



## ISSUES OF IMPROVEMENT OF CIVIL PROCEDURAL LEGISLATION

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### Annotation

This article is devoted to a comprehensive study of gaps in civil procedural legislation, and a number of proposals are also put forward to improve the legislation. Basically, the issue of consideration of cases of special proceedings is raised. At the same time, the author, without being limited to this, also considers the issue of jurisdiction of certain categories of cases of special proceedings. In substantiating his proposals, the author cites foreign practice, which showed an effective result. The main issues of this article are analyzed not only from a theoretical point of view, but also from a practical one - on the basis of specific legislative norms.

**Keywords:** judicial protection, protection order, court, special proceeding, jurisdiction, legal dispute, alternative jurisdiction.

The right to judicial protection is one of the basic human rights, which is enshrined at the constitutional level. Article 55 of the Basic Law of the country states that everyone is guaranteed judicial protection of his rights and freedoms, the right to appeal to the court against unlawful decisions, actions and inaction of state bodies and other organizations, their officials, and everyone is guaranteed the right to have their case considered by a competent, independent and impartial court in order to restore their violated rights and freedoms. deadlines established by law. Ensuring the right of citizens to judicial protection is impossible without a solid legislative framework.

The adoption of the Civil Procedure Code of the Republic of Uzbekistan in a new edition was an important step towards realizing human rights to judicial protection and ensuring fairness and legality in civil proceedings. This code plays an important role in the administration of justice in civil cases and regulates public relations that arise between the court and participants in civil proceedings.. At the same time, it should be noted that the current version of the Code of Civil Procedure does not fully meet the requirements of rapidly developing economic relations in the country and international standards in the field of civil law. In this connection, there is a need to make appropriate changes and improve this law.

In accordance with the law Victims of violence can obtain a protection order for public protection from perpetrators of harassment or violence against women. This





procedure is regulated by the Decree of the Cabinet of Ministers "On measures to improve the system for protecting women from harassment and violence" dated January 4, 2020, No. 3. According to the Regulation, a protection order is issued by prevention inspectors for a certain period. However, the legislation does not provide for the procedure for issuing a long-term protection order in court.

Article 20 of the Constitution states that human rights and freedoms, enshrined in the Constitution and laws, are inviolable and no one has the right to deprive or restrict them without a trial. For the full implementation of this norm, a solid mechanism is needed. For example, in Art. 305 of the Civil Procedure Code of the Republic of Azerbaijan, art. 305 of the Code of Civil Procedure of the Kingdom of Spain, the Law of the Republic of Turkey "On the Protection of the Family", the Law of the Republic of Austria "On Domestic Violence" contain the procedure for issuing a long-term protection order in court. In this regard, it is necessary to add to the number of cases considered by the court and provided for in Chapter 27 of the Code of Civil Procedure, the category of a case on issuing a protection order for a long period, and also establish the grounds, procedure, terms for considering this case and the circle of subjects entitled to address such a question.

The introduction of such an order contributes to the establishment of a new system, consistent with the Constitution, to ensure the safety of persons who have been subjected to violence in the family, as well as in society, thereby increasing the effectiveness of activities to prevent violence.

The next question concerns cases of recognizing a citizen as missing and declaring a citizen dead. According to Art. 305 of the Civil Procedure Code A person's application for recognizing a citizen as missing or for declaring a citizen dead is submitted by an interested person to the court at the last known place of residence of the missing citizen. When filing an application with the court, the applicant may encounter certain difficulties associated with determining the last known place of residence of the missing citizen. In this case, in order to create convenience for the applicant, it is necessary to provide the applicant with the opportunity to file an application with the court at his permanent place of residence, while establishing an alternative jurisdiction. For example, such a provision is provided in Art. 317 Code of Civil Procedure of the Republic of Kazakhstan, art. 276 Code of Civil Procedure of the Russian Federation, art. 312 Code of Civil Procedure of the Republic of Ukraine, Art. 317 Code of Civil Procedure of Georgia and art. 309 Code of Civil Procedure of the Republic of Estonia.

Article 305 of the Code of Civil Procedure of the Republic of Uzbekistan should be supplemented as follows:





“A person’s application for recognizing a citizen as missing or for declaring a citizen dead is submitted by an interested person to the court at the place of residence of the applicant or at the last known place of residence of the missing citizen.”

By introducing such a procedure, certain conveniences will be created for the applicant when applying to the court.

An important issue is the grounds for leaving the application without consideration. So, the current Code of Civil Procedure provides for a total of 14 grounds for leaving an application without consideration. One of these grounds is the case when, during the proceedings of a case of special proceedings, a dispute arose about the law, which is within the jurisdiction of the court. In such cases, the court, explaining the applicant's right to apply to the court in a lawsuit, leaves the application without consideration, thereby breaking the mechanism of judicial protection of the applicant's rights.

In our opinion, in such cases, in order to create convenience for applicants, taking into account the specifics of civil cases, it is necessary to introduce alternative new procedure for resolving the issue.

After conducting a comparative legal with foreign practice, as an example, we can cite paragraph 3 of Art. 33.1 Code of Civil Procedure of the Russian Federation. According to this rule in the process of considering the case on establishing the fact of ownership of the building on the right of private ownership, the self-government body of citizens has the right to make an objection, providing information about the owner of this property. In this case, in order to create convenience for the applicant and the persons participating in the case, the court, instead of leaving the application without consideration and explaining the applicant's right to apply to the court in a lawsuit, has the right, with the consent of the applicant, to proceed to the consideration of the case in a lawsuit.

It is advisable to supplement Art. 294 and Art. 296.1 Code of Civil Procedure in the following edition:

“If a dispute arises about the law during the consideration of the case in a special procedure, based on the characteristics of the case, the court, with the consent of the applicant, issues a ruling on the transfer of the consideration of the case in the general procedure for considering civil cases.”

As a result, it is possible to reduce unnecessary bureaucracy and create convenience for participants in the civil process. Also, a continuous mechanism of judicial protection of the rights and legitimate interests of citizens is guaranteed.

In this article we will also touch upon the issue of jurisdiction when considering cases of special proceedings. The Civil Procedure Code establishes general rules for





jurisdiction also in relation to cases under Art. 296 of the Code of Civil Procedure (special proceedings), while not taking into account the specifics of these categories of cases. Given that these categories of cases have their own characteristics, it is necessary to establish a certain criterion for their jurisdiction.

In particular, art. 296 Code of Civil Procedure must be supplemented and stated in the following wording:

“An application for cases on establishing the fact of ownership of a building on the right of private ownership is filed with the court at the location of the building.

An application for cases on establishing the fact of acceptance of the inheritance and the place of opening of the inheritance is submitted to the court at the location of the immovable property or at the place of opening of the inheritance.

For your information, such a rule of jurisdiction is contained in Art. 266 Code of Civil Procedure of the Russian Federation, art. 309 Code of Civil Procedure of the Republic of Azerbaijan, art. 307 Code of Civil Procedure of the Republic of Kazakhstan, art. 365 Code of Civil Procedure of the Republic of Belarus, art. 283 Code of Civil Procedure of the Republic of Moldova.

The introduction of such a rule allows the applicant, based on the specifics of the case, to determine by a specific criterion which court should apply.

Based on the foregoing, it can be concluded that the introduction of the above proposals into the civil procedural legislation can undoubtedly create convenience for the participants in the civil process and a strong continuous mechanism for judicial protection of their rights and legitimate interests.

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