must proceed from the fact that the generally recognized principles and norms of international law enshrined in international treaties, conventions and other documents They are an integral part of the Russian legal system. The same view of the Supreme Court of Justice is enshrined in the Resolution of the Plenum of the Supreme Court number 5 of 10 October 2003 "On application by the courts of general jurisdiction of the universally recognized principles and norms of international law and international treaties of the Russian Federation."

Under the generally recognized principles of international law Plenum of the Supreme Court understands the fundamental peremptory norms of international law, accepted and recognized by the international community of States as a whole, deviation from which is inadmissible.

The universally recognized norms of international law there is a rule of behavior is accepted and recognized by the international community of States as a whole as legally binding.

In accordance with paragraph "a" of Article 2 of the law "On international treaties of the Russian Federation" under the international treaty meant an international agreement concluded by Russia with a foreign state in writing.

According to the position of the Supreme Court, it is justified and valid legal categories such as "international treaties"; "The principles of international law", "international law", which are essentially self-contained and separate categories of rights.

Until recently law process in Russia claimed that they were not the source of procedural law regulations such as decrees of the President of the Government Decision and other regulations. Thus, it presumed that the source of procedural law is the only law, and no by-laws.

However, after 2015 subject of law-making is increasingly becoming the highest judicial body of the country. In confirmation of this, reference is made to the following acts: Order of the Judicial Department of the Supreme Court on December 27, 2016 N 251 "On Approval of the Procedure for submission to the federal courts of general jurisdiction of documents in electronic form, including in electronic form"; "The order of submission to the Supreme Court documents in electronic form, including in the form of an electronic document (approved by order of the President of the Supreme Court on November 29, 2016 N 46-P.); Resolution of the Presidium of the Supreme Court on June 14, 2017 "On approval of the Regulations on the placement of the text of judicial decisions on the official websites of the Supreme Court, courts of general jurisdiction and arbitration courts in the information and telecommunication network "Internet"; The order of the Judicial Department of the Supreme Court of the Russian Federation on September 11, 2017 N 168 "On approval of the submission of magistrates documents in electronic form, including in electronic form."

These documents issued by judicial institution are legal acts since possess all the criteria and characteristics elaborated theory of law to the normative legal acts.

The most important source of law, of course, is the legal position of the European Court of Human Rights. The Resolution of the Plenum of the Supreme Court on July 27, 2013 № 21 "On application by the courts of general jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto" and explicitly emphasized that the legal position of the European Court of Human Rights, set out in the judgments become final, adopted and in relation to other countries, must be taken into account by the Russian courts in the judicial practice.

International treaties are also a source of procedural law. Rules of the international Federation, and not domestic legislation, apply if the decision on the consent to be bound by this agreement to Russia was made in the form of a federal law. Russia is a party of about forty bilateral and multilateral international treaties, conventions and agreements

on legal assistance in civil and commercial matters, binding international obligations of the Russian Federation more than a hundred countries.

The current Constitution recognizes international treaties as a source of Russian law. However, in January 2020, in the annual message of the President of the Russian Federation to the Federal Assembly of the Russian Federation VV. Putin called for a change in the Constitution, including the recognition of international treaties as a source of law that takes precedence over Russian national legislation. Following this, the Russian Foreign Minister, in a discussion on Radio Ekho Moskvy, said that international treaties are secondary to the U.S. Constitution and do not take precedence over U.S. law. This conclusion of the Russian minister is either poor knowledge of U.S. law or misleading to Russian citizens. Article 6 of the U.S. Constitution states that all treaties entered into or on behalf of the United States are U.S. supreme law. Moreover, in a review of the practice of the U.S. Supreme Court issued in 2019 (the previous review was issued in 1987), reference is made to John Marshall, Chairman of the U.S. Supreme Court, who, as early as 1829, formulated the following principle: "A treaty is a law of the country and should be considered in the courts as the equivalent of a legislative act and should act independently without the assistance of any legal provisions". Thus, a treaty that is signed by the President of the United States and ratified by the Senate becomes a domestic law. The United States (USA) is an alliance of states. The Constitution delimits the rights of the state and the federal authority, and the rights of the state above the federal authority. However, according to Article 6 of the U.S. Constitution, the treaty provisions are above the laws of the states, and therefore judges of each state are obliged to follow the treaty provisions, even if they contradict the laws of the state. The hierarchy of international treaties and domestic legislation in all democratic states is similarly constructed. Unfortunately, the President's policy of amending the Constitution of Russia in 2020 undermines the foundations of international law and introduces anarchy into relations between states, including cooperation in civil and commercial matters.

The most significant multilateral international treaties containing rules of procedure are: The Hague Convention on Civil Procedure of 1 March 1954 .; The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965; Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of March 18, 1970 By the 1954 Convention The Soviet Union joined in 1967, and the 1965 Convention and 1970 have joined Russia in 2001 in the Hague Convention, 41 States participate.

In the above-mentioned international documents it contains a number of provisions, which were the Russian procedural law novelty in the early 21st century. For example, in accordance with Article 21 of the Hague Convention of 1965 allowed the presentation of any person who is in Russia (including Russian citizens) judicial documents through diplomatic missions and consular offices of the States parties to the Convention. Prior to joining the said Convention, in accordance with existing treaties to which the Russian, the service of documents through the diplomatic missions and consular offices were allowed only in relation to nationals of the respective foreign countries.

Russia is also party to multilateral agreements with the Country independent states member states, regulating legal cooperation, including in the field of justice. For example, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, January 22, 1993, as amended on March 28, 1997) provides for legal assistance by performing procedural actions provided for by the legislation of the requesting party, in particular , survey, compilation, transmission of documents, etc. Convention also regulates jurisdiction issues. If the case involved several defendants with residence in the territory of different states, the dispute shall be at the place of residence (location) of any defendant at the choice of the plaintiff. Convention affected and other procedural questions.

Significant numbers of international bilateral agreements have been concluded with the Soviet Union, but they are involved, and Russia as a state - the successor.

Since international instruments regulates the provision of legal aid, it should be to figure out what in Russia is meant by legal aid. Under the legal assistance means the execution proceedings, in particular, the transmission and the service of documents, survey parties, examination of witnesses, experts and other persons, the transfer of evidence, recognition and enforcement of judgments in civil matters, etc. In the agreements, there are some features of the commission proceedings in relation to the various states. For example, the Russian courts have sent letters to the competent authorities of Algeria, Austria, Belgium, Germany, France and some other countries, not later than six months prior to the day of the proceedings, and Albania, Bulgaria, Spain, Korea and other countries - not later than four months.

In applying the provisions of international treaties must be borne in mind that by virtue of paragraph 3 of article 5 of the law "On international treaties of the Russian Federation," the provisions of officially published the Russian Federation is a party, do not require the publication of internal regulations for the application, operate in Russia directly. In other

cases, along with the international treaty of the Russian Federation should be applied and the domestic legal act adopted to implement the provisions of the treaty (paragrah. 5 of the Resolution of the Supreme Court on October 31, 1995).

Among the regulations, as the sources of law in the first place of course, is called the Constitution of the Russian Federation. The Constitution sets out the most important principles of justice. The Constitution has supreme legal force. Enshrined in the Constitution of the supreme legal force and direct action means that all the constitutional norms take precedence over laws and regulations, whereby the courts in the handling of cases should be guided by the Constitution of Russia. Clarifications on the direct application of constitutional provisions contained in the Resolution of the Plenum of the Supreme Court on October 31, 1995 № 8 "On some issues of application by courts of the Russian Federation Constitution, the administration of justice."

Court to resolve the matter, apply directly to the Constitution in the following cases:

a) when the fixed rate of the Constitution, in terms of its meaning, do not require additional regulation and contain no reference to the possibility of its application, subject to a federal law regulating the rights, freedoms, duties of man and citizen and other provisions;

b) when the court comes to the conclusion that a federal law adopted after the entry into force of the Constitution, is in contradiction to relevant provisions of it;

c) when the law or other normative legal act, adopted by the Russian Federation on the subject of the joint jurisdiction of the Russian Federation and the Russian Federation subjects, contrary to the Constitution and federal law, which should regulate the relationship contemplated by the court, no.

The Constitution guarantees everyone the right to have his case considered by the court and the judge to whose jurisdiction it belongs by law.

*Following the Constitution is a normative act of the Federal Constitutional Law (s).*In accordance with Part 1 of Article 1 of the Civil Procedure Code of federal constitutional law, determining the order of proceedings in the federal courts of general jurisdiction is the law "On the Judicial System of the Russian Federation" dated 31 December 1996 with subsequent amendments. Thus, according to article 4 of the law "On the Judicial System of the Russian Federation" to the courts constitute a system of federal courts of general jurisdiction are: appeals courts; Courts of Appeal; supreme courts of republics, territorial and regional courts, courts of federal cities, courts of the autonomous region and autonomous regions, the district courts. The courts of the Russian Federation include the world court.

Civil Procedure Code of the Russian Federation is the main source of civil procedural law. Acting procedure 2002, retaining all the proven themselves in practice, institutions and regulations Code of 1964, significantly expanded the scope of the procedural regulation. There are new institutes of procedural law aimed at improving the procedure for consideration and resolution of new types of cases in order to provide additional guarantees for the protection of citizens' rights. The current Code contains new regulations and modernized pre-existing rules. Code is constantly updated and supplemented with new provisions.

Judicial precedent It is also a source of law, including procedural.

More than four centuries ago, M. Hale developed a theory according to which the judge is not the creator, create a rule that they oracles law. Subsequently, this theory became known as the declarative theory. (Postema G.J. Bentham and the Common Law Traditions - Oxford, 1986). In 1892 Lord Esher also argued that there is no judicial law because judges do not create rights (*Williams v. Baddeley* (1892) 2 QB 324 at 326. S.128). It should be recognized that this theory lasted until the end of the XIX century.

British lawyers, and behind them, and legal scholars in other European countries began to compare their right to the ancient Roman law, defining it as formed by the judges based on the "principle of similarity", according to which cases based on similar facts, should be equally permitted. Therefore, the birthplace of precedent is traditionally considered to England. English courts are now used not only right, but also create it.

In the 19th century, one of the founders of German procedural law Oscar Byulow developed the doctrine of judicial law, he believes the judge is engaged in self rule making, and the court's decision itself is the source of law²⁷.

I.Y. Bogdanovskaya expresses conflicting position on judicial precedent as a source of law: "The judge essentially determines whether a precedent for it is mandatory. As a result, not a judge subject to the law, and the law depends on its subjective installations. The most "hard" a precedent in practice advocates flexible enough, because the judge has a great opportunity in the selection of a precedent"²⁸. But that was hardly a distinguished author's view that the right is dependent on subjective units can agree. The essence of judicial precedent has been formulated yet English jurist Rupert Cross and is based on the basic principles of judicial precedent, which are as follows:

²⁷Oscar Byulow. The doctrine of procedural objections and procedural background / ed. D.H. Valeeva. M. Statute. 2019.8 p.

²⁸Bogdanovskaya I.Yu.The concept of judicial law-making in the legal doctrine of common law countries // Modern Law. 2013. № 11. 9 p.

1. The precedent is not formed by all the judges, but only higher.
2. Each court is obliged to follow the decision of a higher position on the court, and the courts of appeal related to their earlier decisions. Precedent is compulsory.
3. When the administration of justice should be based on the fact that similar cases should be handled in a similar manner.
4. The precedent is the essence of the solution, and the rest have said in passing²⁹.

It seems to us the role of precedent in the law of procedure is very important. According to the chairman of the Supreme Arbitration Court A.A. Ivanov precedent system helps to reduce corruption in the courts, it forms a wide range of legal positions which are well known to market participants, provides predictability of court decisions. Precedents reveal the "strange" decisions retreating from the "established practice". Some scientists believe that the judicial precedent speeds up the process, because when considering similar cases do not need to start from scratch. In England, there are cases when the basis of the solutions lie judicial acts 500-600 years ago, which clearly confirms the stability and consistency of enforcement.

It should be noted that the value of case law has increased significantly in recent decades in the civil law countries, in particular Germany, France and Switzerland. Lawmaking role of judicial precedent has now been recognized in Spain and Portugal. Unfortunately the official Russian procedural doctrine to date and has not recognized the precedent a source of law, hence a lot of conflicting decisions shall be made by the Russian courts.

As I.J. believes I.Yu. Bogdanovskaya, today in civil law countries, increases the value of judicial precedent, and in the Anglo-Saxon legal family is steadily increasing role of the law, however, such a trend yet unobtrusive in Russia.

The essence of the precedent that a decision on the future court cases must be decided by analogy with the decisions of the previous cases. It should be noted that, in common law countries, not all decision represents a precedent, but only its operative part. In the reasoning of the decision, the court sets and reinforces the established court facts are adjudicated facts, but does not set a precedent.

It is also necessary to distinguish between such concepts as: judicial practice and legal precedent because according to D.Y. Maleshin jurisprudence can not be a source of law, while the legal case is the source of law³⁰. Judicial precedent has formulated in legal acts of the

²⁹Kros. R. Precedent in English law. M. 1985. 151-154 pp.

³⁰Maleshin D.Y. Russian civil procedural system. M. Statute. 2011. 237-238 pp.

highest court in the legal position, which is universally valid, not only for the use of it by the courts but by other bodies and officials. While case law is composed of the judicial acts of lower courts and it must not conflict with legal precedent. For example in the Letter of the Federal Tax Service of Russia on August 28, 2019 number BS-4-21 / 1721 recommends assigning objects to the property to take into account not only legal precedent, but also judicial practice and requires the tax authorities in deciding whether to classify an object as real estate study judicial acts. Thus, we can say that in Russia and gradually the role and importance of judicial precedent and jurisprudence increases.

I think that should be the following types of judicial acts as a source of law: the decision of the European Court of Human Rights, Decisions of the Constitutional Court Ruling of the Plenum of the Supreme Court. With regard to the judgments of the lower courts, they can hardly be considered a source of law, but they can be used to solve some legal questions.

Scholars widely view after Russia's accession to the European Convention on Human Rights is to judge the need to include human rights case law of the European Court of Justice in a number of sources of law. So, G.A. Zhilin believes that the Court's ruling not only a formal legal source of law, but also perform a kind of benchmark for the reform of domestic law. In the Russian doctrine and jurisprudence also holds the view that the case law of the European Court of Justice have legal controls, not sources of law. In support of the latter view should be made to the Constitutional Court's Decision, adopted in December 2013, in which the Constitutional Court stated that the decision of the Court shall not be enforceable in Russia.

It is also urgent problem of making the vision of the Constitutional Court of the Russian Federation as a source of law. Thus, some authors consider the acts of the Constitutional Court as a source of law. A similar view is held and the courts. Other authors, example, G.A. Gadgiev is regarded as a source of law decree no self Constitutional trial and resolution inherent in the legal court position.

Despite the different points of view, it should be recognized that judicial precedent reduces bias and arbitrariness in deciding cases. However, this paradigm makes sense in the case where the professional level of the judges will be at a high level. Sometimes in practice, there are interesting incidents, indicating a low level of legal education of Russian judges. For example, a judge of the arbitration court of St. Petersburg in a particular decision expressly referred to the statement by the Russian President at the meeting dedicated to the 85th anniversary of the establishment of the Supreme Court, thus showing a low level of professionalism and a high level of political engagement.

Arguing about the sources of law, the law of Canada deserves attention, namely, Canada, the Federal Court has legislative functions. The Federal Court set up a permanent law drafting committee, the purpose of which is to develop rules of legal procedure, eliminating gaps and shortcomings of the current legislation. The Committee takes the final decision to change the current legislation. Endowed with a similar function, and the Supreme Court of France.

3.2. Action norms of civil procedure legislation

In Part 3 of Article 15 of the Russian Constitution enshrined a fundamental principle of any democratic state, according to which the laws can not be applied, as well as any other regulatory legal acts concerning the rights, freedoms, duties of man and citizen, if they are not officially published for general information. In accordance with this constitutional provision the court may not base its decision on unpublished regulations.

In legal doctrine distinguishes between the following dates: adoption, publication and entry into force.

The date of adoption of the federal law shall be the date of its adoption by the State Duma in the final version. The date of the adoption of federal constitutional law shall be the day when it is approved by both chambers of the Federal Assembly in the manner prescribed by the Constitution.

The procedure for the official publication of the federal normative legal acts defined by the law "On the order of publication and coming into force of federal constitutional laws, federal laws, acts of the Federal Assembly."

For certain types of regulations set a different order of their official publication. Official publication of federal constitutional laws, federal laws, constituting legislation on legal proceedings is considered to be the first publication of the full text in "Rossiyskaya Gazeta", "Parliamentary newspaper" in the "Assembly of the Russian Federation" or the first placing on the "Official Internet portal of legal information" (www.pravo.gov.ru).

Regulation effective date can be defined in several ways:

a) the date of entry into force can be specified in the regulatory act;

b) the normative act shall take effect after a certain period after the date of official publication;

c) the act of the date of entry into force is measured from the date of signing of the document.

Federal constitutional laws, federal laws come into force on the entire territory of the Russian Federation at the end of ten days after

their official publication, unless the laws themselves establish a different order of their entry into force.

It adopted a special law on the introduction of the law in effect in some cases. For example, a special procedure for the introduction of the Civil Procedure Code in 2002 set by the law "On introduction of the Civil Procedure Code of the Russian Federation" dated 14 November 2002. According to the Act, the Civil Procedure Code entered into force on 1 February 2003, with the exception for chapters 34, 35, 36, which takes effect on July 1, 2003.

Law "On introduction of the Civil Procedure Code of the Russian Federation" abrogated or invalid in whole or in part in more than 60 legal acts relating to the consideration of civil cases in courts of general jurisdiction. Federal laws and other normative legal acts related to the Civil Procedure Code and no longer in force, subject to reduction in conformity with the new Code.

Since the procedural law is federal, it shall enter into force simultaneously in all territory of Russia. As a general rule, the laws are not retroactive and applies only to those relations that arose after the introduction of the act into force. However, this rule may be exceptions when the law itself provides for extension of its actions on the relations which have arisen before the entry into force of this law. Such exceptions provided by the law "On introduction of the Civil Procedure Code of the Russian Federation."

According to the parties of the civil procedural rules are binding for all citizens, legal entities and public law entities of the Russian Federation, foreign citizens and foreign legal entities and stateless persons.

On relations with the participation of foreign citizens, stateless persons, foreign organizations, international organizations, civil procedural law applies in accordance with the rules set out in Chapter 43 and 44 of the Civil Procedure Code.

Plenum of the Supreme Arbitration Court in its judgment (September 2012) in a particular case stated legal position on the next contentious issue "normative legal act of executive authority issued only in one of the official sources? Is the order violated his publication" The applicant asked to recognize invalid Order FSFM of Russia on the peculiarities of the order of conducting the register of holders of registered securities of the issuers of such securities. In support of its claim the applicant pointed out that the impugned order was published in the "Bulletin of normative acts of federal bodies of executive power", but was not placed in the "Russian newspaper". This fact, according to the applicant, constitutes a violation of the order of publication, established by the Decree of the President of Russia on the order of publication and entry into force of the

acts of the President, The Government of Russia and the normative legal acts of federal executive bodies. The Supreme Arbitration Court explained that in connection with the publication of the contested order in violation of the order of publication of the applicant believes that it does not entail legal consequences. Consequently, the regional branch of the Russian Federal Financial Markets Service had no reason to bring him to justice as the Director of the said non-fulfillment of the order. It was found that for the society a source of information about the publication of regulations is the "Rossiyskaya Gazeta". Automated legal information systems in the company are not available. However, within the meaning of the Decree of the President of the Russian official publication of normative legal acts of the federal executive bodies is their placement in at least one of these in it sources: "Rossiyskaya Gazeta" and "Bulletin of normative acts of federal bodies of executive power." In view of the contested act can not be regarded as invalid on the ground that he has not been published in "Rossiyskaya Gazeta". The fact that the applicant does not use the "Bulletin of normative acts of federal bodies of executive power" as a source of information on the adopted legal acts, no evidence of violation of the order of publication of the contested order, and the rights and legitimate interests of the applicant. In this regard, the grounds to meet the stated requirements are not available. that the applicant does not use the "Bulletin of normative acts of federal bodies of executive power" as a source of information on the adopted legal acts, no evidence of violation of the order of publication of the contested order, and the rights and legitimate interests of the applicant. In this regard, the grounds to meet the stated requirements are not available. that the applicant does not use the "Bulletin of normative acts of federal bodies of executive power" as a source of information on the adopted legal acts, no evidence of violation of the order of publication of the contested order, and the rights and legitimate interests of the applicant. In this regard, the grounds to meet the stated requirements are not available.

CHAPTER 4

Principles of civil procedure

4.1. Concept and significance of the principles of civil procedure

Such a legal category, as a principle of law is the subject of research not only in the general theory of law, but also in the industry of legal sciences. The concept of "principle" has a theoretical value derived from Latin, meaning "primordial", "first principle". Principles of each branch of law constitute the quintessence field of law, reveal its essence, is a criterion individualizing the industry within the legal system.

Principles of law of great importance is given to the theory of law. That is, researchers in the field of theory of state and law were the first to study and highlight the principles of law. Later jurists in the field of industrial science identified and justified principles of each branch of law. G.F. Shershenevich back in 1909, wrote: "In the name of the legal principle refers to common thought, direction, embedded legislator consciously or unconsciously, in a number of legal rules established by it." However, in a subsequent G.F. Shershenevich indicates that, unfortunately, the legislator is limited to the establishment of certain norms and very rarely gives the general principles. Therefore, summarizing the problem lies entirely on the theoretical and practical legal³¹. In 1919, Professor T. Yablochkov in honor of the memory of G.F. Shershenevich devoted a separate fundamental labor principles of civil procedure.

Modern researchers also pay much attention to the study of the principles of law and in the general principles of civil procedure in particular. Thus, F.N. Fatkulin distinguishing between inner and outer form right below the inner shape of the right denotes the right structure in which the content of the "lights" in the form of the general principles and based on them a system of separate branches, each of which in turn consists of branch principles and systems of certain institutions. Under the outward form of rights F.N. Fatkulin sees external device law, represented by various regulatory sources in a systematic way³².

In the Russian doctrine, there are different points of view on the rights of the principles of the system. So, M.A. Gurvich shared principles of law for their role in the administration of justice in the organizational and functional. Later, the same author proposed to classify them by reg-

³¹Shershenevich G.F. General Theory of Law. M.1995.V.2. 87 p.

³²Fatkullin F.N. Fundamentals of Theory of State and Law. Kazan. 1995. 111 p.

ulation subject to the principles governing the democratic process and the principles that express the legitimacy of the process³³.

K.S. Judelson and A.A. Alekseev classified principles depending on which area in the relationships they are distributed and allocated the following principles:

- general principles - express the content of all the civil procedural law and apply to all branches of law;
- cross-cutting principles - characterized as a civil procedural law and related fields of law;
- sectoral principles;
- the principles of individual institutions³⁴.

Of the principles can not be overestimated. First of all, they are the guarantee issuance legitimate, reasonable and fair judgment.

The doctrine is presumed that civil procedural principles have established the fundamental legal beginning of the civil procedural law governing the construction process, its nature and methods of administration of justice in civil matters. The principles of law are concentrated legislator views on the nature and content of the present proceedings. They pervade all civil procedural institutions and define such a construction of civil procedure, which provides the imposition of lawful and informed decisions.

Originating on the basis of new views on the role and importance of the judiciary, the principles are important prerequisites for the further development and improvement of the civil procedural law.

The principles of any branch of law are closely interrelated and form a single logical-legal system. Only taken together as a system, they characterize civil procedural law as an independent branch of law. Violation of the principle, for example, direct proof of study, leading to a breach of another principle - the rule of law. Thus, some principles should be seen as a guarantee for the other principles.

Meanwhile, in the theory of law there are different approaches to the understanding of the essence and principles of law. Thus, proponents of natural law doctrine of law distinguish principles from the very idea of law and justice, of a certain ideal, purified from accidents. According to them, based on natural principles are made applicable laws and regulations. However, it should be noted that not all natural legal principles enshrined in the rules of law as principles. Conversely, not all principles of law based on raw natural basis. However, in the very doctrine of natural origin principle it is certainly a grain of truth.

³³Gurvich M.A. The doctrine of the lawsuit. M. VYUZI. 1981. 25-26 pp.

³⁴Alekseev S.S. Theory of State and Law. M. Law literatura.1972. 417 p.

Because there are some basic principles of guidance for law-making and law enforcement, it is currently impossible to imagine the work of state bodies, including the Court, without the principles of humanism, justice, the rule of law, democracy. Principles as opposed to the rule of law, so to speak, have a longer duration of its existence.

Principles are very important legal category, since they determine the independence of the branches of law on a par with the object and method, express the essence of each branch of law. It should be noted that with regard to the understanding of the principles in the theory of law and state there are several basic approaches. Representatives of the first, according to G.L. Osokina, should be called D.A. Kerimov, who defined the principle only as a scientific category, reflecting the theoretical positions of certain patterns of social relations, the direction and the main features of legal regulation of social relations³⁵. Representative second direction is M. A. Gurvitch who understood under the general legal principle norm thus identifying the principle and rule of law. The representatives of the third direction can be attributed T.I. Illarionov, who pointed out that the principles may take the form of regulatory systems, although "some of them implemented without special regulatory clearance"³⁶. Thus, T.I. Illarionova admits the existence of principles as in the law and outside the law. However, further distinguished author notes that industry principles ensure the unity of the legislator approaches to regulating a specific set of relations. Consequently, the principles can only exist as set out in the law. For if the principles reflect a single legislator approach to relationships, they can not exist outside of the law.

The greatest interest is the fourth direction (although it can not be called apodictic), whose members are researchers such as V.N. Tcheglov, N.A. Chechina and many other authors. This direction as it accumulates the previous two directions defining principle as basic ideas and how regulatory beginning.

As rightly pointed out by N.A. Chechina principle of law as fundamental principles, guiding ideology different from the scientific and philosophical views that need fixing in the law³⁷. However, we beg to differ with the statement of the author of the above, since the normative consolidation principles have to be the case, but that consolidation may not only be in the law, but also in legal norms (judicial law-making). Today, more and more scientists are talking about the possibility of recognition of judicial rulemaking.

³⁵Osokina G.L. Civil Procedure. A common part. M. Jurist. 2006. 105 p.

³⁶Illarionova T.I. Civil law. M. Norma. 2001. 12 p.

³⁷Chechina N.A. The main directions of development of the science of civil procedural law. Leningrad.1987. 88-90p-p.

A.A. Vlasov defines the principles of procedural law as established by the regulatory basic start defining the process of building, its nature and methods³⁸. In turn, V.N. Kartashov under the principles of the right to understand the source of normative and guiding principles (mandatory requirements) determining the general direction of, the quality and efficiency of legal regulation of social relations³⁹.

The principles are the element structuring group of legal norms of institutions and branches of the law. The principle of any branch of law the concept of multidimensional. It is in the scientific understanding of the principles of the field of law formed an idea of the ideal model of each branch of law. On the other hand, the principle as it is a "working tool" formation and development of the field of law. These two properties determine its principles and important theoretical value.

That the "systemic" principles can be the basis for the individualization of branches of law, pointed out by SN Brother: "... the definition of the field of law contributes to its guiding principle and the definition of the specificity of offsetting the conceptual apparatus"⁴⁰.

Principles of civil procedure law gives it some constructive perfection, they are concentrated legislator views on the nature and content of regulatory proceedings in civil cases, as if they are the structural basis of the right branch. G.L. Osokina rightly believes that the principle is the same time that the idea, which was formed as a result of scientific, professional and mass (ordinary) representations of the ideal model of the field of law, the principle of comparing a "working tool" regulation of public relations⁴¹.

In the science of civil procedural law principles can be divided into two groups: organizational, functional, and functionality. The first group defines principles ships apparatus and process simultaneously. The second group defines only the procedural activity of the court and other participants in the process. These two groups are interrelated principles, often the same principle and serves as an organizational-functional and functional. In connection with this V.M. Sawicki rightly pointed out that there is no organizational principles only, or only functional. Therefore, we can recognize that the principles of the division into two groups is very conditional.

The cognitive and educational purposes in jurisprudence and decided to allocate part of the system of principles.

³⁸Vlasov A.A. Civil Procedural Law. TC "Welby" 2003. 37 p.

³⁹Kartashov V.N. The theory of legal system. Yaroslavl. 2005. 99 p.

⁴⁰Bratus S.N. On the subject of Soviet civil law // *Owls. state-in and right*. 1940. № 1. 38 p.

⁴¹Osokina G.L. Civil Procedure. A common part. M. Lawyer. 2006. 107 p.

The term "composition" in the philosophical sense is used to refer to a list, a set of objects and phenomena. Such content is embedded in the principles of composition, understanding the composition of the list of existing principles of the principles of this or that branch of law.

the principles of the system have a more complex legal phenomenon is the classification of the principles of their composition dividing into separate groups according to some criterion.

4.2. System Principles of the Civil Procedural Law

Organizational and functional principles:

The principle of justice only by the court. The principle has constitutional recognition and enshrined in Part 1 of Article 118 of the Constitution, which reads: "Justice in the Russian Federation is only the court. " The content of this principle is easily revealed by the example of the criminal proceedings. Everyone charged with a criminal offense shall be presumed innocent until his guilt is proven in a stipulated by federal law and established by a court verdict. The principle of justice only by court also acts in civil, administrative court and arbitration proceedings (processes).

In civil proceedings this principle is reflected in the fact that the court in the system of bodies, to protect the rights which are: the arbitration courts, notaries, the commission on labor disputes, administrative bodies has a special place. Judicial protection of law takes precedence over the other, reflected in the fact that:

a) where the issue of law can be examined by several agencies, which include the court, the final decision taken by the court. For example, the Labor Court following the decision of the commission on labor disputes the final decision on the application of an interested person takes the court;

b) the court indirectly charged with the duty of checking the legality of decisions of the arbitration courts in the case of application for issuance of a writ of execution to enforce the arbitral award;

c) any decision taken in an administrative procedure may be appealed in court.

Justice is a special kind of state activity and is carried out only by the judges, with authority in the prescribed manner and within strict procedural form, ie, trial formalized.

The principle of appointment of judges to the position. During the Soviet period of our history it acted principle of election of judges and lay judges. Currently, courts are formed differently and judges are not elected, but appointed to the post. There are two ways of appointing judges to the position: some judges are appointed by the Federation Council of

the Federal Assembly of the Russian Federation and other Russian President.

No matter in what order there is the appointment of a judge, a person may not be presented to the destination without the consent of the Judicial Qualifications Board.

The Council of Federation of the Federal Assembly of the Russian Federation on the proposal of the President of the Russian Federation shall be appointed Chairman of the Supreme Court of the Russian Federation. On the proposal of the President of the Russian Federation, based on the recommendation of the Chairman of the Supreme Court, the Council of Federation of the Federal Assembly appoints the Vice-President of the Supreme Court and other judges of the Supreme Court.

The chairmen, deputy chairmen and judges of the Russian Federation, the judges of district and equivalent courts shall be appointed by the President of the Russian Federation on the proposal of the President of the Supreme Court considering the opinion of the Judicial Qualifications Board. Selection of candidates for the position of judges on a competitive basis.

The age limit of stay in the office of a judge of the Federal Court (with the exception of the Constitutional Court of the Russian Federation - 65 years).

The principle of the sole consideration and resolution of civil cases. In accordance with the Civil Procedure Code before a court of first instance judges considered individually. When the sole consideration of the judge is acting on behalf of the court. Peer review of civil cases in the court of the first instance there is an exception to the general rule (Art. 7 of the Code of Civil Procedure). Peer review the case of three professional judges provided, for example, in cases of disbanding the Electoral Commission (Art. 3 of Art. 260 CCP RF).

In the appellate court of the district court cases are heard by one judge. The appellate court acts adopted under the simplified procedure, it is also considered by a single judge (art. 335-1 CPC RF). Civil cases in the courts of cassation and supervisory instances courts consider collectively.

The principle of judicial independence. This principle is proclaimed in the Constitution means that the administration of justice Judges are independent and subject only to the Constitution and federal law (Art. 1, Art. 120 of the Constitution). Independence of the judiciary - a key principle of justice.

Judges consider and resolve civil cases under conditions that exclude extraneous affect them. Any interference in the work of judges in administering justice is prohibited and shall entail liability under the law.

The independence of judges is ensured by a number of constitutional guarantees (art. 120-124 of the Constitution of the Russian Federation), concretized in the legislation of the Russian judicial system.

Issues arising in proceedings by a court in the collegiate composition shall be resolved by the judges by a majority vote. None of the judges has no right to abstain from voting. Presiding at the meeting shall vote last. The judge does not agree with the decision of the majority shall sign the decision and the right to state in writing his dissenting opinion.

What else outside influence on judges and interference in their activities of any government agencies, local authorities and other bodies, organizations, officials and citizens is unacceptable and entails liability established by the administrative and criminal law. Judgment on the factual circumstances of the case, prove the truth, about the rights and obligations of the parties must be convinced the judges themselves, rather than judgments imposed on them by others from outside.

The judge must in the conference room to apply the law and is not entitled to make its decision to the discretion of the heads of local administrations, authorities and officials. The independence of judges is ensured by political, economic, legal guarantees.

The political guarantees the independence of judges include provisions that prohibit judges to be members of any governmental or other organizations, to political parties, movements, represent the interests of officials, government entities, territories, nations, nationalities, and social groups. Decisions of judges should be free from considerations of practical expediency and political inclinations.

The economic guarantees of independence of judges include such provisions of law, which are the judges due to the state financial and social security, corresponding to the high status of judges, the free provision of living space and other social benefits.

Legal guarantees of judicial independence concerns the statutory procedure for the administration of justice, the order of selection of judges and giving them authority to ban the superior court to give in their definitions with the cancellation of the decision of the lower court guidance on the reliability or unreliability of the evidence on what substantive law should apply in the new proceedings.

The judge, his family and their property shall be under the special protection of the state. Internal affairs agencies are obliged to take the necessary measures to ensure the safety of judges, members of his family, the preservation of their property. The judge is not obliged to give any explanations on the merits considered, or who are in the production of affairs whatsoever, except in the cases and in the manner prescribed by the procedural law. The media has no right to prejudge in their reports

the results of the consideration and resolution of a particular dispute to the decision by the court.

The independence of judges is guaranteed the inviolability of the individual judges (Art. 16 of the Federal Law of the Russian Federation "On the Status of Judges in the Russian Federation" and art. 16 Federal Constitutional Law "On the Judicial System of the Russian Federation"). The inviolability of judges also extends to his home and office, means of transport and communications, correspondence, property belonging to it and documents. A judge may not be subject to any liability for its expressed in the exercise of judicial opinion and decision, if entered into force of a judgment will not be installed guilty of criminal abuse.

In 2013, Article 8 of the Civil Procedure Code has been supplemented by a new Part 4, from which it follows that the information on extra-procedural appeals from any subjects judges to be publicizing and communicating to the stakeholders by posting on the official website of the court. In itself, however, such information can not be regarded as grounds for disqualification of a judge (Article 16 of the Civil Procedural Code of the Russian Federation).

However, despite the fixed to the big problem of judicial independence in Russia, the law guarantees the independence of judges in the system currently exists on the president and his staff. All postulates of independence would have a value in democratic presidential elections, President turnover. In a situation where the judiciary through the appointment of institutions and cancellation is controlled by the president and his staff the principle of independence is a fiction.

Principle equality of citizens and organizations before the law and the courts. This principle has its origins in the constitutional law and was developed in civil law and process. Equality of participants in civil commerce before the law is above all a member of the legal status of citizens and organizations in the community. This principle of the legal nature derives from the proclaimed civil law the basic principles of civil law, which is based on the recognition of the equality of participants regulated their relations, the inviolability of property, freedom of contract, the inadmissibility of arbitrary interference by anyone in private affairs, the need for the smooth implementation of civil rights restoration violated rights and their judicial protection (Art. 1 Civil Code).

Equality of citizens before the law regardless of sex, race, nationality, language, origin, property and official status, place of residence, attitude to religion, convictions, membership of public associations or other circumstances.

Equality in the procedural rules of the organization does not depend on the location of the organization, legal status, affiliation, geographical factors and other circumstances (Art. 6 CPC RF).

The principle of the state language. By virtue of Articles 71 and 118 of the Constitution the courts of general jurisdiction are the federal courts, so litigation in them should be conducted in the state language. Legal proceedings in civil cases is conducted in Russian - the official language of the Russian Federation or in the official language of the Republic, which is part of the Russian Federation on the territory of which the relevant court is located. The military court trial is conducted only in Russian.

Participating in the proceedings who do not speak the language of the proceedings explained and guaranteed the right to familiarize with the case materials, give explanations and testimony, to appear in court and make petitions, lodge complaints in their native language or in any freely chosen language of communication.

Violation of statutory procedural safeguards to protect the rights of persons who do not speak the language of the proceedings, there are absolute grounds for cancellation of the judgment.

the principle of publicity. In civil proceedings the consideration and resolution of cases is in the open court. Open proceedings has a positive effect on the judges involved in the case of their representatives in terms of public control over their activities and the impact on their compliance with the rules of civil procedure law. This principle is one of the prerequisites for issuance of reasonable and legitimate judgments.

The principle of transparency is meant free access to the courtroom for all citizens who want to listen to the process, as well as their right to written notes about the process and audiocomponent all that is happening in the courtroom with the occupied space.

The doctrine of civil process also produce transparency in a broad sense (publicity). Publicity is the right presence in the courtroom of unauthorized persons, i.e. the public, including the media, which can be placed on the trial reports in the media, without prejudice to the findings of the Court in the forthcoming decision. The mass media have no right to exert any influence on judges.

Currently, compliance with publicity principle attaches particular importance. Not accidentally Resolution of the Plenum of the Supreme Court on December 13, 2012 № 35 "On openness and publicity of court proceedings and access to information on the activities of the courts" is devoted to the above principle. In particular, the regulation stipulates that a openness of proceedings, the objective to inform the public about the activities of courts of general jurisdiction is the guarantee of a fair trial, as well as providing control over the functioning of the judiciary.

Courts should create the necessary conditions to ensure openness and transparency of proceedings and the right to receive infor-

mation on the activities of the courts, including persons with disabilities, taking into account the requirements of the Convention on Rights of Persons with Disabilities in 2006. So, if the court has no elevator, the hearing should take place on the first floor of the building. May not be held open hearings on the premises, excluding the possibility of the presence in them of non-actors, representatives of mass media editorial offices. Not allowed Chinese obstacles and Denial of access of the courtroom on grounds of professional affiliation, or because of lack of accreditation or on any other grounds not provided for in the law.

From the principle of transparency allowed exceptions. Such exceptions to the principle of transparency can be divided into two types:

a) mandatory - enshrined in the law of limitation, they are fixed in the text of the law and do not allow discretion of judges or other persons involved in the case. In such cases, the hearing are always closed;

b) alternative limits, allowing for the possibility of holding a closed hearing on the petition of the persons participating in the case, representatives, or at the initiative of the court.

An example of the first type of exception to the principle of transparency are the proceedings on the child's adoption. In accordance with Article 139 of the Family Code and Article 273 of the Civil Procedure Code in order to ensure the legally protected secret of adoption - an adoption case a child to be considered and resolved in a closed hearing, including the announcement of the decision.

Cases containing information constituting a state secret as an exception as discussed in a closed court session. The trial in a closed court hearing on grounds of state secrecy is carried out only in the presence of materials information affairs, which are related to state secrets and classified in the manner and on the basis of the Law "On State Secrets" as well as in accordance with the Presidential Decree of 11 February 2006 № 90 "On the list of information classified as a state secret."

For the state secret information include the following:

1) The information in the military field:

– information on the content of the strategic and operational planning, command and control of documents on preparation and conduct of operations, strategic, operational and mobilization deployment of the Armed Forces, other troops, military formations and bodies, provided by the Federal the law "On Defense", their combat and mobilization readiness, the creation and use of mobilization resources;

– information of Construction of the Russian Federation Armed Forces and other troops of the Russian Federation, the directions of the development of weapons and military hardware, content and results of the implementation of targeted programs of research and development

work on the creation and modernization of armament and military equipment;

- information about, technology, production, volume of production, storage, the disposal of nuclear weapons, their parts, fissile materials used in nuclear munitions, technical means and (or) method of protection of nuclear munitions from unauthorized use as well as nuclear energy and special physical facilities for defense purposes;

- details of tactical and technical characteristics and capabilities of combat use of weapons and military equipment, on the properties, formulas or techniques of production of new types of propellants or explosives for military use;

- information on the location, purpose, degree of preparedness, protection regime and critical facilities, their design, construction and operation, as well as the withdrawal of land, mineral resources and water areas for these objects;

- information on the location, real name, organizational structure, weapons, troop levels and the state of their combat support, as well as the military, political and (or) the operational environment;

2) information in the field of economy, science and technology:

- on the contents of the Russian Federation, preparation of plans and its regions for possible military action on the mobilization capacity of industry for the manufacture and repair of weapons and military equipment, on production, shipments, inventory of strategic types of raw materials, as well as the location, actual size and the use of state material reserves;

- the use of the infrastructure of the Russian Federation in order to ensure national defense and security;

- about the forces and means of civil defense, dislocation, destination and degree of security administration facilities, the degree of security of the population, the functioning of transport and communications in the Russian Federation in order to ensure the security of the state;

- on volumes, plans (tasks) of the state defense order, production and delivery (in cash or in kind) of weapons, military equipment and other defense products, the availability and increasing the capacity of their release, communication enterprises cooperation, developers or manufacturers of these weapons, military equipment and other defense products;

- the achievements of science and technology, research, development, design work and technologies that are important defense or economic importance, affecting the security of the State;

- on stocks of platinum, platinum group metals, natural diamonds in the State Fund of Precious Metals and Precious Stones of the Rus-

sian Federation, the Central Bank of Russian Federation, as well as on the volume of reserves in the depths, extraction, production and consumption of strategic minerals of the Russian Federation;

3) information in the field of foreign policy and the economy:

- on foreign policy, foreign economic activity of the Russian Federation, the premature disclosure may harm the security of the state;
- the financial policy in relation to foreign countries (except generalized indicators of external debt), as well as financial or monetary activity, premature disclosure may harm the security of the state;

4) information in the field of intelligence, counterintelligence and operational-search activities, as well as in the field of combating terrorism and in ensuring the safety of persons, for which a decision on the application of measures of state protection:

- on the forces, means, sources, methods, plans and results of intelligence, counterintelligence, operational search activities and activities to combat terrorism and the financing of this activity data, if these data reveal the listed information;

- on the forces, means, sources, methods, plans and results of operations to ensure the safety of persons in respect of whom a decision on the application of measures of state protection, the financing details of this activity, if these data reveal the listed information, as well as some information on the said faces ;

- on individuals who cooperate or collaborate on a confidential basis with bodies engaged in intelligence, counter-intelligence and operational-investigative activity;

- the organization, forces, means and methods to ensure the safety of objects of the state protection, as well as data on financing of this activity, if these data reveal the listed information;

- on the system of presidential, governmental, encrypted, including coded and secure communication, ciphers, development, manufacture and maintenance of ciphers, methods and means of analysis of cryptographic hardware and means of special protection, information-analytical systems for special purposes;

- the methods and means of protection of classified information;

- the organization and the actual state of protection of state secrets;

- on the protection of the State border of the Russian Federation, the exclusive economic zone and continental shelf of the Russian Federation;

- of the federal budget the costs associated with providing the defense, national security and law enforcement in the Russian Federation;

- on training, revealing the activities carried out in order to ensure the security of the state;
- measures to ensure the security of critical infrastructure and potentially dangerous objects of the Russian Federation infrastructure from acts of terrorism;
- on the results of financial monitoring against organizations and individuals received in connection with the verification of their possible involvement in terrorist activities;
- measures to ensure the security of the Russian Federation of the critical information infrastructure and the state of its protection against computer attacks.

As for the second type of restriction, you can cause a lot of examples of publicity restrictions as exceptions to the principle of transparency allowed, but do not have the unconditional nature and require in each case the discussion of the court and the motivation of the closed hearing. For example, every Russian citizen has the right to privacy, personal and family privacy, confidentiality of correspondence, telephone conversations, etc. In order to protect the confidentiality of correspondence and telegraph messages personal correspondence and personal telegraphic messages can be read only with the consent of the parties in open court, between which there was an exchange of information. Otherwise, such correspondence and telegraph messages shall be announced in a closed court session. The presence in the information relating to the private life of the persons involved in the case, is not unconditional basis for a closed hearing.

The court must take into account the nature and content of the private life of individuals, as well as the possible consequences of disclosing secrets. At the same time, taking into account the provisions of Articles 182, 185 of the Civil Procedure Code, correspondence, recording of telephone conversations, e-mails, audio recordings, video recordings of a personal nature are examined in open court only with the consent of these persons to study these materials.

The law allows an exception to the principle of transparency in the interest of preserving different kinds of secrets. Consideration of the case in closed session is permitted in cases in satisfying the court motions involved in the case of the person claiming the need to preserve commercial and other secrets protected by law.

Consideration in a closed hearing of cases in which disclosed a trade secret, is carried out only in the event that its owner has taken measures to protect its confidentiality, in accordance with the law "On Commercial Secrets" from July 29, 2004 № 98-FZ. In deciding whether a closed hearing must take into account Government Resolution of 1991

"On the list of information that can not constitute a trade secret", as well as Presidential Decree of March 6, 1997 № 188 "On Approval of the List of confidential information" .

To be considered in a closed court hearing civil cases, if an open trial of the case would be contrary to the interests of protecting state secrets and may cause damage to the security of the Russian Federation (Art. 1, Art. 2 of the Law "On State Secrets").

Postulating that the generally recognized principles and norms of international law and international treaties of the Russian Federation shall be a component part of its legal system, the court may consider the case in a closed court session pursuant to paragraph 1 of Article 14 of the International Covenant on Civil and Political Rights, Article 6 § 1 of the European Convention on protection of human rights and fundamental freedoms, which provides that the press and public may be excluded from all the trial or its part for reasons of morals, public order, and where the interests of minor children or to protect the privacy of the parties or to the extent that in the opinion of the court, is strictly necessary in the interests of justice.

On hearing of the case in a closed session of the court shall issue a reasoned decision, which shall be listed the particular circumstances that prevent free access to the hearing room persons who are not participants in the process, members of the press. About the in camera hearing indicated in the minutes of the hearing. Such a determination can not be appealed. After the announcement of the definition of all those present in the courtroom citizens, except for the persons involved in the case, are obliged to leave it.

Within the meaning of Article 10 of the Civil Procedure Code, the trial publicity is ensured at all stages. Failure to comply with rules on publicity of court proceedings constitutes a violation of court rules of procedural law and is grounds for cancellation of a court order, if such breach has resulted in or could lead to the adoption of illegal or unjustified decisions.

Given the importance of the principle of publicity of justice for the Plenum of the Supreme Court of Justice recommended the Russian universities to introduce into the curricula of judicial training a special course on the application of the rules governing the proceedings of openness and transparency and access to information about the operation of the courts.

Plenum of the Supreme Arbitration Court in its judgment of April 4, 2014 № 24 "On ensuring transparency in the arbitration process," further explained that the citizens and the media have the right to be present in the preliminary hearing. However, they can take notes during the hear-

ing, fix it with the recording equipment. One condition - there are no grounds for proceedings in a closed court session.

The matter is a closed court session not only seen, but also allowed, which means that the court acts, containing secrets protected by law, declared in a closed session. Video conferencing and audio in a closed court session is not allowed.

Functional principles:

The principle of legality. In the legal literature states that the legality of a state of society in which, firstly, there is a qualitative, consistent legislation and, secondly, adopted the rule of law are respected and enforced by the authorities, officials, organizations and citizens. In case of violation of law, the state is obliged to ensure adequate protection of violated or disputed rights to the established procedural order. Civil procedure is one of the forms of protection of rights. Legitimacy in the work of the courts means full compliance with all of their orders and regulations made by the proceedings of both substantive and procedural law, i.e. law.

Proclaimed the principle of legality as a general principle in the Russian Federation. Man, his rights and freedoms referred to in article 2 of the Constitution, are the supreme value. The recognition, observance, protection of rights and freedoms of man and citizen has overriding duty of the state.

The principle of legality in its content includes the requirement for the courts correctly applied the substantive (regulatory) law in strict compliance with the rules of procedural law. The court must adjudicate on the basis of the Constitution, international treaties of Russian Federation, federal constitutional laws, federal laws and regulations of the Russian Federation President's acts and normative legal acts of the Russian Federation, normative legal acts of the federal authorities, constitutions (charters), laws and other regulatory legalacts of the Russian Federation, normative legal acts of local self-government. The Court also permits civil cases based on business practice, in cases stipulated by laws and regulations.

The Court, having established the illegality of an act of civil government or any other body, as well as the official Constitution, federal law, generally recognized principles and norms of international law, shall take a decision in accordance with the regulations, which have the highest legal force.

If an international treaty of the Russian Federation stipulates other rules than those stipulated by the Russian legislation, the rules of international treaty. If there is no law governing the controversial attitude, the court shall apply the rules of law regulating similar relations (analogy of

law), and in the absence of such rules shall decide the dispute based on the (right analogy) the general principles and the meaning of laws.

The consideration and resolution of civil cases, courts are guided by the legislation on legal proceedings in the courts of general jurisdiction (Art. 1 of the Civil Procedure Code). This legislation is administered by the Russian Federation. Subjects of the Russian Federation have the right to make rules governing the administration of justice in the federal courts.

The implementation of the principle of legality is ensured by a number of procedural safeguards. These include, above all, guarantees that make up the content of the other principles of civil procedural law, for example, the independence of judges and their subordination only to the law, equality of the parties before the law, adversarial process, equality of the parties, the publicity of the trial, the spontaneity and continuity of trial, etc.

The legislator, in detail regulating civil procedure, still allows for the possibility of judicial errors. To eliminate them and restore the rule of law provided under review judicial decisions.

It is necessary to allocate such guarantees of the principle of legality, as the mandatory notification of interested parties about the time and place of the hearing, the possibility of disqualification of a judge, part of the prosecutor, participation in state bodies and local self-government, the possibility of the parties to have a representative, a clear regulation of form and content of the statement of claim, limited list of grounds for denial of its adoption, etc. As a guarantee of the principle of legality in civil proceedings to be in writing and detail the solutions is regulated by its structural content.

The purpose of civil proceedings is that as a result of the case were set Existing actual circumstances of the case and to him shall be the substantive law is correctly applied. Substantive law are considered violated or incorrectly applied, if the court: a) did not apply the law to be applied; b) apply the law, not to be applied; c) I misinterpreted the law. On this occasion, the Supreme Court Plenum in its Resolution number 23, paragraph 2 stated the following legal position: "The decision is lawful in the case when it is taken under strict observance of the norms of procedural law and in full compliance with the norms of substantive law, which are applicable to a given legal relationship or based on the use, where appropriate, the analogy of the law or similar law. The court must take into account the decision of the Constitutional Court Ruling of the Plenum of the Supreme Court, the European Court of Human Rights. "

The principle of relative truth. For many decades in the Russian civil process acted principle of "objective truth." In the philosophy of truth

understood by the content of knowledge, the identity of its subject. You can select the following types of truths: ontologicheskaya, objective, logical, absolute, relative, formal. As indicated in the literature, the objective truth is the comprehension of the essential characteristics of the subject. However, the truth is, with the objective content yet subjective form. In different countries professionalists have different assessments of the truth to be established in court. In common law countries, the court sets a relative truth. In the Romano-Germanic legal system stipulates that a court should establish the objective truth. In Israel and in many Arab countries, the judge must necessarily reach the truth of the case, even if the parties have not provided sufficient evidence. And if the truth is not reached, the decision does not comply with religious laws.

learning process includes both the establishment of the facts, which the parties bind occurrence, change or termination of their rights and legal assessment of the facts established by the court. The dispute of the parties in adversary proceedings often reduced to an establishment or denial of the facts having legal significance of the case.

If in a particular case the Court has not set completely and correctly the factual circumstances of the case, the rights and obligations of the parties, i.e., Truth, then, consequently, it is impossible to accept the legitimate decision. True is called judgment, in which the objective reality is reflected correctly. Under the truth in a civil proceeding understood the true judgment of a judge is really the actual circumstances of the case in their legal assessment, to establish the facts of the act precedes the application of the rule of law.

Legislation on Civil Procedure provides a list of the evidence by which the set of factual circumstances, the order of their submission, and reclamation, evaluation of evidence rules. In the interest of truth as it guarantees established by the court the duty to provide leadership by civil process.

All known adage that truth is born in dispute. Although the question of truth is quite controversial. Another Indian philosopher Sri Aurobindo said: "The opinion is neither true nor false, but only useful or useless in life." However, participants in the process during the trial seeking to know the truth, but this desire does not always guarantee the knowledge of objective truth.

The method of arriving at the truth in a civil process acts as a contest of the parties in terms of equality. However, not always possible to understand the objective truth in court, but the decision still need to be taken. In this connection, T.M. Yablochkov back in 1909 pointed out that the courts have not established the material and formal truth. In ancient Rome there was a formula: *Errare humanum est* (and judges are people

too). The judges base their decision only on the evidence provided by the litigants. The Court is not entitled to collect evidence in favor of any party. Consequently, the truth, comprehend the court is not objective, and the relative (with respect to the evidence that the parties have presented).

The question of the truth in court is currently a discussion. The principle of objective truth is opposed to the principle of formal truth. The principle of objective truth was enshrined in the Soviet civil process. A.F. Kleinman wrote in 1961 that this principle is an expression of the Leninist theory of knowledge in the implementation of socialist justice⁴². K.S. Judelson also noted that the achievement of the objective truth in the civil proceedings due to the leading role of the working class dictatorship of the working class allied with the peasantry, the absence of antagonistic classes and class struggle⁴³. Currently, the legislator has departed from the principle of objective truth - "the truth is in, no matter what the cost." But on the whole Russian science to date it postulates the principle of objective truth, defining it even as the purpose of civil procedure.

Prevention principle. For the first time on this principle noticed Y.S. Qambarov⁴⁴. This principle defines the role of the plaintiff and defendant in court. The one who first lunged, ie who are the first to take the plaintiff's position, he is seeking protection becomes a person, being an active process side. Thus, the position of the claimant and the transponder is determined purely formal. The plaintiff does not have the right and duty can not lie on the defendant. The essence of the principle of prevention can be expressed in the dictum of the Roman lawyers Qui facuit est temporole potior est jure (lat. Who earlier in time, the first and foremost).

The principle of optionality. The principle of optionality is a recognized principle in procedural science. Appearance in the Russian science dispositive principle helped the German Law School (Gyunner, Schmidt Wetzel). First German learning substantiated the existence of procedural science principle of optionality. The basis of the Russian pre-revolutionary doctrine of the law of procedure has been put "order theory" S.A. Sapozhnikov. According to this theory side disposed as the object of the process and the procedural protection means or attack. In fact, the theory of orders is none other than the principle of optionality. In the Soviet period the scope of the principle of optionality was somewhat limited as a personal initiative of the litigants could not be contrary to public policy (eg,

⁴²Kleinman A.F. Soviet civil process. M. 1954. 158 p.

⁴³Judelson K.S. Soviet civil process. M. 1956. 286 p.

⁴⁴Qambarov Y.S. Litigation: a course of lectures. M. 1895. 23 p.

Today, the principle of optionality is distinguished by the nature of a civil action from the criminal. discretionary principle is the ability of persons involved in the case and especially the parties to dispose of their substantive and procedural law. This principle determines the motion in the case of the process, its transition from one stage to another. In accordance with the principle of optionality is excited a civil case, determined the object and cause of action, appealed the court's decision, his appeal to the execution. Optionality permeates all civil proceedings from the occurrence of a particular civil case before the enforcement proceedings. The conclusion of the agreement is determined by the will of both sides, and the recognition of the claim depends on the defendant's position. Parties choose their methods of protection. Court without referring to it with the claim (statement) to interested parties does not excite a civil case. S.A. Sapozhnikov rightly points out: "The manifestations of optionality so numerous that in the variety of forms is easily lost the essence of the phenomenon. Optionality as if dissolved in a vast array of civil procedural rules. Such diversification dispositive beginning inevitably leads to the loss of the necessary certainty that should be inherent in any scientific concept"⁴⁵. However, it should be noted that this principle is not textually enshrined in the Civil Procedure Code, ie it is not personified and dissolved in many norms Code.

Court starts manufacture in a civil case is not, except by the will of the person concerned. Filing a claim depends on the will of the plaintiff. However, the plaintiff has no right to share their claims and collect the debt in installments. Since in this case it would be several solutions and it would be contrary to the rule of "one and the same claim can not be decided by the two decisions." In Roman law the essence of this principle expresses the phrase *nemo iudex sine actore* (no judge without the plaintiff). The Court should not go beyond the requirements of the parties. However, the appeal court should not depend on whether the claimant any material rights and interests.

In certain cases provided for in the law, civil proceedings may be initiated on the initiative of the public prosecutor, state agencies and local governments, as well as individual citizens, defend the rights and interests of other persons (Art. 45-46 CPC RF). However, this does not exclude the principle of optionality, and is no exception to it.

In accordance with the principle of discretionary side of their agreement may submit the dispute to arbitration. If the law established an alternative jurisdiction for this type of claim, the plaintiff chooses a court, at its discretion. According to the statement of the person involved

⁴⁵Sapozhnikov S.A. Author. cand. jurid. n. The principle of optionality in the civil process. 2006.

in the case, the court is entitled to take measures to ensure the claim at any stage of the process. The plaintiff in the claim defines the subject and cause of action, and can connect to a lawsuit several requirements related to each other. The defendant is entitled to a decision in the case to present to the plaintiff counterclaim.

However, in some cases, the law restricts the principle of optionality. For example, the court does not accept the refusal of claimant from claim, acknowledgment of claim by respondent, does not approve the settlement agreement of the parties, if these actions are contrary to the law, other legal acts, or violate the rights and lawful interests of other persons.

The adversarial principle. the adversarial principle was enshrined even in the Civil Procedure Code of 1964. However, in the doctrine of the discussion around the adversarial proceedings conducted since the 19th century. In this connection T. Yablochkov in 1919 he observes that the wording and theoretical development of the doctrine of the "competitiveness" of civil procedure has already celebrated its centenary⁴⁶.

The Code of Prussia process from July 6, 1793 was enshrined the concept of competition as a contest before a judge independent of the process regions. German scientists, in particular Genner, spread competitiveness on a number of components: *nemo iudex sine actore, nemo invitus ad agendum cogitur, ne procedat iudex ex officio, ne cat iudex ultra petita, iudex secundum allegata et probate iudicare debet, non secundum conscientiam, iudici fit probation.* In connection with the principle of passivity of the court and the exclusive activity of both parties in the process of practical jurisprudence rooted already in the 18th century.

It should be noted that in the ancient state of the process and was based on the adversarial principle. For example, under the Russian Truth or Pskov Judicial Charter in 1467 the main role in the process of belonging to the Parties. In this regard, V.O. Klyuchevskii wrote the following: "The court seems to stand by the chairman or passive than the head of affairs." But in 1497 Sudebnik process already combines both the adversarial principle and the principle of pre-trial. In 1864, the Russian civil process has been introduced the principle of competition, and consequently rejected. During the Soviet period of our history, this principle rather could be called not the adversarial principle and the principle of "the active role of the court."

If the discretionary principle determines the ability of the parties and other persons involved in the case by order of the subject of the dispute and the course of movement, the adversarial principle determines

⁴⁶Yablochkov T. Memory Collection Shershenevich. St. Petersburg. 1919. 2 p.

their opportunities and responsibilities for proving the asserted claims and defenses to defend his legal position. The adversarial principle is closely linked with the principle of legality, of optionality. Condition for the implementation of the principle of competition in favor procedural equality of the parties, as to compete in the pursuit of their subjective rights and protected Law party's interests can only under the same legal conditions using equal procedural means.

the adversarial principle in modern conditions has constitutional recognition. In Part 3 of Article 123 of the Constitution states: "Judicial proceedings are conducted on the basis of equality of the parties." This constitutional provision is replicated in Article 12 of the Code of Civil Procedure.

A vivid illustration of the principle of competition is the established rule of evidence, according to which each person involved in the case must prove the circumstances to which it refers as the basis of their claims and objections, unless otherwise provided by federal law (Art. 1, Art. 56 CCP RF). Evidence submitted by the parties and others involved in the case.

Comprehensive review of the case, the court decision legitimate and reasonable solution provides extensive capabilities of the parties to exercise during their initiative and activity, to present arguments in support of its position and reject the evidence and the arguments of the opposite side. According to the previous legislation the adversarial principle as to neutralize the principle of objective truth, and the court was obliged not limited to evidence submitted by the parties, to take all legal measures to establish the actual circumstances of the case, i.e., collect evidence on its own initiative.

In the doctrine of the civil process in the implementation of the adversarial principle defined role for the court in the interest of the rule of law. "Pure" competition, in which the Court would play a passive role in the process, and the process would be reduced to the "free play of the contending parties", is currently in the Russian civil proceedings yet.

The court determines what the circumstances relevant to the case, which party must be proved. He is entitled to propose to the persons participating in the case, to present additional evidence, verifies the relevance of the evidence submitted to the instant case, the content of the final set of issues on which you want to get an expert opinion, may appoint on its own initiative the examination, if no expert opinion is impossible to resolve the matter properly.

Established in the 19th century in the doctrine of German law adversarial principle it is not based on independent postulates of the pro-

cess, and on the characteristic properties of civil rights, freedom to dispose of their entitlements.

According to some researchers (D.Y. Maleshin), currently in the Civil Procedure Code established a peculiar combination of initiative of the parties and the court activity. Therefore, as if the principle of limited competitiveness⁴⁷. However, the science on this issue, there are different points of view. Some scholars insist on the need to strengthen the role of the court in the gathering of evidence. Others, on the contrary, advocated the pure adversarial principle. In the countries of the European community as a different resolved this issue. For example, in France, the court is an active member of civil procedure. The court may on its own initiative to appoint a forensic examination. In accordance with the Civil Procedure Code, France and Germany, the court may on its own initiative to request something or other evidence, and in the Civil Procedure Code of the Russian right the court no.

As for the common law countries, the situation seems quite the reverse. Thus, in accordance with the Model Conduct for United States Judges - the judge must not independently claim the facts of the case, and must consider only the evidence presented. Nevertheless, many American lawyers offer also enhance the activity of the court. However, the system of civil proceedings in the United States, operating since the mid-30s of the last century until it assumes the active role of the court to collect evidence. Help one of the parties by the Court considered in the U.S. during both bias and injustice, as this may be grounds for disqualification of a judge based on preferences.

The principle of pure competition, typical of Anglo-Saxon law, has in addition to the advantages and some disadvantages. The main disadvantage is that the reduced role of the court as a public authority, turning it into a kind of court of arbitration.

The principle of procedural equality of the parties. At the basis of this principle based on economic and legal principles that put participants in civil relations on an equal footing.

The essence of this principle is reflected in the procedural law of equal opportunities for the parties to defend their rights and interests. Providing one side of the specific procedural law, the law gives the same rights and the other side. If the plaintiff is given the right to change the scope and basis of their claims, the defendant respectively, have the right to change the base of objections previously put forward the claim, the right to accept the claim, counterclaim. Thus, none of the parties

⁴⁷Maleshin D.Y. Russian civil procedural system. M. Statute. 2011. 154 p.

does not enjoy any advantage over the other. Each party has the right to have a representative.

At a resolution of the dispute both sides are equally entitled to rely on the assistance of the court. The principle of procedural equality of arms is a guarantee at all stages of the process and is a prerequisite for competitiveness of the process. For example, each of the parties and other persons involved in the case are entitled to submit to the court questions to be resolved during the examination (Art. 2, Art. 79 CPC RF). When preparing the case for trial the judge shall explain to the parties their procedural rights and obligations (p. 1 hr. 1, Art. 150 CPC RF). Equal right to appeal court decisions on appeal, cassation or supervisory review has each side.

The Court can not render the decision without hearing the explanations of the defendant, or, more precisely, not giving him the opportunity to give such explanations. A. H. Golmsten in 1913 rightly pointed out that each party must be given the same procedural means to combat and given the same opportunity to use them⁴⁸.

The principle of combining writing and orality. Civil procedure is based on a combination of two principles: orality and literacy. Traditionally, the dominant value in this combination gives orality, although it is known that the parties, the court and other participants in the process have to consolidate their relations and to make proceedings in writing.

The law of civil procedure are fixed rules obliging the court, the parties and other participants in the process to make the proceedings in oral form, ie, retaining the principle of orality. So the court hearing is conducted orally. The presiding judge in the court hearing oral opening session announce the case to be examined; court clerk checks the attendance of participants of the process; Court orally explain to the parties and other persons participating in case their procedural rights and obligations. Explanations of the persons participating in the case, expert evidence heard orally. Questions to all participants in the process are also given orally and minuted.

Action orality is of practical importance. Personal communication between the parties is in the process of the court and creates the best opportunity to achieve true knowledge in the process, facilitates the perception of the evidence in the case, which allows the legitimate and reasonable solutions. The oral form of communication increases the effectiveness of the competition of the parties in the process of resolving the dispute.

Some remedial actions must be performed only in writing. The statement of claim as a major procedural document submitted in writing,

⁴⁸Golmsten A.H. Textbook of the Russian civil process. St. Petersburg. 1894.

the judgment shall be made in writing. In writing filed an appeal, cassation, supervisory review and the prosecutor. An important role has written evidence (documents) among the evidence. A settlement agreement between the parties and shall be in writing.

The principle of immediacy. This principle determines the ways of perceiving the court evidence. The importance of the principle stated in the Resolution of the Plenum of the Supreme Court number 23 of 19 December 2003 "On the court decision." By virtue of this principle, the court must base its decision on the case solely on the evidence tested and examined in a meeting of the Court of First Instance. The court is obliged to make every effort to ensure that the information necessary to resolve the dispute the facts were obtained from primary sources, although copies or extracts from them are not excluded. If the business has a value of only part of the document, it is duly certified extract from it. Original documents are presented, when the circumstances of the case in accordance with the legislation must be certified only to such documents.

Examination of evidence in compliance with all the requirements of the principle of immediacy is an effective way to achieve a true knowledge of the circumstances of the case. Entering into direct contact with the sources of evidence, hearing the explanation personally involved in the case of the parties and other participants in the proceedings, the judges thus have the opportunity to lead review of submissions and explanations of these individuals to effectively and actively.

By virtue of the principle of immediacy of evidence in the case examines and evaluates the composition of the court, which should allow the merits of the case and render a decision. The composition of the court should be the same in court. If part of the collegiate court any of the judges eliminated from the process in a particular case, when it replaced the consideration and resolution of the case starts from the beginning (ch. 2, Art. 157 CPC RF).

However, in some cases, the direct perception of the evidence by the court is impossible or impractical. Therefore, the principle of immediacy allowed by the procedural law exceptions. For example, such the exemption if the proof is in another city, region or area of collecting, investigating judicial order another court or when to consider and resolve cases accepted proof security measures (Art. 62-66 CPC RF).

At the same time, the records and other evidence obtained as a result of the court order or by providing evidence directly investigated by the court when considering the merits of the case and evaluated along with other evidence.

Until July 29, 2017 acted "continuity principle" in civil proceedings. According to the judge he could not this principle, considering it is one

thing, to divert attention to the other cases. A break in the trial shall be appointed only for recreation. Before making a decision on the case or to deposit the consideration of the court may not consider other was the case. The presence of this principle has been both positive and negative consequences. The positive was that the court focuses only on one process, the judge remained in the memory of all the circumstances and they are not mixed with the circumstances in other cases. However, this process is delayed, because after the break, the judge was forced to begin the process anew.

Of arbitration proceedings the legislator has long ruled the principle of continuity. This was done for the sake of expediting the consideration of the arbitration cases. In 2017, changes were made and in civil procedure law, according to which, at the moment, during a break in the hearing in one case the judge may consider other civil cases, moving later to the previous case in that part of it which was made break.

The principle to be listened to and heard. This principle in the theory of the process highlights M.V. Sherstuk. The content of this principle consists of three components:

- a) The right of persons involved in the case, give explanations, make statements, to submit petitions;
- b) the obligation of the court to create conditions for realization of the rights of persons involved in the case;
- c) to analyze whether the law and justified whether the alleged claims and arguments.

However, as we see it, the essence of the principle expressed by other process principles embodied in the law of (e.g., via the principle of competition) and no need to separately allocate said principle.

The principle of legal certainty. The role and importance of each principle sufficiently investigated in detail in the scientific literature and presented in textbooks on civil process. However lawyers long time did not attach importance to their work the principle of legal certainty, which, in our opinion, wrongly remains beyond the boundaries of scientific research in the doctrine of law. Meanwhile, it is obvious that principle is inherent in all procedural areas of the law, by virtue of which is cross-sectoral.

The content of the above principle is highlighted by paragraph 9 of Article 391-9 of the Civil Procedure Code. The importance of this principle is also noted in the Supreme Arbitration Court, the judgment of 20.11.2012 № 2013/12. The Court noted that the recognition of the prejudicial judgment, being aimed at ensuring stability and general validity of the court decision, the exclusion of a possible conflict of judicial decisions, presupposes that the facts established by the court in considering

a case pending their denials taken by another court in another case, if they are relevant to the resolution of the case. Thereby prejudicialness serves as a means of maintaining the consistency of judicial decisions and provides the action principle of legal certainty⁴⁹. The principle of legal certainty also means that the decision must comply with and not contrary to the uniformity of judicial practice, which is formed in the decisions of the higher courts. In the Resolution of the Plenum of the Supreme Court set out the legal position of the Supreme Court, to fill the gaps in the law, but also contains comments on the practical application of a rule of positive law. For instance, The Supreme Court in its decision number 8 on October 31, 1995 as amended on February 6, 2007, paragraph 4 provides that in cases the courts should take into account that, if subject to the application of the law or other legal act of the Russian Federation is contrary to federal law, adopted on matters under the jurisdiction of Russia, or the joint jurisdiction of the Russian Federation and the Russian Federation, on the basis of the provisions of part 5 of article 76 of the Constitution court must decide in accordance with federal law. And if there are contradictions between the act of a subject of the Russian Federation and the Russian Federation adopted on matters relating to the management entity shall apply the act of the Russian Federation⁵⁰.

Such legal position of the Supreme Court in a different way than in the general theory of law, interprets the rule on the validity of regulations. In the theory of law contains a general rule that the courts in the decision decisions should always apply the law, having greater legal force. However, such a basic definition referred to all branches of law. However, the establishment of a judicial norm in civil proceedings was produced another rule that the courts by virtue of the principle of legal certainty must comply.

This principle is very extensive substantial aspect. O.A. Egorova and Y.F. Bespalov substantiate the content of the principle of legal certainty through the position of the European Court of Human Rights. However, this view is contrary to the legal position of both the Supreme Court and of the European Court of Human Rights. The Resolution of the Plenum of the Supreme Court on July 27, 2013 № 21 "On application by the courts of general jurisdiction of the Human Rights Convention and Fundamental Freedoms of 4 November 1950 and the Protocols thereto" states that if the judgment had been executed at the time when it became final European Court of Justice ruling, which found that by making

⁴⁹Resolution of the Supreme Arbitration Court of the Russian Federation of 20.11.2012, the № 2013/12 // Access of reference legal system "Consultant".

⁵⁰ Ruling Supreme Court number 8 of 31 October 1995. // in the version February 6, 2007 // Access of reference legal system "Consultant".

this decision, the provisions of the Convention or the Protocols thereto have been violated, the cancellation of the decision on a new circumstance in connection with the above judgment of the European Court of Justice prevails over the principle of legal certainty. From the context it is clear that the legal position of the European Court of Justice are not included in the content of the principle of legal certainty. As we see it, the principle of legal certainty should be considered only in conjunction with the legal position of the Supreme court of Russia and with the legal positions of the Constitutional Court of Russia.

However, the above-mentioned authors quite rightly point out that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that in cases ordered by the courts final decision was taken that decision would not be called into question.⁵¹

On the principle of legal certainty in civil litigation for many years did not pay attention only because legal precedent is not recognized source of law. In the last decade the views of jurists on the role and importance of judicial precedent begin to change. Jurisprudence itself makes a different way to look at the doctrine of the principles of civil procedure as a fundamental principle, enshrined in the rules of law and norms of the judicial establishment, objectify the principle of legal certainty.

The principle of a fair trial. The principle of a fair trial is an international principle, which is enshrined in many international legal instruments. For example, this legal principle enshrined in Article 6 of the Convention "On protection of human rights and fundamental freedoms" and reads as follows: "In the determination of his civil rights and obligations or against him of any criminal charge has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

The principle of fair trial implies a decision in accordance with all the requirements of procedural law, the principle of equality of the parties, not biased and impartial attitude of the court to the parties and providing input, lack of interest of the court in the outcome of the case, the ability of each party to bring to the court their position and give its reasons.

This principle is a fundamental legal principle, recognized as the doctrine of the rule of law and the doctrine of the rule of law. However, in Russia (according to the Constitution of Russia is a legal state), the notion of a fair trial is given much less importance than in most other states.

⁵¹Egorova O.A. Bespalov Yu. F. Decisions of the Constitutional Court of the Russian Federation in the practice of courts of general jurisdiction. M .Prospect. 2013. 88 p.

However, despite the fact that a fair trial there is an international principle, accepted by all modern legal systems, depending on how close to a doctrine of the state legal system of a particular, changing the mechanism of its implementation. The law states recognized the dominant written constitution. The Constitution, on the one hand, is perceived by the theory of legal positivism as a kind of solidified archaic document. On the other hand, lawyers are aware of the need for "living" constitution, which requires an adjustment of the constitutional law enforcement and constitutional interpretation in accordance with the social, economic and other realities.

Fair trial also includes the objective, based on the latest achievements of science research in the field of forensics. So, the latest achievements of criminalistics show that many of the scientific findings, which were previously considered axiomatic, today questioned. For example, examination of traces of human fingers can produce probabilistic results. Some types of examinations: economic, technical, today still do not have definitive concepts and techniques, and therefore, can not provide definitive conclusions. Therefore, a fair trial and should take into account the ambiguity of the probabilistic nature of expert judgment.

CHAPTER 5

Civil procedural relationship

5.1. The concept of civil procedural relationship

The role and importance of the legal relationship in any branch of law is very important. The legal relationship is subject to any branch of law, including the law of civil procedure. The consideration and resolution of civil cases between the court and other participants in the process there are social relations. These relations are being regulated by the law of civil procedure, civil procedure are relationships.

Why you need to study the relationship? M.K. Treushnikov rightly observes, that by studying the legal proceedings, we know the mechanism of the impact of procedural rules for regulated their social relationships, identify the need for and the possibility of improving the forms and methods of legal regulation in order to enhance the rule of law and the rule of law⁵².

Great attention to the civil procedural legal relationships is because they are the object of which are affected by the rules of civil procedure law. Incrementally developing procedural relations reflect the dynamics of the process, allow to evaluate the effectiveness of the impact of a particular law. In administering justice in civil matters Court entering into a legal relationship with the other participants in the proceedings and applies the rules of substantive and procedural law.

Civil procedural legal relationships are now sufficiently developed in the legal category of science and combine to form Institute of procedural law. For the first time the most complete characterization of the civil process as a relationship has been given by a German scientist in the XIX century jurist Oscar Bulow⁵³. In this regard, A.F. Kleinman in 1967, wrote: "If the second half of the XIX century the procedural theory was limited to a description of the proceedings, it had grounds to say that she lived on credit, because she was no common part with the teaching of the subjects, and the object of procedural rights and duties of the court and the parties"⁵⁴. The value of the teachings of O. Bulow on the legal relationship was so great and it is important that the Russian

⁵²Civil proceedings: the textbook / under the editorship of M.K Treushnikova. 2003 M. Gorodets. 84 p.

⁵³Malyshev K. The course of civil proceedings. V.1. 2nd edition. Typography M.M. Stasyulevich. 1876. 73 p.

⁵⁴Kleinman A.F. The latest trends in the Soviet science of civil procedural law. M. Publisher MSU. 1967. 5 p.

legal doctrine even appeared so-called bulow's direction, which representatives were Professor A.H. Golmsten and V.M. Gordon. O. Bulow civil process considered as a civil procedure relationship multiple subjects; it is a legal relationship under public law moving from stage to stage, ie developing relationship.

Today, as in the legal doctrine of legal research is paid great attention. Relationship attach such great importance axiological that some scientists theory of law is compared with the legal theory (J. Sabbo, V.P. Rozhin et al.)⁵⁵. According to these authors, the relationship "fully absorb the right." Although science has an opposite point of view, whose adherents consider the theory of law, without the inclusion of relations (P.I. Stuchka, S.F. Kechekyan, V.P. Kazimirchuk, B.J. Nazarov and others.)⁵⁶. However, as rightly observed by E.B. Pashukanis, "legal attitude - is the primary cell of the legal fabric, and only her right to make her a real movement"⁵⁷.

The jurisprudence also notes that the relationship is a special kind of ideological relations that depend on the material, the basic relationship.⁵⁸

In a society ever since the primitive society has always existed, and there are many different relationships. The political, cultural, social, economic, family, religious, social, etc. All these relationships arise and function as the relationship between people, between people and different collective entities, between collective entities themselves. Such relations are legal relations only when there are rules of law that affect these relations, give them legal. Regulating certain relations, law gives the legal form of the relationship, with the result that these relations take on a new quality and become legal or otherwise, legal relations. Thus, the legal relations - is regulated by the rule of law social relations, whose members act as carriers of corresponding mutually each other's legal rights and obligations; each party relationships endowed as a subjective right (the measure of possible behavior) as well as a legal obligation (proper behavior measure). As J.K. Tolstoy noted, "if it is true that a legal relationship serves as the legal form of the underlying actual social relations, it is impossible to determine the legal relationship as a matter is the actual social relations regulated by the rule of law"⁵⁹. J.K. Tolstoy defined legal relationship as a special kind of ideological social relations in their real form.

⁵⁵Rozhin V.P. World Soviet man. L . Lenizdat. 1960. 33 p.

⁵⁶ Stuchka P.I. Rate of the Soviet civil law: V. 3. M. 1931. 91 p.

⁵⁷Pashukanis E.B. Selected Works on the general theory of law and state. M . Nauka. 1980, 78 p.

⁵⁸Radko T.N. Theory of State and Law. M . Prospect. 2010. 436 p.

⁵⁹Tolstoy Yu. K. Once again on the legal relationship // Jurisprudence. 1969. № 1. 32 p.

The doctrine, of course, there are other approaches to the definition and types of relationships. So, Yu.G. Tkachenko exploring the relationship, divide them into two types: legal relation as a relation and legal relationship as a model⁶⁰. According to T.N. Radko, "... there are legal relations between people, they are ideological relations, strong-willed attitude. Legal relations are relations established and regulated by law, in accordance with the requirements of law; relationship is the relationship between the subjects of law on the basis of their subjective rights and legal responsibilities; relationship always associated with the state, and this relationship is always expressed in the protection of the interests of the parties involved from the possible violations"⁶¹.

Summarizing the teachings of the Soviet and then Russian scientists on the procedural legal relationships can be seen three academic schools. The first scientific school represented by such scholars as a N.B. Zuider and N.A. Chechina, consider civil process as a plurality of elementary individual relations (claimant court, the court-responder, etc.). Second Scientific School, M.A. Gurchich and P.F. Eliseikina, who claimed that in each case arises and develops one procedural legal relationships. According to the views of representatives of the third school (K.I. Commissars and V.P. Mozolin) holds a single procedural legal relationship wherein the basic unit allocated relationship.

Despite such different points of view, we can formulate a generalized conclusion that the civil procedural legal relationships are a variety of legal relations. They, as well as all legal relations characteristic that:

- a) they arise and exist on the basis of the rule of law between individual persons;
- b) legally secured mutual behavior of their members;
- c) to ensure the power of state coercion.

However, civil proceedings - the specific scope of state activity, so arising in its legal relations have their own characteristics:

1. Civil procedural relationships arise on the basis of norms of civil procedure law contained in various sources.
2. There are only between the two entities - the court examining the case and any other participant in the process (trial - the plaintiff, the court - the defendant, the court - a witness, etc.). As can be seen the court is always compulsory subjects of civil procedural relations.
3. Civil procedural legal relationships are only possible in a legal form, ie, they are legal.
4. Civil procedural relationships are imperious character and have the vertical structure of the relationship between entities.

⁶⁰Tkachenko Yu. G. Methodological issues of legal theory. M. 1980. 44 p.

⁶¹Radko T.N. Theory of State and Law. M . Prospect. 2010. 441 p.

5. The civil procedural legal relationships inherent dynamism, they are in constant development. As pointed out by M.A. Gurvich, with the entry into force of the court civil procedural relationship is terminated. But it is unlikely to such a finding reputable scientist can agree. Firstly, the process may end not only the adjudication and determination, such as the termination of the civil proceedings. Secondly, the entry into force of the court usually determines the next step in the process: the appeal proceedings, judicial review, revision of newly discovered or new circumstances. As you can see, the procedural relationships can continue beyond the scope of an enforceable court decision.

The court has a mandatory participant procedural legal relationships. The parties, third parties, the prosecutor, public authorities do not consist with each other in legal relations. Therefore, the procedural relationships can not occur without the participation of the court.

Civil procedural law provides participants with the process of rights and duties assigned to them, but the civil procedural obligations of the participants of the process with respect to each other does not occur, and therefore the law does not provide for the legal consequences in case of non-fulfillment of duties of data. These procedural obligations are transformed through the court, as it were, an intermediary between the other subjects legal relationship. This feature of procedural relations due to the fact that the law of the court assigned a major role in carrying out the tasks assigned to civil proceedings. Court - a body of state power. That it laid the law duty to hear and determine civil cases on the merits. Therefore, the Court assigned the leading role in the process. He manages the process,

Since the Court is a body of power, and authority to it in relation to other participants in the process are imperious character.

The scientific and educational literature procedural relationship referred to as "power relations". Imperious nature procedural relations, first of all, different from civil, family, labor and other material relations, which are characterized by the equality of the participants. In civil proceedings there is no relationship of equality between the Court and other stakeholders. They are relations of power and subordination, in which the court has a public authority, while other subjects of these relationships such powers have not.

Overbearing nature of the powers of the court does not mean that it acts only as a bearer of rights, and all other participants in the process - duty-bearers. Court has not only procedural rights, but also obligations in relation to other participants in the process. For example, the court is obliged to accept the statement of claim in a civil case if it is filed in the manner prescribed by law; he is obliged to consider and satisfy the rea-

soned application to adduce forensic evidence. Procedural rights and duties of the court and other participants in the process are fixed rules of civil procedure and are interrelated. The interests of the court as the main subject of the legal procedure is not contrary to the interests of other participants in legal relations. The court is interested in the most complete realization of the procedural rights of all subjects of the process of the relations arising in civil proceedings, as it is necessary for the proper administration of justice problems. Not by chance the law obliges the court to explain to the persons participating in the case, their rights and duties to warn about the consequences of the commission or the commission of certain proceedings and assist persons involved in the case in the exercise of their rights.

A further feature of civil procedural relations lies in the fact that they are possible only in the legal form. In contrast to the material relations, they can not exist as actual, i.e., not regulated by the rules of civil procedure law.

A specific feature of the civil procedural legal relationships is the fact that they form a system of closely interrelated and interdependent, consistently developing and successive relationships. This system consists of a plurality of relatively independent relations, which may differ from each other for reasons of occurrence, of subject composition, the content of, the object. However, they are interrelated, interdependent and constitute a single system of procedural relations. Relationship any single element of the system is, and can not exist in isolation from the others. Unity, integrity of the system of civil procedural legal relationships is due, above all, the homogeneity of these relations.

Talking about, we note that the civil procedural legal relationships is regulated by the rules of civil procedure law social relations between the court and any other stakeholders, aimed at achieving the objectives of civil procedure stipulated by the Civil Procedure Code.

5.2. Background of civil legal proceedings

Civil procedural legal relationships can occur if you have the following prerequisites:

- a) the rules of civil procedure law;
- b) rules of stakeholders;
- c) the legal facts.

Let us examine each of these prerequisites.

1. For the emergence of civil procedural legal relationships, above all, there must be rules of civil procedure law. These standards serve as a legal basis (basis) for legal proceedings. Without procedural rules may not be legal. Civil procedural rules that act as predictors of civil proce-

dural legal relationships have the following specific features: a) are established only by the state; b) are obligatory; c) have a general character; g) regulate social relations only in the region of the justice in civil affairs court of law; e) support the use of state coercion and procedural measures, e) have the task of ensuring the correct and timely consideration and resolution of civil cases,

Procedural rules have inherent only in them properties and united in legal institutions that form a coherent system of civil procedural law. Each legal provision can not exist in isolation from the other and loses its regulatory quality. Only the industry's system of law, together with other regulations it can fully manifest itself as a regulator of public relations process. Therefore, every civil procedural relations not regulated by the same procedural rules as their totality.

2. For the emergence of civil procedural relations requires that his subjects have civil procedural legal capacity, i.e. the ability to have civil procedural rights and obligations. Be involved in the process can only capacity of the person. The ability to have civil procedural rights and bear procedural obligations of the parties or a third party (civil procedural legal capacity) is recognized equally for all citizens and organizations, is the subject of the substantive law. If there is a statutory right to judicial protection organizations are civil parties in the proceedings and in case of lack of legal status.

From the civil procedural legal capacity should be distinguished civil procedural capacity. Civil procedural legal capacity is the ability to personally exercise their rights in court and charging case management representative.

Legal persons acting in the proceedings as parties and third persons have procedural capacity from the moment of their registration, entering data into a single register of legal entities.

3. Another prerequisite of civil procedural relations are legal facts, ie, facts from which the presence or absence of rule of law binds the emergence, change or termination of the procedural rights and duties. Facts in the law of civil procedure have a certain specificity.

The legal consequences of not involve all the facts, and only the actions or omissions of the Court and other stakeholders. Facts, events can not directly give rise to the emergence or termination of legal proceedings, they are the only basis for taking actions that directly involve and the occurrence or termination of legal relations. For example, the fact of the plaintiff's death by itself does not lead to procedural succession. For the occurrence of procedural relations between the court and the legal successor is necessary that the court made a procedural action - allowed the replacement of the leaving side of the legal successor.

A feature of the legal process it is a fact that the procedural relationships arise, usually in the presence of a certain set of legal facts - legal structure.

Under the legal structure should be understood as a system of legal facts necessary for the occurrence of legal consequences (creation, change and termination of legal relations). Thus, the legal consequences is not a fact, but their system is acting as an independent entity, as a single complex, which only leads to legal consequences.

For civil procedural legal relationships characterized by such compositions in which the facts to be collected consistently, in strict order. Elements of such a composition should follow one another in a strictly procedural rules established sequence. For example, the examination can not be assigned and carried out before a civil case. If it was conducted in violation of the law, the opinion of an expert can not be used by the court as court evidence in the case. The legal formulations with serial accumulation of facts last, final fact is always a fact-action. Fact event can not be terminated by the fact, after it must follow-fact action. This is - a feature of legal formulations in the civil procedural legal relationships.

5.3. Civil procedural capacity

The common ground of participation in civil litigation subject is the presence of a civic standing. Civic standing recognized for all citizens by virtue of their birth. The legal capacity of citizens regardless of their gender, race, nationality, language. The legal status of the subject of civil procedural law is also associated with the presence of the civil procedural legal capacity.

Civil procedural capacity - is provided by the law of the subject of civil procedural legal capacity personal actions within the law to carry out the civil procedural rights and perform assigned to it by the procedural obligations, as well as charging the conduct of the case to his representative.

Citizens become fully operational in adulthood, t. E. Upon reaching the age of eighteen. Minors between the ages of 14 and 18 have a partial capacity. Their violated rights and legitimate interests are protected in court by their parents, adoptive parents and guardians. However, the court is obliged to involve themselves in the minors, such as minors are partly capable. By virtue of Article 26 of the Civil Code of the Russian Federation on disputes arising from the implementation of juveniles of their civil rights, they can go to court on their own. For example, if the dispute concerns the orders of earnings, scholarships or other income.

In the cases provided for by law in cases arising from civil, family, labor, public and other legal relations, minors aged between 14 and 18 years personally defend their rights, freedoms and legitimate interests. However, the court may on its own initiative to involve in such cases, the legal representatives of minors.

A minor who has attained the age of sixteen, may personally exercise their procedural rights and duties in the court case, it was announced as fully capable (emancipation). Emancipation is a citizen classified fully operational by the guardianship or trusteeship, but with the consent of both parents if the minor is working or engaged in entrepreneurial activity.

A citizen may personally exercise their procedural rights and fulfill procedural obligations under Russian law from the time of marriage.

Legal persons have procedural legal capacity from the moment of their registration.

Standing citizens terminated with the death of a citizen or of its announcement in the courts dead.

Procedural legal capacity of a legal entity ends with the termination of its existence, and the procedural capacity of citizens - with the death of a citizen or of the recognition of his judicially incapacitated.

Moments of origin and termination of the civil procedural legal capacity to other participants in the proceedings by the law are not defined, therefore some authors propose the following solution to this issue which deserves attention. So, the judge and the prosecutor's procedural legal capacity arises from the moment of their appointment as such, but stops after the end of their mandate. And capacity of the legal representatives of the court arises from the age of majority, it ceases with death; and for voluntary representation procedural capacity is terminated with the cancellation of the order. Procedural legal capacity experts arises from the acquisition of the necessary knowledge.

As for the witnesses in civil proceedings, the law does not provide for an age limit, the procedural legal capacity witness must be recognized at the discretion of the court depending on the circumstances of a civil case, the age of the citizen and the degree of development of his psyche.

5.4. The object of legal proceedings

Definition of the object of legal proceedings has not only theoretical but also practical significance. He helps to establish the limits of acceptable change subject of the claim or the subject of the application; Evidence of the subject; ratio subject of the claim or application in the case of special proceeding with the subject solutions.

The object of civil procedural relations is directed to that is a legal relationship. It is necessary to distinguish the shared object procedural relations for each individual civil action and special objects of each relationship, taken separately.

Common object - it lies outside the procedural legal issue of law between the parties to the substantive relationship, which is necessary to allow the Court to claim the production, as well as the requirement to establish a legal fact or other circumstances in cases of special proceeding. The overall object of legal proceedings there, and in cases arising from administrative legal relations.

A special object - this is the result, which is aimed at achieving every single relationship. Each separate legal relationship (the court - the parties, the court - a legal representative, the court - the witnesses) has a special object. For example, a special object of procedural relations between the court and legal representative are the rights and interests protected by the law of the sending, which is designed to protect a representative. The object of the relationship between the court and the witness will be information about the facts that are essential.

5.5. Content of civil procedural legal relations

The question of the content of civil procedural legal relationships is one of the difficult questions of civil procedure law theory. In the doctrine of civil procedural law is no consensus on the content of the civil procedural legal relationships. Some authors believe that the content of procedural relations are the rights and obligations of the Court and other stakeholders. For others, the content of civil procedural relations constitute the proceedings of its subjects committed in accordance with their rights and obligations.

More correctly represent the position of those authors who believe that the content of these relations is not only the rights and duties of the subjects, but also their proceedings.

The rights and duties of the subjects of procedural legal relations are the essence, the content of the legal relationship. They determine that the subjects of this relationship can and should do. Entering into a legal relationship, the process participants implement these rights and responsibilities. This implementation is carried out by the commission proceedings. Thus, rights and responsibilities are inseparably connected with the proceedings, making the content of a single civil procedural legal relationships.

Considering the question of the content of civil legal procedure, it is impossible to disconnect the rights and duties of the subjects of these relations with their actions, behavior, since only in their behavior as a

result of their specific actions can be implemented statutory rights and obligations. Rights and obligations of becoming a real character only when carried out as a result of Authorized and obligated persons actions stipulated by law.

5.6. Subjects of civil procedural relations

The subjects of civil procedural legal relationships can be: the court, citizens, organizations, stateless persons, foreigners, branches, international organizations. All of these entities may participate in the process. Entering the civil procedural legal relationships with the court, they become subjects of civil relations. Each subject in the course of pursuing their objectives and accordingly occupies a well-defined position: The plaintiff, defendant, third party without independent requirements, applicants, stakeholders, etc. According to their position, each participant in the process is endowed with corresponding rights and obligations.

All subjects of civil procedural legal relationships should be divided into five groups:

- a) the court;
- b) a person involved in the case;
- c) persons assisting the course of justice;
- d) Assistant judges;
- e) persons who are not directly involved in the trial.

In certain cases, the subjects of civil procedural relations there may be persons who are not directly involved in the proceedings. These include, in particular, include the citizens present at the court hearing in the proceedings and violate the established order. For violation of order during the proceedings, such a person can be fined by the court. The prosecution of these persons is carried out within the civil procedural legal relationships.

The main player in the process is the court. The court has a public authority, to administer justice, and holds a special place among the other participants in the process. Court plays a leading role in the process. All the actors perform their proceedings under its control. He organizes and directs all the procedural activities of other participants in the process and assist them in exercising their rights and responsibilities. The court shall consider and decide the case on its merits.

The subjects of procedural relations are not only the courts of first instance, but also the courts of appeal and cassation instance, as well as the courts, review civil case in order of supervision or of newly discovered or new circumstances. Civil Procedural Law regulates in detail the

activities of the court in all stages of the process. Act by providing the court of law, however, imposes on his responsibilities to stakeholders.

Persons involved in the case. This group of participants in the process occupies a special place among other subjects of civil procedural relations. Persons involved in the case, play an important role civil proceedings. Their work is actively influences the course and development of civil procedural relations, such as the emergence, change and termination of the process as a whole. Under the law, persons involved in the case, shall be:

- a) side;
- b) a third party;
- c) attorney;
- d) persons who apply to the court for protection of rights, freedoms and lawful interests of other persons or to join in the process to give an opinion on the grounds provided by law;
- e) the applicants and other interested parties in cases of special proceeding.

All persons involved in the case, grouped together primarily by the presence of their legal interest and business. The degree of interest in such of these groups are different. The parties and third parties in adversary proceedings, as well as applicants and interested parties in cases of special proceeding have both substantive law and procedural legal interest in the outcome of the case, as involved in the process to protect their subjective rights and interests protected by law. Another group of persons involved in the process (the prosecutor, public authorities, local governments et al.), Protected in the process are not your own, and the state or public interests, rights, freedoms and legitimate interests of others, so the judgment does not affect their subjective rights and interests.

Persons assisting the course of justice. In order to facilitate the proper and quick resolution of the case in the process may be involved as witnesses, experts, specialists, translators and representatives. These individuals are the subjects of civil procedural relations vested certain procedural rights and obligations, but in contrast to the persons involved in the case, a legal interest in the outcome of the case do not have.

Assistant referee. Amendments to the Civil Procedure Code in December 2018 consolidated the procedural status of another participant in the process of self - the assistant referee. Law is regulated by its procedural status, rights and duties. The assistant referee judge has various help, but he has no right to conduct a hearing, so its legal status can not be equated with the court (judge). The assistant referee is an independent subject of procedural relationships with their rights and obligations, which shall enter into legal relations on the one hand with the court, on the other hand with other stakeholders.

Persons who are not directly involved in the trial. In some cases, members of civil procedural legal relationships can become officials and citizens, who are obliged to provide the court with evidence in their possession. Since the Court is not fulfilling the requirements of such persons subject to a fine, therefore, they enter into a relationship with the court, but outside of the process. Also in this group of subjects should include people present in the courtroom, which can be sanctioned for violating the order in the courtroom.

CHAPTER 6

Persons involved in the case

6.1. The composition of the persons involved in the case

Civil proceedings, as a rule, arises on the dispute related to the violation of the rights of the parties. However, the parties to the dispute before going to court being the subject material relations are not the subjects of procedural relations. Only after the initiation of proceedings in a court dispute persons are subjects of civil procedural relations. In the doctrine of civil process distinguish two groups of subjects of procedural relations: person involved in the case and persons involved in the process.

The persons involved in the case, according to the civil procedural legislation of Russia include: hand; third parties; Attorney; public authorities; local governments; organization; individual citizens to go to court to protect the rights, freedoms and lawful interests of other persons or entering into the process with a view to giving an opinion on the grounds provided by the procedural legislation, as well as applicants, interested persons in cases of special proceeding.

In civil proceedings, in addition to the above-mentioned entities may also participate as witnesses, experts, specialists, interpreters, legal representatives, the assistant referee. Mandatory subject of civil proceedings is the court. They are not the persons involved in the case, but they are the persons participating in the process. Thus, the term "members of civil process" is much broader concept of "persons involved in the case."

As such, the definition of "persons involved in the case" in the current civil procedural legislation of Russia has not been disclosed. However, comparing the persons involved in the case, with the other participants in the process and analyzing the provisions of Articles 3 and 4 of the Civil Procedure Code, should come to the conclusion that the criterion for classification of any of the participants in the process to the parties involved in the case, is legal interest in the outcome of the case. Thus, the provisions of Part 1 of Article 3 of the Civil Procedure Code establishes the rule according to which any interested person may in the order established by the legislation on civil proceedings apply to the court for the protection of violated or disputed rights, freedoms or legitimate interests. Article 4 of the Code contains a list of interested individuals and organizations, at the request of that court shall initiate a civil case. Revision of Articles 3 and 4 of the Civil Procedure Code, meaning that the legislator recognizes interested parties as being those who protect in

their rights, freedoms and legal interests, and those who act on its behalf to protect the rights, freedoms and legitimate interests of another person, indefinite number of persons or the protection of the interests of the Russian Federation, municipalities and has a different (public) interest in the outcome of the case.

Given the different nature of the interest parties, according to which the court to bring civil cases, the doctrine to distinguish between the personal (subjective) interest and the state or the public interest.

The group personally interested in the subjects include: the parties, third parties.

State and public interest in the matter is the basis for participation in civil proceedings, the prosecutor and other bodies and persons referred to in Articles 45, 46, 47, 273, 290, 311 of the Civil Procedure Code. However, it must be borne in mind that the legal interest in the case is not only the expectation of a certain legal result of the trial, but also the subjective orientation, i.e. certain motive, which makes the person concerned to seek a court decision certain content. Therefore, the legal interest should also include the expectation of the result of the legal and motive.

Legal interest (legal interest) a person involved in the case, for it creates a certain procedural interest, that is the positive result of the review and resolution of the case, the occurrence of which expects and achieves party proceedings. For example, for the plaintiff Procedure interest is pending adjudication of the claim, the defendant - in anticipation of the decision to dismiss the claim to the prosecutor - pending a legal and sound judgment, e.t.c. Therefore, any person involved in the case, being legally interested in the outcome of the case, respectively, it has therefore some procedural interest.

On the other hand, among the subjects of civil procedural legal relationships are those that, by participating in civil proceedings, expected to achieve and advance a particular result (adjudication), t. E. Have certain procedural interest, which is not based on a physical relationship. These participants in the process are a legal representative acting on behalf of and in the interests of the parties, third parties or persons involved in no-issue affairs. The legal basis of participation in civil proceedings a court representative may be a contract of agency, contract of employment, and so on. The legal interest in the process from a legal representative of a purely procedural nature and is not related to the substantive relations, is the subject of litigation.

Despite the fact that the representative of the procedural independent in the proceedings (for example, in proving), in the case of termination of the agency contract from a legal representative, respectively,

of interest and disappear in the process because of its action dependent on the will of the principal. Apparently, therefore, the legislator does not consider a legal representative (including an attorney) to the persons participating in the case, which in our view is correct, but in the doctrine there is the opinion of some scholars that the representative is still a person participating in case.

In civil proceedings a person involved in the case, it is the participants of civil process, legal interest in the consideration and resolution of civil court cases. By the nature of the legal interests of the person involved in the case, are divided into two groups.

The first group consists of participants in the proceedings, with the outcome to the substantive self-interest, because they protect the civil process their subjective rights and legitimate interests. The second group consists of people involved in the case to protect "foreign" interests and who have by the end of the case publicly Procedure interest (public prosecutor, public authorities, local governments and other organizations. A person involved in the process on the grounds specified in Articles 45, 46 CPC). Persons participating in the case, can affect the movement of civil procedure, i.e. to perform procedural actions aimed at both the development and the process of termination.

From this it follows that among the procedural rights that belong to someone involved in the case, there are such rights as the right to apply for postponement of the proceedings, to suspend the case of abandonment of the application without consideration and on the termination of the proceedings. The right to perform the procedural actions aimed at the incitement of court proceedings can not be characterized involved in the case, because in some cases it may not belong to them. The right to appeal to the court for the initiation of civil proceedings arises long before the emergence of the process, since it is located outside and the subjects of the law are not the persons participating in the case.

Thus, the persons involved in the case, are legally interested in the consideration and resolution of civil cases participants in the process, acting on its own behalf and endowed with the right to perform procedural actions, affecting both the development and the completion of the trial. Persons participating in the case, belong to a wide range of procedural rights, the total of which is enshrined in Article 35 of the Civil Procedure Code.

6.2. The parties in civil proceedings

V.A. Krasnokutsky in 1924 in his essays on the civil process, wrote that any process requires the presence of two members of litigation. If the role of the plaintiff and defendant are the same, then the pro-

cess can not start. A.H. Golmsten in 1915 also pointed to the necessity of presence of the two parties in civil proceedings. This requirement is called the principle of the doctrine of the sole party.

In civil proceedings, hear and determine cases on disputes on civil law, this claim of the case; cases of special proceeding. The first type of cases suggests the existence of two opposing sides, i.e., members of the right dispute that is the subject of litigation. Plaintiff's case has the bulk of the cases dealt with in the civil process.

Article 34 of the Civil Procedural Code of Russia, determines the composition of the persons involved in the case where the first named party. Parties in civil litigation (plaintiff and defendant) are anticipated at the time of the adoption of the statement of claim by the court actors disputed material relationship. However, the concept of the parties in the procedural science is not uniquely defined. In most cases, it is applied to persons involved in litigation matters, i.e., the plaintiff and the defendant.

In the doctrine of the parties shall be considered as subjects of the disputed material legal relations acting in defense of their substantive and procedural interests to which the enforceability of the judgment and that, as a rule, bear the legal costs of the case. The above definition covers both sides of civil proceedings, as well as production, arising out of public relations, is currently considering the norms of the Code of Administrative Procedure.

Civil procedural law does not contain conditional terms for the parties involved in no-issue affairs. In judicial practice in cases unissue productions used the term "applicant" and "the person concerned". In connection with this conclusion is that the parties are in all cases where the proceedings involve two opposing procedural subject, personal legal interest in the outcome of the case. Thus, the personal legal interest in the outcome of the case is the main defining feature, with which among those involved in the case, you can select the part. Legal interest in there based on the legitimate expectations of the party giving it legal protection impaired (disputed) a subjective right or legitimate interest.

Of course, the concept of parties in civil proceedings broader than the part of the disputed material relationship. Questions about whether there is a material legal relationship, whether the right person violated proceedings between the parties has applied for judicial protection, whether the violator person tried to answer - are resolved by the court as a result of the case and set a court decision. In this connection, prior to the adoption of its decision and the entry into force of the parties are not valid, but only prospective subjects of the disputed material relationship and, consequently, the alleged controversial subjects of rights and duties, as well as the alleged bearers of legally protected interests.

The current legislation provides an opportunity to appeal to the court for protection of their rights and legitimate interests of not only the actors, really existing relationship, but also those who consider themselves the subject of infringement (contested) the rights and legitimate interests, and therefore the interest of the parties in the case should not be understood as their objectively existing interest in the judicial decision.

In order to be a plaintiff (applicant) in a particular case, it is sufficient to refer to the interest in the protection of their rights or legitimate interest. Anyone who applies for a judicial remedy should only specify (and prove) that the disputed law (legally protected interest) belongs to him.

By modifying the above, it should be noted that the characteristic features of the parties are as follows:

- presence legal interest (the case of "merging" of the plaintiff and the defendant in one person the court terminates the proceedings);
- conduct by the parties on its own behalf;
- judicial decisions in the name of the parties;
- distribution of power on the side of the court decision;
- laying on the side, as a general rule, court expenses.

The parties in civil proceedings may be citizens, as well as government bodies, local Municipality, state and municipal enterprises, non-profit organizations, associations, societies and associations that are not legal persons. by the parties of course may be foreign citizens, stateless persons, foreign legal entities.

In civil proceedings are always two sides: the plaintiff (the applicant) and the defendant (the person concerned).

Plaintiff- is the one who goes to court to protect their rights or legally protected interest, or the one in whose interests sued the prosecutor, the state bodies, local self-government organization, an official citizen, unless the law granted them the power to protect against its behalf of the rights and legitimate interests of others. In other words, the plaintiff is the one who seeks judicial remedies. However, it should be borne in mind that the concept of the claimant and the person instituting the proceedings do not always coincide.

Defendant- a person with respect to whom there is enforcement of the protection of rights of the plaintiff, the person who has been called to account. But here, at the time of initiation of the case the court should not claim that it was the defendant a duty.

Procedural status of the plaintiff and the defendant in the process occurs only because of prevention, according to the formula of "who is the first time, the first on the right."

6.3. Procedural rights and obligations of the parties

Considering the civil process as a legal attitude quite naturally becomes necessary to highlight the rights and obligations of the parties procedural relations. Civil procedural law gives a broad range of procedural rights and imposes on them the procedural duties.

Subjective civil procedural right hand - this is to establish and maintain the rules of civil procedure law the measure of possible behavior of the parties in the civil proceedings and the possibility of requiring certain actions by the court.

Civil procedural obligation hand - this is required and provided by procedural law due conduct of a party in a civil proceeding, the relevant procedural law of subjective judgment.

In the doctrine there are different points of view on the ability to have rights and obligations. So according to Oscar Bulow litigants have only procedural rights and did not incur any procedural obligations. In turn, the rights of the parties imbued nature and failure to exercise due to them in due time such rights are terminated, and their owner suffers adverse effects. A. Bulow on the basis of his study formulated the principle rights in civil proceedings⁶². It would appear that judgment is highly controversial. If the party voluntarily not exercising its right of this right does not stop her, and treated as an abuse of the right of the negative consequences for such a party. For example, the non-appearance of the defendant in the court indicates the presence of fiction its recognition of the claim.

The rights and obligations of the parties are divided into general and special.

General rights and obligations- these procedural rights and obligations of the parties, which are endowed with both the plaintiff and the defendant. General procedural duties mainly include the following: the parties shall in good faith use of all the procedural rights belonging to them; to comply with a court meeting the established order and unquestioningly obey the orders of the respective judges, with respect to the court. A common law should include, for example, the right to present evidence in court.

Special rights and obligations of the parties listed in 39, 56 and other articles of the Code of Civil Procedure, for example the applicant's right to change the subject of the claim, the rejection of the claim; the defendant's right to recognize the claim in full or in part. Special proce-

⁶² Byulov Oskar. Uchenie procedural objections and procedural background / under red. D. H. Valeeva. M. Statute. 2019. 21 p.

dural obligations are different and depend on the nature of the particular stage of the proceedings and civil proceedings.

Procedural rights and obligations of the parties in the doctrine also is combined with some of the institutions of civil procedural law and on the individual stages of civil process. For example, the applicant's right to refuse a claim, a change in the base or subject of the claim, the defendant's right to defense against the claim along with other procedural rights and obligations of the parties constitute the content of the claim Institute.

The right to appeal is not an enforceable decision of the court and is part of the appeal of the Institute. In addition, the law distinguishes between procedural rights and procedural obligations of the parties at the stage of investigation and resolution of the case on the merits, in the stage of appeal, the appeal proceedings, and so on. D.

By itself, the procedural activity of the parties sufficiently diverse. For example, the parties have the right to give explanations on the case, to declare the different petitions to present to the court evidence, participate in examination of evidence and closing arguments, and so on. D. The parties' actions directly affect the dynamics of the civil procedural legal relationships, t. E. Produce, modify or terminate their . For example, the appeal court decision creates new procedural relations between the parties involved in the case and the court of second instance. Prosequi terminate the proceedings. Regulatory nature of such proceedings the parties allows us to consider them as a legal procedural facts.

In some cases, legal actions of the parties have for the civil procedural legal value of the legal facts (for example, explanations of the parties, gathering and presenting evidence to the court, participating in their study, performance in the pleadings). Such procedural actions of the parties lawyers called procedural actions. However, the procedural actions as opposed to the procedural legal facts are the result of the implementation of already existing and arising subjective procedural rights and procedural obligations of the parties, Remedial actions are only possible in already arisen procedural legal relationships.

Despite the fact that the parties are free to implement prescribed by law proceedings, they can not perform acts contrary to the law and violate the rights and legitimate interests of others.

In the doctrine of civil process on the content divided into three groups of subjective procedural rights of the parties:

- a) law, the implementation of which affects the dynamics of civil proceedings;
- b) the right to participate in the proceedings;
- c) rights, providing legal protection of the parties in the constitutional sense.

So, the first group should include all the rights that make up the content of the principle of optionality. The second includes such procedural rights of the parties, such as: the right to personal participation in the proceedings, the right to representation in court, the right to participate in the examination of evidence, etc. The third group consists of the right to maintenance of the claim; providing evidence; the right to challenge the judges, prosecutor, court clerk, interpreter, expert, specialist, assistant judge; the right to submit comments to the court records, and others.

The current civil procedural law imposes certain obligations on the parties. For example, in accordance with part 3 of Article 38 of the Civil Procedure Code of the persons involved in the case, including those of the parties, it establishes an obligation faithfully to enjoy all the procedural rights belonging to them.

On possible sanctions in case of non-fulfillment of this obligation specified in Article 99 of the Civil Procedure Code, which provides for the obligation to pay the unfair side to the other party compensation for the actual loss of time. Amount of remuneration is determined in this case by a court in a reasonable range and in the particular circumstances.

In addition, each party must prove the circumstances to which it refers as the basis of their claims and objections.

The provisions of Article 115 of the Civil Procedure Code provides for the procedural obligation under which a judge with the consent of the parties can give your hands a subpoena or other judicial notice of the court in the case to present stakeholders. Party, which the judge ordered to deliver the summons, the court is obliged to return back the summons or a copy of a court notice to the recipient's receipt in their preparation.

The plaintiff, to go to court to protect their rights, is also obliged to observe the Code of Civil Procedure Article 131 Requirements to be met by the statement of claim. Failure to perform this obligation entails procedural application of sanctions under Article 136 of the Civil Procedure Code, namely, the court leaves the claim without movement.

6.4. Procedural complicity

According to the provisions of Article 35 of the Civil Procedure action may be brought together several claimants or several transponders. Assuming a plurality of persons on the side of the claimant and (or) transponder legislator thus establishes Institute Procedure complicity. In civil proceedings the purpose of procedural complicity is to facilitate the consideration by the court of civil cases, more quickly and effectively protect and restore the violated rights of citizens and organizations. The grounds of procedural complicity may be controversial membership rights or obli-

gations disputed by several persons, considerations of procedural economy of time and money, while considering several lawsuits, and so on.

Classification of complicity made on two grounds: procedural and substantive.

Three different kinds of complicity procedural legal basis, depending on whether it takes place on which side:

- *active complicity* when on the side of the plaintiff at the same time involves several individuals and one defendant is involved;
- *passive complicity* when a plaintiff and defendant at the same time on the side involved multiple parties;
- *mixed complicity* when both the plaintiff and the defendant's side involved multiple parties.

Remedial Science highlights the procedural conditions of participation. Moreover, these conditions are material in nature. So, participation is admissible in three cases:

- the subject of the dispute are the common rights or responsibilities of several plaintiffs or defendants;
- rights and responsibilities of several plaintiffs or defendants have one base;
- the subject of the dispute are uniform rights and responsibilities.

From the point of view of substantive grounds, participation can be divided into:

- obligatory (required) participation;
- optional (optional) complicity.

Compulsory participation it is the complicity of several plaintiffs or defendants, without which it is impossible to review and resolution of civil cases. It takes place in all cases where the correct decision on the rights and obligations of the parties to proceedings may be made only on condition that the court will consider together all the requirements of complainants and against all-respondents. Civil procedural law does not fix the mandatory list of cases of complicity or indications of its foundation. However jurisprudence established rule that the compulsory participation should occur in all cases where the basis of the requirements of several claimants or several transponders is common law or the total charge.

For instance:

- in cases of common (joint and shared) property;
- of the inheritance;
- copyright and inventors' rights, if it is a joint work of several persons;
- on claims to exclude the inventory of the property;
- on protection of honor, dignity and business reputation;
- the right to use the living quarters and the other.

The essence of participation is compulsory in that the participation in the proceedings of each partner is necessary. However, note that the court has a discretion is not entitled to engage in the case of compulsory participation of the co-plaintiffs who did not declare the claim, together with the original claimant, and not go to court for protection. This is due to the influence of the Russian civil procedural law the principle of optionality, according to which complicity with the mandatory court may draw only with the consent of the plaintiffs in the process. However, in case of failure of the case without the participation of respondent (-respondents) due to the nature of the disputed relationship, the court has the right to bring it (them) to participate in the case on its own initiative.

The optional (optional) complicity this complicity, which is dictated by the appropriateness and timeliness of the joint examination of the claims of several plaintiffs or several defendants. Optional participation is permitted by the court at its discretion. For example, an action for the recovery of wages, brought by several persons, or claim to several persons whose actions caused material damage to the plaintiff.

Civil procedural law does not provide conditions for optional participation. When deciding on the connection in the same production of several lawsuits, if the plaintiff or defendant side involved the same person, the courts are based on the following assumptions: appropriate; Does the joint consideration of several claims in one proceeding the imposition of lawful and reasonable solutions; Does procedural savings in time and costs of production and prevents any possibility conflicting judgments.

Communication between several claims of bases available at the homogeneity claims and interconnection claims. Such homogeneous base claims are possible, for example, if the performance of work under the contract of domestic independent contractors several joint actions have caused damage to the customer (each has delayed implementation of its part of the work). Mutual link claims is also found in labor affairs at collecting more persons with different employer payments arising from the employment contract (salary, bonus payment, severance pay, etc.).

Due to the fact that the condition of an optional participation is appropriate considerations in cases when claims are connected to more than one person or several persons, the joint consideration which complicates and slows down the work of the judge shall be entitled to separate these claims. The judge may, at its own initiative or at the request of the parties to allocate a separate requirement in the independent production only in cases of optional participation.

Unfortunately, today the issue is not resolved in the procedural law of up to what point may be connected with the complicity of the claims. As an optional procedural complicity should help reduce the time

and costs allow it advisable, upon presentation of the claim and in the stage of preparing the case for trial. With regard to compulsory participation, the involvement of partners is not only possible but also necessary at any stage of the process until a decision.

Remedial position partners defined in Article 40 of the Civil Procedure, according to this norm, each of claimants or transponders with respect to the other side acts in the process independently. This rule makes no exception. The independence of each of the partners means that the actions of one of the participants are either in favor of or to the detriment of others. Each of the partners is an independent subject of the process and has all the rights and obligations of the parties. However, partners may entrust the affairs of one or more of the partners. This instruction should be executed in accordance with design rules of legal representation (Art. 53 CPC RF).

Procedural complicity as a procedural institute ensures the establishment of objective circumstances of the case, and significantly accelerates the review and resolution of multiple claims. In addition, procedural complicity reached the prevention of conflicting solutions to all disputed issues before the court in a particular case.

Thus, the set of features that characterize the institution of procedural complicity, allows to define it as a part on the side of the plaintiff or the defendant, or on the side of one or the other at the same time several entities of the disputed material relationship, claims and obligations which are not mutually exclusive.

6.5. Replacing the wrong side

Actual participants in civil proceedings in a particular case referred to the appropriate parties. The process will develop normally only if the parties are adequate. However, in some cases, the process may begin with improper hand (usually the defendant than the plaintiff). Improper party is the person who originally supposed member of the disputed material relationship, but as it turned out, so in reality is not. To be a proper party in a particular case, you must be the subject of the disputed material relationship and have a relationship with the right or duty to satisfy the requirements of the stated requirement. In this case, the rights and obligations arising from the disputed material relationship.

Belonging to a certain person's license or link a specific person with a duty in the disputed legal relationship determines the ability of a material is not a process at all (which is characteristic of the civil procedural legal capacity), but the ability to be a party in a particular case.

The doctrine of the civil procedural rights of a person's ability to be a party in a particular case is called the legitimization to this civil process.

The legal relationship of a person with the right, about the protection or restoration of which originated this process is called the active legitimation. Communicate face with the obligations arising from the disputed material relationship in this process is called passive legitimation.

Civil procedural law places the obligation on the plaintiff to establish the defendant's ability to be a party to this process. Therefore, to legitimize itself and the defendant - means to indicate in the statement of claim all the facts that can be pre convince the judge that the plaintiff and defendant are subjects of the disputed material relationship.

Sometimes law enforcement defendant legitimation causes certain difficulties. In this connection, the Supreme Court in June 2019 made it clear that the defendant, then the executor of compensation for harm affairs of Article 1069 of the Civil Code act as the main manager of budgetary funds on the departmental affiliation of the state body (official), as a result of illegal actions (inaction) of which a natural or legal person harmed, and in cases of compensation for damage in accordance with Article 1070 of the Civil Code of the Russian Federation defendant, then the performer will play Russian Finance Ministry and the return of the budget will be funded from the treasury of Russia.

The Supreme Court also noted that if the state (municipal) authority was the main manager of budgetary funds at the time of occurrence of legal disputes, the case of loss of the status of the court should be involved body with such powers at the time of the trial. Information on the main managers of budgetary funds contained in the departmental structure of the federal budget, as well as in the Statute of the relevant public (municipal) body.

Among the parties to the improper release doctrine as inappropriate plaintiff. Improper plaintiff is a disinterested person. Disinterested person, in accordance with the provisions of Articles 3 and 4 of the Civil Procedure Code, a person who is suing on his own behalf in defense of the rights and interests of others, without being authorized to do so by law or power of attorney. Going to court is a disinterested person entails denial of acceptance from his statement of claim in accordance with Article 3 and paragraph 1 of Part 1 of Article 134 of the Civil Procedure Code.

I.E. Engelman in 1912 rightly pointed out: "Parties in the process can only be stakeholders. On this basis, each of the plaintiff required statement of the facts, which show that it really belongs to the right, on the basis of which the plaintiff is seeking. "

Good side is, the actual subject of the disputed material relationship. Therefore, the recognition of the part of the appropriate depends on whether the party subject to the controversial relationship.

When filing a claim the judge is unable to determine whether the defendant properly and can not be on such a base to refuse to accept the statement of claim.

Article 41 of the Civil Procedure Code establishes the right, according to which the court asking the question, whether the claim filed by the person who should be responsible for the claim, there is the preparation of the case for trial or during the proceedings. Suing for improper defendant complicates the process, prevent its normal development. Rules replace the inadequate respondent properly imposed by law, reflect the subjective nature of legitimation.

Civil procedural law provides for the possibility of replacing only improper defendant, which the applicant qualifies. Therefore, the plaintiff must first consent to the removal of the things which he named defendant and replace it with another defendant, who allegedly has links with the obligation to answer for the lawsuit. Only when the replacement of the plaintiff the defendant's consent to the court issue a ruling, which frees improper defendant from the obligation to participate in the process and to postpone it to attract with the proper defendant, if this does not change the jurisdiction of the case. If the plaintiff does not agree to the replacement of the defendant, the court is not entitled to remove from the case the original defendant in its sole discretion and shall hear and determine the matter of the submitted claim.

Attracted to the consent of the plaintiff in the process the defendant enjoys all the procedural rights of the entry. Upon entry into the process of proper defendant everything that happened before it comes to him not necessarily as consideration of the case by the court first. Improper defendant, the remainder of the plaintiff's request in the process and is the subject of the claim originally claimed, enjoys all the procedural rights of a party to the inception of the process until the decision of the judgment.

6.6. Civil procedure succession

The change of persons in civil proceedings is possible not only to replace the right side of improper proper, but in the order of succession procedure. The essence of civil procedure of succession of the Institute is to move the procedural rights and obligations of the parties (the predecessor) to another person, that becomes the legal successor of the party in a civil case.

The basis for the replacement of the part in the process of succession is the assignee of the disputed material relationship. Such a situation may occur in case of death of the citizen who participated, for example, as the claimant in civil court proceedings. If the deceased were

heirs to them in succession will pass all the substantive rights and obligations.

In addition, the succession is also possible in the case of reorganization of a legal entity (although liquidation of a legal entity entails cessation of its existence without transfer of rights and obligations in the order of succession to other persons). Succession is also possible on the basis of assignment of the claim that the basis of procedural succession can be not only a common (universal) succession of substantive rights and obligations, but also single (singular) succession in cases of transition from one individual to another individual subjective right under paragraph 1 of Article 382 Civil Code or a separate legal obligation under paragraph 1 of article 391 of the Civil Code, or the translation of debt, as well as other cases of change of persons in the obligation.

Succession hereditary relationship a base to replace the said claimant's successor, i.e. leads to procedural succession. But the replacement will take place subject to the expressed desire to join the heirs to the process. If the deceased was a citizen of a defendant, the legal successor will be involved in the process of the court by force.

Civil procedural succession, unlike civil substantive succession can only be a common (universal), as the successor completely replaces a predecessor in the whole volume of his procedural rights and obligations. Civil procedural succession is allowed in all stages of civil proceedings.

When joining is not excited in the process of a new successor proceedings, since legal succession is characterized by the fact that the successor continues to participate in the predecessor.

So, if the party dropped out of the process in the proceedings in the trial court, the court, in accordance with Articles 215 and 217 of the Civil Procedure Code shall suspend the proceedings until the entry into his successor. Once the successor is defined, and requests to allow him in the process instead of leaving the plaintiff, the court shall make a decision about his admission. Such a determination can not be appealed. The court ruling to refuse admission to the assignee of the process can be appealed in private.

In contrast to the disposal of the plaintiff, upon disposal of the defendant, the court at the request of the claimant or on its own initiative, issue a ruling on bringing successor force.

Civil procedural succession may, where permitted succession substantive relations and is not related to the identity of the parties (for example, claims for alimony, divorce, reinstatement, and so on. N. Is impossible succession).

When civil procedural succession proceedings continued with the moment when the part was replaced and the successor to intervene.

Successor to everything that happened in the process before it comes necessarily to the extent that it would be necessary for the person who has replaced the successor.

Despite the fact that article 44 of the Civil Procedure Code provides for the replacement in civil procedural succession the parties, together with the rules of procedure of the Institute also apply to third parties.

Despite the similarity of philological concepts should be borne in mind that the replacement of the part in order of succession procedure is different from the replacement of improper hand properly on the grounds, on the legal implications, and on procedural form.

1. Procedural succession disputed or established by a court decision substantive relations proceeds from the disposed side to another person and that is why the investigation was ongoing, not interrupted as in the replacement of the improper side.

2. Between the improper and the proper parties have no substantive connection. The alleged connection of substantive relations exist in the proper side to the opposite side (with the plaintiff) and improper hand and with the other side (to the plaintiff). However, both of these material relationship is not related to each other. In this regard, the procedural actions committed improper party, do not involve consequences for a proper hand and is not necessary for it.

3. At the same time participation in the improper and the proper parties to the proceedings are considered two separate and independent from each other disputed material relationship. The predecessor and the successor at the same time involved in the process can not.

4. Replacement of an improper party proper is only possible in the proceedings on the merits stage, and legal succession can occur throughout the entire process.

If you encounter in the process of succession should be guided by the provisions of paragraph 6 of Resolution of the Plenum of the Supreme Court number 43 of 29/09/2015, "On some issues related to the application of the rules of the Civil Code of limitations," from which it follows that the meaning of article 201 of the Civil Code, the transfer of rights by universal or singular legal succession (inheritance, reorganization of a legal entity, the transfer of ownership of the thing, the assignment of rights requirements, and so forth.), as well as devolution of authority public legal education to another body does not affect the beginning of the limitation period and the procedure of its calculation.

In this case, the limitation period begins to run in the manner prescribed in Article 200 of the Civil Code, from the date when the original owner of the right to know or should have known about the violation of their rights and about who is the proper defendant in an action for the protection of this right.

CHAPTER 7

Third Parties in the Civil Proceedings

7.1. The Concept and types of third parties

Institute third-party attracted the attention of Russian legal scholars in the 19th century. In particular, A. Borovikovsky in his fundamental work in 1891 devoted an entire chapter to third parties, and indicated that "the origin of a third party in the process - undoubtedly one of the most interesting questions of procedural law, and the intervention of a third party in another process seems abrupt withdrawal from the basic principle of sudoproizvodstvennogo that the process is only a dispute between the plaintiff and the defendant"⁶³.

The modern doctrine of third parties are, as well as the parties (plaintiff, defendant) to the persons participating in the case. Their legal status is characterized by the fact that they are the parties have both substantive law and procedural legal interest in the outcome of the case, enter the process on its behalf and in defense of their interests.

However, unlike the parties, third parties never are not themselves initiate a civil process, they enter into the already started process of other actors in the main disputed material relationship. The participation of third parties in civil proceedings may be because judgment given in a dispute between the plaintiff and the defendant, may affect the interests of such persons. As rightly pointed out A. Borovikovsky "The third party may be a stranger zatragivaemo process or right, directly or indirectly"⁶⁴. Consequently, there is a third party material and legal interest in the outcome of the case.

Third parties involved in civil proceedings to protect their rights and interests protected by law, which do not coincide with the interests of the plaintiff and defendant, as the judgment given in a dispute between the original parties, may affect in one way or another the rights and interests of such persons.

In case of participation of third parties in the process, the court is faced with a number of substantive relations: basic and indirect, but are in close connection and interdependence with the main. The subjects of these indirect material relationships enter into the initiated process to protect their interests. For example, a decision on the original dispute in the future, may be grounds for a party (as a rule - the defendant) to claim

⁶³Borovikovsky A. Judges report. V.1. St. Peterburg. Tipografiya A.S. Suvorin. 1891. 118 p.

⁶⁴Ibid. 120 p.

damages on the right of recourse against a third party responsible for causing harm. This circumstance will be the inducement to join the initiated process of a third party to protect its own interests.

Opportunity to attract a third party in the process of the specific categories of civil cases is largely due to the substantive law. Such rules may be contained in the Civil Code and other laws. For example, according to the contract of sale the seller is obliged to protect the goods the buyer from claims that may arise from strangers (other) people to sell them the property, to exclude the possibility of bringing to the buyer's responsibility on the part of other persons (part 1 of Article 460, part 1 of article 461 and part 1 of article 462 of the Civil Code), as in the case of alienation of the thing sold to the buyer the seller is obliged to compensate the damage. In this case, the buyer, to which the action is brought, the defendant is in a position not their fault, and the fault of the seller.

In law enforcement practice, the most common reason for entering into the process of a third party is a right of recourse. A solution that will make the court, may be grounds for filing a new claim in another process. For example, according to article 640 of the Civil Code, the responsibility for the damage caused by a third party leased vehicle, its mechanisms, devices, equipment, the lessor shall, in accordance with the rules established by Article 59 of the Civil Code. The landlord, in turn, have the right to present to the lessee recourse for reimbursement of the amounts paid to third parties, if it proves that the damage was caused by the fault of the tenant. Also according to the provisions of Article 1081 of the Civil Code, a person who has compensated harm

The participation of third parties in civil proceedings is one of the cases the complication of the process of subject composition. At a multiplicity of actors in the process, third parties should be distinguished from co-plaintiffs or co-respondent. Divergence passes these subjects for the following reasons:

- co-issues and co-plaintiffs multiple defendants occupy during independent position and their requirements are not mutually exclusive and complementary;
- third parties have substantive legal relationship only with the person on whose behalf they act; they have no connection with the other party;
- requirements of the third party and the respondent claimant or mutually exclusive.

Participation in the process of a third party allows the most complete investigation of all circumstances of significance to the case, at the same time promotes the most rapid and effective resolution and

consideration of the dispute, makes it possible to define the rights and obligations of the other participants in the process and to protect their interests in the course of the proceedings, and in general - to make a legitimate and well-founded judgment. In this case, it excludes the possibility of conflicting judgments in respect of the same subject matter of the dispute.

The law provides for the possibility of participation in civil proceedings of two types of third parties: third parties claiming independent demands on the subject of the dispute (Article 42 CPC) and third parties not making independent claims regarding the subject of the dispute (Article 43 CPC).

The question of accession of third parties in the process of deciding, as a rule, at the stage of preparing the case for trial. However, the law allows for the possibility of the intervention of third parties before the adoption of the judgment by the court of first instance in the case (part 1 of Article 42 CPC). When you join the cause of a third party the Trial shall be at the outset.

The law allows any citizen or legal person whose rights and legitimate interests are violated or challenged, the right to judicial protection. Such protection can be accomplished either by a civil case in court, and the participation of interested persons as parties (partners) in the case, and by joining (engaging) the person concerned has already started the process and participate in it as a third party. A third party with independent claims and third party without independent claims are alleged members of other material relationship, but related to the legal relationship between the original parties. Thus, it can be defined as a third party - a prospective subject mediated substantive relations, interconnected with the main legal disputes,

7.2. Third parties claiming to be independent subject matter requirements

A person who considers that his rights have been violated may enter into the initiated process which may arise between other entities, to protect their rights to their own lawsuit. Such a person is referred to a third party, independent claims to the subject of the dispute.

These third parties have all rights and bear all the responsibilities of the plaintiff, except the duty to maintain the claim of a pre-trial procedure for dispute settlement. In this case, the position of a third party, independent claims regarding the subject of the dispute, is equalized with the procedural position of the plaintiff. Such a person seeking protection and requires that a controversial substantive law the

court found for the plaintiff and not for the defendant, but only for him and seeking solutions to their own advantage. Requirements for third-party equivalent of the original request of the plaintiff to the defendant. For a correct determination of the procedural position of a third party, independent claims to the subject of the dispute, is to answer the question of whether it makes separate claims in relation to the matter in dispute.

A review of civil cases involving third parties leads to the conclusion that the actions of third parties, independent claims, are presented, usually to both sides of the original dispute, ie, both the plaintiff and the defendant. It is important to defend a third party in the course of the proceedings its independent right to the matter in dispute and make a decision in their favor.

Entry into the process of a third party, independent claims, takes place on the basis of a court ruling. The law emphasizes that persons claiming independent demands on the subject is, the judge shall issue a ruling on the recognition of third parties in the present case, or refusing to recognize them by third parties, to which may be filed a private complaint. Only after a judicial determination that the third party shall have procedural rights and obligations in the case. In the event that a third party, independent claims regarding the subject of the dispute, such person acquires the right to bring an action, ie, from this point it has all the prerequisites for the right to sue. However, in any case, a third party should be the procedure of exercising the rights to sue,

The judge may refuse to accept the claim of a third party on the grounds stipulated in Article 134 of the Civil Procedure Code, or return it to the statement of claim in the event of non-compliance with legal requirements. The statement of claim of a third party, independent claims, can also be left without movement on the grounds of Article 136 of the Civil Procedure Code.

In accordance with the principle of optionality, if the third party, independent claims, does not realize his right to enter into the process with independent claims, the judge alone can not bring him to participate in the case. In this case, the third party can claim the protection of his violated rights by bringing an independent claim to the other side of the process, in favor of which was issued the decision.

Procedural status of third parties with independent claims is very similar to the procedural position of the co-plaintiffs, so it is important to define their characteristics. These three attributes. Firstly, the third person always comes into the process already begun. Second, the independent nature of third party claims that arise from or other similar grounds, but not such as the plaintiff. Third, the requirements of a third party in whole or in part excludes the plaintiff's claim.

The third person and the applicant is alleged various entities in terms of content material relationships, even though they are having on the one object of the substantive law.

Co-plaintiffs have alleged members of a single complex mnogosubektnogo relationship with the necessary complicity. Their demands are not mutually exclusive.

Summarizing the above, we note the main features of third-party, independent claims to the subject of the dispute:

- a) independent claims on the subject of the dispute;
- b) enter into a voluntary process by filing an independent claim;
- c) always come into the initiated process until the court decision on the case;
- d) can qualify for all the subject of the dispute or its part;
- e) the interests of the third party is generally opposed to the interests of both sides, but can withstand the interests of one of the parties, such as the applicant, does not coincide with the interests of the other side.

7.3. Third parties not claiming independent subject matter requirements

Third parties not making independent claims regarding the subject of the dispute, may intervene on the side of the plaintiff or defendant before the court of the first instance decision in the case, if it may affect their rights and obligations in relation to one of the parties in the future. Thus, a person who does not claim independent demands, enters into already initiated a process leading in a dispute between the original parties.

Having entered into the process, such third parties are eager to help the person on whose behalf they are involved in order to protect their own interest in the future. The main objectives of the participation of third parties not making independent claims in the process are that in order to protect their own interests, as the final judgment in the main dispute between the plaintiff and the defendant, may affect its own rights in relation to one of the parties.

Participation of third parties not making independent claims concerning the subject of the dispute, provides several procedural purposes: firstly, it contributes to the protection of rights of citizens and organizations acting as parties in the case; secondly, it provides a comprehensive and complete establishment of all the circumstances of the case; Third, saving time and court powers.

The judgment may affect the rights and obligations of third parties, as enforceability of the judgment, which establishes certain factual

circumstances, would apply to the rights and obligations of third parties through prejudicial. Preliminary ruling in this case means that the trial of the recourse actions can not be challenged by the facts and the legal relationship established by a decision made with the participation of third parties. Therefore, the legal interest of a third party without independent claims in the course of another's dispute is to establish (denial) of the legal facts, which are the basis of occurrence relationship between the plaintiff and the defendant. This is a legal interest, which is substantive in nature, is provided directly by the judicial law, ie, it is protected by law.

Third parties not making independent claims to have substantive relations with only one of the parties, ie, they act always on the side of the plaintiff or the defendant and are not related to any material legal relationship with the other party. This reflects the difference between them accomplices. For example, in the case of a claim for damages caused by a source of increased danger, material legal relationship exists between the plaintiff (victim) and the owner of the source of increased danger (the defendant), but not between the plaintiff and the direct tortfeasor, which is involved in the case as a third persons who are not independent claims.

The basis in the process of attracting third parties without independent claims, can be given a legal interest of a third party or parties. So, if you contact the court for the recovery of child support is established that the defendant had already recovered child support from another marriage, interested persons in whose favor child support collected, should be involved in the case as a third party on the side of the transponder.

Another example is the participation of a third party without independent claims on the subject of the dispute: the meaning of article 706 of the Civil Code, unless otherwise provided by law or contract, the customer and the subcontractor is not entitled to bring against each other claims related to breach of contracts concluded by each of them with the general contractor . This means that in cases of breach of obligations arising from the contract, as plaintiffs and defendants can act accordingly only the customer and the contractor. Subcontractors, ie persons whom the contractor has drawn up his duties, shall be entitled to participate in the case on the side of the general contractor as a third party without independent claims.

The most common ground for engaging third parties without independent claims in the process is a dispute over which there is the possibility of bringing recourse. Cases attracting the process subjects the material relations as a third party without independent claims, provides standards not only of the Civil Code, but also other regulations,

for example, chatyu 3 of Article 399 of the Civil Code, paragraph 1 of Article 33, paragraphs 2 and 3 of Article 53 law "On mortgage (mortgage) of real estate"; Paragraph 5 of Article 187 and paragraph 1 of Article 281 of the Code of Merchant Shipping).

Third parties not making independent claims are generally involved in the process on the side of the transponder. Much less in the judicial practice, there are cases of involvement of third parties on the side of the plaintiff.

In the case of assignment of the claim and sue the new creditor to the debtor, a new lender may bring to the side of the original creditor plaintiff, who occupies the position of a third party because the original creditor responds to the new creditor for the invalidity of the transferred claims and its participation in the case as a third party should assist the claimant in a dispute with the defendant. When the court rejecting the application requirements due to its invalidity, the applicant receives a right of recourse against a third party - the original creditor (Articles 388 and 390 CPC RF)

Third parties not making independent claims can be brought into the process at the request of both parties involved in the case as well as on the initiative of the court. Application for third party involvement may come not only from the process side, but also on the public prosecutor, state agencies involved in the case.

To third parties without independent claims, characterized by the following features:

- the absence of independent demand for the subject of the dispute;
- joining the already initiated by the plaintiff's case and participate in it on the side of the plaintiff or the defendant;
- availability of material and legal relationship only with the person on whose behalf the third party acts;
- protection of third party self-interest, because the decision on the case could affect its rights and obligations.

Thus, the basis for the entry (attract) in the case of a third party without independent claims is the hypothetical possibility of bringing an action against a third person or the origin of the right to sue a third party, due to the mutual coupling of the main contentious relationship between one party and the third party.

Third parties not making independent claims enjoy the procedural rights and bear procedural obligations of the parties, with the exception of the right to change the base or the subject of the claim, increase or decrease the size of the claim, the waiver of a claim, acknowledgment of claim or the conclusion of the agreement, as well as the presentation of

counterclaim and the claim enforcement of the decision of the court. As you can see, from a third party without independent claims, is missing some discretionary (administrative) rights of the parties.

Entry into the process of a third party without independent claims, the court shall issue a ruling, the trial court made at the outset.

All of the above leads to the conclusion that entry into the case for the plaintiff or the defendant's side does not create a position for a third-party party - a partner in a dispute between the plaintiff and the defendant. A third person is not the intended subject of the disputed material relationship and makes no demands on the subject of the dispute. Therefore, the law and does not provide a third party without independent claims, the full scope of rights and obligations of the parties. However, since third parties involved in the case on the side of the plaintiff or the defendant, they therefore contribute to the protection of rights and legitimate interests of the parties.

Third parties in the trial are endowed with a number of procedural rights, such as to give an explanation on the case, to participate in the questioning of witnesses, to participate in the study, written and physical evidence, to participate in the questioning of experts to participate in the pleadings, and after the decision have the right to appeal , appeal and supervisory appeal against the decision. They also have the right to appeal the decision of the court and file motions related to the movement of the case (for postponement of the hearing, to suspend the proceedings, etc.).

CHAPTER 8

Prosecutor in the civil procedure

8.1. The tasks of the prosecution in civil proceedings

Prosecutor's Office of Russia was established by the Decree of Peter I in 1722, which was confirmed by the provisions of that "general prosecutor still rank - like our eye and Solicitor of the affairs of state." Peter I gave prosecutors considerable powers, they occupied a high position in the ranking. After about 150 years as a result of the judicial reform of 1864 the role of the prosecutor's office has been greatly limited. With this connection the A.H. Golmsten in 1913 wrote that the prosecutors were held with officials of the courts play a secondary role in the judicial activities⁶⁵. The doctrine of civil procedure of the 19th century and did not pay attention to the role and objectives of the Public Prosecutor in civil proceedings. Before doctrine at that time was more important task to study the value of prosecutors in criminal proceedings. According to legal regulations prosecutor was present at all meetings of the judicial institutions, other than magistrates' courts. In the district courts and court wards prosecutor participated only in certain cases. According to A.H. Golmsten in status and value prosecutor belongs to the category of minor subjects, which include secretaries, sworn translators, photographers jurors, attorneys and their assistants⁶⁶.

After the October Revolution of 1917, the prosecutor's office was abolished, but the Bolsheviks realized that without the accounting and control can not do, so needed a body with powers to oversee all the bodies, officials, organizations and citizens, so the prosecutor's office was re-established with broad powers in criminal and civil processes.

Prosecutor in civil proceedings active participation is seen as a fundamental key difference of Soviet civil process of the bourgeois. According to the Civil Procedure Code of the RSFSR in 1964, the prosecutor could be part of the process and at the same time supervise the strict and uniform observance of laws by judges.

In post-Soviet time it formed two opinions on the role and importance of the prosecutor's office in civil proceedings in science procedural law. Some scientists have advocated the view that the prosecutor should be excluded from the participants of the civil process. According

⁶⁵ Golmsten A.H. Textbook Russian civil proceedings. Saint Petersburg. Typography M.Merkusheva. 1913. 94 p.

⁶⁶ibid. 96-97 pp.

to the second point of view of the public prosecutor was not only participant in the process, but also to the process of supervision. Legislator as a result of scientific debate a compromise was reached. According to the Civil Procedure Code of the Russian Federation in 2002, the role and importance of public prosecution in the civil process has changed significantly, the powers of the Attorney decreased significantly, although still the public prosecutor was among the participants in the process.

It should be noted that the public prosecutor is a party to the civil proceedings, not only in Russia but also in many other countries, such as Poland, Ukraine, Kazakhstan, China, Korea, France, etc. But the role of prosecutors in all countries is determined by the domestic law of the country and it is not the same. For example, in Germany, prosecutors are the courts and the majority of German scientists consider the prosecutor's office as a judicial authority.

According to the Russian Constitution, the Prosecutor's Office is a single centralized system subordinate to superior procurators and ultimately to the Prosecutor General of the Russian Federation. The powers, organization and functioning of the prosecutor's office determined by federal law. In this piece of legislation is the federal law "On the Prosecutor's Office of the Russian Federation", which establishes that the prosecutor's office carries out on behalf of the Russian Federation supervision over the observance of the Constitution and the execution of the laws in force in the territory of Russia. Currently, prosecutors lost a supervisory role in a civil proceeding. According to Article 35 of the Law "On Prosecutor's Office of the Russian Federation", the prosecutor participates in civil proceedings in the cases provided by procedural legislation of Russia.

Among the various functions of the prosecutor's office occupies a special place of its participation in the consideration of the courts civil and administrative cases. The peculiarity of this function is that the prosecution does not currently supervise the judicial activity and does not encroach on the autonomy, independence and objectivity of the judiciary, but merely refers to it as an instrument to protect the rights and interests of individuals and that, according to the prosecutor's office believes in need.

Paragraph 4 of Article 27 of the Law "On the Russian Federation Prosecutor's Office" is fixed, in the case of the rights and freedoms of man and citizen, protected in civil proceedings where the victim for reasons of health, age or other reasons can not personally defend in court or arbitration court his rights and freedoms are violated or when the rights and freedoms of a significant number of citizens, or in other circumstances a violation of acquired special public importance, the public

prosecutor shall file and a court or arbitral tribunal claim the benefit of victims.

Of the Civil Procedure Code, taking into account the provisions of Article 27 of the Law "On Prosecutor's Office" determines that the statement in defense of the rights, freedoms and legitimate interests of citizens may be filed by the prosecutor only if the citizen of the state of health, age, disability and other valid reasons may itself to go to court. However, these restrictions do not apply to statements by prosecutors, the basis for which is the protection of social rights; rights and interests in the world of work; protection of the family, motherhood, fatherhood, childhood; social protection; the right to housing in the state and municipal funds; health; securing the rights to a healthy environment; education.

In addition to protecting the rights of individual citizens, the prosecutor may apply to the court to protect the rights, freedoms and interests of unspecified persons or the interests of the Russian Federation, the Russian Federation and municipalities.

The possibility of the participation of the prosecutor in civil process provides various legislative acts. Thus, according to Article 70 of the Family Code, the case of deprivation of parental rights may be considered by the court at the request of the prosecutor. Claims on the limitation of parental rights, in addition to the other persons referred to in paragraph 3 of Article 73 of the Family Code, can be filed by the prosecutor.

By virtue of paragraph 1 of Article 391 of the Labor Code, the prosecutor may apply to the court if the decision of the commission on labor disputes is not consistent with the law or other normative legal acts.

The significant role of the prosecution in the court settlement of cases of public law and order. In particular, the prosecutor is entitled to the limits of their competence to apply to the court to invalidate all or part of the normative legal act of a public authority, local authority or public official.

8.2. Forms of participation of the prosecutor in civil proceedings

Participation of the prosecutor in civil proceedings may at any stage of the process from case initiation to the court to comply with the judgment. At the same time Attorney form of participation in civil proceedings, the scope of his rights and obligations, the content of the proceedings are different depending on what stage of the process he is involved. Legislation distinguishes two forms of the prosecutor in the civil proceedings.

The first form - according to which the prosecutor is entitled to appeal to the court to protect the interests of others, so that the public prosecutor is the initiator of the process.

In Part 1 of Article 45 of the Civil Procedure Code provides that the prosecutor may apply to the court to protect the rights, freedoms and legitimate interests:

- a) citizens;
- b) an indefinite number of persons;
- c) the interests of the Russian Federation, the Russian Federation and municipalities.

A statement in defense of the citizens the prosecutor can be filed only if the citizen for health reasons alone can not go to court. This restriction does not apply when it comes to protecting the violated social rights in labor relations; Protection of the family, motherhood, fatherhood and childhood; social protection; guaranteeing the right to housing in the state and municipal housing stock; health; guaranteeing the right to a healthy environment; guaranteeing the right to education.

The prosecutor may apply to the court for the return of illegally moved into the Russian Federation and held in the Russian Federation on the implementation of the child or in respect of that child's access rights based on Russian international treaty.

Guided by Resolution of the Plenum of the Supreme Court № 50 of November 17, 2015, the prosecutor has the right to challenge in court the decision, actions (inaction) of the bailiff and other officials of the Federal Authority of enforcement in cases stipulated by the law (Part 1 of Article 45 of the Civil Procedural Code of the Russian Federation, part 1 of article 39 of the CAP).

In the stage of making a statement the prosecutor acts as the initiator of the emergence of procedural relations. The shape and content of the application submitted to them must comply with the general provisions laid down in Article 131 of the Civil Procedure Code. The complaint brought by the Prosecutor to protect the interests of the Russian Federation, the Russian Federation, municipalities, or to protect the rights, freedoms and legitimate interests of an indefinite number of persons indicated, what exactly are their interests, what right has been violated. Very much a requirement that the statement of the prosecutor shall contain a reference to a law or regulation providing for ways to protect the violated rights and interests.

Specified in the procedural law of the requirement regarding the content of the statement made by the prosecutor applies to the court, act as a guarantor of observance of the provisions of the law, which define the cases in which the prosecutor shall have the right to initiate a civil

case in court, because, unlike the Code of Civil Procedure of 1964, the right to appeal in court the prosecutor is now significantly narrowed.

Failure to comply with the requirements of the public prosecutor about the content of the statements applied to them there is reason for leaving the statement without movement, with the consequences provided for in Article 136 of the Civil Procedure Code.

The prosecutor who filed the application, enjoys all the procedural rights and bear all the procedural obligations of the plaintiff. The exception is the right to sign the settlement agreement. The prosecutor also exempted from the obligation to pay court costs. The prosecutor is obliged to process enough to actively participate in the preparation of the case for trial, in particular, to convey to the respondent a copy of evidence to substantiate the factual basis of the claim.

The prosecutor has the right to declare the petition for the recovery of evidence that can not be obtained without the assistance of the court, for example, the court order, to call witnesses, the appointment of expertise, etc. It is highly desirable part of the prosecutor in the preliminary court hearing, especially in cases where there is a question on the termination of the proceedings, leaving his statements without consideration, or when the defendant initiates the request for passage of the period of limitation or the statutory appeal period to the court.

In the stage of preparing the case for trial and during the trial may be denied the prosecutor of a declaration submitted to the defense interests of another person. However, if the proceedings the prosecutor does not coincide with the position of the person or his legal representative, the examination of the merits continues. In this case, the termination of the proceedings also require that the applicant or his legal representative rejected the claim and this refusal is not contrary to the law or infringe the rights and legitimate interests of others.

During the trial, the prosecutor appealed to the court a statement, not entitled to give an opinion either on the merits of the case or of specific issues that may arise in the hearing. During the prosecutor takes the position of Procedure of the plaintiff, and therefore enjoys the rights and obligations of the plaintiff.

As a person involved in the case, the prosecutor has the right to bring the appeal or cassation appeal. As stated in the Resolution of the Plenum of the Supreme Court on January 20, 2003 № 2 "On some issues in connection with the adoption and enactment of the Civil Procedural Code of the Russian Federation," the right to submit these ideas to a higher court has a prosecutor is the person involved in the case from the point of view the provisions of articles 34, 35, 45 of the Civil Procedure Code, regardless of whether he was in a meeting of the Court of first instance. His claim in this case is guaranteed by law.

Attorney Entry in civil proceedings by filing their application is currently the main form of its participation in the consideration and resolution of civil cases on the merits. Restricting the conditions of his entry into the civil procedure, the law at the same time does not bind the initiative of the prosecutor, his independence in deciding whether there is a need to address the court with the appropriate application.

For example, from 2010 to 2012, prosecutors have conducted inspections in drug treatment clinics. It was found a lot of people with a diagnosis of "Drug addiction to alcohol", which issued a driver's license. Prosecutors are bringing an action in court to invalidate driving licenses of such persons. The Prosecutor General's Office report noted that during this period on claims prosecutors driver's license had been deprived of 42 thousand. Man.

At the same time, civil procedure legislation provides another form of participation of the prosecutor in civil process, namely accession to the process already initiated by others. In contrast to the first form of the second form is for the public prosecutor mandatory, if the law provides for its participation in a civil case. The doctrine of this form of participation of the prosecutor in civil process is called a mandatory form.

This form of participation in the prosecutor assigned by Part 3 of Article 45 of the Civil Procedure Code. In view of this the prosecutor rules shall enter into the process and provide opinions on cases of eviction, for reinstatement, compensation for harm caused to life and health, as well as in other cases envisaged by procedural legislation and other federal laws to implement the powers vested in him .

Civil procedural law provides for the participation of the public prosecutor on the second form in such civil matters as: adoption (adoption) of the child; on the recognition of the citizen as missing or declaring the citizen dead; on the limitation of legal capacity; of deprivation of legal capacity; on restriction or deprivation of a minor under the age From 14 to 18 years the right to dispose of his earnings, scholarships or other income; declaring minor is fully capable; when considering applications for return of the child or of the exercise of rights of access to the child.

Among the federal laws that mandate the prosecutor involved in the process, you can call the Family Code, which stipulates that cases of deprivation of parental rights and the restoration of parental rights; the restriction of parental rights; adoption of cancellation (adoption) of the child are considered with the participation of the public prosecutor.

In the event of a court above cases the judge must notify the appropriate public prosecutor, and the appointment of the case for trial to give notice of the time and place of the hearing. However, the non-appearance of the prosecutor, the notified the court about the time and

place of the hearing, is not an obstacle to the proceedings. From this we can conclude that the proceedings in the absence of the prosecutor, who is required to take part in the proceedings before the force of law, when properly notified of the time and place of the trial itself does not apply to cases of violations of procedural law, entailing a cancellation of the judgment and hence is not an obstacle to the consideration of the case without the prosecutor.

In contrast to the Code of Civil Procedure of 1964, the current Procedure Code does not provide for the right of the court to recognize the compulsory participation of the prosecutor in the case.

8.3. The rights and obligations of the prosecutor as a person involved in the case

By joining the process in which the public prosecutor is obliged to participate in the force of law, the public prosecutor as the person involved in the case are entitled to get acquainted with the materials of the case, to declare objections, present evidence, participate in their research, to make petitions. The special investigation procedure that is authorized to perform the public prosecutor, which came in already started the process of others, relates how his conclusion on specific issues arising during the proceedings, and on the merits of the case as a whole. Opinion on the merits of the case given by the prosecutor in the hearing after the pleadings.

In its opinion, the prosecutor must prove briefly considered the social significance of the legal and business, to analyze in detail investigated in the trial evidence to evaluate them, to show which of them should be recognized as valid, and which are misleading and why. The Prosecutor shall disclose the nature of legal parties to comment on the law or other normative legal act regulating the legal relationship data and, ultimately, to express their views on how it should be resolved on the merits.

However, the prosecutor expressed the point of view of the case is not binding on the court. Nevertheless, attentive listening to the speech of the prosecutor, participating in the case, whether his speech in the debate, or delivered by way of an opinion question, allows the court to more clearly understand the arisen legal parties to accept their arguments, compare different points of view of both the actual as well as on the legal side of the case and in accordance with the principles of legality, competition and other principles of civil procedure form an inner conviction on the evaluation of proof ments, of the circumstances set out in the case, the validity and legitimacy of the stated requirements.

Attorney involved in the case are entitled to get acquainted with the record of the hearing and bring comments on it, which are considered in the order established by the Procedure. In case of disagreement the prosecutor involved in the case with a view to giving an opinion to the court decision in the first instance, the prosecutor must bring the appeal or cassation appeal.

Since the provisions of Article 327 of the Civil Procedure Code determines that the case the court of appeal made by the rules of the court of first instance, the prosecutor who brought the idea to the court retains its right to participate in the case when considered on appeal. Similarly solved the question of the participation of the prosecutor in the appellate court, and if he is taking part in the trial court did not file the appeal submission.

The prosecutor who brought the appeal submission, it shall be entitled to withdraw before the decision or determination of the Court of Appeal. In case of refusal by the prosecutor appellate representation court shall issue a ruling on the termination of the appeal proceedings, if the decision or ruling of the trial court was not appealed by others. Review of appeal submission is also possible in the court of cassation prior to the hearing of the cassation instance. Having accepted the submission review, the court shall issue a ruling on the termination of the appeal proceedings, provided that the decision of the court of first instance has not filed a complaint of others.

Appeal to the court of cassation with the idea of the revision entered into force the decisions and rulings given officials prosecution, listed in Article 377 of the Civil Procedure Code, only on the condition that in the case under consideration which have been handed down by the contested judicial acts, participated Attorney regardless of the form of participation.

The provisions of Article 394 of the Civil Procedure Code, the prosecutor shall be empowered to bring an idea to revise the judgment, decision of the court on newly discovered or new circumstances and due to the participation of the prosecutor in the examination of the case. Existing legislation calls for the prosecutor to the court for review of maturities on newly discovered or new circumstances of judicial acts with other persons involved in the case.

CHAPTER 9

Participation in civil proceedings government agencies, local governments, organizations and citizens, to protect the rights, freedoms and legitimate interests of others

9.1. Background and purpose of participation in the subjects, protecting the interests of others

In cases stipulated by law, public authorities, local governments, organizations and citizens have the right to appeal to the court to protect the rights, freedoms and lawful interests of other persons, at their request or to protect the rights and legitimate interests of an indefinite number of persons. A statement in defense of the legitimate interests of the minor or incapacitated citizen may be filed regardless of the request of the person concerned or his legal representative. This right derives from article 4 of the Civil Procedure Code of Russia, which stipulates that a civil action may be instituted at the request of a person acting on its behalf in defense of human rights and freedoms and lawful interests of other persons indefinite number of persons or the protection of interests of Russian Federation , Russian Federation, municipalities. Such legal regulation of participation in civil proceedings of some subjects that do not protect their rights and interests protected by law and the rights of other subjects, provides an important safeguard to protect the violated rights of citizens.

When the public authorities and other actors are carriers of the substantive rights and obligations of protection which they ask the Court, in which case they take in the course of the position the party or a third party, independent claims and act in their own name to protect their own interests, have a material –law and procedural legal interest in the outcome of the case.

However, public authorities, local governments, organizations or individuals can participate and civil proceedings to protect not only their rights and interests protected by law, but also to protect the interests and rights of other persons who are the subjects of a disputed material relationship. In this case, the basis for their participation in the process will be an interest in law and justified settlement of disputes arising out of the

functions or duties that are assigned to them by the law or regulations that determine the competence of the body (the organization). Participation in civil proceedings all of the above subjects most often associated with their subject expertise and implementing powers in a particular field of management.

The main purpose of their participation in the process is:

- to protect the rights of others,
- rendering assistance and support to individuals who are not able to force health, disability, age, exercise protection on their own.

All these actors, in this case belong to the same group of persons involved in the case and all of the following features are combined:

- They have only a procedural legal interest in the outcome of the case;

- participate in the process on its own behalf, but in defense of the interests of others;

- participate in the process and by virtue of their official duties by law arising out of their jurisdiction.

The basis of participation in civil proceedings of public authorities, local governments, organizations and individual citizens is not only the presence of specific instructions in the law on the possibility of their participation in the protection of rights and legitimate interests of others, but also social orientation, the special importance of those rights and protected legitimate interest in the protection which they are, for example, the protection of the interests of mothers and children, protection of the environment, protection of consumers' rights.

9.2. Procedural forms of participation of subjects of protecting the interests and rights of others

Russian Federation Law content two procedural forms of participation in civil proceedings of public authorities and local governments, organizations and individuals:

a) appeal to the court to protect the rights, freedoms and lawful interests of other persons, at their request or on its own initiative on behalf of groups of persons (action in defense of the interests of the incapacitated person or minor may be filed regardless of From the request of such a person);

b) public authorities, local governments, organizations and citizens may enter the process on its own initiative or on the initiative of the persons participating in business, as well as on the initiative of the court to give an opinion on the case in order to implement their duties.

However, regardless of the shape, the main purpose of their participation in both forms is to protect the rights and interests of citizens,

organizations, carrying out the duties entrusted to them by the state for the protection of various rights and interests. Thus, participating in civil proceedings, the aforementioned entities do not only protect the rights of direct carriers, but also the interests of the state and society as a whole, ie, the rule of law.

*The first form of participation*⁶⁷- a civil case. The lawsuit in defense of violated or disputed rights, freedoms and legitimate interests of the incapacitated citizen may be brought regardless of the request of the legal representative or other interested person (Art. 1, Art. 46 of the Code of Civil Procedure). Public authorities and other entities, which by law have the right to protect the interests of other persons who may apply to the court at the request of the person concerned. However, the right should be protected in the circle of subject competence of these entities. In the existing Russian legislation does not contain a list of all possible cases bringing government agencies and other entities claims to defend the interests of others. However, in some cases, the law still contains such an indication.

For example, in accordance with Article 28 of the Civil Code of the Russian Federation should be given permission of the guardianship authorities for the transaction on the alienation of property of a minor child. This permission must be obtained in advance of the transaction in order to ensure compliance with the legitimate property rights of the minor child. In the case of non-compliance with this rule, state agencies, local governments have the right and need to file a claim for recognition of the transaction invalid.

The legal status of local self-government can be defined acts of local executive bodies.

In paragraph 9 of Resolution of the Plenum of the Supreme Court on May 29, 1998 "On application of the law courts in the resolution of disputes relating to the upbringing of children" formulated the legal position according to which in addition to government agencies, claims the protection of the interests of others can bring other bodies and organizations. For example, the number of persons on the applications on the basis of which the courts deal with cases of deprivation of parental rights, defined by Paragraph 1 of Article 70 of the Family Code. These include: body or agency with responsibilities for the protection of the rights of minors: the guardianship authorities, the commission on juvenile institutions for orphans and children left without parental care, children's homes, boarding schools, children's homes , homes for the disabled, social rehabilitation centers for minors,

⁶⁷Fictitious, copyright. It does not provide a legal definition of a form of participation in legislation.

An action for the restriction of parental rights may be brought pre-school educational institutions, general educational institutions and other agencies with responsibilities for the protection of the rights of minors (Art. 73 RF IC). In the absence of parental agreement on the payment of alimony, if failure to provide the content of minor children and failure to claim in court the guardianship authority has the right to sue for the recovery of maintenance for minor children with their parents (Art. 3, Art. 80 RF IC).

In accordance with the Law "On protection of consumers' bodies to protect the rights of consumers at the local administration and public organizations of consumers can sue in court to protect the rights of consumers, as well as the protection of consumers indefinite steep. In the first case it is necessary consumer recourse to such bodies for protection, in the second case to court can take place without the application of citizens to the authorities to protect the rights of consumers.

The requirement for the liquidation of the public association in connection with the cessation of its activities as a legal entity on the grounds specified in Articles 29 and 52 of the Law "On Public Associations", may submit the Provincial Department of the Ministry of Justice of the Russian Federation.

On the basis of the law "On Environmental Protection" enterprises, institutions, organizations and citizens have the right to sue in court for termination of environmentally harmful activities that are harmful to the environment and harmful to health and property of citizens.

An indication of the possibility of bringing an action in defense of their rights not to, and the rights and interests of other persons is contained in other regulations. On the basis of the Law "On Trade Unions, their rights and guarantees of their activity" (articles 19 and 23), the trade unions are on their own behalf to sue in defense of the interests of union members.

Law "On General Principles of Local Self-Government", adopted by the State Duma on October 6, 2003, provides for the right to local self-government, their officials, to sue in a court of law or an arbitration court to invalidate the acts of the public authorities and their officials , local governments and their officials, enterprises, institutions, organizations and public associations that violate the rights of local self-government (Art. 46).

A number of provisions of the Civil Code provide for the possibility of excitation of certain cases of special proceeding government agencies and other entities. On the basis of Article 281 of the Civil Procedure Code, the case of the limitation of the citizen in the capacity as a result of abuse of alcohol or drugs may be initiated on the basis of statements

of his family members, the guardianship authority, psychiatric or neuro-psychiatric institution.

The case of the restriction or the deprivation of a minor between the ages of 14 to 18 years the right to dispose of his earnings, scholarships or other income may be initiated on the basis of the statements of parents, adoptive parents or guardian or the guardianship authority (Art. 1, 2, 3 tbsp. 281 CCP RF).

In all the above cases, state agencies and local governments, sued in defense of the interests of others, are not party to the substantive relations, therefore, they are not plaintiffs in the full sense of the word. These agents act as claimants only in procedural sense, as are procedural legal interest. Persons who have submitted an application to the protection of the legitimate interests of other persons, enjoy all the procedural rights and bear all the procedural obligations of the claimant, except for the right to enter into a settlement agreement and the obligation to pay court costs.

Procedural plaintiffs must justify and support the requirements in the hearing, which they applied to the court to make all actions in the same manner as the plaintiff - the subject of the disputed material relationship, ie, hand in the material sense. Such entities can not make a counterclaim for a joint review of the original claim.

Public authorities and other entities, protecting other people's rights and interests in court belongs to all the other procedural rights which the law confers the plaintiff. An interested person on whose behalf a claim is made shall be notified of the hearing and participates in it as a plaintiff. In case of failure of state authorities, local governments, organizations or individuals to support the requirements stated by them in the interests of another person, the case proceeds on the merits, if the person in whose interests is requesting or his representative notifies the refusal of the claim. In case of failure of organs, organizations and citizens to support the claim made by them in the interests of another person, as well as the failure of the plaintiff on the suit, advancing procedural consequences provided by Paragraph 2 of Article 45 of the Civil Procedure Code.

State bodies, local self-government bodies may also hold the position of the defendants in the procedural sense. Thus, the guardianship authorities may take the position of the defendant in the procedural sense in the case of restoration of parental rights and the abolition of adoption. Representatives of state bodies act after the pleadings of the parties and third parties, they are also entitled to a replica.

Attention is drawn to the fact that the first form of participation (a civil case) may participate in the process as state bodies, local self-government and individual organizations and individuals.

When accessing a public authority to the court in defense of other persons of interest must be considered the legal position formulated in paragraph 5 of the Resolution of the Plenum of the Supreme Court on September 29, 2015 № 49 "On some issues related to the application of the rules of the Civil Code of the limitation period", according to which within the meaning of paragraph 1 of article 200 of the Civil Code of the Russian Federation with reference to the court of public authorities, local governments, organizations or individuals with a statement in defense of the rights, freedoms and legitimate interests of other persons in cases where such a right granted to them by law, the beginning of the limitation period is determined based on the fact that the violation of his rights and of who is a proper defendant in an action for the protection of this right, knew or should have known the person,

In contrast to the forms of participation associated with the initiation of the process in the second form associated with the conclusion of the cottage in the already initiated process of the legislator reduced the list of subjects endowed with this right. These subjects include only public bodies and local authorities.

The second form of participation in civil proceedings It gives public authorities and local governments to engage in business for an opinion. In the cases stipulated by federal law, state bodies, local self-government before the decision of the first instance court shall take the matter on its own initiative and at the initiative of the persons involved in the case to give an opinion on the case for the implementation of their duties and protect the rights, freedoms and the legitimate interests of other persons or the interests of the Russian Federation, the Russian Federation and municipalities. State bodies and local authorities can be involved in the process and at the initiative of the court without a special indication in the law.

Let's conclude the process is not binding for the court and assessed in conjunction with all the other evidence. However, the court is obliged to lead in addressing the reasons for which it rejects the conclusion in whole or in part. Thus, the Family Code contains a sufficiently large number of rules governing the participation of the guardianship authorities in cases arising from the marriage and family relations. For example, when considering courts of disputes relating to the upbringing of children, regardless of who sued to protect the child's interests, to participate in the proceedings should be brought guardianship authority (Article 78 Family Code). According to the provisions of Article 273 of the Civil Procedure Code, the application for adoption is considered in a closed court session with obligatory participation of adopters (adopter)

In accordance with paragraph 4 of Article 40 of the Law "On Protection of Consumers' Rights Federal antimonopoly agency (its territorial

bodies) have the right to intervene on its own initiative or on the initiative of the parties to a case for giving an opinion on the case in order to perform its duties to protect violated or disputed rights of others, public or public interest, as well as, where appropriate, can be induced to participate in the initiative of the court. Plenum of the Supreme Court in its judgment of June 28, 2012 № 17 "On consideration of civil cases by courts in disputes on the protection of consumers," pointed out that the relevant authorities carrying out their duties to protect the rights and legitimate interests of consumers, as well as local governments to the court decision in the case may intervene on its own initiative or on the initiative of the persons involved in the case, as well as be involved in the court as the competent authorities who have the process in order to give an opinion on the case. And the conclusion of the above bodies can be given both orally and in writing. Plenum also pointed out that the conclusion of evidence in the case is not, but the court in the reasoning part of the decision should express their opinion on this conclusion. and in writing. Plenum also pointed out that the conclusion of evidence in the case is not, but the court in the reasoning part of the decision should express their opinion on this conclusion. and in writing. Plenum also pointed out that the conclusion of evidence in the case is not, but the court in the reasoning part of the decision should express their opinion on this conclusion.

The question of the participation of the state body, local self-government organization in the process decided in the stage of preparation of the case for trial. The judge must notify the state body of the hearing. State body, a local authority must submit at the time of the proceedings its opinion in writing.

According to Article 78 of the Family Code, the guardianship authorities is obliged to conduct a survey of the living conditions of the child and the person (s) applying for his education, and provide the court with certificate of inspection, and based on its opinion on the merits of the dispute.

The conclusion of the guardianship authority must be submitted to the head of the local government body or by an authorized official of the local government unit which is assigned the functions of protection of the rights of children.

The conclusion is given in writing and shall be delivered to the court. After which the court, the person involved in the case, their representatives can ask the authorized representatives of the questions about this conclusion in view of his explanation and clarification. If a public authority are involved in the case, his involvement in the case is not only the right but also a duty.

The conclusion of a public authority is essential for the proper resolution of the dispute, but the court is not bound by the arguments and conclusions contained in the conclusion, and may render a decision, contrary to the views expressed in the conclusion. However, as noted above, in this case required the court reasoned arguments of disagreement with the conclusions contained in the conclusion.

It is necessary to conclude a public authority, local authority distinguished from expert opinion. Expert - a person who is not interested in the outcome of the case and only responds to questions posed by the court in determining the appointment and examination of the facts relating to, but not right. Russian procedural doctrine does not recognize the expertise of the law. Experts warn about the criminal liability for knowingly giving false conclusion or for refusing to give an opinion. Participation of experts depends on the specific circumstances of the case, while the participation in the public body, usually due to an indication of the law and a specialist is not warned about criminal responsibility.

CHAPTER 10

Judicial representation institute

10.1. The concept of judicial representation

Institute representation in civil proceedings has been known since ancient Roman law. According to E.V. Vas'kovsky, according to the Institutes of Justinian, "and the disease and the age and the necessary travel and many other reasons often prevent from doing business in the court personally"⁶⁸. Russia is also the institution of representation has a history which stretches back over a hundred and fifty years. The importance of this institution shows the fact that in the 20th century, the founders of Russian procedural law paid him much attention in his writings⁶⁹. Outstanding Russian protsessualistov E.A. Nefed'ev back in 1909 wrote that in contrast to civil proceedings criminal litigant can avoid personal appearance in court, to replace himself as a representative. As a result of the judicial reform of 1864, a new subject in the civil process - spokesman. As representatives of the period allowed only attorneys. Despite participation in the barrister, as indicated by T.M. Jablochkov, the host material and procedural parties in the process continues to be the principal⁷⁰. T.M. Yablochkov done fundamental comparative studies institute Russian representation, Germany, England. As evidenced by A.H. Golmsten as a representative in court may participate only lawyers - attorneys, who, in my opinion there are only educated in the right helpers litigant - pravozastupniki, his involvement in the case is optional. Such a person provides legal advice has chosen his side, composes court papers, the court pronounces a speech and doing anything else that requires him special knowledge⁷¹.

Born in the mid-19th century, the institution of representation exists in the civil proceedings and the present time, although it has undergone significant changes. In accordance with the procedural legislation of the Russian citizens may conduct their case in court personally or through their representatives. Personal participation in a citizen is not deprived of his right to have a representative on the case.

⁶⁸Vas'kovsky E.V. Textbook of civil procedure. Moscow. Edition Bashmakova. 1914. 116 p.

⁶⁹Yablochkov T.M. Subjects judicial recognition. Yaroslavl. 1914; Golmsten A.H. Textbook Russian civil proceedings. Saint Petersburg. 1913; Isachenko V.L. Charter of Civil Procedure. Saint Petersburg. 1911 Vas'kovsky EV Textbook of civil procedure. Moscow. Edition Bashmakova. 1914.

⁷⁰Yablochkov T.M. Subjects judicial recognition. Yaroslavl. 1914. 95 p.

⁷¹Golmsten A.H. Textbook Russian civil proceedings. St. Petersburg. 1913. 107 p.

Cases incapable or lacking full capacity of citizens are in court by their legal representatives.

In accordance with the doctrine of the Russian judicial representatives may be only natural persons who on the basis of the powers granted to them appear in court on behalf of the principal. The activities of the representative has the following objectives:

- a) the achieve the most favorable for the client's decision;
- b) providing the principal with the implementation of the latter's rights;
- c) assisting the court in the administration of justice in civil matters.

Thus, under the legal representation meant procedural activities representative in the civil procedure, carried out by them in the above order.

The need for legal representation due to various reasons. For example, a person involved in the case can not have civil procedural capacity (minors, persons found incompetent by a court). Since incapacitated citizens can not conduct its affairs in court in person, so their rights are exercised by the legal representatives (parents, adoptive parents, guardians, trustees).

The most common need for representation is called the desire of stakeholders to obtain qualified legal assistance in dealing with their civil case in court. The participation of a legal representative in the process contributes to a more complete explanation of all the circumstances of the case. Therefore, representation in civil proceedings is of great importance and serves as an important safeguard to protect the rights, freedoms and legitimate interests of citizens and organizations.

Representatives of the only able-bodied person can be in a court whose authority to conduct business properly documented and confirmed with the exception of judges, investigators, prosecutors, judges, assistants, court staff which by law can not act as representatives in court, other than legal representation and participation in the proceedings as representatives of the relevant authorities.

As a result of procedural reform in December 2018 by the legislator in Russia there was an attempt to introduce the Russian civil process of the Institute of professional representation. However, this reform is carried piecemeal. At present, as representatives only in the courts of the Russian Federation or the Supreme Court of Russian Federation subjects admitted attorneys, as well as persons holding a law degree or a degree in jurisprudence. At the regional and international courts as representatives still is open to all able-bodied persons who have no professional education.

In addition, the presence of higher legal education is not required for the patent attorneys on disputes related to legal protection of intellectual property, arbitration managers, trade unions if they are in court the interests of union members.

Certain restrictions on the exercise of legal representation provided by law in relation to the lawyers. Thus, the lawyer shall not be entitled to receive from the person who applied to him for legal assistance, in order if it:

a) It has its own interest in the subject of the agreement with the client, other than the interest of the person;

b) He participated in the case as a judge, prosecutor, expert, specialist, interpreter, witness, and if he is an officer, in whose jurisdiction the decision was in the interests of the person;

c) is a relative or family relations with the official who participated or participates in the proceedings;

d) provides legal assistance to the principal whose interests contradict the interests of the person who filed a request for the conduct of the case.

To conduct business through a representative in court may not all participants in the process, but only the part of the applicants and other interested parties, in particular in cases of special proceeding, third parties independent claims regarding the subject of the dispute, a third party without independent claims in relation to the matter in dispute .

Legal representation possible for all categories of civil cases in the court of first instance, appeal and cassation, supervisory authorities, when reviewing the decision came into force on newly discovered or new circumstances, as well as the execution of judicial decisions.

Case of legal persons also have the right to maintain representatives in court on the basis of the powers granted. Attention is drawn to the fact that the entity implements its capability through its bodies acting in accordance with the law, other legal acts and the foundation documents. The competence of the body of the legal person is enshrined in its founding documents. In particular, the body of the legal entity authorized to defend its interests in court and acts without authorization (Article 53 CC). In virtue of which the legal entity is not a representative of a legal entity.

On behalf of the Russian Federation, the Russian Federation and municipal entities in the court acts as the authorized representatives of state bodies and local self-government within their competence established by regulations or other acts, defining the status of these bodies. Specially commissioned by those entities on their behalf may appear in court and other legal persons or citizens.

Representatives of the Russian Federation in case of presentation of claims to it or other requirements are appointed by order of the Russian Federation which are officials of relevant authorities.

On behalf of the liquidated organization in court is the authorized representative of the liquidation commission.

The powers of the leaders (organs), acting within the powers granted to them by law, other legal acts or constituent documents, or representatives of the organization confirmed upon the court documents proving their status and the fact that empowerment. Powers of attorney certified by a warrant. Powers of attorney confirmed by other representatives. In addition, representatives must provide the court with one of the following: higher legal education; the existence of a scientific degree; Law order.

The powers of the legal representatives of supporting documents certifying their status and authority. Such documents are child's birth certificate, certificate of adoption of the child and the representative of the passport.

In accordance with applicable law, the court may appoint a legal representative in accordance with Article 50 of the Civil Procedure Code to the defendant if the latter did not appear in court and place of residence is not known it. According to the procedural doctrine, the court may appoint a representative and in other cases established by law, ie, a list of such cases is open.

To perform the tasks representative shall enter into legal relations with the court. These relations are governed by the rules of civil procedure law and are of a procedural nature. Relations representatives and are governed by the substantive law (civil, family, labor, etc.) and are by nature financially-legal relations. Basically this relationship arising out of an agency contract or relationship of kinship between parents and children.

The representative acting on behalf of the sending process. The formula "statement on behalf of the represented" in this case means the legitimate representative of the judicial proceedings, committed within the limits of its powers and aimed at obtaining some positive results for the legal person represented. Participation in the process of a legal representative does not remove from the case itself is represented by a person (the plaintiff, the defendant, the applicant and the like), it can participate in, along with his representative.

The law does not limit the representation of a circle of civil cases, however, given the need to obtain a court in some cases personal explanations of the parties, the court may summon the parties to personal explanations and in the presence of representative (for example, claims for divorce; in cases of paternity, for the recovery of alimony, reinstatement and other).

Litigation has an independent institute of civil procedural law and must be distinguished from the other institutions of like other branches of law.

Thus, the institution of judicial representation procedure is significantly different from that of the Institute representation in civil law. The differences are a number of features: on the objectives and nature of the relationship between the representative and the represented; on subject composition; on the grounds of occurrence; Legal consequences, which entails the issuance of orders to make legal actions. For example, in 2013 in connection with the reform of civil law has changed the norm of Article 185 of the Civil Code, and therefore the power of attorney issued to the representative, the stamp of the organization is not required. But the procedural representation of the presence of the press remains still optional.

About Procedure state representative in civil proceedings in science for a long time there have been discussions. Some scientists believe that the representatives of the parties are not involved in the case, other (M.K. Treushnikov) carry them to the number of persons involved in the case⁷². There is another point of view, which seems more logical. It lies in the fact that representatives are not the persons involved in the case, but they are the persons participating in the process.

10.2. Types of judicial representation

Depending on the classification of bases can distinguish different types of legal representation. For example, in one case, the mission may only occur in the presence of will presented in the other - for the emergence of representations of will submitted is required. In connection with the foregoing can be distinguished representation of two views:

a) *voluntary representation*, Which occurs only in the presence of this expression as a representative, and the sending (thus at voluntary representation will be matching at least two subjects);

b) *obligatory (legal) representation* For the occurrence of which does not require the consent of the will of the two entities, it has enough presence will only represented.

In turn, the voluntary representation, depending on the nature of the relationship between the represented and the representative can be divided into two subspecies:

a) *contractual representation*, which is based on the contractual relationship between the represented and the representative of the representation in court;

⁷²Treushnikov M.K. Civil proceedings: uchebnik. M. Gorodets. 2003. 157-166 pp.

b) public office, which is the basis of origin of the persons represented by membership in voluntary associations.

Contractual representation there is, as a rule, order, under which one party (represented) on the basis of a civil contract authorizes the other (representative) conducting the case in court, and the representative assumes these responsibilities. Contractual representation may also be based on labor relations and may be a permanent employee of the company (for example, legal counsel). In this case, the basis of representation is an employment contract between the company and its employees. The circle of persons who may be involved in the process of treaty members is quite broad. Representatives of the treaty may be, for example, lawyers, legal advisers and other staff employees on business organizations, these organizations, one of the partners on behalf of the other partners and others.

Most often, lawyers are members of the court. They occupy a leading place among the representatives in the protection of rights, freedoms and lawful interests of citizens and organizations in court. Lawyers are persons with special knowledge in the field of law and practical experience of conducting cases in court, for which protection and assistance in the protection of rights, freedoms and interests of other people have a professional work. Therefore, they are designed to provide the most qualified legal assistance. Detail the issues of representation by lawyers in court devoted his writings Professor A.A. Vlasov⁷³.

To receive legal aid, an individual or organization must enter into an agreement with a lawyer for legal aid (paragraph 4 of Article 25 of the Law "On Advocacy and the Legal Profession in the Russian Federation"). The lawyer acting as a representative in civil, administrative proceedings only on the basis of an agency contract. Other types of legal aid lawyer has on the basis of paid services agreement. The remuneration paid by the principal lawyer, paid in cash or transferred to the account of legal practice in the manner and time stipulated by the agreement.

In some cases, legal assistance is provided free of charge. The guarantee of free legal assistance and organizational and legal bases of activity of legal aid is currently governed by the law № 324-FZ "On free legal aid in the Russian Federation." Thus free legal aid is provided by: the federal executive bodies, executive bodies of subjects of public law offices, notaries and other entities.

⁷³Vlasov A.A., Kuksin I.N. A lawyer in the proceedings. A short training course. Moscow: Norma. 2005; A.A. Vlasov The activities of a lawyer in court in cases of protection of honor, dignity and business reputation. A Practical Guide. M. Lawyers. 2006.

The Party in whose favor the decision of the court, in its written request to the Court awards the other hand, the representative of the service charges, but within reasonable limits. If in the prescribed manner attorney services were provided free party in whose favor the court decision, the cost of legal fees are recovered from the other party in favor of the relevant legal practice.

As a contractual representative of the enterprise, institution or organization, it can be any full-time employee, authorized to conduct the case in court. In those cases, when an organization requests the protection of the rights to one of the employees, based on its knowledge, expertise in, which is the subject of litigation. On behalf of the legal persons in court as representatives serve mostly legal advisers, who are lawyers and have special knowledge in the field of law and provide qualified assistance to their organizations.

Public representation it called the office, carried out in a civil proceeding by the authorized public organizations on matters of their members. Public office is of great importance for the protection of the rights of workers and employees, inventors, innovators, creators of artistic works and others. The legal basis for this kind of representation is the fact that membership of a citizen in one way or another public organization, which by virtue of the statute is obliged to provide legal assistance to its members.

Public organizations do not protect the rights of citizens, but only those whose implementation depends on the purpose of the organization. Therefore, the public representation occurs only for certain categories of civil cases. Public representation can provide legal assistance not only to its members but also to other citizens, who are engaged in activities promoted by the organization. So, protect the rights of trade unions in the field of production, labor, life and culture of all workers, not just union members. Membership in public organization or exercise of an activity promoted by this organization, can only lead to a representation of the presence of expression of the will to do so by the principal.

Prerequisite allocating public representative is an oral or written statement about this public organization member or other person whose rights are guarded by the organization. However, the powers public representatives of the parties and third parties are not represented by, as in contractual dealership, and from relevant Public representation. For example, representatives of workers' interests in court can act authorized trade unions, i.e. Adult person specially appointed trade union to assist in the protection of rights and legitimate interests in court. This representative may be any adult member of the trade unions, but the unions are the most competent employees staffing system,

The protection of the rights of inventors and innovators in the court act authorized by the relevant public organizations. Members of the public may be authorized by different organizations, but that by law, statute or regulation given the right to protect the interests of members of these organizations.

Legal representation. The emergence of the term "legal representation" is explained by the fact that the presented into force laid down by law conditions (for example, incapacity or partial capacity can not independently choose a representative and, therefore, its representative determines the law (for example, the law number 3185-1 "On psychiatric care and guarantees the rights of citizens upon its provision"). On the legal representative can only speak in relation to natural persons, by virtue of any reason not to have the opportunity to defend its interests in the su . De personal basis of this kind of representation in addition to the rule of law, can be: a) the fact that the origin of children from the respective parents, certified in accordance with the law (Chapter 10 FC RF). b) the fact that the adoption of children (Chapter 19 FC RF); c) administration bodies act guardianship (Chapter 20 FC RF).

Legal representatives, as well as all the legal representatives must be of legal age and legally competent individuals. The legal representatives in court advocate parents, adoptive parents, guardians, trustees. These persons are authorized representatives under the law. The list of legal representatives is not exhaustive. The legal representatives can be and other persons to whom this right is granted by federal law, for example, the law № 324-FZ of November 21, 2011 "On free legal aid in the Russian Federation." Article 7 of the Act determined that the free legal aid (including in the form of representation in the courts) have natural or legal persons who are members of the state system of free legal aid; Individuals and legal entities, are members of the non-state system of free legal aid; other persons who are entitled to free legal aid. In accordance with Article 15 of the same law, the participants of the state system of free legal aid are: the federal executive bodies and their subordinate agencies; executive bodies of subjects of the RF and their subordinate institutions; controls state off-budget funds; State law office; lawyers, if they participate in the public system of legal aid. Article 20 of the Law № 324-FZ secured a fairly extensive list of subjects to whom by virtue of law, free legal assistance should be provided, including in the form of representation in the courts. For example, the data entities include: disabled groups 1 and 2; disabled children; orphans; Heroes of the Russian Federation; Heroes of the Soviet Union, Heroes of Labor, etc.

Parents who are not deprived of parental rights, are also legal representatives of their minor children by virtue of kinship. They advocate for their children in all institutions, including the judiciary, without special powers (article 64 of the Family Code). With regard to the representation of minor parents against their children, due to lower marriage age for them they have full legal capacity from the moment of marriage. If the parents are not married, then the implementation of legal representation is achieved in the legislation as follows: parents, unmarried, 16-year-olds have the right to be the representatives of their children;

there are contradictions, which leads to a violation on the part of the rights and legitimate interests of children of parents in the legal practice there are situations when interests between parents and minor children. In such cases, children are free to contact the guardianship authorities for protection of their rights, and on reaching the age of 14 - the court directly (Part 2 of Article 56 of the Family Code).

Parents deprived of parental rights, can not be the legal representatives of their children (art. 71 FC RF).

Legal representation of children is stopped upon reaching the age of majority. After that, parents may only be representatives of their treaty.

In the case in which the citizen must participate, duly recognized as missing, as his representative a person who acts in trust property of the missing person.

Performing the duties of guardians and trustees in respect of persons in care in the state or public institutions entrusted with the administration of these institutions. As a legal representative for the wards in these situations serves head of the institution or its authorized employee.

Of children up to 14 years and over persons found incompetent by a court due to mental illness or dementia, placed under guardianship. Of minors under the age From 14 to 18 years, of the persons disabled by a court in the capacity due to the abuse of alcoholic beverages or narcotic substances, as well as on adults capable persons, if they are on a state of health can not independently exercise their rights and fulfill their duties, established custody .

Legal representatives may participate personally in the court, and may also separately charging for legal representation to another person, chosen by them as representatives.

For the legal representative not necessarily a legal requirement on the need of higher legal education.

The doctrine stands out as another kind of representation - representation for other purposes. This representation has similarities

with the contractual and legal representation. First, the office of destination arises from the instructions of the law. For example, by virtue of Article 43 of the Civil Code of the property of a citizen deemed to be missing, it is transmitted on the basis of a court decision in trust other parties. This person, in this case, will act as the representative in the court of claims that are made in relation to this property. Or on the basis of the provisions of Article 1173 of the Civil Code, if a part of the inheritance has a property that requires not only protection, but also management, the notary as the founder of trust management enters into a contract of trust management of this property. The Trustee will act as a legal representative. However, in this case the representative shall hold office for a fee, and this circumstance brings it closer to the contractual representation.

By the establishment of destination can also be attributed, and the provisions of Article 50 of the Civil Procedure Code, the court appoints a lawyer to represent the defendant in the absence of a representative of the defendant, whose place of residence is not known.

10.3. Powers of judicial representatives

Powers of court representatives to conduct the case in court need to be designed and verified in accordance with the requirements set out in the law. The representative's authority must be expressed in a power of attorney issued and executed in accordance with the law. Power of Attorney issued by the citizens shall be certified by a notary. By notarised power of attorney equated with power of attorney, certified by the organization where the principal works or studies; Housing and operational organization of the principal place of residence; administration of the inpatient treatment institution in which the principal is being treated; commander (chief) corresponding to the military unit, compounds institution military school if proxy issued by military personnel, workers in these parts, the compound institution military school, or members of their families. Powers of attorney of persons in places of detention, make sure the head of the respective places of detention⁷⁴.

The power of attorney on behalf of the representative of the organization shall be signed by its head or other authorized to do so by its constituent documents of the person.

⁷⁴It is necessary to distinguish the situation of part 3 of Article 185 of the Civil Code and Part 2 of Art. 52 Code of Civil Procedure of the Russian Federation, which fix a different circle of persons entitled to certify the power of attorney.

Authority of the head of the proceedings in the court of supporting documents certifying his status and the fact that empowerment (business card, the general meeting protocol, order, etc..).

The right to a lawyer to play in the court as a representative certified by a warrant issued by an appropriate legal practice. order form approved by the federal body of justice. For special powers of attorney must have authorization from the represented person.

Representatives of trade unions and other public organizations must submit documents certifying the assignment of relevant associations in the implementation of representation in the present case (minutes or extract from the minutes of the general meeting or the elected body of the public association, etc.).

It is necessary to pay special attention to the fact that the powers of the representative can be defined in an oral statement, which is included in the record of the hearing or in a written statement to the court trustee (Part 6 of Article 53 CPC) and in this case, no further written power of attorney is not required.

Legal representatives submit to the court documents proving their status and authority. Such documents are the passport of the parents (adoptive parents), children's birth certificates, certificate of adoption. Custodians must provide the court with guardianship or caregiver's license.

Persons who do not have power of attorney or other documents certifying their powers to conduct the case in court, can not be admitted into the process as a representative. The lack of confirmation of powers duly executed representative deprives him of the proceedings void.

In the presence of appropriately decorated in court and confirmed by the authority to conduct affairs representative is allowed to process and acquire the right to commit all those proceedings are entitled to make himself represented in court. He, in particular, the right to get acquainted with the case materials, make copies, take notes, to present evidence and participate in their research, ask questions to other persons involved in the case, witnesses, experts and specialists, to make petitions, including the taking of evidence and etc. These powers are shared powers, without which a representative can do to defend the rights of their clients.

However, the law provides for such proceedings, the right of fulfillment of which must be specifically authorized by a power of attorney issued by the represented person. So, it should be specifically stated right of the representative to: the signing of the statement of claim, presenting it to the court, submit the dispute to arbitration, filing a counterclaim, a full or partial waiver of claims, reducing their size, the

recognition of the claim, the subject of alteration or cause of action, the conclusion of a settlement agreement, the transfer of authority to another person (delegation), the appeal of the court decision, the presentation of the executive document to the collection, receipt of property or awarded de er. A special clause in the power of attorney for the commission of each of these actions is necessary because,

Legal representatives as compared with other members occupy a special position. They have the right to make all those procedural steps that may be carried out in the process are themselves, if they have the procedural capacity. Unlike other members of the legal representatives are free to make without good authority administrative action, such as a full or partial waiver of the claim, acknowledgment of claim. However, in some cases, to carry out the said type of action requires permission of the guardianship authority.

CHAPTER 11

Competence of courts of law

11.1. The concept of the competence of courts of general jurisdiction

Procedural reforms started in Russia in 2016, which led to the abolition of the Supreme Arbitration Court was aimed at unification of the two judicial systems: the system of arbitration courts and courts of general jurisdiction. Despite the goals so far in the force of law "On the Judicial System in the Russian Federation" is still the independence of the two judicial systems. In December 2018 the Russian Federation adopted the law number 451, developed by the Russian Supreme Court, without considering the opinion of scientists, which the provisions of a legally abolished Institute jurisdiction. The provisions allow the Institute jurisdiction to delimit the competence of the courts of judicial systems. Despite the legal abolition of the jurisdiction of the Institute, the rules of differentiation of the competence of the judicial systems actually stayed that allows you to come to a conclusion about the cosmetic procedure replacing the jurisdiction of the Institute competence. Furthermore, continue to exist various forms of protection of the violated rights. Protection of the rights carried out in addition to ships and other competent authorities according to the competence assigned to them, and therefore in this case we should distinguish the competence of those bodies in accordance with their subordinate.

Russian procedural doctrine did not share the competence and jurisdiction until 1917, these two legal concepts are the essence of the same rules. This conclusion follows from the analysis tutorial E.V. Vaskovsky of Civil Procedure 1914⁷⁵. Paragraph 38 of the second chapter the author calls "the competence of the courts", and in paragraphs 40-46 reveals the spiritual jurisdiction of the courts, commercial courts and other Russian vessels. Paragraphs 47 - 53 of the textbook devoted to the jurisdiction of the Institute disclosure. Thus, before the revolution Russian procedural doctrine not distinguish competence and jurisdiction, delimiting with the jurisdiction of the jurisdiction.

Of all forms of judicial form of the most in demand, because it is universal. With judicial form of protection violated or disputed civil rights is performed in accordance with the competence established procedural

⁷⁵Vas'kovsky E.V. Litigation: a textbook. M. Publication Brothers Bashmakova. 1914.

law: Constitutional Court (Statutory Courts) subsystem common courts, arbitration subsystem vessels arbitration courts. As can be seen, the judicial authority is not uniform and is carried out (ch. 2, Art. 118 Constitution RF) through constitutional, civil, administrative and criminal proceedings. Moreover, civil and administrative proceedings are carried out as courts of law, and arbitration courts, each of which have their own competence.

For instance, there is a jurisdiction of the Constitutional Court of the Russian Federation. During the constitutional court proceedings under the special rules by logical-normative research clarifies the legal structure of acts of higher legal force on their compliance with the Russian Constitution. The Constitutional Court on the complaint of a citizen of a violation of his constitutional rights and freedoms checks the constitutionality of regulations applied in the applicant's case, which completed its consideration of the court and shall decide only on the issues raised in the complaint by assessing both the literal meaning of consideration of regulations and the meaning attributed to them official interpretation or established legal practice, as well as on the basis of their place in the system of legal norms.

Protection of civil rights in the administrative procedure is possible only in cases stipulated by law. So the law is the Code of Administrative Offenses. The decision taken in an administrative procedure may be appealed in court.

Administrative proceedings in cases not related to business and other economic activities, carried out according to the norms of the Code of Administrative Procedure of courts of general jurisdiction. In cases arising from administrative relations, the dispute shall be settled not on the right of civil, administrative and on the right. Administrative jurisdiction is an independent judiciary to protect the right form.

Apart from the judicial, administrative forms, there are other forms of protection of rights, such as: self-defense, claim form, notarial form, a social form, the executive form of protection of rights.

Notarial form of protection and preservation of the undisputed subjective civil rights provided Principles of the Russian Federation legislation on notaries. Labor rights of workers, in addition to the court, may be protected by commissions on labor disputes in accordance with the provisions of the Labor Code. The law establishes a specific procedure for settlement of collective labor disputes, which consists of several stages.

Some legal issues related to the rights of the uncertainty resolved meetings of cooperatives, economic entities, as referred to their competence by law and relevant statutes. For example, the competence

of the General Meeting of Shareholders referred to establish the maximum amount of declared shares, splitting and consolidation of shares, participation in holding companies, financial-industrial groups and other associations of commercial organizations (Article 48 of the Law "On Joint Stock Companies").

In accordance with Part 3 of Article 46 of the Constitution of the Russian Federation citizens have the right to apply to international bodies for the protection of the rights and freedoms of man and citizen (for example, the European Court of Human Rights).

As you can see, the rights of citizens and organizations can protect the various organs. Due to the fact that in Russia there is not one, but several forms of protection of rights, requires a clear legislative allocation between these bodies the scope of powers of Legal Affairs, on the terms of reference or in other words on the subject of competence to the fact that there was no competition between all these bodies.

Since ships system consists of two subsystems, each subsystem has its substantive expertise. Therefore, the judicial competence can be defined as a system of rules allowing to distinguish between cases between the courts of general jurisdiction and arbitration courts. Despite the legal abolition of the jurisdiction of the Institute, the value of the subject of judicial competence and relevant at the moment. Institute of competence, who succeeded the jurisdiction Institute acts as a certain timing between the courts of general jurisdiction and arbitration courts.

In determining the competence of the courts of general jurisdiction is necessary in addition to the provisions of the Civil Procedure Code, guided the Resolution of the Plenum of the Supreme Court on January 20, 2003 № 2 "On some issues arising in connection with the adoption and enactment of the Civil Procedural Code of the Russian Federation."

Compliance with the rules of substantive jurisdiction of courts of law is a prerequisite for the right to appeal to the court, the violation of which entails procedural consequences provided for in Article 135 paragraph 2 of the Civil Procedure Code.

Any civil case related to one of the types of proceedings (lawsuits special, clerks, etc.). Therefore, to determine the competence of courts of general jurisdiction in various cases use different rules. For neiskovyh cases in law used this method for the determination of judicial competence as a complete listing of categories of cases, constitute a particular type of neiskovogo production. For example, the jurisdiction of courts of general jurisdiction applies writ proceedings for claims based on the notarized transaction; on a transaction made in writing; to protest non-payment of bills; non-acceptance and acceptance of dating the perfect notary, etc. (Article 122 CPC RF).

General courts hear and determine cases arising from public relations, for example, according to the protection of the electoral rights or their right to participate in referendum of citizens of the Russian Federation and other matters specified in the Code of Administrative Justice. However, such cases are not following the rules of civil procedure, and according to the rules of administrative procedure.

Courts of general jurisdiction are competent to hear cases of special proceeding. Categories of cases listed in Article 262 of the Civil Procedure Code. For example, the case of establishing the facts of legal significance, adoption (adoption order) of the child and other matters. However, this norm is determined that the cases of special proceeding to federal law can be attributed, and other things, so the list of these cases is open.

Courts of general jurisdiction are also considering neiskovye cases challenging the decisions of arbitration courts to issue writs of execution to enforce arbitration decisions, solve issues related to the implementation of promoting functions in respect of the arbitral tribunal (chapters 46, 47, 47.1 CPC RF), cases of recognition and enforcement of foreign judgments and foreign arbitral awards (chapter 45 CPC RF), cases involving a foreign state (chapter 45.1 CPC).

To characterize the competence of the courts of general jurisdiction claim cases their complete enumeration method is not applicable. This is due to the fact that the list in one or in several articles Procedure claim all matters that may consider the ordinary courts is not possible in view of their huge quantitative and objective diversity.

For a long time in civil proceedings to determine the subject matter jurisdiction of claim cases we used two criteria in combination: a) the nature of the disputed relationship and b) the subject structure of the disputed legal relationship (Article 25 of the CPC of the RSFSR in 1964). On the basis of the first criterion, the courts of general jurisdiction to consider the case of claim, arising out of civil, family, labor, housing and other legal relations. Based on the second criterion - one of the parties to the dispute had to serve the citizen. Installed at the time Article 25 of the Civil Procedure Code of the RSFSR the criteria for determining the competence of claims cases do not act now.

In accordance with applicable regulations of the Russian law courts of general jurisdiction have the right to consider the plaintiff's case, together with organizations, such as disputes between public associations, or disputes involving local governments, or the dispute at the request of the Ministry of Justice on the Elimination of social organization. At the same time, the arbitration courts may consider disputes involving entrepreneurs citizens.

According to the provisions of paragraph 8 of Article 22 of the Civil Procedure Code, courts of general jurisdiction consider corporate disputes related to the creation of a legal entity, its management or participation in a legal entity, is a nonprofit organization, with the exception of non-profit organizations, business to corporate disputes which federal law within the competence of arbitration ships. Since the law there were gaps in the legal regulation of judicial competence, such gaps were filled in due to the legal positions expressed by higher courts in Russia.

Plenum of the Supreme Court of Justice of 18.08.1992. Number 12/12 pointed out that the cases involving attorney's office are subject to review by the courts of general jurisdiction, as a common law cases, not related to business or other economic activity.

The Presidium of the Supreme Arbitration Court in its judgment of 10.09.2013, the number 2332/13 in the case number A08-5402 / 2011 expressed the legal position according to which the competence of the courts of arbitration include disputes on claims for payment of the actual value of the share of the deceased member of society his successor.

The courts of general jurisdiction have the right to hear and determine disputes arising out of any legal relationship that is difficult to enumerate a complete list. Plenum of the Supreme Court in its judgment of June 28, 2012, № 17 "On Protection of Consumers' Rights formulated the legal position according to which on the Elimination of manufacturers make an application (performer, seller), or on the termination of an individual entrepreneur for violation of consumer rights, filed an official the authorized body shall be considered by the court of general jurisdiction. In addition, the Plenum of the Supreme Court pointed out that in accordance with Articles 45 and 46 of the Civil Procedure Code, the ordinary courts are competent to hear cases on the claims of prosecutors, authorized bodies, local authorities,

According to the agreement between the parties, certain types of dispute may be referred by the parties to arbitration, except for disputes provided for by Part 2 of Article 22.1 of the Civil Procedure Code.

It is necessary to note that under the provisions of Article 27 of the Arbitration Procedure Code of the arbitral tribunal is competent to try cases involving individuals engaged in entrepreneurial activities without forming a legal entity having the status of an individual entrepreneur, and if a dispute arises from economic relations.

In accordance with the Resolution of the Plenum of the Supreme Court on January 20, 2003 № 2 "On some issues in connection with the adoption and enactment of the Civil Procedural Code of the Russian Federation" arbitration courts consider as disputes between

shareholders and joint-stock company, members of other economic partnerships and companies, with the exception of labor disputes.

Since the production and consumer cooperatives are not economic partnerships and companies, so the cases of disputes between cooperatives and their members should be considered by courts of general jurisdiction.

In 2011, the system of arbitration courts was established court for intellectual property rights, which also has its own competence. Since its establishment, all disputes over intellectual property rights, regardless of the subject of the dispute shall be settled by this Court, even if such a subject is a citizen-entrepreneur.

As a party to the dispute for the benefit of a legal person may be a founder (participant) of the legal entity, but this argument will be considered in the arbitration court. This is directly indicated the Plenum of the Supreme Arbitration Court in the Resolution number 62 dated July 30, 2013. It's about when the director of the legal entity has suffered loss entity. In this case, a claim may appeal to the director member of the society of the legal entity to recover from recent losses. As you can see, in this mishap defendant and surfer in the dispute are the individuals, but the dispute will be considered in the arbitration court, rather than in a court of general jurisdiction.

Summarizing the above, we note that the ordinary courts are competent to hear and determine plaintiff's case, together with citizens, organizations, public authorities, local governments, on the protection of violated or disputed rights, freedoms and legitimate interests in disputes arising from civil, family, labor , housing, land, environmental, corporate and other legal relations (paragraph 1 of part 1 of article 22 of the Civil Procedure Code). All claim and neiskovye cases are dealt with by the courts of general jurisdiction, provided that they do not belong to the category of economic disputes and other cases under the law of the jurisdiction of the arbitration courts (Articles 27-33 APC).

In determining the competence of the courts of general jurisdiction should operate on the following criteria:

- 1) the nature of the disputed relationship;
- 2) subject composition;
- 3) controversial or indisputability rights restored;
- 4) presence of arbitration (arbitration) reservations in the contract between the parties;
- 5) the presence of terms of pre-trial settlement.

In addition, the highest judicial authority Russia draws attention to the fact that:

1. In accordance with Article 7.1 of the law "On state regulation of tariffs for electricity and thermal energy in the Russian Federation" the

competence of the arbitration courts referred all disputes related to the implementation of state regulation of tariffs for electricity and heat, regardless of the subject composition of the disputing parties and connectedness dispute with a business.

2. The competence of general jurisdiction courts referred cases of disputes between an individual and a legal entity, does not stem from economic relations.

We formulated above list of criteria for delimiting the subject-matter jurisdiction of the court system is conditional. Russian lawmaker has created a rather complex system of rules for the definition and distribution of powers between the courts of arbitration and courts of general jurisdiction that does not fit into a well-defined formula. Unprofessional legal technique of subjects who develop and then enact laws often without the involvement of the scientists creates real problems in judicial legal practice.

11.2. Types of judicial competence

The doctrine of procedural law can distinguish several types of competencies. Knowledge of these types allows you to properly address the issue of the use of any form of protection of the right or the sequence of appeals of citizens and organizations for the protection of the rights of the various organs of the State or competent organizations.

Exclusive competence. The vast majority of disputes arising out of civil, family, housing, environmental and other legal viewed directly only by the court and can not be resolved on the merits by other bodies. This type is called exclusive jurisdiction. This means that do not require pre-order compulsory treatment in any other bodies to resolve the dispute by the court. The exclusive competence include disputes about the recognition of the authorship of a work of art, for reinstatement of recognition of the transfer contract apartments to citizens invalid, etc.

Alternative competences. The essence of the alternative competence means that the legal dispute can be resolved according to the law, not only the court but also to other non-judicial authority (for example, in the administrative procedure, the notary, the arbitral tribunal). Appeal to some form of protection of the right depends on the discretion of the plaintiff, applicant or other interested person is determined by agreement of the parties, expressed as a separate document and in the text of a civil contract (contract). For example, according to paragraph 2 of Part 1 of Article 80 of the Family Code, parents have the right to enter into a notarial agreement on the content of their minor children (child support payment agreement). It shall be in

writing, subject to notarial certification and has the force of a writ of execution (Articles 99-100 FC RF).

Decisions and actions (inaction) of election commissions and their officials may be appealed to a higher election commission or a court. Preliminary appeal to the higher election commission is not a prerequisite for applying to the court.

A kind of alternative is the transfer of competence disputes to arbitration. For the submission of the dispute to the arbitration court will not require the one hand, and the two sides, as well as an agreement to refer the dispute to the arbitral tribunal in a certain form. The law provides for requirements for the form of the agreement to submit the dispute to the arbitral tribunal. It must necessarily be concluded in writing, in the form of a separate arbitration agreement or in the form of an arbitration clause in the contract. An agreement is in writing if it is contained in a document signed by the parties, concluded by an exchange of letters, on the internet, telegrams or other means of communication to ensure fixation of the agreement (Articles 5 and 7 of the Law "On arbitration courts in the Russian Federation "). The parties may cancel the agreement to submit the dispute to the arbitral tribunal by mutual consent. Avoid unilateral waiver of the agreement to submit the dispute to arbitration.

Conditional competence. This type of competence means that for certain categories of disputes is necessary to observe the pre-court procedure for their consideration in his capacity as a necessary condition for consideration of the dispute by the court. Since December 2018 the Civil Procedure Code as a general rule contains a provision on conditional competence. Thus, pursuant to Article 3 of Part 4 of the Civil Procedure Code, the application is submitted to the court after compliance with the claim of a pre-trial order solution to the dispute, if it is provided by federal law for this category of cases.

Required non-judicial procedure for the consideration and resolution of disputes established in the cases of the request for compensation for damage caused to their health, if a party to the obligation of the injury acts as an employer who is responsible for the harm caused to the health of workers, employees and members of collective farms and other co-operatives, citizens working on civil contracts and contract assignments, industrial injury that occurred on the territory of the employer and the outside (articles 2 and 3 of the Rules of poss escheniya employers for harm caused to workers injury, occupational disease or other damage to health associated with the performance of their job duties, approved by the Supreme Council of the Russian Federation on December 24, 1992 № 4214-1 with subsequent amendments).

Pre-trial (Claims) procedure for settlement of disputes provided for in Articles 136-140 Railway Transport Regulations of the Russian Federation and other similar statutes of transport, as well as the Communications Act, Code of inland water transport, etc.

The competence of the cases determined by communication requirements. This competence is that by combining several interconnected requirements some of which are competent court of law, and other arbitral court all the requirements to be considered in a court of law if their separation is not possible.

Article 22 of the Civil Procedure Code contains the rules, resolve the question of competence linked claims that their separation is possible. In this norm fixed priority jurisdiction of the courts of general jurisdiction, which in turn means that if a separation of the requirements, the judge shall issue a ruling on the adoption of the requirements of the jurisdiction of the court of general jurisdiction, and refusal to accept the requirements of the jurisdiction of the arbitral tribunal.

In addition, in the Resolution of the Supreme Court number 50 of November 17, 2015 states that if part of the consolidated executive produce along with executive documents arbitration courts executed executive documents issued by courts of general jurisdiction, and / or execution of non-judicial authorities, verification of the legality of which is within the competence of courts of general jurisdiction, the application contesting decisions, actions (inaction) of the court bailiff related to the implementation of the consolidated enforcement proceedings as a whole, are resolved by the court of general jurisdiction. Supreme Court postulates that in the conduct of summary enforcement proceedings, which along with the arbitration courts executive documents executed by the executive documents issued by courts of law, the approval of the settlement agreement, the reconciliation agreement on any enforcement proceedings, a part of the consolidated,

Negotiated competence. Contractual competence is determined by the mutual agreement of the parties. For example, the agreement of the parties may refer the dispute to arbitration (Part 3 of Article 3 of the CPC and Article 5 of the Law "On arbitration courts").

Competence also in the doctrine is divided into a unit, by virtue of which the trial of the case shall be entitled to exercise only one court, and multiple when things permit may carry out a variety of organs. For example, to recognize a citizen incapable or incompetent law authorizes a court of general jurisdiction. However, irregularities in the voter lists (protection of electoral rights) can eliminate not only the courts, but the electoral commission of the polling station at the place of location.

11.3. Jurisdiction of the court of claims

In civil proceedings, the bulk of the civil cases are so-called plaintiff's case as they emerge from the right disputes. Thus, in accordance with Article 22 of the Civil Procedure Code, the courts consider and resolve claim cases involving citizens and organizations, public authorities and local self-government on the protection of violated or disputed rights, freedoms and legitimate interests, in disputes arising from civil, labor, family, housing, land, environmental and other legal relations.

Claim cases referred according to jurisdiction, the court of general jurisdiction can be divided into several groups:

- a) cases of disputes about the right, in which both sides or at least one - the citizen;
- b) cases involving individual entrepreneurs in disputes not related to their business activities;
- c) cases of disputes involving the two sides, organizations not within the jurisdiction of the arbitral tribunal.
- d) corporate spores.

Attention is drawn to the fact that the existence of a dispute on the right in the excitation of civil procedure is tentative. It was there in fact a violation of any right of challenge, determined by the Court after examining the evidence submitted at the end of the trial.

Since the disputes can arise from a wide variety of legal (civil, family, labor, housing, etc.), In this case it does not matter what branch of law regulates the relations between the contending parties, and it is important to their relative position in the conflict that occurred in relation to each other .

However, the judicial competence of the claim cases is not unlimited and is limited to two positions:

1. As a rule, one of the parties in this dispute is a citizen of Russia foreign citizen or stateless person, or a team of people.
2. Federal law, international agreement, treaty or agreement of the parties may be established a judicial procedure for the proceedings of a legal dispute (arbitration or arbitration).

In particular, in the courts of general jurisdiction to consider such things as:

- a) challenging the denial of registration of religious organizations and the termination or suspension of their activities;
- b) the protection of honor, dignity and non-pecuniary damage;
- c) to invalidate the results of elections and referenda;
- d) contesting refusals of registration of mass media and licensing them, as well as challenging the decision to annul the licenses issued, to terminate or suspend the activities of the media and others.

Substantive law, in particular the Civil Code, also set the judicial competence, such as cases involving the obligation to pay the publicly promised reward (art. 1055 of the Civil Code), and cases arising from the refusal of organizers of lotteries, totes and other games based on risk by their conduct or transfer of their term (Art. 1063 Civil Code).

11.4. Competence of the court of general jurisdiction in non-claims cases

In civil proceedings neiskovye case characterized by the fact that they are not related to disputes about right. Such cases are dealt with in a special procedure. The assignment of these cases to the judicial jurisdiction to a certain extent an exception, which is why the competence of the courts is determined by law exhaustively exactly by transferring.

In a special procedure general courts deal with cases in which there is no dispute about the law, as the applicant's rights are not violated and no one disputed, but there are vague, ambiguous facts, which is related to the realization of rights. In particular the production of protected rights are not subjective, but only the legitimate interests of the applicants by the court to establish legal facts or their registration by the competent authorities, on the basis of which the latter issued the relevant documents. Therefore, if you apply to the court to be established that there is a dispute about the law, the judge is obliged to leave the claim without movement and to clarify the need for the applicant to registration statement of claim (part 3 of article 247 CCP RF).

Civil Procedure Code establishes the jurisdiction of courts of general jurisdiction in cases of special proceedings by referring to a list of such cases (Article 262 of the Civil Procedural Code of the Russian Federation). This is the case: the establishment of facts of legal significance; adoption (adoption order) of the child; on the recognition of the citizen as missing or declaring the citizen dead; on the limitation of legal capacity; of deprivation of legal capacity; on restriction or deprivation of a minor under the age of fourteen to eighteen years old right to dispose of their income; declaring minor is fully capable (emancipation); for recognition of ownerless movable and recognition of municipal ownership of ownerless immovable; the restoration of the rights of the lost securities to bearer or order securities (writ production); involuntary admission of a citizen in a psychiatric hospital and compulsory psychiatric examination; for corrections or changes to entries in the books of civil status; allegations of notarial acts or refusal of the commission; on applications for restoration of lost court proceedings.

Writ proceedings. The ordinary courts are also competent to hear cases of writ of production. Requirements, which may be considered in order writ of production, listed in Article 122 of the Civil Procedure Code. All these requirements should not flow out of the business relationship and not be associated with other economic relations.

CHAPTER 12

Institute of Jurisdiction

12.1. The concept of jurisdiction

Jurisdiction is an institution of civil procedural law, to which attention was drawn protsessualistov in the 19th century. As rightly pointed E.V. Vas'kovsky at the beginning of the last century: "Jurisdiction of cases in close, properly speaking, is the same as that of homogeneous spatial competence of courts"⁷⁶. A similar within the meaning of the definition given jurisdiction and A.H. Golmsten: "Under the civil jurisdiction should actually understand affiliation known civil cases to the number of cases falling under the jurisdiction of, and not the other one homogeneous vessels. All homogeneous courts differ not native affairs organization and their jurisdiction and exclusive venue in the area within which they exercise their power "⁷⁷. In the procedural doctrine of the 19th century, scholars have identified the following types of jurisdiction: exclusive, shared, contractual, legal (legal), elective (optional).

After the resolution of the question of the competence of a court system includes consideration of a case, the person concerned must determine the specific court within the judicial system, which should make a statement of claim, ie, to determine the jurisdiction of the dispute. The legal concept of competence should be distinguished from the concept of jurisdiction. Competence and jurisdiction is the relationship between the total and private. Competence is a broader concept than the jurisdiction. The rules on jurisdiction can determine the specific court within the courts of general jurisdiction.

Before going to court it is important to determine which court should apply, since the initiation of civil cases (and this is done by making a statement and the judge making the determination) the judge will verify compliance with the terms of reference to the court.

Condition for the emergence of civil procedure in a particular dispute is the decision of a judge of a bilateral problem:

a) if the resolution of a particular dispute falls within the competence of the court of general jurisdiction;

⁷⁶Vas'kovsky E.V. Litigation: a textbook. M. Publication Brothers Bashmakova. 1914. 208 p.

⁷⁷ Golmsten A.H. Textbook Russian civil proceedings. Saint Petersburg. Typography M.Merkusheva. 1913. 78 p.

b) Is related to a specific court proceedings in the case, that is determined by the jurisdiction.

Jurisdiction is an institution of procedural law, consisting of a system of legal norms regulating the affairs relevance to the conduct of specific court within the judicial system to address in the first instance.

In accordance with the law "On the Judicial System of the Russian Federation" of general jurisdiction court system constitute the federal courts and magistrates' courts. The federal courts of general jurisdiction is currently made up of four levels:

- a) regional courts;
- b) The supreme courts of republics, territorial, regional courts, city courts of federal cities of Moscow and St. Petersburg, the court Autonomous Region (Jewish), the courts of autonomous regions;
- c) appeals courts;
- d) cassation courts.

Military courts equated to either district courts or to the supreme courts of republics, territorial, regional courts (Art. 26 of the Civil Procedure Code RF).

Magistrates' courts are the courts of the Russian Federation.

12.2. Types of jurisdiction

In civil proceedings the following types of jurisdiction:

- Patrimonial jurisdiction.
- The territorial jurisdiction.
- Functional jurisdiction.

Patrimonial jurisdiction:

Jurisdiction of civil cases the courts a certain level of the judicial system is called tribal jurisdiction. All civil cases in terms of their tribal jurisdiction are divided into four types: some things have jurisdiction in the first instance magistrates and others - the district courts, the third - the supreme courts of the republic, regional, provincial courts, municipal courts of the cities of Moscow and St. Petersburg, the court autonomous area courts of autonomous regions, the fourth - the Supreme Court of the Russian Federation.

Patrimonial jurisdiction is determined by the nature of the (native) business, subject of dispute, as well as the subject composition of the material relationship. According to tribal jurisdiction occurs delimitation of competence of magistrates from the district courts, district courts, the courts of the Russian Federation and the subjects of the courts from the Supreme Court of the Russian Federation.

During the Soviet period in the science of civil procedural law and in practice, argued that since the bulk of civil cases resolved by the

district courts, and the higher court has the right to withdraw any civil case to the first instance from the lower court, the concept of tribal jurisdiction had values.

Currently, the legal regulation of the jurisdiction has changed radically. In 1989-2002 of the year. in the Russian Federation were adopted legislative acts (on the settlement of collective labor disputes, the Official Secrets Act, political parties, etc.) under which certain disputes have been referred in the first instance the jurisdiction is not regional, and higher courts, including the The Supreme Court of Russia. Novels in the procedural law of reinforced value patrimonial jurisdiction. Fundamentally change the rules of withdrawal of cases by higher courts of the lower courts. According to article 47 paragraph 1 of the Russian Constitution, no one may be deprived of the right to be heard in court and the judge under whose jurisdiction the case falls under the law. Thus, the Constitution provides for the right of that in the moment of the higher courts do not have the right to exclude cases for consideration of the lower courts. Therefore tribal jurisdiction in the present conditions is the current view of jurisdiction.

The general rule of tribal jurisdiction is that the majority of civil cases be resolved by magistrates, district courts, except in cases referred by various legislative acts to the jurisdiction of the superior courts.

The supreme courts of republics, territorial, regional, city courts of federal cities of Moscow and St. Petersburg, autonomous region, autonomous regions currently consider and resolve in the first instance cases listed in Article 26 of the Civil Procedure Code. For example, cases involving state secrets.

By the jurisdiction of the court of the Russian Federation, other than those listed in Article 26 of the Code of the cases include cases:

- by the statements of Russian citizens permanently residing outside of Russia, foreign citizens, persons without citizenship on adoption (adoption order) of the child who is a citizen of the Russian Federation (Part 2 of Article 269 of the Civil Procedure Code of the Russian Federation);
- on the recognition of the illegal strike (Article 413 of the Labor Code);
- an appeal against the dissolution of the representative body of local self-government, dismissing the head of the municipality from the post;
- of the ineligibility of the composition of the deputies of the legislative (representative) body of state authority of the Russian Federation, including in connection with the addition of the deputies of their authority;

– on appeal by persons permanently residing outside the Russian Federation, illegal actions of officials of diplomatic missions and consular offices of citizenship.

Part 3 of Article 26 of the Civil Procedure Code provide exceptional patrimonial jurisdiction of certain cases. In particular, only the Moscow City Court hears as a court of first instance cases that are related to the protection of copyright and (or) related rights, except the right to photographic works and works obtained by processes analogous to photography.

Jurisdiction of the Supreme Court enshrined in Article 27 of the Civil Procedure Code, and the Federal Constitutional Law "On the Supreme Court of the Russian Federation." The Supreme Court is considering a civil action in the first instance the following cases:

– to resolve disputes between the federal authorities and the authorities of the Russian Federation, between the authorities of the Russian Federation, referred to the Supreme Court of the Russian Federation by the President in accordance with Article 85 of the Constitution;

– cases on economic disputes between the federal authorities and the authorities of the Russian Federation, between the supreme bodies of state power.

A large group of cases, the Supreme Court considers the first instance in the administrative proceedings. Thus, in the period from 2002 to 2014 of the year greatly expanded the list of cases dealt with at first instance by the Supreme Court of the Russian Federation. In the Supreme Court is being challenged non-normative acts, ie individual character of the President of the Russian Federation, Federation Council, State Duma and the Government. As a rule, it acts concerning the dismissal of certain civil servants and other employees; for compensation for infringement proceedings deadlines economic disputes.

Article 85 of the Constitution provides for the transfer of the Russian Federation by the President of the dispute between the authorities of the Russian Federation and the authorities of the Russian Federation, as well as between the authorities of the Russian Federation to the appropriate court. The Constitution did not specify which court to refer the dispute. However, subject to the provisions of Article 27 of the Civil Procedure Code, it can be concluded that these disputes are considered in the first instance by the Supreme Court.

The previous practice of higher courts in the event of cancellation of the decision on appeal or supervising order to make difficult things to proceedings at first instance does not correspond to the current provisions of Article 47 of the Constitution.

Not within the competence of the Supreme Court's consideration of requests for compliance with the Constitution of the Russian Federation, normative acts of ministries and departments of the Russian Federation relating to the rights and freedoms of citizens.

By the jurisdiction of justices of the peace include the following categories of cases:

- the case of a writ (court order may be issued by the court if the scrip claim does not exceed five hundred thousand);
- the case of divorce, if there is no dispute between the spouses of the children;
- business sharing between spouses joint property at the price of the claim, not exceeding fifty thousand rubles;
- case of property disputes, except in cases of inheritance and property cases arising out of the relationship for the creation and use of results of intellectual activity at the price action, not exceeding fifty thousand rubles;
- case of property disputes arising in the sphere of protection of consumer rights, at the price of the claim, not exceeding one hundred thousand.

The above list is open as to the jurisdiction of justices of the peace by the federal law can be attributed, and other matters.

In the case when combining the new requirements related Mezhyuev are requirements for changes in the presentation of the claim or counterclaim are the jurisdiction of district court, and the rest remain Jurisdiction Magistrate, all the requirements to be considered by the district court. If things jurisdiction changed during its consideration at the magistrate, the magistrate shall issue a ruling to transfer the case to the district court and to allocate it to the district court (Part 3 of Article 23 of the Code of Civil Procedure). Disputes between the magistrate and the district court of jurisdiction is not allowed.

In determining jurisdiction is important to remember that, by defining the generic jurisdiction of the case, the courts must proceed from the fact that, in accordance with Article 47 of the Constitution, "... no one can be deprived of the right to be heard in court and the judge under whose jurisdiction the it falls under the law. "

General territorial jurisdiction:

As a sign of determining jurisdiction, except kind of cases, also serves a sign of "territory", which is subject to the jurisdiction of a particular court. A sign of the territorial jurisdiction of the court, you can control which of the homogeneous vessels (of the many regional or courts of the Russian Federation) under the jurisdiction of the case. This type of jurisdiction is called the territorial (local) jurisdiction. Rules allow

the territorial jurisdiction to distribute civil matters for consideration in the first instance between similar vessels. In the doctrine of civil procedural law territorial jurisdiction is divided into subspecies: the general territorial jurisdiction, the jurisdiction of the claimant's choice (alternative), exclusive jurisdiction, contractual jurisdiction and venue of communication affairs.

Rules establishing the territorial (local) jurisdiction, allow to distribute the civil case between similar vessels of the same level of the judicial system. Jurisdiction of the case depends on the administrative territory in which the court acts.

The general rule of territorial jurisdiction (general territorial jurisdiction) is enshrined in Article 28 of the Civil Procedure Code. According to the general rule, a claim submitted to the court at the place of residence of the defendant. The lawsuit presented to the organization at the organization. The seat of the foreign citizen or stateless person in the Russian Federation is a dwelling or other premises in which the person actually resides (regularly uses for sleep and rest) or organization at which a foreign national or a stateless person shall be subject to registration at the place of residence .

The basis of determination of jurisdiction based on the principle of interest, the essence of which is that the person interested in the protection of their right to sue in court, in the territory of the jurisdiction where the defendant is located.

Upon presentation of a claim to a national court is determined by the place of residence of the defendant. Article 27 of the Constitution states that everyone lawfully within the territory of the Russian Federation has the right to move freely and choose their place of residence. Thus, the provisions of the Constitution divide the two concepts: a) place of residence and b) place of residence. The law "On the right of citizens of the Russian Federation to freedom of movement and choice of place of stay and residence within the Russian Federation" dated 25 June 1993 also contains these two legal concepts. The seat of the name of the place where a person is temporarily, and place of residence recognized the place where a citizen permanently or primarily resides.

The place of residence of minors under 14 years old, or people under guardianship, the place of residence of their legal representatives - parents, adoptive parents or guardians.

Currently, citizens can have not just one but several residential properties on the right of ownership. Part 2 of Article 213 of the Civil Code provides that the number and value of the property owned by citizens and legal entities are not limited to, so define them permanently

or place of residence is sometimes difficult. Judicial practice in dealing with this issue is based on the provisions on registration of citizens registered⁷⁸. Thus, the statement of claim to the citizen is presented in the court, where the citizen has passed the registration account. Follow-up after change of suing the defendant residence does not change the original jurisdiction of the case.

The Constitutional Court in its ruling on October 5, 2000 № 199-O has formulated a legal position that the citizen residence may be established by the court based on a variety of legal facts, not necessarily related to the registration of its competent authorities. For example, when deciding on the jurisdiction of the case of a dispute over the right to communicate with the child, possessing the nationality of a foreign state, the court sets the habitual residence of the child, which clarifies issues such as the duration, frequency, conditions and reasons for the child's stay in the territory of the state and the movement of family this state, the nationality of the child, the place and conditions of visiting educational institutions, language skills, family and social relationships of the child in that State.

Not a place of residence of citizens staying in the remand prison or prisons. Claims to persons serving sentences or are in pre-trial detention shall be filed at the last known place of residence.

Claims for organizations are presented at the organization. Address of the organization is determined by the state registration of the site. Plenum of the Supreme Arbitration Court in the Resolution number 61 of 30 July 2013 explicitly states that the address of the legal entity shall be determined by the address of the permanent executive body of the legal entity, and it is reflected in the uniform state register of legal entities. Legal entity bears the risk of non-receipt of the consequences of legally significant messages received at its address specified entities (Entities) into the Unified State Register, as well as the risk of not having at this location a representative and a legal person shall not be entitled to relations with persons in good faith relied on data USRL the address of the legal entity, refer to data that is not made in the Unified.

Alternative jurisdiction:

Jurisdiction on the option of the plaintiff (applicant) is an alternative jurisdiction. Its essence lies in the fact that it has jurisdiction not only to the court at the location of the defendant, but another court specified by law. When it under the jurisdiction of several courts of the same level, the choice of court for review and adjudication belongs to the plaintiff (applicant) (art. 29 CPC). The meaning of the rules of jurisdiction

⁷⁸ Recording Institute currently operates in place of residence registration in force in the Soviet period of our history.

alternative is to create a more favorable legal guarantees for the party in need of judicial protection of violated or disputed rights, namely, the choice of court. Privileges for the plaintiff in the first instance are associated with an increased protection of the rights and interests of persons in need of legal protection.

Norms on alternative jurisdiction are not subject to broad interpretation and application. The judge has no right to deny the plaintiff in the application of the rules of the alternative jurisdiction and forwarded the plaintiff (applicant) to another court, referring to the possibility of the proceedings in the other court. Procedural law establishes a list of cases in which the determination of the place of the proceedings going on at the choice of the claimant (Article 29 of the Code of Civil Procedure).

1. In accordance with the general rules of territorial jurisdiction an action is brought on the location of the defendant. However, in cases where the defendant's place of residence is unknown or the defendant resides abroad, the action may be brought on the location of the property or the last known place of residence in the Russian Federation.

2. A suit against the company may be filed at the location of its assets. Lawsuit against the company arising from the activities of its branch or representative office, can be presented as the address of the branch or representative office.

3. Claims for alimony and paternity may be brought by the plaintiff as to his residence.

4. Claims for damages caused by injury or other impairment of health, as well as the death of the breadwinner, may be brought by the plaintiff at his place of residence or place of harm.

5. Actions for damages caused by collision ships, as well as for the recovery of compensation for assisting in the rescue of the sea, for the recovery of wages and other sums due to the members of the crew of vessels may be brought at the location of the defendant ship or port of the vessel.

6. Claims arising from contracts, including labor which indicate the place of performance may be presented also at the place of performance of the contract.

7. Claims for divorce may be filed at the place of residence of the plaintiff in the case where when there are minor children or when the state of health of the plaintiff to leave the place of residence of the defendant is difficult for him.

8. Claims for the recovery of pension and housing rights, the return of the property or its value, associated with reimbursement of losses caused to a citizen by unlawful conviction, unlawful criminal prosecution, unlawful use as a measure of preventive detention on his

own recognizance or illegal imposition of an administrative penalty in the form of arrest may be presented also at the place of residence of the plaintiff.

9. Claims for Protection of Consumer Rights may be brought also the place of residence or temporary residence of the plaintiff, or the place of the conclusion or performance of a contract. Exceptions are claims arising from contracts of carriage, in which case the claim is always presented at the carrier, which was presented a claim.

10. Claims for protecting the rights of subjects of personal data, including for damages and compensation for moral damages may be brought in the court at the place of residence of the plaintiff.

11. Claims for termination of the issuance of search engine links the system operator, allowing access to information on the Internet may be brought in the court at the place of residence of the plaintiff.

12. Claims for the restoration of labor rights may be brought at the place of residence of the plaintiff.

As stated in the Resolution of the Plenum of the Supreme Court number 17 of June 28, 2012 "On consideration by the courts of civil cases on disputes concerning the protection of consumers' rights, the court has no right to return the statement of claim, the requirement for the carrier, which is served by the rules of jurisdiction claims on consumer protection within the framework of performance of the contract on the implementation of the tourism product. Supreme Court also pointed out that the statement of the prosecutor, the authorized body of the local government, public associations of consumers on the protection of indefinite number of consumers are considered for location of the defendant.

Exclusive jurisdiction

Exclusive jurisdiction is so called because it established rules preclude the use of other types of territorial jurisdiction, in particular: the total territorial, alternative, contractual and communication requirements. For certain categories of civil cases (Article 30 of the Civil Procedural Code of the Russian Federation), choice of forum does not depend on the will of the plaintiff, and precisely predetermined by law. Prosecution of cases listed in the law to other courts, other than those excluded.

Claims for rights to land, buildings, facilities, structures, and other objects, firmly connected with the land (real estate), the release of property from arrest imposed at facilities or seized property.

Claims of creditors to be met prior to acceptance of the inheritance the heirs, the jurisdiction of the court at the place of opening the inheritance.

Claims to the carriers, arising from contracts of carriage of goods, passengers or luggage, the carrier shall be filed at the address to which the claim was presented.

The provisions of Article 244.11 of the Civil Procedure Code is defined solely by territorial jurisdiction of cases to consider applications for return of the child or on the implementation of the child rights of access. Such cases have jurisdiction over one district court in the Federal District, specifically listed in the law.

Rules on exclusive jurisdiction are reasonable and are aimed at ensuring as much as possible favorable conditions for the timely and proper consideration of cases, as facilitated by picking up evidence in the case, and the solution of other procedural issues. For example, the documents relating to the buildings, located in the Bureau of Technical Inventory (BTI) to the address of the structure; evidence relating to the land, are also in the local administration institutions District Court. Therefore, the rules on exclusive jurisdiction are intended to ensure the implementation pronounced in the case of a judgment by the court, where the object of the dispute, hold a registration, for example, real estate in the area, which issued the decision.

Rule of exclusive jurisdiction for probate applies when a claim the creditor of a deceased person shall be presented to the heirs within six months after the opening of the inheritance, ie until the time of entry into the inheritance. If an action is brought after receiving an inheritance, then the general rules of territorial jurisdiction, ie, action is brought is not the address of inherited property or the main part of it, and at the place of residence of the defendant.

These rules are logical, as an estate can be divided into parts, one adopted heir, and other compensation paid for the stake, etc. Therefore, the rule of exclusive jurisdiction after the acceptance of the inheritance is meaningless.

Plenum of the Supreme Court in the Resolution number 10, and the Plenum of the Supreme Arbitration Court in the Resolution number 22 of 29 April 2010 made by the joint legal position according to which the claims of rights to immovable property are considered in court at this property. For claims of rights to immovable property are, in particular, claims to eliminate violations of the rights of non-custodial possession.

Prorogated jurisdiction:

Under the terms of contractual jurisdiction by agreement between the parties themselves can change the territorial jurisdiction for the case. In accordance with the principle of optionality civil process, the parties are entitled to determine the court having jurisdiction of the case. However, they can change only two kinds of territorial jurisdiction: general and alternative. Exclusive jurisdiction as generic can not be determined by agreement between the parties. These types of jurisdiction are defined by law regulations.

According to the rules of jurisdiction contractual parties have the opportunity in the interests of a particular maneuver or the plaintiff or the defendant. An agreement on jurisdiction may be included in a separate provision in the civil contract (contract) concluded between the parties. The parties may also exchange of letters, telegrams, other lockable means of information transmission and to determine territorial jurisdiction. The parties' agreement on jurisdiction can be expressed in petitions, claimed before the court that the case, for example, at the place of residence of the plaintiff.

Contractual jurisdiction creates many advantages for the parties, extras, as the law provides for their right to elect the most suitable in relation to the territorial court. The agreement on jurisdiction is equally binding upon the parties. Changing the terms of the contract one of the parties is not allowed. The law does not provide for the right side to unilaterally change the terms of the agreement on jurisdiction.

Thus, according to the general rules of territorial jurisdiction the application for annulment of the arbitration courts and international commercial arbitration, adopted by the Russian Federation lodged with the district court in whose territory the decision of the arbitral tribunal. However, by agreement of the arbitration application to set aside an arbitral award may be submitted to the district court at the address or place of residence of one of the parties to arbitration.

Jurisdiction of a few interconnected Affairs:

It has jurisdiction in the case where there exists between the cases is an objective link which allows us to consider all the requirements stated in the same process. The existence of jurisdiction on communication affairs due to the need for timely and proper consideration in one case several claims submitted to the various defendants. All the claimants in this case should arise from a legal basis. For example, the action may be brought against persons jointly caused the harm (Article 1080 of the Civil Code). Author of the work, the discovery has the right to sue the other authors, co-authors of the place of residence of one of the authors.

The claims may be brought simultaneously to several organizations and individuals-entrepreneurs. Such a situation can occur, for example, using trademark or brand name in the course of business. The plaintiff has the right to bring a claim in court at one of the organizations.

According to the rules of the jurisdiction of the plaintiff shall be entitled to sue the court at the place of residence of one of the defendants. The right to choose the court liaison Affairs belongs to the plaintiff. Jurisdiction Communications Minister should be distinguished

from alternative jurisdiction. For example, when using an alternative jurisdiction will select a court or the place of residence, the address of the plaintiff or the defendant. When jurisdiction Communications Affairs Court selection takes place only on the basis of residence, the defendant's address (the defendants).

Jurisdiction of the counterclaim:

Jurisdiction counter-claim is a separate subspecies of territorial jurisdiction. The counterclaim is one of the means of protection of the defendant against the principal claim. The logic of the legal nature of the counterclaim and the conditions of its presentation is such that it can only be considered at the place of consideration of the substantive action and at the same time with him.

Jurisdiction of the claim in the criminal proceedings:

If a crime is caused property damage, the protection of the rights of the victim must be carried out by presentation, consideration and resolution of civil action in criminal proceedings according to the norms of the criminal procedure code. However, in some cases, the victim's subjective right is not protected in criminal proceedings. This can occur when: a) a civil action is not presented in a criminal case; b) the court dealing with the criminal case, for whatever reason, does not allow a civil action or a civil plaintiff recognizes the right to the satisfaction of the claim, but does not indicate the amount to be recoverable. If a civil action was not declared, or is not allowed in criminal proceedings, it shall be presented by the general rules of jurisdiction. Stated a claim in the criminal proceedings is considered by the court, which is considering the criminal case itself.

Functional jurisdiction:

The procedural doctrine also stands functional jurisdiction. Containing functional jurisdiction are rules governing the jurisdiction of the trial court, appellate court, court of cassation, and supervisory instance court hearing the case on newly discovered or new circumstances. Thus, it is possible to make a statement that specifies the functional jurisdiction of the jurisdiction of cases, depending on the stage of civil process.

12.3. Jurisdiction transfer rules

Transferring a civil case from one court to another, an exceptional phenomenon. The general rule of jurisdiction is that the case accepted by the court to its production in compliance with the rules of jurisdiction should be allowed by the court on the merits, despite the fact that in the future it has become the jurisdiction of another court except as change of jurisdiction established by Articles 26 and 27 of the Civil Procedure Code. Thus, if it was made in compliance with the rules of jurisdiction,

and subsequently changed patrimonial jurisdiction and the case was within the jurisdiction of the superior court (the court of the subject of the Russian Federation or the Supreme Court) the lower court is obliged to refer the case to a higher court.

In addition, as an exception, the transfer of cases from one court to another court of the same level may occur in the cases provided for in Article 33 of the Civil Procedure Code.

The procedural law is enshrined only four cases where the court may transfer the case to another court of the same level:

a) if the civil case was brought under the general rule of territorial jurisdiction of the court at the last known residence of the defendant, and his actual place of residence at the initiation of proceedings was not known, but in the process of consideration and resolution of the case it is established that the presence of a request for transfer of the defendant case to another court of competent jurisdiction, the case to court for the defendant's place of residence;

b) if the proceedings it became clear that it was taken to the production in the same court in violation of the rules of jurisdiction;

c) after the removal of one or more judges or other reasons, the replacement of judges or the proceedings in this court it became impossible. In this case, the transfer of the case carried out by a higher court. The transfer of cases to be considered in the court of the Russian Federation made the cassation court of general jurisdiction. The transfer of cases to be considered by the appeal court of general jurisdiction exercised by the Supreme Court. To transfer the case to another court on the grounds that the court issue a ruling, which shall enter into force on the day of its adoption and is not subject to appellate review.

d) the two sides declared a request for consideration of the case at the location of the majority of the evidence.

If the proceedings before the Court revealed that it is subject to review by the arbitration court, the court of general jurisdiction shall refer the case to the arbitration court, which it attributed to the jurisdiction.

The law also established a remedial order of transfer of the case from one court to another. To transfer the case to another court or to refuse to transfer the case to another court decision is made on which, in the cases specified in the law may be filed a private complaint.

Referral made after the expiry of the appeal determination, as in the case of a complaint, after the issuance of the court's decision on the abandonment of the appeal.

The case referred from one court to another, it should be taken into consideration by the court in which it is directed. The law states that disputes over jurisdiction between courts in the Russian Federation are not allowed (parts 3-4 of Article 33 of the Civil Procedure Code RF).

CHAPTER 13

Institute of proofment in civil procedure

13.1. The concept and purpose of legal proofment

Very practical importance of proof of procedure and evidence in civil proceedings drew attention to this subject in the science of civil procedural law. In this area, the study was conducted by such prominent Russian scientists protsessualistov as A.T. Bonner, M.A. Gurvich, I.G. Halperin, J.M. Zhukov, I.M. Zaitsev, G.D. Uletova, M.K. Treushnikov, K.S. Judelson, P.P. Yakimov and others.

The constitutional duty of the court is not only timely, but also to correctly hear and determine civil cases. Proper consideration and resolution of the case means:

- a) establishing a subjective right or legitimate interest of the parties (sides), by examining the factual circumstances in the court;
- b) the precise application of substantive law to the findings of fact in the judgment.

Before the court comes to the conclusion about the existence of a subjective right or a legally protected interest, it must ascertain the facts relied on by the parties. Since the legally relevant facts, to which substantive law attributed the presence of subjective right or legitimate interest arise and exist before the emergence of the civil proceedings, the court can not obtain knowledge of them directly, without having to study the evidence.

Developing the conceptual provisions of the theory of evidence, the founders of the Russian doctrine of the law of evidence formulated in the late XIX - early XX century. two main areas. The representatives of the first trend relates A.H. Golmsten indicating that the evidence submitted by the parties always; proof is the subject of the rights of the parties and the exclusive right; Court nor any way to collect evidence and references⁷⁹. A.F. Kleinman also considered proof as the procedural activities of the party who was to present evidence refuting evidence of the enemy, statement requests, to participate in the examination of evidence. According to him, the goal is to prove the conviction of the court by the parties in the legitimacy of their claims and objections⁸⁰.

⁷⁹Golmsten A.H. Textbook Russian civil proceedings. Saint Petersburg. M. Typography Merkusheva.: 1913 205 p.

⁸⁰Kleinman A.F. Civil proceedings. M. 1936 // Selected Works. Krasnodar. 2009.

Supporters of another direction in the procedural science (to the representatives of which can be attributed K.S. Judelson) was determined as the legal evidence activity of the subjects of the process to establish with the help of these procedural law means and methods of objective truth. To the subjects of proof, in their opinion, the court concerned and the persons involved in the case.

However, it should be recognized that the controversial beginning of the process suggests that the determining in proving are all the same actions of the parties, i.e., each party must prove the circumstances to which it refers as the basis of their claims and objections (it points directly to part 1 of Article 56 of the Civil Procedure Code). The law explicitly emphasizes that the evidence submitted by the parties and others involved in the case. It would seem that the court has no right to collect and present evidence. These provisions of the law here are the strong arguments in favor of considering proof exclusively as an activity party aimed at Court conviction in their correctness. However, the warning against pure adversarial in 1864 T.M. Yablochkov wrote, that we should not get involved in adversarial principle, adjusted to an extreme, it leads to the domination of a heartless formalism. If you do not provide the court with a known proportion of the initiative to clarify the case, it often does not win the side that law, and one that is more adept at the process⁸¹.

Therefore, not carried away by the pure adversarial process, Russian doctrine postulates that it is necessary to provide the court to assist the parties in the collection of certain evidence, so the Russian doctrine postulated that at the request of interested parties, the court may demand the necessary evidence from the persons from whom they are. Furthermore, the judge may impose on the official court fine if such person prevents the transmission of evidence to the court. Actually this view is not only in civil law countries, which also postulated the need to strengthen the active role of the court, but also in common law countries⁸². However, in the United States to date, in accordance with the provisions of the Model Code of Judicial Conduct (Model Code of Judicial Conduct) - the judge must not independently collect evidence, and must consider only the evidence presented⁸³. In spite of this, more and more American protsessualistov believe that the passivity of the court there is a lack of procedural system.

⁸¹Yablochkov T.M. Textbook Russian civil proceedings. Yaroslavl. 1912.

⁸²Hazard G.G. Taruffo M. American Civil Procedure. An Introduction. New Haven, 1993. 103 p.

⁸³Medvedev I.R. Civil litigation in England and the United States: increasing the responsibility of the parties for their explanations and actions // Jurisprudence. Number 1. 2007. 145 p.

In Russia, a court may make a number of other actions relating to the establishment of facts. For example, the court determines the circumstances relevant to the case and indicates which side they must prove. The court is entitled to offer to persons involved in the case to submit additional evidence. And if you provide the necessary evidence is difficult at the request of the parties the Court provide assistance in the collection and taking of evidence. These circumstances gave rise to allegations that Russia has limited the adversarial principle⁸⁴. For comparison it should be noted that during the Soviet period, in civil proceedings in the interests of establishing the truth the court was obliged to take all measures for a comprehensive, complete and objective determine the actual circumstances of the case.

Thus, by defining the legal evidence at the present time, it would be better to determine that legal evidence is an activity, not only parties but also of the court, down from the statement of the parties and interested persons on the facts; presentation, collection, research and evaluation of evidence. It is obvious that in this activity involves both sides and other interested parties and the court.

The court of general jurisdiction may assist in gathering evidence even to the arbitral tribunal in accordance with the procedure provided for in Article 57 of the Civil Procedure Code. For this purpose the arbitration court side gives the arbitration request to direct the request is in a court of law. Request the arbitral tribunal marks a court of law within a period not exceeding 30 days from the date of its receipt by the court. Only in cases strictly specified by law (Article 63.1 CPC RF) request the arbitral tribunal is not enforceable. For example, the request will not be executed if he can violate the rights and legitimate interests of third parties not involved in the arbitration.

Unfortunately, in the Russian legislation, despite the opinion of the doctrine is not fixed one of the fundamental principles of legal evidence, namely the pre-disclosure of evidence principle. Changes to the Civil Procedure Code in December 2018 only formally regulated that each person involved in the case, shall disclose the evidence on which it refers to other persons participating in the case within the time limit set by the court, unless otherwise provided Code (part 3 of article 56 CPC RF). As can be seen from the context of this provision: a) the parties entrusted with the duty of prior disclosure of evidence; b) Unknown most importantly - the time when evidence must be disclosed.

For comparison it should be noted that in the English during the violation of terms of disclosure of evidence is completely precluded from

⁸⁴Maleshin D.Y. Civil procedural system. M. Statut. 2011. 279 p.

raising refer to the undisclosed evidence in time. Of course, the English side in the process, can refer to the valid reasons for missing the term. But in general, the approach of the English judges are very hard: out of time almost impossible to enlighten them in the case file. Therefore be- have more conscientiously side in the English course.

As rightly pointed out English Professor Andrews, disclosure of evidence (disclosure) has four main functions:

- firstly, it helps to achieve equitable access to information;
- secondly, to promote a settlement of disputes;
- thirdly, it helps to avoid the so-called court traps, i.e. situations in which a party can not adequately respond to the information disclosed by a sudden at the last meeting;
- fourth, the Court helps to accurately assess the facts when making a decision on the merits⁸⁵.

13.2. The concept of forensic proof

In the process means of proof to establish the presence or absence of legally significant facts are the forensic evidence. Article 55 of the Civil Procedure Code provides the legal definition of evidence. Evidence in the case are prescribed by law received information about the facts of the procedure on the basis of which the court determines the presence or absence of circumstances justifying the claims and objections of the parties and other circumstances relevant to the proper consideration and resolution of the case. This information can be obtained from the explanations of the parties and third parties, testimonies of witnesses, written and physical evidence, audiovisuals, expert reports. Evidence obtained in violation of the law shall have no legal force and can not be the basis for the court's decision.

Despite the existence of certain evidence in the law, in procedural doctrine do not stop debate about the legal nature of the concept, the content of forensic evidence. The uncertainty lies in the fact that some authors consider legal evidence only as known facts, with which it is possible to establish the facts of the unknown unknowns. According to other researchers, the evidence is both evidence and means of proof. However, in science there are also other opinions, but they are not as widespread.

However, we must recognize that the paradigm of the conceptual nature of the evidence is determined by the unity of their content and the procedural form, whereby the forensic evidence consists of two closely

⁸⁵Andrews N. English Civil Procedure. Fundamentals of the New Civil Justice System. Oxford. 2003.17 p.

related elements: information about the facts (content) and the means of proof (procedural form). In support of such an understanding of the forensic evidence law scientists studying the theory of evidence, given a lot of arguments.

However, this raises a relevant question: what is the nature and meaning of the term "information"? It seems that the data and information are identical concepts. In support of this judgment, reference is made to the law "On information, informatization and information protection", in which information is defined as information on persons, objects, facts, events, phenomena and processes regardless of their presentation. This definition quite accurately reflects the essence of the information as a necessary part of the process of acquiring knowledge.

Actions, events, events are always reflected in the objects or animate and inanimate natural objects, which are native (source) media. But the condition for obtaining true knowledge is the accuracy of the information used in this case. Procedure Law in Article 55 defines the ways in which information can be obtained, namely, from the explanations of the parties and third parties, testimonies of witnesses, written and physical evidence, audio, video, expert reports.

In proceedings authenticity of the information is guaranteed by statutory procedural order of receipt, securing, studies and evaluations in the trial. Procedure in compliance with said order information objectified in procedural form, called proof means. For example, if a violation of the procedural form of questioning the witness (he was not warned of criminal liability for refusal to testify or perjury), his testimony did not acquire the necessary procedural form, do not become a means of proof. Information on the facts obtained in different, not the statutory procedural form are not forensic evidence and can not be the basis for the court's decision.

The Russian doctrine under the law is a violation of:

firstly, to obtain information about the facts of unexpected law of evidence;

secondly, the failure to comply with the procedural order of receiving information about the facts in court.

13.3. Classification of proof

The procedural doctrine, there are various classifications of evidence on various grounds. Thus, according to the nature of communication with the evidence to prove the fact all the evidence is divided into direct and indirect.

Direct judicial evidence is considered to be such evidence, in which the content has a unique connection to prove the fact, that of such

evidence should be one conclusion about the existence or absence of fact.

Called indirect evidence In which the content has to prove the multi-valued relationship. The presence of multi-valued communication allows to come to a more probable conclusions.

According to the process of forming data on evidence of the facts are divided into original and derivative.

initial evidence generated by the direct impact of the desired fact in the information carrier.

Derivatives (copies) called evidence, the content of which is re-produced from the information obtained from other sources.

According to the sources of evidence are divided into personal and subject, depending on whether the source of evidence of human or material object.

For personal evidence include explanations of the parties, third parties, testimonies of witnesses, expert opinions.

By subject It should include written and physical evidence.

The doctrine also mixed evidence allocated. For mixed evidence includes: expert opinion, recognition, investigative experiment. Justification mixed evidence based on the fact that the formation of the mixed evidence consists of two parts, as it were, on the facts of the information is retrieved from two sources: personal and objective. For example, an expert studying the evidence, converts the received information from the source itself becomes a source of evidence in the form of expert opinion.

Persons and Things (material world objects) act as a source of evidence or media information about the facts, if they are secured in a different way and the information is stored.

13.4. Subject of proof

The Russian civil procedural law is a category of law, as a "subject of proof" is not fixed. However, the procedural doctrine often scientists pay attention to it, since in practice this concept is important and crucial. The subject of proof is that it is necessary to prove in a civil proceeding. "The subject of proof - as he wrote prof. K. Malyshev, - are controversial legal facts, namely, the existence or non-existence of these facts"⁸⁶.

In civil process as a legal proof, and the process of proving directed to setting different meaningfully facts.

In the doctrine there are three classes of facts, the presence or absence of which is set using the evidence.

⁸⁶Malyshev K. The course of civil proceedings. Saint Petersburg. 1876.

1. *Legal evidence of a substantive nature.* Their establishment is necessary for the proper application of the substantive law governing legal disputes, and ultimately for the proper settlement of the case on the merits. For example, before a court can decide whether one person is obliged to pay the other party a sum of money under the contract, the court must determine whether there was such an agreement, that is to establish the object of the contract and terms of performance of the obligations under the contract by both contracting parties.

2. *Evidentiary facts.* Evidentiary facts are those facts which, if proven, allow logical way to bring the required legal fact. For example, in cases of paternity records invalid plaintiff may rely on the evidentiary fact long absence at the place of residence of the defendant, and therefore excluded the conclusion of fatherhood.

3. *Facts having exclusively procedural value.* With these facts related to the emergence of the right to bring an action (for example, the implementation of the mandatory pre-trial settlement of disputes), the right to suspend the proceedings, its termination, as well as the right to perform other procedures (for example, the adoption of interim measures).

To refer to the totality of the facts to be proved, in the doctrine used another term - "the limits of proof." Correctly identify the subject of proof in a civil case it means to give the entire process of collecting, research and assessment of the evidence in the right direction.

The procedural theory has been suggested that the subject of proof in civil cases is set allegations and defenses of the parties. It seems that the wording is not entirely accurate. To prove the subject include all the facts of legal significance, even if the plaintiff and the defendant does not refer to them. Therefore, the object of proof is based on the subject to the application of substantive law. Moreover, in accordance with the Code of Civil Procedure, the subject of evidence in the case established by the court, based on the nature of the disputed legal relations and legal rules governing this relationship. The court determines what the circumstances relevant to the case, which side should they prove to the court the circumstances puts up for discussion, even if the parties to any of them did not refer (Part 2 of Article 56 CPC). The volume of the object of proof of the facts during the trial in a civil case may be subject to change. Evidence Change object associated with the rights of parties to change the subject of the claim, increase or decrease the size of the claims.

A special challenge in judicial practice is the correct definition of proving the subject of disputes arising out of legal relationships regulated by the substantive law with respect to a certain disposition (debate about

deprivation of parental rights, the transfer of children to education; disputes over compensation for damage, if necessary, taking into account the victim's guilt and property status of the person who caused the damage; moral damages disputes), that is, when the court should take into account the specific circumstances of the case itself is designed to assess certain facts with regard to their legal significance of their inner conviction. Such rights norms are in the theory of civil procedure called "situational" standards, since they settled relationship with the expectation of judicial discretion. The court in the retiring room he appreciates "the imprudence of the victim", "property status of the defendant", "interests of minor children", "the interests of one of the spouses." Unfortunately at the present time, neither the doctrine nor in law enforcement do not have any rules or techniques or the precise definition of the scope of the violated rights of the parties to the dispute.

13.5. Grounds for exemption from proving

In accordance with the law, the evidence submitted by the persons participating in the case. However, the procedural doctrine is divided into four groups of facts without requiring remedial activity for their proof. These facts can be taken as a justification for the court's decision without conducting evidentiary procedures. These include:

- a) the facts established by the court well-known;
- b) the facts adjudicated (foregone), i.e. established by a legally effective decision or judgment of the court;
- c) the facts, confirmed by the notary;
- d) the facts recognized by a party, if the recognition is accepted by the court.

1. *The facts established by the court generally known.* The circumstances, recognized by the court generally known need not be proved. Well-known fact may be deemed by a court only if two conditions are met: the objective - known fact wide range of people; subjective - known fact to the court (judge). Well-known recognized, as a rule, events (drought, earthquake, war, flood). Common knowledge of a fact is relative and depends on the time elapsed since the events, the prevalence of events in a particular area. Known facts not proved, because they are obvious. Recognized as well known or that the facts could not only the trial court, but the courts trying the case on appeal, cassation and supervisory review.

2. *The facts adjudicated.* Adjudicated facts are facts established by a decision of the court of general jurisdiction of the arbitral tribunal or a court verdict. The facts established by a legally effective decision of the court of general jurisdiction of one civil case, not be proved again in

the proceedings of another civil matter in a court of law, which involves the same person.

The facts established by a legally effective decision of the arbitral tribunal has not proved again in the proceedings of a civil case in a court of law, which involves the same person.

Which entered into force of the court verdict in the criminal case, other judgments of the Court in this case and the court decision in a case concerning an administrative offense are mandatory for the court considering the case of the civil law consequences of actions of a person in respect of whom they are taken out, on: a) had whether these actions place and b) the offense was committed by the person.

It should be noted that prejudicial facts established by a court decision is subjective and objective limits. Objective limits regarding the circumstances established by a legally judicial act on the previously considered case. Subjective limits adjudicated means that the facts established in court and recorded in the judicial act applies only to persons involved in the trial. For all other persons, such facts are irrelevant and should be proven again.

3. *The facts confirmed by a notary.* When issuing the document notarization notary hereby certifies the different circumstances, the authenticity of which is accepted by the court for the truth without further testing, provided that the notarial document is not refuted by the court on an application for forgery of evidence.

4. *The facts recognized party.* The recognition of a party in the circumstances on which the other party is basing its claims or objections, the latest releases of the need for further proof of these circumstances. Such recognition is entered in the court records, and if the recognition is set out in a written statement, it shall be attached to the case file. If the court has reason to believe that the recognition done in order to conceal the real facts of the case, or under the influence of fraud, violence, threats, honest mistakes, the court does not accept the recognition of what decision is made, and in this case, these circumstances must be proved on a general basis (and part 3 of article 68 of the CPC RF).

In common law countries, the court may recognize other circumstances not requiring proof. So, Leon Dugui pointed out that along with the individual subjective responsibility for guilt creates strict liability for risk, which is in direct connection with the concept of socialized rights. Thus the phenomenon of innocent liability was established in common law countries.

In civil law countries, civil law has traditionally been based on the premise "a particular victim has to prove that a particular delinquent their actions have caused him harm." However, the socialization of civil law,

strengthening the principles of justice in the area of responsibility led to the change in the position of judges in common law countries.

As rightly pointed out by Donald Gifford, interacting together, the collective and the collective victim or indefinite delinquent spawned a fundamental challenge to the traditional requirement of individualized causation in tort law. For example, in one case (described by D. Gifford), the victim has suffered injury due to the fact that her mother, being pregnant, take a pill containing DES substance that turned out to be harmful to the embryo. The claim has been submitted to several companies from among about 300 companies that produced in a given time preparations containing substance DES. The victim was not able to prove any specific drugs manufacturer took her mother many years before filing a lawsuit. Thus, there was no evidence of individualized causes of action of a particular delinquent, caused adverse effects to a specific victim. It is likely that the defendants lacked a specific tortfeasor. However, the California Supreme Court ruled in favor of the victim. The court pointed out that the respondents collectively represent a significant share of the market and can be presumed that a malicious drug could be produced by one of the-respondents and if the defendants will be unable to refute this assumption, each of them can be held accountable for the harm caused to the health of the victim the percentage that is a fraction of each transponder in the market the product. However, the California Supreme Court ruled in favor of the victim. The court pointed out that the respondents collectively represent a significant share of the market and can be presumed that a malicious drug could be produced by one of the-respondents and if the defendants will be unable to refute this assumption, each of them can be held accountable for the harm caused to the health of the victim the percentage that is a fraction of each transponder in the market the product. However, the California Supreme Court ruled in favor of the victim. The court pointed out that the respondents collectively represent a significant share of the market and can be presumed that a malicious drug could be produced by one of the-respondents and if the defendants will be unable to refute this assumption, each of them can be held accountable for the harm caused to the health of the victim the percentage that is a fraction of each transponder in the market the product.

In the above example is scientific and practical interest that responsibility rests not on the specific tortfeasor, but on the causer of all possible for the mere fact of release into circulation dangerous goods that could cause harm to the victim. Thus, such court cases call into question the principle of individualized causation and raises serious scientific debate about the legal nature of the civil law of the phenomenon, and at the same time and the facts to be proved.

13.6. Distribution of duties of proof

The basic rule of the adversarial process postulates that "each party must prove the circumstances to which it refers." In the civil procedure law, this rule is enshrined in paragraph 1 of Article 56. This requirement of the law applies not only to the plaintiff and the defendant, but also to other subjects of proof included in the number of persons involved in the case.

However, the phrase "Evidence charge" to a certain extent arbitrary. It is no accident in the law rightly uses the term "shall" instead of "shall". "I must" and "shall" have different lexical meaning. Ought implies the possibility of choice of behavior, while the duty of such a choice does not allow. Different and legal significance of the Russian-language words. The witness, for example, there is no choice, or may not appear when summoned by the court. It is his duty, the fulfillment of which is provided by measures of state coercion (fines, forced drive). The parties of such an obligation does not exist, the parties are free to not commit any procedural actions. But the party wishing to win the case, to prove the facts on which it substantiates its claims or objections. Party is active in proving on the basis of their own interests, wanting to win the process. When the person concerned can not independently ensure submission of necessary evidence, it has the right to petition the court for assistance.

The party opposing the other side in evidentiary activity carries the risk of adverse effects for themselves. So, when evading side to participate in the examination, failure to experts necessary materials and documents for the investigation, the court, depending on which side of evading assessment, and what for it is important, the right to recognize the fact, to find out where the examination has been appointed established or refuted (part 1 of article 79 of the CPC RF).

Russian legal science distinguishes this legal category as "presumption of guilt", which is based on the law or the legal position of the Supreme Court of the assumption that a certain subject guilt until proven otherwise. Thus, the presumption of guilt could be based either on the rule of law or the legal position of the Supreme court. The largest number of presumptions contained in civil law, eg. the presumption of guilt of the tortfeasor; the presumption of guilt of a person, do not fulfill the obligation or to execute it properly. In collecting reputational damage installed presumption mismatch information disseminated fact, by virtue of which the plaintiff is not required to prove the wrongfulness of the conduct of the defendant, spreading defamatory of the plaintiff and untrue information.

In accordance with the Resolution of the Plenum of the Supreme Court №1 on January 26, 2010 medical institution must prove the absence of guilt in causing patient harm and moral harm, while the patient should not have to prove the fact of poor-quality care. The lower courts are sometimes neglected given the legal position of the Supreme Court and wrongly place the burden of proof of guilt medical institution on the plaintiff, thus wrongly distribute the burden of proof.

In disputes for damages the plaintiff, although refers to the guilt of the defendant, it is not required to prove, as it should have been from the general rules of evidence. Here, as we see the private right to change the allocation of responsibilities for proof, namely the tortfeasor is obliged to prove that harm was caused not through his fault. Wines prichinitelja presumed rule of law. Presumption of guilt of the tortfeasor applies to all obligations arising from the fact of the injury.

Fair Party is not obliged to prove the guilt of the offender. On the contrary, a person who violates this or other obligation to prove the absence of guilt. Article 401 of the Civil Code establishes the rule that a person is guilty, if the degree of care and diligence that was required of him, had not taken all the measures for the proper fulfillment of the obligation.

You can give another example. The general rule of the civil law rights lies in the fact that the absence of guilt in violation of the obligations exempt from liability. This rule is always applied in its relations with non-profit organizations. However, entrepreneurship discharge of the debtor shall be allowed only in case of absolute impossibility to fulfill the obligation, ie, the presence of extraordinary and compelling circumstances that the contracts are often referred to by the term "force majeure". Therefore, in some cases, it is only necessary to prove the absence of guilt, and in others it is not enough and additionally will have to prove "force majeure".

In addition to the presumption of guilt is necessary to recognize the existence of the Russian doctrine of "evidentiary presumption." Moreover, the existence of evidentiary presumptions indicating jurisprudence. Thus, the Trial Chamber of the Supreme Court in its decision number 5-V10-56 in 2012 indicated that the burden of proving the circumstances, exempt from liability for improper performance of an obligation which has arisen in the field of consumer protection, is on the seller (manufacturer, performer). In another judicial act of the Judicial Board on Civil Cases of the Supreme Court in 2012, also points out that the dispute between the buyer and seller of goods sold as a salesman proves the absence of defects in the goods or of the occurrence of the disadvantages is not his fault.

In the absence of evidentiary presumptions general rule.

The Supreme Court in its decision number 8 on October 31, 1995 as amended on 6 February 2007 specifically stresses that if necessary, taking into account the state of health, age and other circumstances that hinder the parties an opportunity to provide evidence, without which it is impossible to properly consider the matter, the court at the request of the parties shall take measures to requisition such evidence.

Questions division of responsibilities for proving so important for law enforcement that even the Constitutional Court formulated its legal position on the matter. Thus, in its decision of October 13, 2009 № 1320 About the Constitutional Court pointed out that in disputes arising from the employment relationship, it is the employer's responsibility to the employee for proof of guilt, it is a guarantee of a fair settlement of labor disputes, as the employee is in the economic and organizational dependence on the employer.

In cases of compensation for damage upon the occurrence of tort claimant is exempt from proof of unlawful actions of the defendant.

At the evidentiary presumption is also indicated by the European Court of Human Rights, which in its judgment "Korchagin against Russia," notes that the non-pecuniary damage is a subjective assessment of the applicant's suffering that he had to endure as a result of violation of his rights, and by its very nature, this damage can not be established credible evidence. The Court also pointed out that the applicant need not provide the court with evidence in support of the problems it non-pecuniary damage.

13.7. The relevance and admissibility of evidence

That evidence played a role in the process, they must have a certain set of qualities that allow them to identify the relative objectivity. First of all the evidence must have relevance or admissibility. Informed decisions should be recognized when it addresses relevant to the facts of the case, the court confirmed proven evidence to satisfy the requirements of the law on their relevance and admissibility.

The essence of the principle of relevance lies in the fact that the court takes into account only the evidence relevant to the consideration and resolution of a particular case (Article 59 CPC). In other words, relevance means having connection description information contained in the source of evidence of the facts, the presence or absence of which must be installed in the trial, i.e. the concept of relevance due to the content of the evidence. Procedural Law contains a number of provisions enabling the court in advance of bringing evidence in the process to get an idea about their relevance. Thus, the applicant must state in the petition the circumstances on

which he bases his claim, and the evidence supporting the circumstances set out by the claimant, as well as attached to the application documents, on which it bases its claims. A person applying for the recovery of any written study, physical evidence or call witnesses must indicate the circumstances that can be installed on that evidence. Depending on the disputed legal one and the same fact in one civil case may have relevance property other similar dispute the same fact can not have the property of relevance. For example, if the resolution of disputes for alimony to the children on the parents need to clarify the facts of financial position as the plaintiff and the defendant and, accordingly, research evidence to support these facts. And in disputes for alimony from parents to children,

The principle of the relevance of evidence indicates the content of the evidence, while the principle of the admissibility of evidence related to their procedural form, ie, view of the procedural means of evidence, regardless of what information is contained in them.

Circumstances of the case, which under the law must be confirmed by certain means of proof, referred to in Article 60 of the Civil Procedure Code, can not be confirmed by any other evidence. Admissibility there is a certain, pre-set by the law limiting the use of evidence in the process of solving specific civil cases. Norms that establish the rules of admissibility, i.e. the procedure for the application and use of evidence, are in the legislation of various branches of law, such as Articles 160-162 of the Civil Code.

The procedural science stand admissibility principle with positive and negative content. admissibility principle with positive content means that on specific cases the law requires the use of certain means of proof, not excluding the possibility of using, in addition to a valid and other evidence. Prescribing the use of certain means of proof, the legislator assumes that it is in evidence the data provides the most reliable information about the unknown circumstances of the case. The principle of admissibility of evidence with negative content indicates that the provisions of the law or instructions of the Supreme Court exclude certain means of proof. For instance,

The inadmissibility of the negative character evidence can also be determined by the Supreme Court. Thus in a particular case the Supreme Court dismissed the case against a motorist driving ban for exit into oncoming traffic, due to lack of sufficient evidence of the offense (The Supreme Court on May 29, 2017 № 5-AD17-17). The Russian Supreme Court has indicated that a written explanation of the inspector of road inspection service can not be regarded as admissible evidence by the fact that they are written by the Inspector personally and were received by himself.

13.8. Evaluation of evidence

As rightly said Harvey MacKay "stuff does not play the crucial role they are playing." Therefore, when assessing the evidence certainly all participants in the process should pay attention to the various little things. In connection with the assessment of evidence in the procedural science and practice it is considered important because it affects the imposition of lawful and substantiated decision. Evaluation of evidence is a logical and legal side. The logical side of the evaluation of the evidence is that in the course of legal evidence the court, a person involved in the process and other evidence actors make logical operations on evidence analysis, their relevance and admissibility of the case, all the information about the facts together into a single evidentiary information system when refuted and some other approved.

Evaluation of evidence The legal side of reflected in the fact that the logical operations performed by the subject of civil procedural relations in order to compare the actual data with the rule of law. The purpose of assessment is not arbitrary, as defined by law, objectively assess the results are always expressed in a perfect procedural legal action.

The literature offers a variety of bases of evaluation of evidence classification. Depending on who evaluates the evidence, assessment of evidence is divided into recommendatory and imperious.

Advisory in nature is the estimate given by the persons participating in the case. Such an evaluation of the evidence contained in particular in the speeches of the persons participating in the case; their representatives acting in judicial debate. The value of this assessment is that it is one of the conditions, provides a comprehensive assessment of the evidence by the court taking into account the views of all interested stakeholders. The court takes into account the views of other members on the evidence evaluation process, but is not obliged to follow them. Evaluation of the evidence given by the court, is an imperious nature, since the decision in which it is reflected, are universally binding force.

Depending on the evaluation of the knowledge level of evidence is divided into preliminary; final; control.

Called pre-evaluation of the evidence, which is given to persons involved in the case and the court in the decision, examination of evidence, ie, before the court in the deliberation room to make a decision. The results of evaluation at this stage apparently expressed in a certain court acceptance of evidence as attributable to the case or refuse to accept such, a petition for the admission of written evidence to the case, the appointment of an additional examination by the court, etc . The sides of the debate and give its preliminary assessment of the evidence.

It called final evaluation of the evidence, which is given only by the court under the conditions of the secrets of the deliberations room and serves as a basis for making a judgment. The purpose of the final evaluation of evidence is to establish the truth of the case.

Control assessment of the evidence carried out by higher courts when reviewing cases.

Evaluation of evidence conducted in compliance with the following principles:

- a) The court evaluates the evidence on their inner conviction;
- b) evidence assessed comprehensively, fully and impartially;
- c) no evidence for the court do not have a predetermined force.

However, the law may be preferred in some evidence in this case, the court must be guided by the preferred assessment of the evidence. For example, the law on vehicle inspection № 122-FZ found that if the diagnostic information service map contained in the UAIS, contrary to the information of "paper" diagnostic card, priority is given to the information contained in the information system.

The proof is recognized by the court valid, if as a result of its inspections and investigations it appears that the information contained in it are true. Doubts about the reliability of evidence may occur in the presence of a number of circumstances.

In assessing the evidence of considerable importance is the study of the source of the evidence in terms of its ability to adequate perception, preservation and reproduction of information. These abilities are dependent on psychophysiological characteristics person involved in the process as a witness, either from physical, chemical and other properties of the object to be used as evidence, etc. Doubts about the authenticity of the source of documentary evidence arise, for example, the presence of defects in its design; absence of necessary details in official documents or in violation of the procedure for compiling relevant documents.

The reliability of evidence is questioned, not only in connection with the defect source of evidentiary information, but in the case of existence of two or more of the evidence with the opposite content. In this case, the accuracy of the unreliability and other evidence established by comparing them with other available in the case, or in addition to demand evidence.

In addition to the reliability of the evidence should have a sign sufficiency. Sufficiency is the quantitative and qualitative categories. The conclusion is the result of the adequacy of the study and the final assessment of the evidence, probative finishing work. Speaking about the sufficiency of the evidence, it is necessary to emphasize a very important fact. Sufficiency can not be ensured mechanically by summing

attributable content permitted in shape and credible evidence. Before the trial, the task - not to select any relevant, admissible and credible evidence, and especially those that have the highest value. Value in turn - is the property of any information, which is an expression of its usefulness.

13.9. Sources of evidence

Explanations of the parties and third parties.

Explanations of the plaintiff, the defendant, as well as participating in the case of third parties - one of the types of personal evidence, the originality of which lies in the fact that they are given to the court by persons interested in the outcome of the case. Giving an explanation on the case, said subjects reported trial data on the facts, that is a right and not an obligation of the parties. The law does not sanction for refusal to testify explanations of the parties, for perjury, since otherwise it would be contrary to the principles of optionality and competitiveness. However, it should be taken into account here that the right to give an explanation is closely correlated with the duty to prove their claims and objections.

Court hears explanations of the parties, third parties immediately after the case report. With their knowledge of the court process begins (Article 174 of the RF Code of Civil Procedure). Means of proof are the explanations of the parties, which contain information about the facts relevant to the resolution of the case. While the arguments, the arguments, the legal evaluation of the events of forensic evidence are not.

Explanations of the parties and third parties act as a rule, as the initial evidence, because these subjects are the witnesses of acts, events, phenomena, the presence or absence of which must be installed in the consideration of a particular case. It should be borne in mind that the party to the proceedings may be not only the subjects of substantive relations, but also the public prosecutor, public bodies, local authorities, other bodies, citizens, when they are suing for the benefit of others (Part 1 of article 45, Part 1, article 46 CPC of the RF) and take the procedural position of the plaintiff. Explanations of these persons are derivatives of the evidence because they do not directly perceive the facts associated with the controversial substantive relations,

Explanations of the parties and third parties as a means of proof in the theory of evidence to classify for certain types. By the method of bringing to the court information about facts distinguish written and oral explanations. Written and oral explanation sides are complementary. In written arguments of the parties as the evidence contained in the statement of claim, which is a necessary procedural document for each civil

case. Recognition of the part can be seen as recognition of the action as a whole (the claims), and as a proof of (the finding). Recognizing the fact, the party thereby inform the court about the information that he had or did not take place in reality. Recognition by parties of the facts on which the other party is basing its claims or objections,

In legal literature, most authors adopted a classification recognition of judicial and extrajudicial. When the party acknowledges the presence or absence of fact, included in the subject of proof in the case in a court session, the court referred to the recognition, generating consequences provided by Paragraph 2 of Article 60 of the Civil Procedure Code. Recognition of the fact entered into the trial record, which is signed by the party to recognize the fact. Acceptance or rejection recognition of a court decision is issued. If the finding set out in a written statement the parties, it should be admitted into evidence. Extrajudicial confession called the attention of the parties about the facts expressed outside of the process, regardless of the procedural form.

Witness statements.

A witness is a person who may be aware of any information about the circumstances relevant to the consideration and resolution of the case. Is not proof of information given by the witness, if he can not specify the source of his knowledge.

The witness is called to court to report information directly to their perceived or known to him the facts relevant to the case. It differs from the persons involved in the case in that it has no legal interest in the outcome of the case. The presence of a witness, not a legal interest does not give grounds to ensure that does not use that person as a source of evidence. Therefore, the presiding attitude reveals a witness to the persons participating in the case. Knowledge of other, non-legal interest of the witness is necessary for the proper construction of questioning witnesses and evaluating his testimony.

A witness may be any citizen is able to perceive and reproduce the events of the world. The ability to be witnessed by the law is not associated with the presence of a certain age, so the witness can be children. Of course, when called as witnesses children can not ignore the reasonable age limits, as the correct perception of the world comes with a certain level of human development. Available disorders in the human psyche, as well as physical disabilities (poor eyesight, deafness) does not mean that the person can not testify in court. The possibility of questioning as a witness of a person is determined by the court taking into account the specific circumstances. However in the law contains a number of restrictions on the citizens interrogation as witnesses. The reasons for such restrictions are quite clear and they are connected with the

professional activities of such persons. In accordance with Article 69 of the Code of Civil Procedure shall not be questioned as witnesses:

a) representatives in civil proceedings or defense counsel in criminal proceedings, the administrative case on circumstances which became known to them in connection with the performance of duties of the representative or defense counsel;

b) judge, jury, national or arbitration assessors of the issues that have arisen in the conference room in connection with the discussion of the case with the court decision or sentence;

c) priests religious organizations that passed state registration - the circumstances that they have become aware of the confession.

Citizens may, in certain cases provided by law to exercise the right of witness immunity, i.e. to refuse to testify. It is noteworthy that the institution of witness immunity existed in Roman law - "no one should be call against his will for testimony against his father-in-law, stepfather, stepson, cousin, cousin, cousin and nephew and of those who are in a close degree of kinship. .. ". In the Russian pre-revolutionary right as there were rules exempting from the obligation to witness against relatives in a straight line. Under the current legislation (Article 51 of the Constitution, Part 1 Article 69 of the Civil Procedural Code of the Russian Federation) has the right to refuse to testify the following subjects:

a) Citizen against himself;

b) husband against wife, children, including adopted children, against their parents, adoptive parents, foster parents against children, including adopted children;

c) siblings against each other, grandfather, grandmother against grandchildren and grandchildren against grandparents;

d) legislators in relation to information that has become known to them in connection with the performance of parliamentary powers;

e) Commissioner for Human Rights in the Russian Federation in relation to information that has become known to him in connection with the performance of their duties;

f) the arbitrator (arbitrators) on the circumstances became known to him during arbitration.

All other persons summoned as witnesses are required to appear in court for the oral presentation of his testimony, as well as the most complete and correct presentation of information about the facts. The law guarantees for the run-time duties witness preservation of average earnings in the workplace. Witnesses who are not in labor relations, for distraction from their usual occupations receive monetary compensation. Witnesses reimbursed incurred in connection with the appearance before the court the costs of travel and hiring rooms and per diem. The wit-

ness does not know the language of the proceedings, it has the right to testify in their native language and use the services of an interpreter. Witness when testifying may use written material in cases where his statements associated with any digital or other data, which are difficult to keep in mind. These notes are presented to the court and the parties involved in the case, and can be attached to the case by a court decision. A witness in civil proceedings can take advantage of other rights, namely, to ask permission to leave the courtroom until the end of proceedings; ask in established cases of interrogation in their place of residence.

The law of the two main responsibilities of the witness stated:

- a) to appear in court when summoned;
- b) to give truthful testimony.

Non-appearance of a witness in the trial for reasons deemed unacceptable by the court entails the application of penalties.

The procedure for the examination of witnesses established by Article 177 of the Civil Procedure Code. Prior to consideration of the merits witnesses removed from the courtroom. This measure eliminates the possibility of the parties' influence on witnesses. Each witness is interrogated separately. He warned about the criminal liability for refusal to testify or perjury. The presiding judge finds for witnesses to the persons participating in the case and invite the witness to tell the court all he personally knows about the circumstances of the case.

The content of the witness testimony has two parts: general and special. For general part includes information about the facts that establish the identity of the witness, his relationship to the parties and to the point. The special part of the examination includes information about the unknown, of evidentiary facts of the case, ie, that has probative value.

The best form, provides the highest-quality evidence of witnesses and their correct understanding of the court, is the oral form of evidence. Written statements of witnesses are not allowed. Witness testifies in the form of a free narrative of the facts (actions, events, phenomena), of which he was an eyewitness, as well as the facts, the presence or absence of which he had learned from the words of others. In the latter case, the proof is not the original but a derivative that should be considered by the court in its assessment. They can not admit evidence of a witness, if he can not specify the source of his knowledge.

After that, the witness may be asked questions. The first person asks questions, according to which the witness is called, the representative of that person, and then the other person involved in the case, their representatives. Unacceptable statement before the witness questions suggestive nature, when in the question itself contains the answer or when the question can only be answered with "yes" or "no." Judges have

the right to question witnesses at any time of his interrogation. If necessary, the court may re-examination of witnesses on the same or the next court session.

The exception to the principle of immediacy are the following cases of obtaining witness testimony:

- a) examination of evidence in order to ensure;
- b) questioning at his place of residence, if the witness as a result of sickness, old age, disability or other valid reason unable to appear when summoned by the court;
- c) The questioning in the performance of the court order.

It has a number of features interrogation minor witnesses. The interrogation of a witness under the age of fourteen years, and at the discretion of the court and witnesses under the age of fourteen to sixteen years produced with the participation of teaching staff, which is called to court. In case of necessity caused by the parents, adoptive parents or guardians of the minor witness. These persons may with the permission of the presiding officer to ask questions of the witness, as well as express their opinion about the identity of the witness and the content of the testimony given to them. To eliminate the influence of adults on the juvenile witness, they can have their presence in the courtroom during his questioning of the courtroom on the basis of the court can be removed or that the person involved in the case, or removed any of the present citizens. Person who is involved in the case, after returning to the courtroom testimony of a witness reported a minor maintenance and must be given the opportunity to ask questions of the witness.

A witness who has not attained the age of sixteen, after interrogation removed from the courtroom, except for the case if the court deems it necessary the presence of the witness in the courtroom.

In assessing the evidence the court must consider whether the mere fact received a witness or he learned of the existence of hearsay. Information perceived hearsay, can be misinterpreted by the person who it passed. The witness may also be wrong to perceive information. In assessing evidence, the Court analyzes the whole process of creation, preservation and transfer of witness information. Finally, the witness could simply deliberately distort information, acting on the side of the plaintiff or the defendant. Yet Einstein said that the nature of how insidious the object of study, but not malicious, ie not lying consciously "responding" to the question of the researcher; but man as an object of study often lie - either unconsciously or deliberately concealing or misrepresenting the reality of personal, group and system interests, or as a prisoner of false consciousness, or simply out of ignorance. When assessing the testimony of the witness is necessary to consider this fact.

Written evidence

In accordance with Article 71 of the Civil Procedure Code written evidence are containing information about the circumstances of importance for the consideration and resolution of the case, the acts, contracts, certificates, business correspondence and other documents and materials made in the form of a digital or graphic recording, including those obtained by fax, electronic or other communication using information and telecommunication network Internet, documents signed by electronic signature. By written evidence includes judgments and decisions of the court, other court orders, protocols for specific legal proceedings, court records annexed to the Protocol commit procedural acts (charts, maps, plans, drawings). The real basis of written evidence make the objects of the material world that can save inflicted written signs. A method of applying marks in this case irrelevant. On the basis of the driven-in-law definition, we can conclude that the written evidence may be not only documents, but also other physical objects. Written evidence in the practice of justice is given special status, for even Roman lawyers thought: *Quod non est in actis, non est in mundo* - which is not in the documents that there is no light.

A distinctive feature of the written evidence is that the information necessary for the court to establish the unknown circumstances of the case, are seen from the content of written characters. In contrast to the material evidence, which in its outward expression as are some items with printed text, but evidentiary information is not in the text, and in the properties of the object itself.

The method of research written proof - reading and reading in the hearing.

It should be noted that not every document written proof and every document written proof. The concept of "document" is very much wider meanings and written evidence. For example, specified in Section 2 of Article 55 Procedure Code audio-video meet the definition of an audiovisual document containing visual and audio information. Charts, maps, plans, drawings can be defined as a graphic document. The legal definition of "document" contained in several normative legal acts. As a result of the generalization of various acts can be determined that the document - is fixed on a material bearer with requisites allowing to identify not only the information itself, but also the originator of the document. Each document has an external signs, reflecting the shape and size of the document information storage medium, a recording method, design elements. A written document can be handwritten, typewritten and electronic.

Use of documents in civil proceedings is possible under certain conditions:

1. The presence of a legally binding document. Valid documents give the necessary details. In the document, as details must include: name of the organization or the creator of the document; location of the organization; production date of the document; name of the person responsible for its production; name of the person who approved the document.

2. The document must be available to be read, ie contain comprehensible information, decoding of encoded data. This requirement stems from the general rules of legal proceedings involving the immediacy of perception judges the evidence contained in the sources.

Written evidence, such as documents in the process of theory to classify: on the subject of the origin of documentary evidence; the nature of the content of the written evidence; in the form of evidence.

By subject written evidence are divided into formal and informal. White Paper - a document created legal entity or individual, designed and certified in the prescribed manner. Official written evidence comes from government bodies, officials, enterprises, institutions and organizations in the discharge of their functions or by citizens exercising their rights and fulfill their duties, in the form prescribed by law. By official written evidence includes, for example, birth certificates, marriage registration, orders for admission to work, wills, contracts, etc. Official written evidence are characterized in that they reflect the authority of the subjects of the issuing authority; They have the shape and details

Documents issued in violation of competence are invalid in whole or in part. They can not be used as documentary evidence justifying the decision. Known informally as the written evidence emanating from legal entities and individuals having formalized.

On the content of the written evidence is also divided into two groups:

- regulatory
- reference and information.

Called administrative written evidence, the contents of which testifies to the facts of power-strong-willed character. For administrative evidence include:

- a) acts of public authorities and management;
- b) acts of enterprises, institutions, social organizations, issued within the competence.

For reference information written evidence are various kinds of certificates, deeds, reports, minutes of meetings, meetings, writing business and personal data, etc.

The shape of the written evidence can be classified into four groups:

- documents the simple written form;
- written evidence obligatory form and content (the act of industrial accident, birth certificates, marriage registration);
- notarized contracts without their subsequent registration;
- documents requiring a subsequent registration.

Written evidence submitted in the original or a copy, duly certified. Original documents submitted when the circumstances of the case in accordance with the laws or other normative legal acts are subject to confirmation only such documents or when the case can not be resolved without the original documents, or when the submitted copy of the document is different in its content. For example, in the original title documents to be submitted.

Written evidence in court may make the documents obtained in a foreign country. Evidence in court, they are recognized, if not contradicted by their authenticity, and they duly legalized. Legalization of a document made of diplomatic or consular service of the Ministry of Foreign Affairs of the Russian Federation. Article 55 of the Consular Charter of the USSR in 1976 specifies that "the Consul legalizes the documents and acts drawn up with the assistance of the consular district authorities." Witnessing consuls documents and acts drawn up with the assistance of the authorities of their consular district or emanating from those authorities, is the authentication of signatures on these documents and compliance paperwork to the laws of their country of origin. Document legalization assessed by the court on a general basis,

Foreign official documents can be recognized in court written evidence without legalization in cases stipulated by international treaty. Such an international agreement is, for example, the 1961 Hague Convention.

Original documents available in the case, may be returned at the request of the persons submitting them, after the court decision comes into force, at the same time remain in the judge certified copies of documents. Before the decision enters into force the evidence submitted can be returned to their faces, if the court finds it possible.

The Civil Procedure Law established special procedural safeguards to protect the secrecy of private correspondence and telegraphic communications of citizens. It can be read out in open court only with the consent of the persons between whom this correspondence took place. Otherwise, such correspondence shall be announced and examined in a closed session.

Copies of the documents submitted to the court by the person involved in the case, sent or delivered them to others involved in the case,

if they have these documents available, including in the case of filing a court claim and the documents attached thereto through completion of the form the official website of the court.

Material Evidence.

In the civil procedure law the evidence is defined as items which, by their appearance, properties, location or other criteria may serve as a means to establish the circumstances relevant to the consideration and resolution of the case.

The term "subject" as used in the procedural law, the condition is sufficient, since items may be: land, residential and commercial spaces, animals, etc. Objects used as evidence by the fact that they have the ability to reflect events, phenomena and actions. Reflection appears to change the properties of an object, its type, fingerprints, footprints, etc., carrying some information about what actually happened. Evidence are not the objects themselves, and the information that can be obtained in the course of their studies. The object itself in this case will act as a source of information.

Signs of physical evidence objects are quite varied. Information relevant to the case, not only provides the study of the appearance of the object, its properties or location, as well as the existence of an object itself, the time of creation or modification. Obviously, that can not be given even a rough list of items that are used as evidence in proceedings in civil proceedings.

In respect of evidence subject to the same rules for presentation and reclaim as for written evidence. Person representing a particular object as evidence or applying for its reclamation must specify which are relevant to the facts of the case can be set with this proof.

Way to explore the physical evidence is their examination. The procedural law applied to the written and physical evidence used two terms "inspection" and "research", it does not mean that we are talking about two different proceedings. Examination - the method of examination of evidence, consisting in direct perception and learning the court with the participation of the persons involved in the case, signs, certain properties of the material object. The purpose of the inspection to obtain the information needed to establish the circumstances relevant to the case. The procedure of examination of physical evidence is provided a number of articles of the Civil Procedure Code, such as 58, 75, 183, 184.

It is obvious that a number of items is very difficult to deliver directly to the court because of their physical or chemical properties, are inseparable one from the other things, the use of the object in the production process, etc. Some material objects in general can not be delivered, for example, land, buildings, structures and other real estate. De-

pending on where geographically is evidence examination is carried out either directly by the court examining the case, or sent instructions to the relevant court for the commission of the procedural action.

The procedure of examination of physical evidence at their location established by Articles 58 and 184 of the Civil Procedure Code. About the inspection on the spot by a court decision is made. The place and time of the inspection shall be notified persons involved in the case. Absence of properly notified parties does not prevent the carrying out inspections. Although the examination of evidence at their location is a separate procedural action, it is produced in the form of the court hearing in compliance with legal requirements relating to the meeting, with the difference that it takes place outside of the court room. When carrying out inspection, if necessary, can be carried out taking photos, audio and video. Protocol full verbal description examines attributes of objects, their exact size, color, quality, etc.

When viewed from a specialist may be present. I must admit that the appearance in civil proceedings a procedural figure specialist is a great achievement of the Civil Procedure Code in 2002.

For many years the legislator has consistently ignored repeated and justified proposals expressed by scientists to provide the opportunity to participate in civil proceedings specialist, assists in the implementation of remedial actions.

Provisions of the Civil Code regulated inspection and examination of evidence, perishable. Physical evidence, subject to rapid deterioration, immediately examined and investigated by a court in their place of residence or in another place determined by the court, and then returned to the person presenting them for inspection and study or transferred to organizations that can use them for other purposes.

Storage of physical evidence claimed in various ways. Article 74 of the Civil Procedure Code establishes the order of storage, providing the safety provided to demand things either. Thus, the evidence stored in inventory or special surrender to the storage chamber of the court of evidence. Things that can not be delivered to the court, are stored in their location. When physical evidence is itself disputed property, conservation contributes to the adoption of measures to secure the claim.

Expert opinion.

Conclusion The expert (s) as a means of proof is formed as a result of studies of individual factual circumstances of the case by persons having special knowledge in the field of science, art, technology, crafts. The examination has a study presented by the court facilities, conducted by experts on the basis of special knowledge, in order to extract information about the facts that are important for the proper settlement of the

case, committed in a particular procedural order and in compliance with the established procedural rules of law. Types of examinations used in civil proceedings, are as varied and numerous as industry expertise. You can specify only an illustrative list of types of expertise, depending on the nature of the application of expertise: forensic, forensic psychiatric, merchandising, economic,

The examination may be appointed by the court at the request of both parties involved in the case, and on the initiative of the court at the stage of preparing the case for trial and the trial stage before judgment. In some cases, the purpose of the examination is the responsibility of the court. Thus, in accordance with Article 283 of the Civil Procedure Code, to determine the mental state of the citizen court must appoint a forensic psychiatric examination. Examination procedure is regulated by a special law on May 31, 2001 № 73-FZ "On State forensic activities in the Russian Federation", which secured the legal framework, principles and main directions of the state forensic activities.

When appointing the examination the court is obliged to strictly observe the rights of persons involved in the case. An important stage of the appointment of the examination process is to define the research object, the circle and the content of the issues on which the examination should be carried out. On the subject to be examined, point to the person applying for the purpose of examination or they are determined by the court. The final selection of the objects have the prerogative of the court. Obtaining samples for comparative studies, which are attached to the case is the responsibility of the court, for example, to obtain handwriting samples. In the case of a challenge signatures on documents or other written proof of a person, the court shall have the right to obtain handwriting samples for further comparative research. Obtaining samples of handwriting by the court can be carried out with the participation of a specialist. On receipt of handwriting samples shall be drawn up, which reflects the time, place and conditions of the handwriting samples. The protocol signed by the judge, the person whose handwriting samples were obtained, the expert if he was involved in the commission of the procedural action.

In accordance with Part 2 of the Civil Procedure Code, Article 79 of the persons involved in the case are entitled to submit to the Court questions which they consider necessary to put before the expert. The court may reject questions, but always motivating his refusal. Circle and content questions to the expert in final form defines and articulates the court.

Parties and other persons involved in the case, have the right to request to appoint an examination in a particular forensic expert institu-

tion or request to appoint an expert in a particular specialist, but the choice of a forensic expert institution or expert refers to the competence of the court.

It does not disclose the concept of "expertise" in the legislation. The doctrine of a special knowledge is generally understood as such knowledge which are beyond the common general knowledge from the experiences of the people. Special knowledge are not among the well-known, publicly available, with mass distribution, ie, these are the knowledge that a professional has only a narrow circle of specialists.

In the case of the order of examination expert institution specific expert appointed by the head of the said institution. In the arbitration process, there is another rule that the court itself should warn experts criminal liability.

Party or others involved in the case, have the right to challenge an expert appointed by the judge or the head of the expert institution. Withdrawal may be declared on the initiative of the court in relation to the expert appointed by the head of the forensic institution. In accordance with the law of the expert shall be challenged if it is:

a) at the previous hearing of the case I was involved in it as a public prosecutor, the court secretary, representative, witness, expert, specialist, interpreter;

b) He is a relative of any of the persons involved in the case or their representatives;

c) personally, directly or indirectly interested in the outcome of the case or there are other circumstances giving rise to doubts as to his objectivity and impartiality;

d) It was or is in service or other dependence on any of the parties involved in the case, their representatives.

Under the above circumstances, the expert also independently obliged to recuse himself or herself.

On the appointment of the examination the court shall issue a ruling. The law establishes the requirements for its content. When ordering the examination, the court may suspend the proceedings for a period specified by the court to carry it out. Determination of the examination appointment is directed, or the head of a court expert institution, either directly to the expert appointed by the court.

The expert has the right to: a court order to get acquainted with the case materials; to participate in court proceedings; to ask questions to the persons participating in the case, and witnesses; declare the application for additional materials; refuse to give an opinion on matters beyond the scope of his expertise, as well as in the case if the materials provided to him are insufficient for an opinion; do to be entered in the

record of the hearing statements on the misinterpretation of actors in his opinions or testimony; to give the necessary explanations for the submission of findings in the hearing; to reimbursement by him in connection with a court appearance on travel expenses, the hiring of premises and daily subsistence allowance; to remuneration for work done on behalf of the Court,

The expert may not: engage in personal contact with the participants of the process if it calls into question his lack of interest in the outcome of the case; independently collect materials for forensic examination; inform anyone about the results of the forensic examination; destroy objects of research or significantly change their properties without the permission of the court.

The expert must: take production expertise entrusted by the court; to conduct a full investigation before it of objects and materials of the case; appear when summoned by the court to the court and give an informed and objective opinion on the questions posed to him, as well as to respond to additional questions of the persons participating in the case, and the court; make a reasoned written report about the impossibility to give an opinion; not to disclose information, which became known to him in connection with the manufacture of judicial examination, including information which may restrict the constitutional rights of citizens; ensure the safety of objects presented research and case file (Article 85 CPC; Article 16 of the Law "On State forensic activities in the Russian Federation").

Both in science and in practice, the following types of examinations: the commission when the research is carried out by at least two experts of one specialty, and comprehensive - is carried out by experts of different specialties.

The written opinion of an expert is composed of three parts: introduction, research and final. In the introductory part shall include: the name of the examination, its number; whether it is more or complex; name of the authority, information about the expert; date of receipt of the examination materials; the basis for the production of examination, the name received for examination of materials and questions posed to allow an expert. In the research part of the study describes the process, given the scientific explanation of the findings, details the methods and techniques used by an expert in the study of the actual circumstances. The final part of the expert formulates conclusions. The report is the result of a special study of the actual circumstances of the case.

The Court can not agree with the expert, but the opposition of the court shall state the reasons in the decision in the case or in the definition.

Plenum of the Supreme Arbitration Court in its judgment of April 4, 2014 № 23 "On some issues of practice of arbitration courts of the analysis of legislation" to further clarify some of the issues which are not reflected in the law. In particular, the judges of the major findings that can not be denied in the examination in the non-governmental organizations or by a person, although possessing special knowledge, but is not an employee of the expert institution, only due to the fact that it can be assigned to the state expert institution.

If the examination can not be imposed by a court, in this case it is necessary to obtain the consent of at least one person involved in the case. On the face, which is claimed by the court the object of study, not representing it, it can be imposed by a court fine.

During the examination may be attended by persons involved in the case. To this end, the said persons apply to the court. In case of failure in the expert opinion the court in due time to the head of the expert institution or expert, the court may impose a fine.

Audio-video as a proof.

First code of civil procedure in the history of the procedural legislation in 2002 introduced a number of legal proceedings in the audio-video recording of evidence. The debate on the need for the legalization of the means of evidence was carried out for a long time. The Resolution of the Plenum of the Supreme Court of the USSR from December 1983 "On the application of procedural law in cases before the Court of First Instance," stated that "in case of necessity the court may, taking into account the views of participating in the case, examined representation of sound and video recordings." Said opinion judges the highest court of the USSR was caused by objective reasons, such as: becoming more common to use tape recorders and video cameras are not only for professional purposes, but it remained unclear for recording data should be included any means of proof. The procedural literature several attempts to justify accessories audio video is to work, then to evidence. The legal status of this type of evidence was necessary because, despite the explanations of the Plenum of the Supreme Court, the formal use of sound recordings and video recordings are illegal as the Civil Procedure Code of the RSFSR contains an exhaustive list of means of evidence that could be used in the process, but among them the audio-video recording did not have.

In considering the use of such means of evidence it became apparent that the audio recording no signs of any of the admissible evidence. Therefore, giving them official status of evidence was a remarkable event.

Fall under the definition record Phonodocuments, i.e. document containing the audio information captured any recording system. Videos

fall under the definition of an audiovisual document. Audiovisual document is a document containing visual and audio information. Code of Civil Procedure to date does not define the audio-video recordings, but contains a very important requirement to the effect that the person presenting the audio-video recording on an electronic or other medium or petition for their reclamation is required to specify when, by whom and under what conditions make entries. The fundamental nature of the requirements determined by the fact that in respect of such materials are likely to be illegally obtained.

The law establishes a remedial order studies audio-video recordings. Their reproduction is made in the meeting room or another specially equipped for this purpose room with an indication in the minutes of the hearing of evidence signs of fertile sources and playback time. The court shall hear the explanations of the persons participating in the case. Media audio-video recordings to be stored in the court. Only in exceptional cases, after the decision enters into legal force, they can be returned to the person or entity from which were obtained. At the request of the person involved in the case, he may be extradited made at his expense copies of records. On the issue of the return of carriers of audio and video court makes the determination on which can be filed a private complaint.

13.10. Securing evidence

Securing evidence is called consolidation in accordance with the law of information about the facts of the intentional or reckless destruction. This need arises when there is reason to believe that the presentation of evidence in the future would be impossible or difficult. For example, when used as evidence perishable foods, losing the appearance and properties, or when the accident occurred and the scene you want to capture its effects, etc.

Records and other documents prepared in the process of evidence used in the proceedings as written evidence.

Prior to the institution of civil proceedings in the court providing the evidence held by notaries in accordance with the Fundamentals of legislation on notaries. To this end, the person concerned shall submit an application for securing evidence to the notary in the area of activity of which legal proceedings to secure evidence shall be made (p. 175 Instructions on notarial acts).

When deciding on the need to provide evidence of the notary ascertains whether the threat is real evidence being destroyed. If a notary come to the conclusion unsubstantiated statements about securing evidence, he denies the applicant in the commission of the notary action.

Such a failure can be appealed by the applicant in court in accordance with Article 310 Civil Procedure Code.

In order to provide evidence of a notary can question witnesses, to inspect the written and physical evidence, to appoint examination. When the proceedings for securing evidence notary is governed by the Civil Code.

Notary announces the time and place and provide evidence of the parties concerned, but absenteeism they are not an obstacle to the implementation of actions to secure evidence. Providing evidence without notification of one of the parties and stakeholders is made only in cases of urgency, or when it is impossible to determine who will subsequently be involved in the case. Notary warns the witness and expert on liability for knowingly giving false evidence or conclusion, and for refusing or avoiding to testify or imprisonment. A witness may be questioned at their place of residence, if, due to illness, old age, disability or other valid reason unable to appear when summoned by the notary. Written and material evidence examined by the notary.

All action taken in order to ensure evidence, drawn drawing up a protocol to be signed by a notary public and participating entities. At the end of production to ensure that evidence is given to interested parties, one copy of each instrument in order to ensure the evidence.

After a civil case to ensure the evidence held by the judge. In connection with the issue of providing the evidence necessary to pay attention to the following circumstance. Of the Civil Procedure Code in 1964 explicitly stated that before the legal proceedings to ensure the evidence produced by notaries.

The Procedure in 2002 similar to the rule of law is absent. In this connection, two questions arise. Can we assume that notaries lose the right to produce actions to preserve evidence? Can the court make such actions before the initiation of the case, especially since the provisions of the Arbitration Procedure Code allows securing of evidence by the judge before the claim (part 4 of article 72 of the APC RF). Article 64 of the Civil Procedure Code expressly states that the provision of the evidence produced at the request of the persons involved in the case and to acquire such status only in relation to the case. Consequently, the court action to secure evidence should not be administered prior to the initiation of the case. On the other hand, provision of evidence - a form of consolidation, rather than research. It means, that at the time of interim action by the judge in the course of a notary or before the initiation of legal proceedings does not address issues of reliability and sufficiency of the evidence, and did not assess the evidence. Therefore, the notary can carry out notarial acts for securing evidence, the more such actions correspond to the international practice.

CHAPTER 14

Claim

14.1. The concept and essence of claim proceedings

Civil proceedings is the main kind of legal proceedings, since the bulk of the cases considered by the rules of action proceedings. Prior to 2015, civil proceedings in Russia existed only in civil and arbitration processes. In connection with the adoption of the Code of Administrative Procedure of the claim form of protection of the right it has also become the main form of administrative proceedings.

In civil proceedings to protect the violated subjective right by the court in the order of action proceedings. Most of the provisions of the Civil Procedure Code regulates the procedure of action proceedings, in connection with which the doctrine is not without reason to believe that the claim form of protection of the right to a large extent coincides with the civil procedural form.

The procedural doctrine highlight some characteristic signs of action proceedings, which individualise it from other types of production. These characteristics should be attributed first and foremost:

- a) the existence of a substantive claim arising out of violated or disputed rights of the parties;
- b) the existence of a dispute about the subjective right;
- c) the presence of two parties with opposing interests, which are endowed with certain powers by law to protect their rights and interests in court;
- d) equality of sides in the material relationship;
- e) production of claim driven by filing a claim;
- f) in each case action proceedings necessary to have a claim.

The statement of claim is a critical procedural remedy violated or contested rights. The form in which the protection of the violated subjective right, called the claim form, and controversial requirements to be considered as part of the limitation of the procedural form, called claims. Thus, we can conclude that the disputed claims are claims.

According to J.S. Voitinsky all disputes are divided into two types: protect the rights and protected by law. First there are the rights of disputes - a claim dispute, the second debate of the interest - not claim⁸⁷.

Due to the fact that the claim form is now the main form and in all administrative proceedings claim disputes can be divided into two types:

- a) claims arising from breach of a disputed subjective right;

⁸⁷Voitinsky I.S. Labor Law of the USSR. M.-L. 1925. 249 p.

b) a claim arising from a breach of public law.

The first to be considered in the order of civil procedural form, the second in the administrative proceedings.

Since there are various ways to protect the violated rights, in each case of violation of the right corresponds to a specific form of protection of rights. Choosing a method of protecting the civil rights directly owned by individuals and legal entities, ie individuals who believe their rights abuses. Protection of infringed rights started in one form of protection of the right, in some cases, can be transmitted for consideration to other forms of protection rights. For example, the court of general jurisdiction may be in the presence of an arbitration agreement to transfer the consideration and resolution of the dispute to an arbitral tribunal.

Right on the Limitation form of protection and can speak in relation to arbitration, which is excited also by filing a claim, but the consideration of such a statement is not within the framework of civil procedure, and under the administration of the arbitration.

Despite some differences in the form of the statute of rights of the defense in civil, arbitration, administrative proceedings or arbitration basic features of all claim forms are the same.

14.2. The concept of claim and a statement of claim, elements of a claim

Controversial substantive requirements of one person to another, unsusceptible to certain procedural order, called the lawsuit. In contrast to the claim, the claim has a procedural remedy violated rights.

Theoretical development of action of the Institute, its essence and content derive its origin in ancient Rome. The Digest lawsuit seen as a right of a person to exercise judicial order belonging to his requirements⁸⁸. Subsequently Institute claim was supplemented studies French and German lawyers. In particular, the French explorer L. Zh. de la Morander is-belives that a lawsuit is a legal action, the will by which a person applies to the court for the administration of justice and the restoration of the violated legal provisions or the creation of new legal provisions. Russian scientists 19 - 20 centuries, also devoted his research institute action. Among the scientists who have made a great contribution to the development of the theory of the lawsuit should be called A.A. Dobrovolsky, M.A. Gurvich, I.A. Zherulisa, O.V. Isaenkova, G.L. Osokin, N.A. Cecina, D.M. Chechot.

However, the doctrine is still very ambiguous perceived the essence of the claim. Some scholars (eg. E.A. Treshcheva) for the claim to

⁸⁸Roman private law: the textbook / ed. I.B. Nowicki. M. 2010. 71 p.

understand the requirement of protection of violated rights. According to her lawsuit is not going to court⁸⁹. With this concept claim agrees G.D. Uletova⁹⁰. However, this definition becomes unclear to whom such a requirement is addressed. It seems to us the claim is a substantive requirement of the plaintiff to the defendant and requested the court to consideration of the application to the defendant in a particular procedural requirements of the procedure.

Since the statement of claim has a procedural expression of the claim, the statement of claim should contain substantive requirements of one person to another and it is clearly stated in Article 131 of the Civil Procedure Code. In turn, the defendant is entitled to submit to the plaintiff counterclaim (Article 137 CPC RF). The counterclaim defendant his material and legal requirements apply to the original claimant. Ipso jure (lat. In the force of law) upon presentation of demands by several claimants or against several respondents judge may select one or more claims in separate proceedings.

When the claimant withdraws the claim, he refused not by recourse to the court (the applicant does not waive the procedural protections) the claimant withdraws his financial demands on the defendant, so it seemed to be repaid and re-plaintiff with a similar requirement in the court of appeal can not.

Claim of an important means of excitation for a particular dispute process. According to the law, any interested person may apply to the court to protect violated or disputed right. Such an appeal to the court called suing.

Going to court with a claim involves the examination of the case in determining the enforceability order. Filing a lawsuit claims in civil proceedings means that between the plaintiff and defendant, a dispute arose in connection with the violation or contesting of a subjective right, in this case the parties fail to settle it without the intervention of the court and submitted the dispute and the court resolution. Thus, any reference to the court in civil proceedings must be accompanied by a requirement for the defendant, ie, to a particular person who has violated subjective right. Going to court is at the same time of two powers: the right of the plaintiff to state a substantive requirement for the defendant and the

⁸⁹Treshcheva E.A. On the concept of the claim and the statement of claim in the civil and arbitration process // Problems of claim and the claim form of protection violation: Proceedings of the Scientific Conference. Krasnodar. 2006. 263 p.

⁹⁰Uletova G.D. Discussion on the concept, elements and practical significance of the claim (in the light of scientific views of Professor A.A. Dobrovolsky // the Legislation. 2015. № 5. 79-88 pp.

plaintiff's right to go to court to hear the case. Strictly speaking, these two powers and is sued.

All lawsuits form is dedicated to carefully check the validity and legitimacy of the demands of the plaintiff to the defendant, and if it is reasonable and lawful, the court satisfies the requirement. Otherwise, the court in its decision denying the claim, and these things mean that the court did not deny the procedural appeal to the court, and to meet the material requirements of the claimant to the defendant.

If not the plaintiff's claim against the defendant, there is no claim. Going to court without the substantive requirements for the defendant could not be regarded as a claim. Thus, the claim is a single concept with two sides: substantive and procedural law. Both sides are in an indissoluble unity. For any dispute the plaintiff's appeal to the court always have to be accompanied by the plaintiff to the defendant. If we talk about the lawsuit filed, it should be borne in mind that both the powers of the plaintiff in the indissoluble unity have been implemented.

The procedural science pays great attention to the study of the subject and grounds as elements of a claim. action element is characterized by its content and legal nature. There is a general view of lawyers whereby suit consists of two elements: a base object and⁹¹. Law and Litigation and operate these two elements of the claim. Value elements of the claim is that they provide a means of individualization claims. On the subject and the bottom of one claim is different. Subject matter and cause of action are important for the determination of identity claims, they help to flesh out the circumstances of the case and build a defense against the claim.

The law states that the change occurs on the claim or cause of his subject (Article 39 CPC RF). action elements are important to determine the scope of protection according to the presented requirement. They also set the particular proceedings in each case. Thus, the question about the elements of the claim has not only theoretical but also practical significance. Meanwhile, in the doctrine of this position is not the only one.

Some authors have suggested that in addition to the above two elements of the claim it to be a third element - content. For example, M.A. Gurvich⁹², A.F. Kleinman as an independent element emit the contents of the claim, which refers to the action of the court, the commission of which the plaintiff requests. However, one can hardly agree with this statement, because the specified element of the claim is the same as

⁹¹Dobrovinsky A.A. Ivanova S.A. The main problems of the claim form of protection of rights. M. 1979. 32-33 pp; Civil process: Textbook / Ed. M.K. Treushnikov. M. 1996. 143-146 pp

⁹²Gurvich M.A. According to the Soviet civil process Lectures. M. 1950. 69 p.

with the purpose of the procedural action, there is outside and can not be an integral part. In addition, neither the law nor jurisprudence do not secrete this element as an integral part. In fact, the action content limited to its two elements - the subject and the base. It is no coincidence in the civil procedural law is not mentioned anywhere on the content as the third element of the claim.

According to V.K. Puchinskogo suit contains three elements: the subject, the base and the way to protect the rights⁹³. G.L. Osokina, in turn, believes that the lawsuit is also composed of three elements, such as the subject, the bottom and sides⁹⁴. With so many conflicting views on the content of the claim O.V. Isaenkova proposes to abandon the concept of "Index Search" and highlight the features and attributes describing the claim. According to her with this change everything falls into place and the claim as a whole will have specific features on the basis of which each claim will be individualized, not folding with the meter and the kilogram, as is the case in the construction of an elementary action structure⁹⁵.

In the civil procedure law establishes that in the statement of claim shall be given to the demand of the plaintiff to the defendant and the circumstances on which the plaintiff bases his claim. Therefore the legislator identifies two action elements: the object and the base. However, in order to establish the identity claims in law enforcement is necessary to select a third element - side. It is only when the coincidence of the above three elements of a claim is considered to be identical. It is therefore reasonable to assume that an action has three elements: the subject, the bottom and sides.

The subject of the claim is specific substantive requirement that the applicant presents to the defendant and with respect to which the court must decide the case. However, there are different opinions on this issue in the procedural theory. Some authors advocate the position that the subject of the claim has legal disputes, the rights and obligations of the parties. Others believe that there is nothing more than the subject of the claim, as the substantive dispute. It is difficult to agree with the point of view according to which the claim is the subject of legal disputes because the law states that the petition should be specified requirement, rather than a legal relationship. Therefore, legal disputes can not be the subject of a claim. Nevertheless, from the relationship follows a specific legal requirement plaintiff to the defendant, which the plaintiff goes to court. It is known that a relationship of (housing, family, inheritance, la-

⁹³Puchinsky VK Search for items in the Soviet civil process // the Soviet state and the right. Number 3. 1979. 51-52 pp.

⁹⁴Osokina G.L. Lawsuit (theory and practice). M. 2000. 450 p.

⁹⁵Isaenkova O.V. Sued in civil proceedings. Saratov. 1997. 74 p.

bor) can flow not one but several requirements and each of them is able to be an independent subject of the claim. Thus, the subject of the claim is not disputed legal relationship, not a subjective right, not the rights and duties, violated the defendant and especially not the spores, and the demands of the plaintiff to the defendant to eliminate violations of law and its restoration.

In addition to the subject of the claim can distinguish the so-called material object of the dispute, which may be a concrete thing, an object, a sum of money to be transferred to the plaintiff, that is recoverable. The material object of the dispute is part of the subject of the claim, so the object is to change the subject to change. In particular, when it comes to increasing or decreasing the size of the claim, it changes the quantitative side of the material object of the dispute that determines change subject of the claim.

Cause of action constitute the legal facts on which the plaintiff bases a substantive requirement for the defendant. According to article 131, paragraph 5, of the Civil Procedure Code, in the statement of claim shall be required to indicate the facts on which the plaintiff bases his claim to the defendant.

Cause of action is that of which the claimant withdraws its claim to the defendant. Legal facts as the basis of the claim there are circumstances that create, modify, extinguishing the rights and obligations of the parties, or prevent the emergence of rights and obligations. Such legal facts can be: the conclusion of a contract, marriage, causing damage. In most cases, a base is difficult claim actual composition when it consists of several legal facts constituting the cause of action.

Code of Civil Procedure establishes the rule according to which the statement of claim must specify the factual basis of the claim. However, the law does not contain a mandatory requirement to refer to the statement of claim on the legal basis of the claim. However, in some regulations refers to the need to specify not only the actual cause of action, but also the legal basis of the claim. Thus, the need to refer to the legal basis of the claim stated in the Code of Arbitration Procedure, in the Rules of the International Commercial Arbitration Court, in Article 23 of the Rules of the Arbitration Court at the Chamber of Commerce in Russia, as well as the claim of the prosecutor.

14.3. Types of Claim

There is a substantive and procedural legal classification of claims. The overall goal of all procedural actions in civil proceedings is one, it is the protection of violated or disputed the subjective rights of the plaintiff.

Substantive nature claims is different and this diversity is reflected in the fact that the claims differ from each other by the nature of the disputed legal relationship and the requirement, to which the plaintiff refers to the defendant. Substantive claims classification allows to correctly determine the direction and extent of judicial protection, the competence of the authority to resolve disputes, subjective part of the disputed legal relations, as well as reveal the specifics of the procedural features of the dispute. For example, claims for compensation for damage caused by the injury and claims for reinstatement are by nature procedural claims to award, at the same time they are different in composition of participants of dispute, the peculiarities of legal evidence and composition of forensic evidence.

The doctrine of procedural actions can be divided into three types:

- a) to award;
- b) the recognition;
- c) the transformation.

Claims for the award are the most common in the judicial practice.

The claims of the plaintiff award, referring to the court for protection of his rights, asked the court to acknowledge his right to his controversial, and in addition, to award the defendant to perform certain actions or to refrain from acting. As a form of protection is determined by the nature of the violation of the rights of defense of which the applicant asks the claim for awarding takes place in the case when the nature of the disputed rights violations of its protection may only be carried out by awarding the defendant to perform certain actions or to refrain from acting. A characteristic feature of the award of the claims is that they like there is a connection of two requirements: on the recognition of the disputed right, followed by a requirement to award the defendant to fulfill obligations. Claims for the award referred to in science and executive suits. Claim for award can be directed to the fact that the defendant refrained from actions that violate the rights of the plaintiff. Such claims are called claims for banning.

Subject of a claim for the award of a substantive requirements of the plaintiff, the defendant directed the award of the commission of any act in favor of the plaintiff or to abstain from committing any act. cause of action to award constitute legal evidence of rights occurs (for example, the fact of the transaction, drafting and certification of wills), and evidence that this right has been violated (eg, default). Examples of claims for award can serve as an action for eviction from the premises, the claim for the transfer of the child to education.

Claims for recognition found in the jurisprudence of much less. Purpose of the recognition of claims is to eliminate the uncertainty and

divisiveness law. The defendant in the case of presentation to him of the claim for recognition or induce the commission of any action in favor of the plaintiff. Claims for recognition referred to in science claims as when resolving the task of the court is to determine the presence or absence of the disputed law.

Claims for recognition (ustanovitelye claims) have been known since Roman civil process and termed prejudicial claims.

According to V.M. Gordon claims for recognition is none other than the confirmation of judicial proceedings⁹⁶.

With the help of lawsuits on the recognition of the protection of rights is carried out by a court decision. As challenging right may create in the future threatening to infringe, claims for recognition, the charges for the prevention of threats to the right of the plaintiff, and have a preventive value. Claims for recognition can be a means of establishing not only the disputed law, but also controversial duties. In judicial practice, there are cases where a claim for recognition of the claim may be preceded by the award of. This happens in cases where both the claim requirements are mutually connected and the satisfaction of the claim for recognition entails and the satisfaction of the claim of the award.

Claims for recognition are divided into positive and negative. If the claim is directed to the recognition of the controversial law, there will be a claim for recognition is positive, for example, a claim for recognition of the right of authorship, property rights, etc. If the lawsuit is aimed at the lack of recognition of the disputed law, for example, an action for annulment, it will be a negative claim for recognition.

Under transducer claims refers to claims about the origin of a new financial relationship. The judgment in this case acts as a legal fact of substantive law, which changes the structure of the material relationship. Transforming claims stood M.A. Gurvich and K.I. Komissarov. However, not all authors identify this type of claims. In particular, A.A. Dobrovolsky, A.F. Kleinman in his writings challenged this view and do not emit the above claims.

In addition to recognizing the claims of the award and of the transformation in the legal literature points to: class actions, lawsuits on behalf of groups of persons, indirect (derivative) claims. However, the classification of claims is not widespread in the procedural doctrine.

Also of interest is the classification of actions proposed by Y.S. Gambarov, which singles out the following actions:

1. Property claim - such claims, which protects property rights.
2. Personal actions - to protect personal or contractual rights.

⁹⁶Gordon V. A. Lawsuit for recognition. Yaroslavl. 1906. 200 p.

3. Petition proceedings - about the law and its practice.
4. Possessory (owners') claims - claims of ownership and the right to appear⁹⁷.

14.4. Right of claim

The term "suit" comes from the word "seek", in other words, to seek protection in court. To such a right has been realized, you must have certain procedural prerequisites.

The doctrine of procedural views on the lawsuit as an institution under public law are divided into three schools. Some scientists have developed the so-called theory of a specific right of action, while others - the theory of abstract right to sue. Representatives of the third school the previous two directions combined. Representatives of the first school for the right to claim to understand an appeal to the state (represented by the Court) to meet in the established procedural form of material and legal interest, ie understand this right as a legal defense against the defendant. Therefore, from their point of view, the right to claim a right to a judgment favorable to the plaintiff. Representatives of the second school based on the fact that the right of action is a purely procedural rules aimed at obtaining a judgment irrespective of the content. Supporters of the third school by modifying the previous two school under the term "right of action" means the two are inextricably linked powers. According to them a right of action includes the right to sue and the right to his satisfaction. The most common point of view in the Russian doctrine is the proposition that the right to claim there are two powers: the procedural authority (right of action) and substantive competence (the right to the satisfaction of the claim). Both powers are closely linked. The right to sue is an independent subjective right of the plaintiff. If the plaintiff has a right of action and the right to the satisfaction of the claim, its violated or disputed right to receive adequate legal protection. According to them a right of action includes the right to sue and the right to his satisfaction. The most common point of view in the Russian doctrine is the proposition that the right to claim there are two powers: the procedural authority (right of action) and substantive competence (the right to the satisfaction of the claim). Both powers are closely linked. The right to sue is an independent subjective right of the plaintiff. If the plaintiff has a right of action and the right to the satisfaction of the claim, its violated or disputed right to receive adequate legal protection. According to them a right of action includes the right to sue and the right to his satisfaction. The most com-

⁹⁷Gambarov Y.S .Civil law. M. Printing V.F. Richter. 1895.

mon point of view in the Russian doctrine is the proposition that the right to claim there are two powers: the procedural authority (right of action) and substantive competence (the right to the satisfaction of the claim). Both powers are closely linked. The right to sue is an independent subjective right of the plaintiff. If the plaintiff has a right of action and the right to the satisfaction of the claim, its violated or disputed right to receive adequate legal protection. procedural authority (right of action) and substantive competence (the right to the satisfaction of the claim). Both powers are closely linked. The right to sue is an independent subjective right of the plaintiff. If the plaintiff has a right of action and the right to the satisfaction of the claim, its violated or disputed right to receive adequate legal protection. procedural authority (right of action) and substantive competence (the right to the satisfaction of the claim). Both powers are closely linked. The right to sue is an independent subjective right of the plaintiff. If the plaintiff has a right of action and the right to the satisfaction of the claim, its violated or disputed right to receive adequate legal protection.

The right of action is implemented the constitutional right to judicial protection. It should be noted that the right of action is not itself breached the subjective right of the plaintiff, but only the possibility of obtaining the protection of those rights in certain procedural order (in the form of the statute).

Leaving the scope of this paper right to the satisfaction of the claim will analyze the procedural law. The presence or absence of a right of action is checked when making a claim, the court examines the procedural prerequisites. If the claimant is not entitled to claim, the judge has the right to: refuse to accept the claim; return the statement of claim, leave the claim without movement.

The substantive side of the right of action, i.e., the right to the satisfaction of the claim is checked and found out during the trial. If the claimant's right justified both from a legal and a factual side, the plaintiff has the right to satisfy the claim. However, an interested person may be entitled to claim the right to be absent at the same time to meet the claim. For example, the expiration of the limitation period is grounds for denial of the lawsuit because the plaintiff has no right to the satisfaction of the claim, but the lawsuit was filed in the court in compliance with all procedural prerequisites.

According dogmatic views entitlement to sue, t. E. Authority to process excitation, related to the presence of preconditions right of action. These preconditions were first formulated by the German scientist Oskar Bülow and later development of the Russian Professor M.A. Gurvich. Investigating Roman process Oscar Bülow formulated conclu-

sion that the civil process has dualism and is divided into two stages. In the first step are checked procedural conditions are essential to start the process. In the second step examines material legal disputes⁹⁸. In the Roman civil process there was a special procedure for preparation of the case, in which only checked the prerequisites allowing to start the process. Subsequently, a similar procedure was retsiprovan right in countries such as France and Germany. In preparation for the process, the parties were entitled to that eksteption reference to the factual circumstances and the rule of law entailing refusal to examine the claim without examining the facts of the case.

Modern Russian doctrine distinguishes between general and specific procedural prerequisites suing. Among the general for all types of cases include the following prerequisites:

1. The plaintiff is entitled to civil procedural law, legal capacity and should have a legitimate status in the lawsuit. Civil standing in court - is the ability to have civil procedural rights and affection. It is closely linked to the civil capacity. Since all citizens of legal capacity from the moment of birth, from that moment, they may be parties in the case. Most often this assumption is important for organizations having legal personality. However, in cases stipulated by law may have legal standing organizations without legal entity status. With the definition of legal capacity in law enforcement generally no problem. Problems arise in determining the legitimacy of the person submitting the claim, i.e., Does that person procedural law. Since the law does not, and it is not possible to fix all instances of legitimation of the plaintiff's courts take into account the legal position of the Supreme Court.⁹⁹ Other legal position is formed in the judicial review approved by the Presidium of the Supreme Court of June 22, 2016, according to which the injured party may apply to the court for challenging a settlement agreement and the insurance compensation for the recovery of the amount of insurance compensation only if there are grounds for the recognition of the agreement invalid¹⁰⁰. Thus, we can conclude that if there are grounds specified in the lawsuit will not be the victim has the right to sue. Procedural prerequisite in this case would be the plaintiff legitimacy to civil disputes, and judging by the judicial practice is verified by the court at the stage of the statement of claim.

⁹⁸Oscar Bülow. The doctrine of procedural objections and procedural background / hole. Ed. D.H.Valeev. M. Statute. 2019. 33p.

⁹⁹ Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation on January 15, 2013 № 153 // ATP Garant

¹⁰⁰Review of practice of consideration by courts relating to compulsory insurance of civil liability of owners of vehicles // Resolution of the Presidium of the Supreme Court on 06/22/2016. Claim 18 // ATP Garant

2. The statement of claim must be considered and resolved in civil proceedings, that is, court of general jurisdiction shall be competent in the consideration of the dispute.

The correct definition of competence is essential to address the issue of making a claim. The competent court of law is a necessary procedural prerequisite for consideration of civil cases. The Court rejects the claim if the application is subject to review by the procedure of constitutional or criminal proceedings of the cases of administrative legal relationship or is not subject to review by the courts.

3. The following general procedural precondition is the absence of an enforceable court decision in a dispute between the same parties on the same subject and on the same grounds, or the absence of a decision to terminate the proceedings in connection with the adoption of the rejection of the plaintiff of a claim or assertion of the world agreeing sides. Before taking action on the failure of the plaintiff or the approval of the settlement agreement of the parties the court shall explain to them the legal consequences associated with the issue reject, including the inability of the secondary treatment in court in a dispute between the same parties on the same subject and on the same grounds. It follows from the provisions of the law, the consequences of non-action are explained only to the claimant, not the parties to the process. Therefore, the statutory consequences of termination of the proceedings due to the failure of the plaintiff the claim relate only to the plaintiff and not the defendant. Consequently, the effects of nolle prosequi does not deny the defendant the right to file a similar claim in court.

4. Other general conditions right of action contained in articles 131, 132, 134, 135 of the Civil Procedure Code.

Apart from the general prerequisites for the right to sue, there are special conditions for certain categories of cases.

For example, for some categories of civil cases of the mandatory pre-court procedure for resolving the dispute. This means that before the person concerned may apply to the court for protection of violated or disputed rights, it must use the form of pre-trial settlement. So mandatory extrajudicial procedure of dispute settlement provided for the protection of rights of consumers of financial services. For insurance contracts, including the contracts of personal insurance claim presentation to the insurer, and then appeal to the Financial Commissioner (Ombudsman) is required to appeal to the court. By Financial Ombudsman pending trial should be handled if the amount of compensation does not exceed 500 thousand Rubles.

Another example, in accordance with Article 17 of the Family Code, the consent of his wife during pregnancy and for a year after giv-

ing birth to divorce at the request of her husband, is a special prerequisite for this category of cases.

Special procedural precondition is also vice ekstseptsiya powers. This assumption concerns the possibility of bringing an action in court and participate in litigation representative. So in administrative matters in the process can only be attended by representatives of a higher legal education or a degree in jurisprudence. According to general civil cases in the regular courts of appeal and cassation instances also have the right to participate only person holding a law degree.

In November 2019 the law "On Advocacy" has been amended, according to which the lawyer cancellation meant a violation of the Code of Ethics and other nefarious reasons (non-performance or improper performance of their duties to the client, the disclosure of confidential information, the principal, the commission of an intentional crime) shall not be entitled to participate in further proceedings as a representative, a former lawyer and therefore is not entitled to a representative, regardless of long exercises to sign a statement of claim and other procedural documents. In this connection, the Federal Chamber of Lawyers in pursuance of the said provision must post on its website information for public use about lawyers deprived guilty status. In turn, the court accepting the statement of claim signed by any representative must ensure that a representative has not previously been a lawyer and his powers terminated guilty. Subsequently, at a preliminary stage of preparation to do the opposite party is entitled to raise an objection against the beginning of the process in view of the fact that the representative is deprived of the status of lawyer on grounds guilty.

In addition to the above-mentioned division of procedural preconditions to the general and specific, they can also be divided according to the procedural consequences of two types: the suspensory and preclusive. Among the prerequisites should be called suspensive conditions set out in Article 131-132 of the Civil Procedure Code, which entails the abandonment of the claim without movement, so they just postpone the trial. Preclusive conditions set out in Articles 134 and 135 of the Civil Procedure Code, under which the court has no right to bring a civil process, and either returns a claim or refuses to adopt it.

It should be noted that the institution of the procedural prerequisites for the right to bring an action has a long history. So even in the Roman Republic procedural prerequisites they have been utilized and glossators. In addition, Degestah Justinian revealed the possibility of procedural objections to the beginning of the process. In Roman law doctrine of ekspetsiyah it was fairly well developed and studied. Moreo-

ver in the earlier times of the formal proceedings ekstseptsii called praescriptio.

According to A. Bulow procedural prerequisites to disclose the contents of procedural objections to the beginning of the process and are nothing else than the negative expression, takes the form of ekstseptsy. Procedural Background right of action should be considered as requirements for the process and the appearance of these requirements form the actual composition Procedure relationship exclusively with the negative side, which characterizes both Oscar Bülow procedural ekstseptsiyu.

Procedural objections according O. Byulov may be entered:

- a) on the process entities;
- b) concerning the process object;
- c) regarding the submission of the claim and notice of him;
- d) on the process sequence¹⁰¹.

Procedural conditions on the admissibility of certain evidence of the claim to a particular defendant. In this connection, we can not agree with the views of P.N. Safonenkov, believes that the procedural prerequisites of the right to sue only fixed in Article 135 of the Civil Procedure Code¹⁰².

The legal consequences of non-compliance with the procedural prerequisites right of action consists in the fact that if their absence is found at the initiation of proceedings, the judge must either refuse to accept the application or leave it without any movement, either return the statement of claim without consideration. In case of lack of procedural preconditions to the stage of the proceedings at suschestvu- the proceedings should be discontinued, the court may also refer the case to the arbitration court or go to the consideration of the case according to the rules of administrative procedure.

According to I.V. Reshetnikovoyi as in the stage of making a claim to the court proceedings necessary to investigate the facts justifying the right of action, the following facts must be proved¹⁰³. However, we can not agree with this statement on the ground that the proof process must take place within the civil procedure and procedural prerequisites being a sufficient condition for the institution of civil proceedings investigated by the court prior to the initiation of the case. In the first stage, the court

¹⁰¹Oscar Bülow. The doctrine of procedural objections and procedural background / ed. DH Valeeva. M. Statute. 2019. 37 p

¹⁰²Safonenko P.N. The bar examination status: teaching practical manual. Part one. Business courtyard. 2017. Ar. 9.8.

¹⁰³Handbook of proof in civil proceedings / ed. IV Reshetnikov. Norma. Infra-M. 2017 // ATP Garant

must examine the procedural prerequisites that the plaintiff does not prove, as indicated in the statement of claim and the annexes to the statement of claim. Otherwise we will have to deal with a significant infringement of the right to judicial protection, as by fingirovaniya court will create obstacles in making a claim.

Background right of action must be reasonable and sufficient to ensure the person whose right is violated opportunity to resort to judicial protection. The Constitutional Court in the Decision number 20-P of 11 July 2017. found that "an appeal to the different methods of judicial protection may not be conditional on the person concerned is the laying of unreasonable and excessive charges that its weight could be made inapplicable procedural results and thereby devalue the possibility of access to justice."

14.5 Procedural protection of the defendant against the claim

The law provides equally equal opportunities to protect their rights both sides of the process. According to Article 39 of the Civil Procedure Code, the defendant may admit the claim. However, in most cases, the defendant does not accept the claim and defend against claims brought against him by all legal means, which include: objections to the claim, counter-claim.

Objections against the claim has primary means of protection against the claim transponder. Objections can be both substantive and procedural. Substantive objections directed against the defendant's claims. Procedural and legal objections are intended to refute the legitimacy of the process, its origin, to continue. It may be objected, aimed at the suspension, the termination process. The main thing is that they are always directed against the process and based on the law of civil procedure rules. Substantive objections of the defendant directed to refute the claims of the plaintiff, the defendant objected to the factual and legal side of the claim.

Counterclaim. According to Russian law, the defendant is entitled to a decision of the court to the plaintiff to present a counterclaim for joint consideration with the initial claim. Filing a counterclaim made by the general rules of filing a claim. The counterclaim is the substantive requirements of the defendant to the plaintiff, claimed to be considered jointly with the initial claim. The respondent may make a counterclaim to the point until the court retired to the deliberation room. To submit a counter-claim the law establishes a special rule of jurisdiction.

In accordance with the law of the counterclaim, regardless of its jurisdiction is taken for joint consideration in the court at the place of the

consideration of the initial claim. The answer to the stated counter-claim shall be given in the judgment at the same time with the answer of the claim of the plaintiff originally claimed. Doctrine developed three conditions for the adoption of a counter-claim to the production of ships, together with the original claims against the requirement:

- a) counterclaim is directed to offset the initial requirements;
- b) satisfaction of the counterclaim excludes all or part satisfaction of the initial claim;
- c) between the counter and the initial claims are interrelated, and their joint consideration will lead to more rapid and proper resolution of disputes.

For making a counter-claim only one of the conditions. As a rule, a counterclaim for acceptance to production for joint consideration with the original, if it is directed to offset or a deviation of the initial requirements. The requirement for the competition can be made in the form of a counter-claim, in the same time can be claimed by the defendant in the form of objections to the satisfaction of the initial claim. In this case, it is possible, if the counterclaim does not exceed in size the original request.

Plenum of the Supreme Court number 13 of June 26, 2008 "On application of the norms of the CPC RF in the consideration and resolution of cases in the court of first instance," he pointed out that in making the counterclaim should discuss the question of the postponement of the trial to ensure that the person can prepare for a counter-claim. The plenum also points out that the definition of the rejection of the counterclaim is based on the absence of the conditions stipulated in Article 138 of Civil Procedure Code, can not be appealed, because it does not prevent the realization of the right to appeal for judicial protection by bringing an independent action and excitement on it a separate production.

14.6. Disposal of remedies

Parties belong important dispositive rights, by managing which they can influence the course of the process, change its movement and direction. The parties have in their arsenal the following protection rights: the plaintiff may change the base or the subject of the claim, increase or decrease the size of the claim or reject their claim; the defendant has the right to recognize the claim; the parties may complete the work by the settlement; the plaintiff has the right to join in a lawsuit several demands, the parties may use a mediator services, the parties may refer the matter to arbitration.

The plaintiff may abandon the claim, the parties can reach an amicable agreement, to use the services of a mediator, or to conclude an agreement to refer a dispute to arbitration at the stage of preparing the

case for trial. The claimant to waive the claim, acknowledgment of claim by the respondent or the terms of the agreement between the parties entered into the record of the hearing and signed by the parties. Before taking action on the failure of the plaintiff or the approval of the settlement agreement by the parties or the court shall explain to the claimant side effects of the respective proceedings. In the event of failure by a court rejection of claimant from claim, acknowledgment of claim by respondent or non-approval of the settlement agreement of the parties the court shall render a determination and shall continue the examination of the merits.

Subject matter varies when the plaintiff instead of the original claims new substantive requirements to the defendant. Right to change the subject of the claim belongs to the plaintiff and not the court. The plaintiff is also entitled to change the cause of action. At the same time, simultaneously the object change and cause of action entails a change in the claim as a whole.

The plaintiff has the right to join in a lawsuit several requirements related to each other. Such compounds are often appropriate and useful to the case, because it serves the interests of a more complete and rapid examination of the case. Most of these requirements are derived from the same contentious relationship.

Not ruled out the possibility of considering in the same process several claims, although not resulting from a physical relationship, but the feasibility of their joint consideration is dictated by the specific circumstances of the case. For example, it can be connected in a lawsuit several requirements: for annulment, and to invalidate the certificate of inheritance. Attention is drawn to the fact that in one statement of claim can be combined requirements as property and non-property nature.

The judge, having found that in the production of this court there are several homogeneous cases involving the same parties or the number of cases on the claims of the plaintiff to the various defendants, or various claimants to one respondent, considering the opinion of the parties shall be entitled to bring these things into one production for joint consideration and resolution if it considers that such a merger would contribute to the proper and timely consideration and resolution of the case.

In some cases, the court is not only entitled, but also obliged by law to consider a few of the claim at the same time, despite the fact that some of them by the claimant or represent. Thus, by virtue of Article 24 of the Family Code in case of divorce, in case if there is no agreement between the parties, the court must determine with which parent will live minor children after divorce, with one of the parents and how much child

support collected on their children ; at the request of the spouse entitled to maintenance from the other spouse, to determine the size of the content.

The judge receiving a claim, shall be entitled to designate one or more of the joint plaintiff claims in separate proceedings, if it considers that separate consideration of them more appropriate.

nolle nolle means only on the substantive requirements for the defendant. In practice, there are cases of abandonment of the claim due to the fact that the defendant voluntarily fulfilled his obligation.

The recognition of the claim by the defendant is expressed by the defendant in the court agreed with the plaintiff's claim and as enshrined in the protocol of the court session. The Court does not accept the plaintiff's abandonment of the claim, acknowledgment of claim by the respondent and does not approve the settlement agreement of the parties if it is against the law or violates the rights and legitimate interests of others.

Settlement agreement takes an important place among the administrative actions of the parties. Court approval of a settlement agreement entails important legal consequences, namely the termination of the proceedings and depriving the parties the possibility of a second treatment with the identity claim. The essence of the global agreement between the parties lies in the fact that as a result of the agreement reached on certain conditions (usually by means of mutual concessions) allowed their dispute. In some cases, the settlement agreement in general can not take place. So, it is impossible to reach an amicable agreement on matters of paternity, to change the amount of alimony payments below the limits set by law.

Court settlement agreement may be concluded at any stage of civil process. Already at the stage of preparing the case for trial the judge shall take measures to a settlement agreement. Subjects of a settlement agreement may be parties: the plaintiff and the defendant. Perhaps the conclusion of the agreement and with the participation of a third party, independent claims to the subject of the dispute.

As stated in the Resolution of the Plenum of the Supreme Court number 50 of November 17, 2015, a settlement agreement, the agreement on reconciliation, not executed voluntarily, subject to enforcement on the basis of a writ of execution issued by a court at the request of the parties of this agreement (part 2 of article 142 of the Court Procedure Code, according to law analogy courts of law in a civil proceeding to part 4 of article 1 GIC RF portion 137 CAS article 9 RF).

14.7. Security for a claim

Institute to ensure the claim is a set of rules established by law, which can be applied by the court on its own initiative or at the request of the persons involved in the case, if there is an assumption that the performance rendered in the case of the solution will subsequently difficult or impossible.

The court or the judge on the application or the application of the persons participating in the case or on its own initiative, may take measures to secure the claim. A court or a judge may be allowed several types of support the claim (Article 140 CCP RF). Ensuring the claim is allowed at any stage of the proceedings, if failure to take action could make it difficult or impossible to execute the court decision. The value of this institution is that it protects the interests of the plaintiff in the case, when the defendant will act in bad faith or if the failure to do may result in the impossibility of execution of the court ruling.

Russian civil procedural law does not provide for securing the future of the claim, while in European countries such a possibility exists. While action is brought, under Russian law, it can not be guaranteed.

Application of measures to ensure the claim is only possible after the initiation of proceedings and is allowed at any stage of the proceedings. Ensuring action can take place on both the original and counter-claims. Ensuring action possible in the proceedings in the court of both the first and appellate, cassation and supervisory instance, if such a measure is taken by the court of first instance.

Ability to provide civil action is also provided in criminal proceedings, the characteristic feature of which is the use of investigation and search operations necessary to detect the hidden property which can be drawn to the recovery in favor of the applicant.

The possibility of securing a claim in civil proceedings is also possible in cases dealt with in the arbitration procedure (arbitration). In accordance with Article 139 of the Civil Procedure Code, the court of general jurisdiction based on the location of the arbitral tribunal considers the statements of the parties of arbitration proceedings for interim relief.

Solving the issue of interim relief, the court must take into account that this fact can cause harm to the interests of the defendant and other persons. Therefore, the claim security should always be decided taking into account the protection of the rights and interests of other persons involved in the case and to ensure that action taken must be proportionate to the plaintiffs demand.

Article 140 of the Code of Civil Procedure provides for measures to ensure the claim, but the list is open. Where necessary, the court may take other measures to ensure the claim, which meet the objectives set

out in Article 139 of the Civil Procedure Code. The Court, where necessary, may be allowed several measures to secure the claim.

The most common measure to ensure the claim is a seizure of the defendant's property. However, in practice it is often the problem of finding the defendant's property. Unfortunately the Russian legislation in this upsets the balance of the interests of the plaintiff and the defendant, giving the defendant an opportunity to hide their assets. In this connection it is interesting to the regulation of security measures in the English court.

In English, the court has the right to seize the defendant's property, but at the same time the court orders the defendant to provide information on his property, and breach of duty of disclosure is considered as contempt of court and is punishable by a fine (amount at the discretion of the court without ANY KIND restrictions), imprisonment or confiscation of property. For example, in the case of Lexi Holdings plc v. Shaid Luqman, a person was deprived of liberty for a term of 18 months for failing to provide her passport and other documents, non-conservation of evidence, failure to disclose information about the assets and failure to provide information on the whereabouts of funds and assets, as well as transactions with property and assets that are covered by the order the freezing of assets.

Russian of the Civil Procedure Code provides for the possibility of substituting one kind of software to look for another. Thus, according to a person involved in the case, may be replaced with some measures other measures to ensure the claim in such manner as provided by Article 141 of the Civil Procedure Code.

When securing the claim for recovery of a sum of money in return for the defendant by the court adopted measures to ensure the claim is entitled to submit to the court by the plaintiff the sum claimed. The question of replacing one kind of software to look for other permitted in court. Persons participating in case shall be notified of the time and place of the hearing, but their absence does not serve as an obstacle to the consideration of substitution of the type of collateral.

Consideration of the application to satisfy the plaintiff's claim for interim relief has its own characteristics. An application for interim measures may be contained in the statement of claim, and in a separate statement. As a general rule, an application for interim measures is considered the date of its receipt by the court without notice to the defendant and other persons involved in the case. The adoption of measures to secure a claim the judge makes the determination. Solving the issue of interim relief, the court must determine how justified the claims of the plaintiff as well as whether the claimant concerns deserve attention about possible fraud on the part of the defendant or other persons to

counter the future execution of the judgment. Determining the court for interim relief is to be executed immediately following the procedure established for the execution of judgments.

The law also provides for the abolition of providing the same court, which issued a decision on the provision. According to the provisions of Article 144 of the Civil Procedure Code, the maintenance of the claim may be revoked by the same court at the request of the defendant, or the initiative of the judge or court. Procedure for resolving the issue of the abolition of security for the claim provided by law. Resolution of the issue on cancellation of securing the claim takes place in court. Persons participating in case shall be notified of the time and place of the hearing, but their absence does not preclude consideration of the abolition of security for the claim.

Although the reason for providing cancellation action is not specified in the law, it may be the case when the conditions have changed or disappeared, giving rise to the claim. Cancel to ensure the claim can occur at the initiative of both the court and the parties involved in the case (plaintiff, defendant, third parties, the public prosecutor).

If the court refuses the claim, the decision to dismiss the claim does not involve mechanically cancel the claim. Suspension of the proceedings does not entail compulsory abolition of security for the claim. However, since the suspension of the proceedings is sometimes designed for a fairly long period, the court may, in these cases, specifically to consider whether there is a need to maintain the measures taken in connection with the provision of the claim.

If the claim made by his security measures remain in force until enforcement of the judgment. On the abolition of measures to ensure the claim, the court shall promptly report to the relevant authorities or local governments, registering property, or the rights to it, their limitations (encumbrance), transfer rights, termination.

Since the ruling on securing an action shall be executed immediately before their entry into force, the supply of private complaint does not suspend the execution definition for interim relief. Submission of private complaint on the definition of the replacement of one type of collateral or other action on the abolition of software suspend the execution of the challenged determination. Pending resolution of the appeal on the definition of the cancellation or replacement of one type of software to look for other continues to operate to ensure a measure previously adopted by the court. In the event of a failure in the lawsuit taken interim measures will remain until the entry into force of the court. However, the judge at the same time with the decision of the court or after its cancellation may issue a ruling of the court on the abolition of measures to secure the claim.

Institute to ensure the claim is equally protects the interests of both the plaintiff and the defendant so the court, allowing maintenance of the claim, the plaintiff may require the provision of security for possible damages of the defendant. The defendant, after the entry into force of the court, which denied the claim, the plaintiff is entitled to submit a claim for damages incurred by the measures to ensure the claim, made at the request of the plaintiff. However, the defendant can not claim damages when the claim provision was made on the initiative of the court, the statement of the prosecutor, bodies of state administration.

CHARTER 15

Conciliation procedures in the Russian civil process

15.1 General provisions on conciliation procedures in Russia

In Russia, the number of cases before the courts of general jurisdiction is increasing annually by about 1 million. In 2019 courts examined approximately 19 million civil cases. This has led to a significant increase in the load on judges, which certainly affects the quality and objectivity of judgment.

Since 2017 Russia held judicial reform, under which the legislator in addition to incorporation in a civil action such types of proceedings as a simplified manufacturing of class action, writ proceedings (intensive way of reducing the burden), standard fixed a new, previously unknown Institute of Procedural Law - Institute of conciliation procedures (extensive road load reduction).

However, the actions of the participants of the process aimed at reconciliation between disputing parties have a long history in Russia. Another Pskov Judicial Charter (1467) provides for the termination of litigation through the conclusion of a conciliation agreement between the parties. SI Gerasimova indicates that the Law in 1497 also envisaged the possibility of reconciliation between the parties, the parties have reached the judicial duel could at any moment to come to terms¹⁰⁴. Since the conciliation of Sudebnik subject to court approval, such a reconciliation was procedural in nature. In the later period, Catholic Code of 1649 also contained a provision to the effect that the parties can resolve the dispute through a settlement agreement. On this basis, the proceedings subject to termination and could not be re-instituted. These features of the settlement agreement are fixed at the moment and in the current Civil Procedure Code of the Russian Federation.

Developing the concept of dispute settlement without a judgment on the basis of the agreement the Charter of civil proceedings in 1864 also included provisions on the reconciliation of the parties. According to the Charter of the court was required to invite the parties to end the dispute reconciliation, but it was soft law the parties, and not an obligation.

¹⁰⁴Gerasimova S.I. Formation of conciliation procedures in Russia: historical and legal aspect // Legislation. 2018. N. 12. 75 p.

Unfortunately the first Code of Civil Procedure of the RSFSR in 1922 did not contain provisions on dispute settlement on the basis of goodwill. But in the Civil Procedure Code of the RSFSR in 1964 indicated the possibility of an amicable settlement in this case, the proceedings had ceased. Thus, the historical roots of the conciliation procedures of the Institute has its origins, about the middle of the 15th century.

In the Soviet period, the possibility of conciliation (settlement agreement) regulated by the civil procedural legislation of the RSFSR. However, in the pre-revolutionary period, and after it consolidated the Russian procedural legislation only one conciliation - the settlement agreement. It seems that, in principle, it was justified and only because the number of cases considered by the judges was not great. After termination of the Soviet Union, the former Soviet Union, including in Russia began to develop private property and the market economy, which is determined by a sharp rise in discussed in court disputes. Therefore, in 2010 the legislator establishes another conciliation - mediation. Settlement agreement is different from a mediation agreement in that the latter is using an intermediary - mediator. Thus, the conciliatory attitude in civil procedural relations are complicated by additional subject - mediator.

Until 2019 in the Russian doctrine of procedural discourse took place on one conceptual issue, namely, how to reconcile civil litigation and conciliation¹⁰⁵. There are two opinions. On the one hand conciliation considered as part of civil proceedings, on the other hand claimed that they are out of the process. The 2019 of Civil Procedure Code has been supplemented by a new Russian head 14.1 with the result that the above issue was seemingly resolved. However, the debate continued on whether to consider the conciliation procedure in civil proceedings as a separate stage of the process or they are conceptually fit into an integral part of each stage of the process.

It seems that if the conciliation appointed during a civil process, they can be used is available at any stage of the process, and even at the stage of enforcement of the judgment. In this case, the actions of the parties, to settle the dispute proceedings are committed within each stage and in that case they do not form separate process step. However, some conciliation, namely: negotiate and notary mediation are non-judicial procedures are performed respectively and tend to excitation trial.

Certainly most effective conciliation will be at the stage of preparing the case for trial, as they contribute to reducing the burden on the court, the procedural time-saving, cost on litigation costs. Their applica-

¹⁰⁵Zdrok O.N. The place of conciliation procedures in the civil process // the Legislation. 2019. N. 5. 77 p.

tion in this case to make more efficient the process of restoration of the violated right or legitimate interest.

E.A. Nosyreva rightly notes that due to the complex nature of the problems to be solved at the stage of preparation of the case, it includes both actions to the organization of the future of the process and actions, aimed to reconciliation of the parties, not to bring the case to trial¹⁰⁶. This confirms the soundness of the thesis that conciliation is not an independent stage of the process.

In connection with what is not certain the opinion of some authors in the doctrine of the rights of the Republic of Belarus. In particular I.A. Bel'skaya believes that conciliation meets all the characteristic features of independent business process step and includes substeps: preparatory (assignment reconciler); basic (mediation); final (approval of a conciliation agreement)¹⁰⁷. However, with all due respect to the author is unlikely with this opinion can agree. Each step in the process has a well-defined place and is located within a process is not randomly but in a strict sequence. Each stage, subject to the laws of logic, it should be one after the other according to certain rules established by the civil procedural form. Conciliation may take place at any stage of the process, their place in the process of the law is not precisely defined. Therefore, we believe, the quintessential in this case is the delineation of concepts such as step and the process. Actually no accident and the legislator qualifies conciliatory action as a process, not a stage.

Chapter 14.1 of the Civil Procedure Code of the Russian Federation referred to as the "conciliation procedure. Settlement agreement". Thus, in a literal interpretation of the title of the chapter develops the idea that the settlement agreement does not apply to the conciliation procedure. However, Article 153.3 of the Civil Procedure Code, in addition to: negotiation, participation intermediary (mediation) and judicial reconciliation postulates that can be used and other conciliation procedures, not inconsistent with law. In this connection, it can be concluded that the settlement agreement is also one of conciliation procedures.

Diversification of conciliation procedures due to recent changes in procedural law in August 2019. Currently, as the conciliation procedures in the civil process, Russia should consider such procedures as a set-

¹⁰⁶Nosyreva E.I. The stage of preparation of a case for trial: a comprehensive and comparative analysis of the norms of CPC RF and APC RF // Contemporary doctrine of civil arbitration proceedings and enforcement proceedings: theory and practice. Collection of Scientific articles. Krasnodar. 2004. 99 p.

¹⁰⁷Belskaya IA Mediation (reconciliation) in the economic process: current problems and trends: autoref. dis. ... Cand. the faculty of law. sciences'. Minsk. 2012.

tlement agreement, mediation, negotiation, conciliation court and other procedures that are not prohibited by law.

Y.F. Bespalov to the conciliation procedure in civil proceedings considers the direction of one party to the other proposal on pre-trial settlement of dispute¹⁰⁸. Apparently the author has in mind, in this case, the Complaint settlement. However, the claim procedure is not part of the civil process as claim procedure of dispute resolution have the pre-trial procedure whereby the process, he has only indirect value, compliance with which is necessary only for filing an application to the court. And in this sense must be separated by a pre-trial and judicial conciliation.

In foreign doctrine justified and applied in practice quite extensive diversification of the conciliation procedures, such as arbitration, negotiation, mediation, conciliation procedure, the mini-trial examination to establish the facts of the case, the Ombudsman participated in a dispute, and many others.

The most common economic disputes reconciliation processes are negotiation, mediation and arbitration. And this is understandable, since to resolve the conflict peacefully contractors try to keep existing business relationships. In foreign jurisdictions permit legal conflict for a long time has become a practice of business turnover. And the foreign practice conciliation contribute not only to preserve, but also to the development of economic relations, free courts from cases that can be resolved voluntarily. Unfortunately, in the Russian Federation conciliation procedures have not yet been as widespread and are used very rarely.

In accordance with the procedural legislation of the Russian the court is obliged to take measures to reconcile the parties and otherwise assist them in settling the dispute. Contributing to the settlement of a dispute the court is guided not only the interests of the parties, but also the judicial tasks. However, this duty of the court is more implicit and is a fiction. But the parties do not have obligations and the most important incentives to resolve the conflict out of court.

Reconciliation of the parties should be based on principles such as voluntariness, equality, cooperation and confidentiality.

The parties have the discretionary right to choose one or another conciliation procedure, as well as determine the conditions of its implementation. If the conciliatory attitude should attend the mediator, the parties voluntarily choose the candidacy of such an intermediary (mediator, a court conciliator). One side of his will can not choose such an interme-

¹⁰⁸Bespalov Y. F., Hardzeyuk D.V., Kasatkin A.Y. Conciliation in civil, criminal and administrative court procedure of the Russian Federation:.. scientific-practical manual. Avenue. 2018. 128 p.

diary, so there should be an agreement on the matter between the parties.

Conciliation (if it is viewed as a set of actions, and not as a result) can be carried out at the request of both sides, and at the initiative of the court, but the actual reconciliation is not the responsibility of the parties, as it operates on volunteerism. The initiative of the court to conduct a conciliation procedure may be contained in the determination of eligibility for production, on the preparation of the case for trial or otherwise determining the later stages. The court may also make an offer to the parties orally, and this proposal is entered into the trial record.

In the event of any court conciliation the court is obliged to postpone the hearing for a period not exceeding two months. At the same time, the time to which the case was postponed is not included in the period of the proceedings, however, it is taken into account in determining the reasonable time of proceedings.

In the definition of the conduct of the conciliation procedure, the court must provide the following information: names of the parties, the subject of the dispute and the terms of reference for which the conciliation settlement, the terms of the conciliation procedure can be used. The definition may contain other information necessary to ensure the proper conduct of the conciliation procedure.

During the use of the conciliation procedure, the parties should aim to achieve positive results in the resolution of the conflict in whole or in part. Thus, reconciliation is possible and on the part of the disputed claims. If the parties fail to reach reconciliation, refused to conduct conciliation procedures or their implementation has expired, the court resumes trial in the manner prescribed by part three of Article 169 of the Civil Procedure Code.

At the cognitive level, it is clear that all conciliation procedures aimed at achieving a positive result. This raises the question of practical importance that should be considered a positive result? A positive result of the reconciliation of the persons participating in the case, should be considered: 1) a settlement agreement in respect of all or part of the claims submitted; 2) partial or complete failure of the claim; 3) partial or complete recognition of the claim; 4) full or partial waiver of appeal, cassation, supervisory review; 5) recognition of the circumstances on which the other party is basing its claims or objections.

The recognition of the circumstances, acceptance of the claim, the rejection of the claim in whole or in part accepted by the court in the manner prescribed by the procedural legislation.

The recognition of the circumstances on which the other party is basing its claims or objections can be made not only in the form of bilat-

eral agreements, but also in the form of a unilateral declaration of agreement with the position of the other side.

The 2019 of the Civil Procedure Code was amended important provisions guaranteeing their independence parties of conciliation procedures. In particular, the law has been fixed, do not be questioned as witnesses representatives of those involved in the conduct of the conciliation procedure, the mediators, including mediators, conciliators court, the circumstances of which they have become known in connection with participation in the conciliation procedure.

15.2 Types of conciliation procedures

Settlement agreement.

At the heart of the settlement agreement is usually a contract novation of the debt. However, the settlement agreement as opposed to a novation of the debt contract have conciliation procedure, performed under the supervision of the court, in a strict procedural form, the result of which is to determine the court's approval of the settlement agreement. Settlement agreement may be entered into in respect of all claims, and then the proceedings should be discontinued. If a settlement agreement is in respect of the claims in this case the proceedings be terminated only in the part of the claim, and in the rest of the proceeds.

Settlement agreement may be concluded at any stage of the civil process, as well as the performance of the judicial act. Third parties making independent claims regarding the subject of the dispute, shall be entitled to participate in the conclusion of a settlement agreement as a party. Third parties not making independent claims regarding the subject of the dispute, shall be entitled to act as participants of a settlement agreement in two cases:

- if they acquire rights;
- on them shall be responsible under the terms of the settlement agreement.

Settlement agreement can not violate the rights and lawful interests of other persons or contrary to law. Therefore, the court, claiming the settlement agreement should check these circumstances.

Since the settlement agreement approved by the court, the procedure of its approval puts on some procedural form set out in article 153.9 CPC RF. The amicable agreement shall be in writing and signed by the parties or their representatives if they have the authority to enter into the settlement agreement expressly provided for in the power of attorney or other document confirming the authority of the representative.

The amicable agreement must necessarily include the conditions agreed between the parties with respect to the size and period of per-

formance of obligations to one another or one party over another. In the settlement agreement the parties may stipulate conditions for deferment or installment of execution of obligations by the defendant, on the assignment of the claim, the full or partial remission of a recognition of the debt, on the application of sanctions for non-performance or improper performance of obligations and other conditions if they do not conflict with federal law.

Settlement agreement is presented to the court regarding the claim. However, it is included in the global agreement conditions that are associated with the request, but that has not been the subject of litigation.

Settlement agreement may be concluded as on the distribution of costs and expenses. If the settlement agreement is not a condition for the allocation of legal costs, the court resolves the issue when approving the settlement agreement in the general procedure established by the procedural legislation.

Settlement agreement is drawn up and signed in a number of copies greater than one instance of the number of persons who have entered into a settlement agreement, since this instance court attached to the materials of the civil case.

Settlement agreement approved by the court in charge of the case. If a settlement agreement concluded in the process of enforcement of the judgment, it is submitted for approval by the court that has considered the matter as a court of first instance. It seems that in order to reduce the load on the court should be given the right to approve the settlement agreement at the stage of enforcement of the bailiff.

For the purpose of approval of the settlement agreement, the court shall notify the parties involved in the case about the time and place of the hearing. In case of failure to appear at the hearing of persons who have signed the settlement agreement and properly notified about the time and place of the hearing, the approval of the settlement agreement is delayed, if such persons are not received applications for consideration of this issue in their absence.

By results of consideration of the approval of a settlement agreement, the court shall issue a ruling. The Court does not approve the settlement agreement in the two cases, if it is:

- contrary to the law;
- violates the rights and legitimate interests of others.

Procedural form required by the court, when considering the approval of a settlement agreement to investigate the facts of the case, and provided the persons participating in the arguments and evidence. However, the court should evaluate them only to the extent that it is neces-

sary to verify compliance with the settlement agreement the law and non-infringement of the rights and legitimate interests of others.

In approving the first instance court of the settlement agreement is subject to return, not all paid by the state. duties, but only a 70 percent. If a settlement agreement approved at the appeal stage that will be refunded only 50 per cent of the paid state. duties. Claiming an amicable agreement on the stages of appeal and supervisory court returns only 30 per cent of the paid state. duties.

It is important to note that when considering the approval of a settlement agreement in the case of appeal of the judicial act by the courts subsequent instances validity of the relevant court decision is not checked. Since the conclusion of the Agreement have soft law of the parties and third parties, the court may not approve the settlement agreement in part, modify or exclude any of the terms agreed between the parties. However, when considering the approval of a settlement agreement, the court has the right to invite the parties to exclude the settlement agreement certain conditions, contrary to the law or violating the rights and legitimate interests of others.

In the definition of the Court approving the settlement agreement include the following information: 1) approval of the settlement agreement or refusal of approval of the settlement agreement; 2) the terms of the agreement; 3) on the return of the plaintiff paid their public duties; 4) about the distribution of costs and expenses. In the definition of the approval of a settlement agreement concluded in the process of enforcement of the judgment it should also be pointed out that the judicial act is not enforceable.

Defining the approval of the settlement agreement is subject to immediate execution, as is effective immediately for the imposition, so these definitions may only be appealed to the appeal court within one month from the date of such determination. In turn, the determination to refuse the approval of a settlement agreement may be challenged on appeal. Approval of the settlement agreement on the whole subject of the dispute to the Court of First Instance shall entail the termination of the proceedings completely. If the parties have approved the settlement agreement only on the part of the claim proceedings be terminated in part.

It should be borne in mind that the approval of a settlement agreement in the appellate courts, appellate and supervisory authorities on the subject of the stated requirements shall entail cancellation of previously issued judicial acts and the termination of the proceedings.

Approval of the settlement agreement entered into when considering an application for the allocation of legal costs incurred in the first courts of appeal, appellate or supervisory instances, entail termination of the application for the allocation of legal costs.

Since the settlement agreement has the conciliation and executed persons, he concluded, it must be voluntary in the manner and within the timeframe stipulated by the settlement agreement. However, if the international agreement does not comply voluntarily, it shall be enforceable under the rules of Section VII of the Civil Procedure Code. In this case, on the basis of a court ruling approving a settlement agreement and at the request of the claimant last issued a writ of execution to enforce.

Mediation.

After an appeal to the court, on the basis of discretionary principle, the parties are entitled to use at its discretion, any conciliation.

Mediation as a way out of court settlement of the dispute (conciliation) appeared in Russia in 2010 in connection with the adoption of the law "On alternative dispute settlement procedure with the participation of a mediator." Since the right to have a soft law mediation the parties in the presence of such a request from the parties the court shall give the parties an opportunity to exercise their procedural rights, and therefore the court is obliged to postpone the trial.

In order to ensure that the mediator of its functions must be ensured independence and thus it can not be questioned as a witness in the case of the circumstances that have become known to him in carrying out his responsibilities.

Based on the interpretation of existing legislation should distinguish between two types of mediation: pre-judicial and judicial.

Pretrial mediativnoe agreement concluded before filing an application to the court and shall be certified by a notary. A mediation agreement in this case is certified with the mandatory participation of a mediator (mediators), a neurotransmitter - a representative of the organization performing activities in providing mediation. If the agreement of the parties to the mediation procedure provided for the participation of several mediators, mediativnoe agreement to certify with the obligatory participation of at least one mediator, carrying out activity on providing mediation. A mediation agreement reached by the parties as a result of mediation carried out without submission of the dispute to the court or arbitral tribunal, in the case of notarial certification is valid execution document and enforceable.

Trial mediation unlike-court mediation conducted within arisen trial by judicial determination. Mediators to carry out activities on a professional basis may judge those who are in retirement. Lists of judges who are in retirement and wishing to carry out activities of mediators on a professional basis, conducted by the Judicial Council of the Russian Federation. It should be noted that this type of mediation is common in

countries such as England, USA, Japan, Croatia and others. In these countries, the court has special discretionary powers, it establishes a judicial procedure and sends the case to mediation, including and without the consent of the parties. For example, in Japan, the Supreme Court of Japan during the mediation proceedings shall evaluate and forecast the results of its authorization. For this purpose, it creates a mediation structure consisting of a judge and two mediators, competent in matters of law, building, business, medicine, etc. The Court invites mediators taking into account their professional competence. As a result of such a meeting is conducted a mediation protocol.

In Greece since 2012 when the courts are special judge-mediators, to which the parties, with their agreement, sent by the court to settle the dispute. In this case, consideration of the case may be postponed for 3 - 6 months. A mediation agreement between the parties is made in writing and sent to the judge of first instance, which gives it a force for execution

As indicated by I.V. Reshetnikov, "In California (US), the judge may hold talks with the parties to a peaceful resolution of the dispute. If the parties do not come to reconciliation, in accordance with their opinions the same judge or another to resolve their disputes ¹⁰⁹».

Currently, in the Republic of Belarus also actively used mediative dispute settlement procedure. The Belarusian courts assistants to judges and other court staff on the basis of the court perform the functions of mediators in cases before the courts. At the stage of case initiation and preparation for the trial of his agreement of the parties to mediation is not required. In the later stages of the mediation is possible only with the consent of the parties. As indicated in the literature, as a result of 80 - 85% of the disputes submitted mediators ended peace settlement. Currently in the Republic of Belarus to the work involved as mediators of the Center for Conflict Resolution at the Belarusian Republican Union of Lawyers.

The doctrine identifies several types of mediation.

First and foremost it is worth noting the mediation that are based on the Harvard method and the principle of "no losers" (win-win). Harvard Law School has changed the conventional approach to negotiating. Normal practice is that the negotiations must be carried out strictly and under such negotiations won only one side, and the other loses. According to the Harvard method of mediation the mediator at the first stage identifies the interests of the parties to the dispute and only then brings them to resolve disputes through a joint active discussion. The aim of the

¹⁰⁹Reshetnikova I.V. Cultivating the idea of reconciliation // Russian judge. 2010. N. 4. 31 p.

Harvard Mediation is - to activate the participants in the process to achieve a result which benefits both parties, not just one. Essentially Harvard approach to mediation turned the tough negotiations in the partnership in which each party wins.

Russian mediation model has similarities with the Harvard model, but a mediator role in our country more widely. The Russian mediator not only brings the parties to an agreement to settle the dispute, but also is a mediativnoe agreement. Thus in our country picks combine the two functions: on the one hand, having the necessary skills, the mediator as it makes a diagnosis of the dispute, is holding talks with the parties, it reveals interest leads them to a compromise and reconciliation; On the other hand, as a lawyer, he is preparing a draft a mediation agreement, speaking more as a lawyer than a mediator.

In Hungary, as mediators often serve two people: a lawyer and a psychologist.

In Portugal, to assist the mediator often involve experts in a particular field of knowledge as an expert.

It should be noted that the Russian courts a mediation settlement agreement or agreements are not so often, and I would say - is very rare. There are several reasons. First, mediation is primarily rooted in countries with adversarial proceedings as an alternative to expensive and lengthy court proceedings. And the cost and duration due not only to litigation, but also the pre-trial preparation of the case, being done by the lawyers of the parties. The duration of pre-trial preparation can reach two years. Therefore, the parties are more likely in these countries are on the pre-trial reconciliation.

In Russia, on the sides of litigation costs are not significant. Instead of a lawyer as a representative involved in the process as a representative of any person, often not even having legal education. State fee is very low, in addition there is a delay institutions, installments, reducing the size of the state fee. Pre-trial stage does not require significant time and cost. All these factors significantly impede implementation in the Russian process of conciliation procedures, including mediation.

However, it seems to us for mediation incentives do exist in Russia. Statistics show that out of 900 definitions of the dismissal of the case due to reconciliation of the parties, only one has been appealed in cassation, i.e. less than 0.5 percent. While it is usually about 35 percent of appealed judicial acts, i.e. much more, and this lengthens the process of restoration of the violated rights of the parties to the dispute. In addition, for the parties to conciliation very convenient, because the dispute ends in the first instance court. Do not waste time and money to appeal and participate in the court hearings higher courts.

Another advantage is the reconciliation of its voluntary compliance. For example, only 20% of determinations on termination of the case due to reconciliation issued writs, i.e. approximately 80 percent of the judicial determination of which ends the process in connection with the reconciliation of the parties executed voluntarily by the parties themselves.

The main subject of mediation speaks neutral - mediator. It should not be an affiliated person of the parties to the dispute.

Therefore, in order to expand the mediation is needed in the implementation of the legal consciousness of the human desire for reconciliation, an explanation of all the advantages of mediation.

Conversation.

Another independent conciliation are negotiated. Parties have the right to settle the dispute through negotiations for reconciliation. Negotiations are always made on the terms determined by the parties and the court does not intervene in the negotiations. Only in the cases stipulated by federal law or agreement, negotiations are conducted on a mandatory basis. Since negotiations are the responsibility of the parties or third parties, the law does not establish any procedural form of negotiation.

Negotiations essentially represent the exchange of opinions between the parties.

Judicial conciliation.

Judicial conciliation takes place with the participation of a court mediator is a new institution in the procedural law of Russia. Meanwhile, international practice has been using the institution to reduce the load on judges.

Year after year, a growing number of legal disputes. However, one can constantly and endlessly increasing the number of judges. Under these conditions requires extensive way of development of the judicial system with the purpose of reduction of load on it. Many European countries and the United States have passed this way. The U.S. judicial system is still in the middle of the last century has found a rather interesting way out of this situation. So a sharp increase in the number of court cases in the U.S. in the middle of the last century deterministic introduction in the United States Institute of Masters. In 1968, the US passed a law on the federal magistrates. Since this time, the judicial institute of reconciliation was quite large and difficult path of development. As indicated by D.V. Knyazev in 1976, the law gives judges wide powers of masters-both in the pre-trial preparation of the case, and to reconcile the parties¹¹⁰. Currently, Judge Masters is carried out in the United States conciliation, and the judge re-

¹¹⁰Knyazev D.V. Judges-masters in the judicial system of the United States: legal status, participation in civil proceedings and conciliation procedures // Law. 2017. N. 3. 168 p.

lieved of these duties in order to focus only on the judicial powers. Judges, magistrates conduct conciliatory action, and the parties trust such a judge, because it has a high profile and enjoys the confidence of the parties. Here the authority of the judge plays an important role in the peaceful settlement of the dispute. Activities of a judge-Master is based on principles such as: moral authority, independence, neutrality.

In some judicial districts of the United States are local norms binding direction of the case for the preliminary assessment procedure and the prospects of being carried out as a judge-masters. Each U.S. District Court shall establish its program of alternative dispute resolution, appoint a judge or a master-judge responsible for directing and monitoring of programs for alternative dispute resolution. However, it should be recognized that the main procedures carried out in U.S. courts to resolve legal conflict is still early mediation and independent evaluation. But in any case, all conciliation procedures are conducted by the judge, the Master, which the parties rely on and who has authority.

In the Russian Federation as from 2019, the parties have the right to use the procedure of judicial reconciliation with the participation of a court mediator. In fact, this judicial reconciliation talks, but they are in addition to the participating special subject - the judicial conciliator, who may just be a retired judge. The order of a court of reconciliation as opposed to the negotiations is determined by the Rules of judicial reconciliation, approved by the Plenum of the Supreme Court, while the order is determined by the negotiation by the parties to the dispute.

Judicial conciliation is carried out on the basis of the following principles:

- independent,
- fair viewing,
- fair judicial conciliator.

Therefore, judicial conciliators can not be questioned as witnesses in the case. To judicial Conciliator requirements are defined in addition Civil Procedure Code Rules of judicial reconciliation. Because of the law, a court conciliator can only be a retired judge. List of judicial conciliators is formed and approved by the Plenum of the Supreme Court of the Russian Federation on the basis of the suggestions of cassation courts of general jurisdiction, appellate courts of general jurisdiction, the supreme courts of republics, territorial, regional courts, federal cities ships court of an autonomous region, courts of autonomous districts, the district (naval) military courts of the judicial nominations conciliators from among retired judges wishing to act as a judicial mediator.

The judicial conciliator in the course of their activities should be guided not only by the provisions of the Civil Procedure Code of the

Russian Federation, but also the law on the status of judges in the Russian Federation. By virtue of what it can be stated that the judicial conciliator is a public entity and is entering into a legal relationship between the parties to the dispute on behalf of the state.

Because each court has lists of judicial conciliators, the parties dispute the right to choose at his discretion the court nominee conciliator. The candidacy of the judicial conciliator is determined only by mutual consent of the parties and approved by the ruling of the court.

The activities of the judicial mediator is aimed at achieving the following objectives:

- compare and reconcile positions of the parties in the case;
- finding additional opportunities for the settlement of a dispute with regard to the interests of the parties;
- get to assist the parties in reaching a mutually acceptable reconciliation result.

To achieve the above objectives, the judicial conciliator must understand and assess the validity of asserted claims and objections, whereby the judicial conciliator endowed with certain powers:

- 1) to negotiate with the parties, other persons participating in the case;
- 2) study the documents submitted by the parties;
- 3) to get acquainted with the case with the consent;
- 4) to make recommendations to the parties with a view to the prompt settlement of the dispute and maintaining business relationships;
- 5) carry out other activities necessary for the effective resolution of the dispute and the court under the Regulations of reconciliation.

Judicial Conciliator not a party to the proceedings and shall not perform any action, entailing the emergence, change or termination of rights or obligations of the persons involved in the case and other participants in the process. However, the judicial conciliator may in some cases be subject to procedural relations. For example, the judge may ask the court conciliator information on the conciliation procedure. However, such a request must be made not more frequently than once every fourteen days.

The procedure and terms of remuneration of judges who are in retirement and exercising the functions of the judicial conciliators shall be determined by the Government.

List of references used

- 1) Andrews N. English Civil Procedure. Fundamentals of the New Civil Justice System. Oxford. 2003.
- 2) Alekseev S.S. Theory of State and Law. M. Law literatura. 1972.
- 3) Belskaya IA Mediation (reconciliation) in the economic process: current problems and trends: autoref. dis. ... Cand. the faculty of law. sciences'. Minsk. 2012.
- 4) Bupalov Y. F, Hardzeyuk D.V., Kasatkin A.Y. Conciliation in civil, criminal and administrative court procedure of the Russian Federation:.. scientific-practical manual. Avenue. 2018.
- 5) Byulov Oskar. Uchenie procedural objections and procedural background / under red. D. H. Valeeva. M. Statute. 2019.
- 6) Bogdanovskaya I. Yu. The concept of judicial law-making in the legal doctrine of common law countries // Modern Law. 2013. № 11.
- 7) Bratus S.N. On the subject of Soviet civil law // Ows. state-in and right. 1940. № 1.
- 8) Borovikovsky A. Judges report. V.1. St. Peterburg. Tipografiya A.S. Suvorin. 1891.
- 9) Chechina N.A. The main directions of development of the science of civil procedural law. Leningrad. 1987.
- 10) Dobrovinsky AA. Ivanova S.A. The main problems of the claim form of protection of rights. M. 1979.
- 11) Egorova O.A. Bupalov Yu. F. Decisions of the Constitutional Court of the Russian Federation in the practice of courts of general jurisdiction. M. Prospect. 2013.
- 12) Fatkullin F.N. Fundamentals of Theory of State and Law. Kazan. 1995.
- 13) Gurvich M.A. According to the Soviet civil process Lectures. M. 1950.
- 14) Gordon V. A. Lawsuit for recognition. Yaroslavl. 1906.
- 15) Golmsten A.H. Textbook of civil proceedings. St. Petersburg. 1913.
- 16) Golmsten A.H. Textbook Russian civil proceedings. Saint Petersburg. Typography M. Merkusheva. 1913.
- 17) Golmsten A.H. Textbook of the Russian civil process. St. Petersburg. 1894.
- 18) Gambarov Y.S. Civil procedure: a course of lectures. M. Gorodets. 2005.
- 19) Gambarov Y.S. Civil law. M. Printing V.F. Richter. 1895.
- 20) Gurvich M.A. The doctrine of the lawsuit. M. VYUZI. 1981.

- 21) Hazard G.G. Taruffo M. American Civil Procedure. An Introduction. New Haven. 1993.
- 22) Isaenkova O.V. Sued in civil proceedings. Saratov. 1997.
- 23) Ivanov A.A. The quality of laws and the activities of the arbitration courts // Journal of Russian law. 2005. N 4.
- 24) Isachenko V.L. Charter of Civil Procedure. Saint Petersburg. 1911
- 25) Illarionova T.I. Civil law. M. Norma. 2001.
- 26) Judelson K.S. Soviet civil process. M. 1956.
- 27) Knyazev D.V. Judges-masters in the judicial system of the United States: legal status, participation in civil proceedings and conciliation procedures // Law. 2017. N. 3.
- 28) Kolokolov N.A. The judiciary as a general legal phenomenon: the author's abstract of the dissertation of the doctor of juridical science. Nizhni Novgorod.: 2006.
- 29) Krasnokutsky V.A. Essays on the Civil Procedural Law: the experience of systematization of legislation of the RSFSR and the USSR Judiciary and civil proceedings. Kineshma: Publishing House of the Ivano-Voznesensky gubsoyuza. 1924.
- 30) Krapivensky S.E. Social system. Volgograd.: Publisher University of Volgograd. 2000.
- 31) Klyuchevskii V.O. Works in 9 volumes. V.1. Russian course istorii.Ch.1. M. 1997.
- 32) Kros. R. Precedent in English law. M. 1985.
- 33) Kartashov V.N. The theory of legal system. Yaroslavl. 2005.
- 34) Kleinman A.F. Soviet civil process. M. 1954.
- 35) Kleinman A.F. The latest trends in the Soviet science of civil procedural law. M. Publisher MSU. 1967.
- 36) Kleinman A.F. Civil proceedings. M. 1936 // Selected Works. Krasnodar. 2009.
- 37) Leskov Y.G. Corporate acts as a source of law // The journal of business and corporate law. 2016. № 4.
- 38) Osokina G.L. Civil Procedure. A common part. M. Jurist. 2006.
- 39) Radko T.N. Theory of State and Law. M. Prospect. 2010.
- Tolstoy Yu. K. Once again on the legal relationship // Jurisprudence. 1969. № 1.
- 40) Mokhov A.A. Civil proceedings - a form of justice // The rule of law. 2018. № 3.
- 41) Maleshin D.Y. Civil procedural system.M. Statute. 2011.
- 42) Malyshev K. The course of civil proceedings. Saint Petersburg. 1876.
- 43) Medvedev I.R. Civil litigation in England and the United States: increasing the responsibility of the parties for their explanations and actions // Jurisprudence. Number 1. 2007.

44) Nosyreva E.I. The stage of preparation of a case for trial: a comprehensive and comparative analysis of the norms of CPC RF and APC RF // Contemporary doctrine of civil arbitration proceedings and enforcement proceedings: theory and practice. Collection of Scientific articles. Krasnodar. 2004.

45) Nefed'ev E.A. Textbook Russian civil proceedings. M. Tip. Emperor. Mosk. Univ. 1909.

46) Novickiy I.B. Roman private law: the textbook / ed. I.B. Novickiy. M. 2010.

47) Osokina G.L. Lawsuit (theory and practice). M. 2000.

48) Puchinsky V.K. Search for items in the Soviet civil process // the Soviet state and the right. Number 3.

49) Reshetnikova I.V. Handbook of proof in civil proceedings / ed. I.V. Reshetnikova. Norm: Infra-M. 2017

50) Reshetnikova I.V. Cultivating the idea of reconciliation // Russian judge. 2010. N. 4.

51) Radko T.N. Theory of State and Law. M. Prospect. 2010.

52) Shagieva R.V. Law enforcement / textbook edited by R.V. Shagieva. M. Norma Infra-M. 2015.

53) Safonenko P.N. The bar examination status: teaching practical manual. Part one. Business courtyard. 2017. Ar. 9.8.

54) Shershenevich G.F. General Theory of Law. M. 1995. V.2, Issue 4.

55) Shagieva R.V. Interpretation of the law as a legal activity: historical and theoretical problems of understanding // Scientific works of the Russian Academy of lawyers and notaries. 2017. N 2.

56) Savinyi F.K. The system of modern Roman law. Vol.1 / per. with it. G. Zhigulina; ed. O. Kuteladze. M.: Statute. 2011.

57) Stuchka P.I. Rate of the Soviet civil law: V. 3. M. 1931.

58) Shitkina I.S. Local regulation of the Company // State and Law. 1999. № 10.

59) Sapozhnikov S.A. Author. cand. jurid. n. The principle of optionality in the civil process. 2006.

60) Tsikhotsky A.V. Theoretical Problems of effective justice in civil cases. Novosibirsk.: The science. 1997.

61) Treushnikov M.K. Litigation: a textbook. M.: Gorodets-izdat. 2003.

62) Treshcheva E.A. On the concept of the claim and the statement of claim in the civil and arbitration process // Problems of claim and the claim form of protection violation: Proceedings of the Scientific Conference. Krasnodar. 2006.

63) Tkachenko Yu. G Methodological issues of legal theory. M.1980.

- 64) Tolstoy Yu. K. Once again on the legal relationship // Jurisprudence. 1969. № 1.
- 65) Rozhin V.P. World Soviet man. L. . Lenizdat. 1960.
- 66) Uletova G.D. Discussion on the concept, elements and practical significance of the claim (in the light of scientific views of Professor AA Dobrovolsky // the Legislation. 2015. № 5.
- 67) Vlasov A.A. Civil proceedings. M. Yurayt. 2003.
- 68) Vlasov A.A. Civil Procedural Law. TC "Welby" 2003.
- 69) Vlasov A.A. Kuksin I.N. A. lawyer in the proceedings. A short training course. Moscow: Norma. 2005.
- 70) Vlasov A.A. The activities of a lawyer in court in cases of protection of honor, dignity and business reputation. A Practical Guide. M. lawyers. 2006.
- 71) Vas'kovsky E.V. Litigation: a textbook. M. Mirror. 2003.
- 72) Voitinsky I.S. Labor Law of the USSR. M.-L. 1925.
- 73) Vas'kovsky E.V. Textbook of civil procedure. Moscow. Edition Bashmakova. 1914.
- 74) Vas'kovsky E.V. Litigation: a textbook. M. Publication Brothers Bashmakova. 1914.
- 75) Yablochkov T.M. Textbook Russian civil proceedings. Yaroslavl: Knigoizdat of I.K. Hasanov. 1910.
- 76) Yablochkov T.M. Textbook Russian civil proceedings. Yaroslavl. 1912.
- 77) Yablochkov T.M. Subjects judicial recognition. Yaroslavl. 1914
- 78) Yablochkov T. Memory Collection Shershenevich. St. Petersburg. 1919.
- 79) Yukov M.K. Theoretical problems of the civil procedure law system (in Russian) / Under edition of V.V. Zaitsev. M. Statute. 2019.
- 80) Yarkov V.V. Civil proceedings. M.: Wolters Kluwer. 2006. 119 p.
- 81) Zdrok O.N. The place of conciliation procedures in the civil process // the Legislation. 2019. N. 5.

Svirin Y.A.

DOCTRINE OF CIVIL PROCEDURE RUSSIA

Monograph

SIA BIOM.LV
Rīga, LV-1009
Augusta Deglava iela 7 - 32