



THE CONCEPT AND LEGISLATIVE REGULATION OF SPECIAL PROCEEDINGS AS A TYPE OF CIVIL PROCEEDINGS

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Annotation:

The article analyzes the concept and legislative regulation of special proceedings as a type of civil proceedings, as a result of which proposals and recommendations are put forward to improve the current Civil Procedure Legislation of the Republic of Uzbekistan.

Keywords: civil process, special proceeding, judicial reform, civil court, judicial act, foreign experience

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Special proceedings - a type of civil proceedings, which differs from the claim by the absence of a dispute about the right and, as a result, the absence of disputing parties with opposing legal interests. Special proceedings are characterized as non-contentious, unilateral proceedings.

Civil cases are considered in special proceedings, in which it is necessary to confirm in court the presence or absence of legal facts or circumstances on which the emergence, change or termination of personal or property rights of citizens depends. For example, a citizen applies to the court for the establishment of family relations, since the establishment of this fact is necessary for him to enter into the right of inheritance or to receive a pension in the event of the loss of a breadwinner.

In the order of special proceedings, civil cases are also considered, in which it is necessary to confirm the presence or absence of an indisputable right (establishing the fact of ownership of a building on the right of ownership, cases on the restoration of rights on a lost document). According to these categories of cases, the court decides questions not only of fact, but also of law. In these cases, the protection of the right cannot be carried out in a lawsuit, since there is no dispute about the right and the person concerned does not make any demands on anyone.





In special proceedings, cases are considered in which the court establishes the legal status of a citizen: in some cases, a citizen is recognized as incapacitated or has limited capacity; in others - declared dead or recognized as missing.

Chervony Yu.S. notes that "Special proceedings are a type of civil proceedings in which civil cases are considered, which confirm the presence or absence of legal facts on which the emergence, change or termination of personal or property rights of citizens depends, or the presence or absence of an indisputable right is confirmed, and also determines the legal status of a citizen.

In cases of special proceedings, a dispute about a fact is possible, which requires judicial confirmation, since the fact established by the court is not always obvious and there are conflicting judgments regarding its existence. In all such cases, the court must verify the existence or non-existence of facts by checking and comparing the available evidence, identifying contradictions in the judgments of interested parties. Thus, a dispute about a fact in a special proceeding is possible, and the presence or absence of a fact must be established by the court if the dispute about the fact has not turned into a dispute about the law. If, during the consideration of the case in the order of special proceedings, a dispute arises about the law, which is within the jurisdiction of the courts, the court must leave the application without consideration and explain to the persons concerned their right to file a claim on a general basis. Cases of special proceedings are considered by the courts according to the general rules established by the Code of Civil Procedure, with exceptions and additions established by the procedural legislation.

Since there is no dispute about the law in special proceedings, there are no parties (plaintiff, defendant), third parties in cases of this type of legal proceedings. The case is initiated by the applicant, interested persons may participate in the consideration of the case. In this regard, in special production, the principle of competition is practically absent. The principle of disposability also does not fully operate, since in special proceedings such typical institutions for action proceedings as a settlement agreement, recognition of a claim, refusal of a claim, securing a claim, a counterclaim are not applied.

So, we note that a special proceeding is a type of civil proceedings, which differs from the claim in the absence of a dispute about the law and, as a result, the absence of disputing parties with opposite legal interests. Special proceedings are characterized as non-contentious, unilateral proceedings.

"According to Article 293 of the Code of Civil Procedure, the cases of a separate proceeding are:

1) on the establishment of facts of legal significance;





- 2) on the adoption (adoption) of a child;
- 3) on recognizing a citizen as missing or on declaring a citizen dead;
- 4) on limiting the legal capacity of a citizen, on recognizing a citizen as incapable, on limiting or depriving a minor aged fourteen to eighteen years of the right to independently dispose of his income;
- 5) on declaring a minor fully capable (emancipation);
- 6) on recognizing a movable thing as ownerless and recognizing the right of municipal ownership to an ownerless immovable thing;
- 7) on the restoration of rights under lost bearer securities or order securities (calling proceedings);
- 8) on compulsory hospitalization of a citizen in a psychiatric hospital and compulsory psychiatric examination;
- 9) on making corrections or changes in civil status records;
- 10) on applications for completed notarial acts or refusal to perform them;
- 11) on applications for the restoration of lost judicial proceedings.

Laws may refer other cases to consideration in the order of special proceedings.

Modern Uzbek legislation on special proceedings is disclosed in subsection III "Special proceedings" and contains a list of cases considered by the court in the order of special proceedings:

- 1) on the establishment of facts of legal significance;
- 2) on the adoption of a child (adoption) (hereinafter referred to as adoption);
- 3) on recognizing a citizen as missing and declaring a citizen dead;
- 4) on recognizing a citizen as partially capable or incapacitated;
- 5) on involuntary hospitalization of a person in a psychiatric hospital or extension of the period of hospitalization;
- 6) on the hospitalization of a person in a specialized department of an anti-tuberculosis institution on an involuntary basis or an extension of the period of hospitalization;
- 7) on declaring a minor fully capable (emancipation);
- 8) on recognition of property (thing) ownerless;
- 9) on the restoration of rights on lost documents to the bearer (call proceedings);
- 10) on the restoration of lost judicial proceedings.

Article 294 describes the procedure for the consideration and resolution of cases by the courts in the order of special proceedings.



CONCLUSION

A special proceeding is a type of civil proceedings, which differs from the claim by the absence of a dispute about the right and, as a result, the absence of disputing parties with opposing legal interests. Special proceedings are characterized as non-contentious, unilateral proceedings.

Modern Uzbek legislation on special proceedings is disclosed in subsection III "Special proceedings" of the Code of Civil Procedure and contains a list of cases considered by the court in the order of special proceedings.

Article 294 of the Code of Civil Procedure describes the procedure for the consideration and resolution of cases by the courts in the order of special proceedings.

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