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PROTECTING VIOLATED RIGHTS AND LEGITIMATE INTERESTS IN THE COURT: A CLAIM AS A PROCEDURAL AND LEGAL COMPONENT OF LAW

PROTEÇÃO DE DIREITOS VIOLADOS E INTERESSES LEGÍTIMOS NO TRIBUNAL: UMA REIVINDICAÇÃO COMO COMPONENTE PROCESSUAL E LEGAL DA LEI*

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Abstract: The study considers the right to apply to the court, analyzes the prerequisites for exercising such a right, and determines issues in the implementation of this right in the Russian court. To study the research topic, the authors of the article used general scientific methods (systemic, theoretical, and historical analysis) and special scientific methods (comparative law, logical, technical, and legal analysis, specification, and interpretation). This study analyzes the conditions and prerequisites for exercising the right to apply to the court in the Russian Federation. Although the conditions for the exercise of this right are enshrined in law, the related norms are mostly discrete in nature. This allows the Russian courts, guided by the principle of judicial discretion, to interpret such norms in their own manner, which actually limits the right to judicial protection. As a result, the authors of the article have formulated a theoretical definition of the right to apply to the court, revealed issues in the implementation of this right in the Russian Federation, and determined the prerequisites for exercising this right in the Russian court.

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Keywords: The right to sue. The right to apply to the court. Prerequisites for exercising the right to appeal to the court.

Resumo: O estudo considera o direito de recorrer ao tribunal, analisa os pré-requisitos para o exercício desse direito e determina questões na implementação desse direito no tribunal russo. Para estudar o tema da pesquisa, os autores do artigo utilizaram métodos científicos gerais (análise sistêmica, teórica e histórica) e métodos científicos especiais (direito comparado, análise lógica, técnica e jurídica, especificação e interpretação). Este estudo analisa as condições e pré-requisitos para o exercício do direito de recorrer ao tribunal na Federação Russa. Embora as condições para o exercício deste direito estejam consagradas na lei, as normas relacionadas são, em sua maioria, de natureza discreta. Isto permite que os tribunais russos, guiados pelo princípio da discrição judicial, interpretem tais normas à sua própria maneira, o que de fato limita o direito à proteção judicial. Como resultado, os autores do artigo formularam uma definição teórica do direito de aplicar ao tribunal, revelaram questões na implementação deste direito na Federação Russa e determinaram os pré-requisitos para o exercício deste direito no tribunal russo.

Palavras-chave: O direito de processar. O direito de recorrer ao tribunal. Pré-requisitos para o exercício do direito de apelar ao tribunal.

1. INTRODUCTION

The judicial protection of violated rights and legitimate interests is impossible without the proper implementation of the right to apply to the court. The need to ensure this right has been repeatedly expressed by the European Court of Human Rights. Each state establishes its own prerequisites and conditions for the exercise of the right to apply to the court.

To be able to go to court and defend their violated subjective rights, a person shall have the right to sue. On the one hand, the right to sue is a prerequisite for the restoration of the violated right of the plaintiff. On the other hand, the right to sue is an independent subjective right of the plaintiff. If the plaintiff has the right to file a claim and the right to satisfy it, then their violated or contested right will be judicially protected. The constitutional right to judicial protection is realized through the right to claim. It is worth mentioning that the right to sue is not the violated subjective right of the plaintiff but only the possibility of obtaining protection for such a right in a certain procedural order (in the form of a claim).

In the Russian procedural doctrine, the right to sue comprises two rights: the right to sue in a substantive sense and the right to sue in a procedural sense. The right to sue in a procedural sense is the right to go to court. Being subject to all the conditions for the implementation of this right, the court initiates proceedings. The right to claim in a substantive sense is the right to satisfy the claim, the conditions for the exercise of this

right are examined by the court in a court session. If it is proved that the plaintiff has the right to satisfy the claim, the court will satisfy it by its decision. For the procedural doctrine, it is relevant to consider the right to apply to the court. Without its implementation, it is impossible to restore the violated substantive right. The theoretical and legal approach to the right to claim helps better understand significant differences in its substantive and procedural aspects. Based on the Constitution of the Russian Federation, every person who considers their right violated can apply to the court for its restoration but sectoral laws establish the conditions for the exercise of this right, without which it is impossible to go to the court. Such conditions are contained in the Russian procedural law of a discrete nature, which allows the court to give them an independent interpretation and limits the right to judicial protection.

2. METHODS

In the course of the study, we used general scientific methods of cognition, including the principle of objectivity and consistency, as well as theoretical and historical analysis. In addition, we applied such specific scientific methods as comparative law, logical and technical-legal analysis, and specification. The methodological basis of the study was laid by the theory of cognition.

We analyzed legislation and scientific literature, compared international approaches to solving the problem, and generalized scientists' opinions on the issues under study, which emphasized their relevance. Throughout the research, we used various sources of information to formulate and solve the problem: strategic planning acts, regulatory legal acts, statistical information posted on government websites, monographs, and articles, including those published in journals indexed in Scopus and Web of Science, containing provisions regarding the implementation of the right to sue in the Russian Federation.

3. RESULTS AND DISCUSSION

According to dogmatic views, the right to apply to the court is associated with the right to initiate legal proceedings and depends on the prerequisites for implementing this right.

In the Ancient Roman Republic, glossators identified and used procedural prerequisites. The Digest of Justinian emphasized the possibility of procedural objections to the commencement of proceedings. While determining the prerequisites for the right to sue, the ancient Roman jurists allowed the defendant to object to the commencement of proceedings. In preparation for proceedings, the parties were granted the right of *exceptio*, i.e. the right to refer to the actual circumstances or the rule of law entailing a refusal to consider the claim without examining the actual circumstances of the case. In Roman law, the doctrine of *exceptio* was well developed and sufficiently studied. During the period of formal legal proceedings, *exceptio* was called *praescriptio*. In the Roman civil proceedings, there was a special preparatory procedure, within which only the prerequisites for starting such proceedings were checked. Subsequently, a similar procedure was adopted by the laws of France and Germany.

Fundamental research on the prerequisites for the right to sue was conducted by the German scientist Oskar Bülow and then developed by the Russian professor M.A. Gurvich. While studying the Roman proceedings, Oskar Bülow concluded that civil proceedings were characterized by dualism and were divided into two stages. At the first stage, the procedural prerequisites that are essential for the commencement of proceedings are checked. At the second stage, disputable substantive legal relations are considered (Bülow 2019, 33).

To exercise the right to appeal to the court, there are certain procedural prerequisites for its realization. The prerequisites for the right to sue are regulated by the current Russian legislation but there is no direct indication that they are prerequisites. In addition, an exhaustive list of these prerequisites is not legislatively enshrined and their consolidation is of a discrete nature. Therefore, this issue is debatable in the Russian doctrine, which determines contradictory litigation practice.

Depending on the range of cases in respect of which the relevant prerequisites arise, they are usually divided into general and special. Analyzing the general prerequisites for the right to appeal as the main one, it is necessary to highlight civil procedural legal capacity (Eliseikin 1975, 13). Civil procedural legal capacity is part of a wider concept of legal capacity. Consequently, the definition of civil procedural legal capacity cannot contradict the definition of legal capacity in the general theory of law.

In Russian science, civil procedural legal capacity is the legally recognized ability of a person to have civil procedural rights and bear obligations, i.e. the opportunity to become

a subject of civil procedural legal relations (Melnikov 1981, 281). It is widely believed that all parties to proceedings have civil procedural legal capacity, and legal capacity is the key property of a subject of law since it is impossible to become a subject of specific legal relations without being a subject of law.

Absolutely all citizens of the Russian Federation have procedural legal capacity from the moment of their birth: from that moment they receive the potential opportunity, under certain conditions and legal facts, to become a party to trial proceedings. The emergence of civil procedural legal capacity cannot be associated with age restrictions in substantive law. Not only citizens but also organizations have civil procedural legal capacity. At the same time, the civil legal capacity of organizations that do not have the status of a legal entity, which are founded and registered in the manner prescribed by law, is ambiguous in judicial practice. There is also no consensus on the civil procedural legal capacity of the prosecutor, public authorities, or local self-government bodies defending the others' interests since it is believed that these subjects have not legal capacity but rather competences.

In Russian legal science, there is also an opinion that civil procedural legal capacity is special since a person in a trial can adopt a certain role: the plaintiff, the defendant, the prosecutor, etc. (Vikut 1984). However, it is well known that special legal capacity can only proceed from the general one that exists regardless of civil procedural legal relations. This issue can be resolved by dividing the legal status of a citizen into general, special, or individual. All citizens have a general status from birth, certain groups of citizens have a special status, and some citizens have an individual status.

Although civil procedural legal capacity is not enshrined in Article 134 of the Civil Procedure Code, it is a prerequisite for the exercise of the right to apply to the court, along with other prerequisites enshrined in the above-mentioned article. These serve as the basis for rejecting a statement of claim. At the same time, civil procedural legal capacity as the basis for refusing to accept a statement of claim should be manifested only in relation to persons protecting the others' interests. Thus, the court should not accept a statement of claim if this statement is filed in defense of the rights, freedoms, or legitimate interests of another person by a state body, local government, organization, or citizen. This refers to cases where these persons go beyond the limits of possible civil procedural legal capacity.

In judicial practice, courts have a different opinion regarding the claims of organizations that do not have the status of a legal entity or when such organizations are

sued. We believe that the court is obliged to refuse to accept the statement of claim in such cases since the organization does not have civil legal capacity. If it was discovered that the party did not have legal capacity after the initiation of the case, it makes sense not to terminate the proceedings but apply the procedure for replacing the wrong party by analogy in the law. It is necessary to terminate the case only if the legally capable subject refuses to replace the incapacitated one.

The Russian procedural law does not indicate the possibility of refusing to accept a statement of claim if there is a direct legislative prohibition on going to court. Legislative prohibition should be regarded as a restriction of civil procedural legal capacity. For example, such restrictions on civil procedural legal capacity should be as follows: a ban on judges, assistant judges, investigators, and prosecutors to be contractual representatives in the court.

It is worth mentioning that the legal capacity of the plaintiff and the defendant is not a prerequisite for the right to go to court since the right to sue is associated with the ability to be a party to proceedings and not with the ability to exercise one's rights.

The next prerequisite for the right to appeal to the court is the assignment of specific disputes to the competence of a particular court. The previously indicated prerequisite was considered within the framework of jurisdiction but amendments were made to the procedural law of the Russian Federation in 2018. Accordingly, the institution of jurisdiction was replaced by the institution of competence.

The analysis of judicial practice shows that citizens or organizations do not always consider the competence of state bodies, therefore the courts refuse to accept their statement of claim. Based on the semantic interpretation of the procedural law, the competence of the judiciary is an unconditional and mandatory basis for initiating proceedings. This prerequisite is associated with the largest number of judicial errors that entail a violation of the rights of a person who considers their right violated. These errors have repeatedly been considered by the European Court of Human Rights. Courts often mistakenly refuse to accept a statement of claim, believing that the case does not fall within the competence of a particular court. At the same time, there are incidents when courts consider claims that do not fall within their competence. As noted in the relevant literature, there are serious problems and difficulties in determining competence, which significantly weakens the mechanism for protecting the subjective rights and legitimate interests of citizens and organizations (Bagirova 2021, 372).

In the Russian procedural doctrine, the issue of a legal interest as a prerequisite for the right to go to court is debatable. There are three viewpoints on this issue. Thus, M.A. Gurvich, V.V. Yarkov, and some other scholars deny a legal interest as a prerequisite for the right to apply to the court. On the contrary, R.E. Ghukasyan and other authors attribute this concept to the prerequisites for the right to sue. Under the third viewpoint, a legal interest combines substantive and procedural content. According to M.A. Vikut, the substantive content of legal interest is manifested through a court decision that can bring a positive result to the party. At the same time, a legal interest determines the right of the party to participate in the trial (Vikut 1968). D.M. Chechot (1960) also considers a legal interest as a combination of civil and procedural law.

It seems that the authors' opinions about a common legal interest are erroneous since there are two types of general legal interests: substantive and procedural. Depending on the substantive or procedural interest, there are different parties to legal proceedings. In particular, the plaintiff and the defendant should have both substantive and procedural interests. If the plaintiff lacks such an interest, the litigation will not be initiated and the plaintiff will not have the right to go to court. The lack of legal interest of the defendant does not deprive the court of the right to initiate proceedings in the case but such a defendant should be replaced by a proper defendant. To initiate case proceedings in the interests of another person, the prosecutor should have only a procedural interest. The prosecutor has no substantive interest.

In this connection, we consider a legal interest as a prerequisite for the right to go to court. The objective nature of legal interest is associated with its procedural nature. The objectivity of legal interest is manifested in its independence from the plaintiff's consciousness, while the subjective component does not matter for the right to go to court. This conclusion is consistent with Clause 1 of Article 3 of the Civil Procedure Code, which establishes the right of a person to go to court in order to protect their rights, freedoms, and legitimate interests. To exercise this right, such a person submits a statement of claim that describes the actual circumstances of the violation of the right.

The plaintiff's interest is assumed until the moment the absence of the violated rights of the interested person is established. Based on the evidence of the subject's disinterest, the court can refuse to accept the statement of claim. Based on the general principles of law, the applicant's interest is present until the court establishes the absence of the contested rights or interests.

In addition, it is necessary to highlight negative prerequisites for the exercise of the right to apply to the court associated with the right to bring suit or action. These are as follows:

– No court decision that has entered into legal force issued in a dispute between the same parties, on the same subject, and on the same grounds;

– No court ruling that has entered into force on accepting the plaintiff's withdrawal of the claim or on approval of the settlement agreement between the parties;

– No decision of the arbitration court binding on the parties, except in cases where the court refused to issue a writ of execution for the enforcement of the arbitration court decision.

The Russian courts refuse to accept a claim if there is a court decision that has entered into legal force on a dispute between the same parties, on the same subject and on the same grounds, or a court ruling to terminate such proceedings in connection with the acceptance of the plaintiff's withdrawal of the claim or approval of a settlement agreement between the parties.

In legal science, statements of claim are considered identical if they have the same plaintiff and defendant, the subject, and the basis of the claim. Consequently, the change of even one component leads to the loss of the claim identity and gives the parties the legal right to file a claim to the court. According to T.M. Makeeva (2020), identity is the basis for refusing to accept the statement of claim. Thus, the court accepting the statement of claim should determine the similarity of the specified claim with the decisions or rulings that have entered into legal force, and correlate the filed claim with possible settlement agreements. In case of mutual coincidence (the subject, grounds, and parties), the court establishes the identity of claims and issues a ruling on the refusal to accept the statement of the claim since it has already been resolved based on a decision that has entered into legal force or is under consideration. If the identity of claims is properly determined, it is an important prerequisite for the exercise of the right to apply to the court. However, there are common judicial errors in determining such identity.

As a prerequisite for the right to file a claim, one should observe the mandatory pre-trial procedure for resolving a dispute. Since 2019, the use of alternative dispute resolution methods has become mandatory before going to court. In the Russian doctrine, the pre-trial (claim) procedure for resolving a dispute is regarded both as an institution of substantive law and as an institution of procedural law, which implies various legal

consequences. In substantive law, compliance with the claim procedure aims to prevent a possible violation of obligations, the actual demonstration of serious intentions, and the possibility of restoring the violated rights and legitimate interests of the parties. An additional goal might be the creation of an evidence base for further judicial protection. In procedural law, the pre-trial procedure is a condition for the exercise of the right to apply to the court. Therefore, the imperative or dispositive application of this approach is debatable. It is worth mentioning that most rules on the application of the claim procedure in substantive law are considered from a dispositive viewpoint, taking into account that this rule does not violate the balance of interests and does not become nominal. For example, stimulating techniques that can encourage entities to use this procedure can be the rule provided for by Clause 1 of Article 111 of the Arbitration Procedure Code of the Russian Federation. Regardless of the case consideration, court costs are attributed to the entity that neglected the claim procedure established by law or in a contract, including if the deadlines for submitting a response to the claim were violated or it was left unanswered. Proceeding from this provision and based on substantive law, the subject can foresee a more favorable outcome, in particular, meet the deadline and lose time, miss one or another opportunity for recovery, including giving the defendant a possibility of abuse or assuming future legal costs to facilitate the case consideration. Such events should be considered individually depending on the existing substantive legal relations. Consequently, the subject is motivated to choose a better way to resolve the dispute with due regard to a particular situation. Therefore, it would be appropriate to exclude this condition for the exercise of the right to apply to the court from procedural law.

Currently, Russia experiences certain difficulties in the implementation of the claim procedure, which affects the right to judicial protection in general. The thirty-day period for responding to a claim established by law violates the balance of the rights and interests of the parties and prevents the exercise of the right to apply to the court. In particular, a bona fide party might suffer from the actions of a dishonest party since the latter can take measures to prevent further litigation, for example, withdraw assets (30 days is often enough for this).

It is also debatable what documents will confirm the observance of the right to the pre-trial settlement of disputes since no or insufficient evidence will undermine the exercise of the right to apply to the court and limit the right to judicial protection.

The compliance with the claim procedure is considered disputable, provided that the defendant's location is unknown. In this case, the rule on sending a claim at the property location does not work. The judge has a formal reason to limit the right to apply to the court and, consequently, the right to judicial protection. At the same time, a repeated appeal is not prohibited but it is unclear how to apply if the location of the defendant is unknown.

In the Russian doctrine, it is unresolved at what point in the trial the defendant should declare that the plaintiff has not complied with the claim procedure or that the limitation period has been missed. According to the rule of good faith, it is obvious that the defendant should do this within the maximum reasonable time after they learn all the details of the trial. Thus, this issue is to be resolved before the case is considered on the merits; otherwise, the defendant clearly violates the rule of good faith and this gives rise to the defendant's abuse of their right. Indeed, it is impossible to completely prohibit the defendant to state non-compliance with the claim procedure or missing the limitation period. However, the defendant should do this only if they prove they could not have performed this action earlier.

The Russian doctrine also emphasizes other classifications of the prerequisites for the right to sue. In addition to dividing such procedural prerequisites into general and special, Yu.A. Svirin proposed two types according to procedural consequences: suspensive and preclusive. The suspensive prerequisites are enshrined in Article 131 and Article 132 of the Civil Procedure Code of the Russian Federation and postpone the consideration of a statement of claim. The preclusive prerequisites are enshrined in Article 134 and Article 135 of the Civil Procedure Code of the Russian Federation. If there are prerequisites, the court is not entitled to initiate civil proceedings and either returns the statement of claim or refuses to accept it (Svirin 2020, 52).

We considered the existing prerequisites for the right to sue and revealed that a procedure for performing legally significant actions is of fundamental importance in addition to the specific grounds necessary for their implementation. In order to go to court, objective circumstances are not enough to protect the rights and legitimate interests of a person. It is also mandatory to comply with the procedure for exercising the right to go to court.

If a person has the right to apply to the court, it is necessary to follow a certain procedure to exercise this right. This procedure is fixed by the civil procedural law and concerns both the form and content of the statement of claim.

The most important step in exercising the right to appeal to the court is to complete a statement of claim. This action is directly regulated by the current procedural legislation. In this regard, this action should comply with legal requirements for the statement of claim.

According to the procedural law of the Russian Federation, a statement of claim might be concluded in one of two forms:

1) A statement of claim drawn up on paper;

2) A statement of claim drawn up in electronic form.

In addition to regulating the possibility of filing a claim in electronic form, the current legislation establishes the obligation to send it to the court through special information systems. Within the framework of civil and arbitration proceedings, electronic statements of claim are filed through the federal state information system "The Unified Portal of Public and Municipal Services", or any other information system determined by the Supreme Court of the Russian Federation, the Judicial Department under the Supreme Court of the Russian Federation, or electronic document management systems used by participants as part of a unified system of interdepartmental electronic interaction.

There are additional requirements for electronic statements of claim related to the need to validate them using a simple electronic signature or a qualified electronic signature depending on the internal conditions for accepting these documents by specific information systems. For example, a qualified electronic signature is mandatory for claims filed by the parties to proceedings through electronic document management systems.

Despite the general similarity of civil and arbitration legislation in terms of regulating the process of filing claims, there are some differences. In addition to the requirements for a claim, Article 4 of the Arbitration Procedure Code of the Russian Federation regulates its content, i.e. an indication of the economic nature of the dispute. It is justified to determine the specifics of disputes which is conditioned by the competence of arbitration courts. Although Article 131 of the Civil Procedure Code mentions the content of the claim, there are no specific requirements of the civil procedure legislation for such a claim.

The content of such a claim is also determined by the fixed list of information subject to mandatory indication in the statement of claim in accordance with the current civil and arbitration legislation. Thus, the claim should contain the following data:

1) The name of the court to which the application is submitted;

2) Information about the plaintiff: first name, last name, patronymic name (if any), the date and place of birth, the place of residence or place of stay, identifiers (individual insurance account number, taxpayer identification number, the number and series of an identity document, the number and series of the driver's license, the number and series of the vehicle registration certificate) for citizens; the name, address, taxpayer identification number and main state registration number for organizations; name, address for sending court summonses and other court notices, one of the identifiers for representatives;

3) Information about the defendant: first name, last name, patronymic name (if any), place of residence, date and place of birth, the place of work (if known), and one of the identifiers (individual insurance account number, taxpayer identification number, the number and series of an identity document, the main state registration number of a sole proprietor, the number and series of the driver's license, the number and series of the vehicle registration certificate) for citizens; name and address, the taxpayer identification number and the main state registration number (if known) for organizations. When a citizen fills the statement of claim, they indicate one of the identifiers if it is known to the plaintiff;

4) The essence of the violation or threat of violation of the rights, freedoms, or legitimate interests of the plaintiff and their claims;

5) The circumstances on which the plaintiff bases their claims and the evidence confirming these circumstances;

6) The amount of a lawsuit if it is subject to assessment, as well as the calculation of the amount of money recovered or disputed;

7) Information on compliance with the pre-trial proceedings for applying to the defendant, if they are established by the federal law;

8) Information about the actions taken by the party (parties) aimed at reconciliation, if such actions were taken;

9) The list of documents attached to the application.

In addition, a number of documents should be attached to the statement of claim, in particular:

1) A document confirming the payment of state fees in the prescribed manner and amount, or the right to receive benefits in the payment of state fees, or an application for a deferral, installment plan, and reduction of state fees or exemption from paying such fees;

2) The power of attorney or other document certifying the authority of the plaintiff's representative;

3) Documents confirming the implementation of the mandatory pre-trial proceedings for settling the dispute, if such proceedings are established by the federal law;

4) Documents confirming the circumstances on which the plaintiff bases their claims;

5) The calculation of the amount of money to be recovered or disputed signed by the plaintiff or their representative, with copies in accordance with the number of defendants and third parties;

6) The acknowledgment of receipt or other documents confirming the sending of statement copies and attachments to other persons participating in the case, which other persons do not have, including electronic statements of claim and attached documents;

7) Documents confirming the commission by the party (parties) of actions aimed at reconciliation, if such actions were taken and the relevant documents are available.

To exercise the right to apply to the court, persons whose rights are violated need to do more than commit lawful actions in terms of filing a claim. The result of filing a claim is its acceptance or refusal to accept by the judicial authority. If the statement of claim is drawn up and filed in accordance with all legal requirements, the court issues a ruling that initiates proceedings.

The current procedural legislation establishes a single term for the consideration of claims (five days) which seems to be fair and proportionate. However, there are suggestions to either reduce or increase this period (Popova 2020, 339). We believe that such proposals violate the prudential principle since, given the workload of courts, it is impossible to examine claims in a shorter period of time. On the contrary, if the specified period is extended, it can significantly increase the duration of judicial proceedings which are already time-consuming.

While studying the procedure for exercising the right to apply to the court, it is crucial to analyze the grounds for refusing to accept a statement of claim.

First of all, the court shall determine whether the right to judicial protection enjoyed by the applicant relates to the exercise of the right to sue or whether another body

is needed to protect the violated right. If the case under consideration does not relate to civil or arbitration proceedings, this gives grounds to reject the relevant statement of claim in accordance with Article 134 of the Civil Procedure Code and Article 127.1 of the Arbitration Procedure Code.

For example, in accordance with the Resolution of the 15th Arbitration Court of Appeal of November 22, 2019 in case No. A53-20619/2018, a sole proprietor filed a lawsuit against another sole proprietor for the recovery of debts and penalties. The arbitration court terminated the proceedings on the case, arguing that at the time of filing the statement of claim the defendant did not have the status of a sole proprietor. Accordingly, this dispute was not subject to arbitration. The plaintiff disagreed with the arbitration court and appealed against its judicial decision. After studying the case materials, the Arbitration Court of Appeal concluded that the appealed decision could not be canceled. A sole proprietor filed a similar claim with a court of general jurisdiction. This court also refused to accept such a statement of claim, arguing that the dispute was not within the competence of the court of general jurisdiction since the parties were sole proprietors and the dispute was of economic (i.e. it is caused by entrepreneurial activity). The ambiguous wording of the law on exercising the right to apply to the court (both courts refused to consider the statement of claim) deprived the plaintiff of the right to judicial protection.

According to I.V. Reshetnikova (2017), the court needs to investigate the procedural facts justifying the right to sue when accepting a statement of claim, therefore such facts are subject to proof. This opinion seems wrongful since the process of proving is part of the existing civil proceedings and the procedural prerequisites for the right to appeal (being sufficient conditions for initiating civil proceedings) are examined by the court before initiating a civil case. At the first stage, the court should examine the procedural prerequisites that the plaintiff does not prove but indicates in the statement of claim and annexes. Otherwise, we deal with a significant infringement of the right to judicial protection since the court creates obstacles to accepting the statement of claim.

The prerequisites for the right to sue must be reasonable and sufficient to guarantee the person whose right has been violated the possibility of resorting to judicial protection. Resolution of the Constitutional Court of the Russian Federation No. 20-P of July 11, 2017 states that one or another method of judicial protection cannot be conditioned by the imposition of unreasonable and excessive burdens on the person concerned. The latter

might make the achieved procedural results meaningless due to their severity and limit access to justice.

4. CONCLUSION

Based on the foregoing, we drew the following conclusions:

1. In fact, one of the prerequisites for the right to apply to the court is the legal capacity (general and special) of the plaintiff. However, it is not directly specified in the law, which gives rise to contradictory judicial practice.

2. Unlike legal capacity, the legal capability is not a precondition for the right to apply to the court.

3. While accepting a claim, the court has the right to investigate the prerequisites for the right to apply to the court indicated by the plaintiff. At this stage, the court does not have the right to demand evidence of the right to apply to the court from the plaintiff since such evidence must be examined in a court session at a later stage of the proceedings.

4. The form of an electronic claim as one of the prerequisites for the right to apply to the court should be regulated by the law rather than by-laws of the Judicial Department under the Supreme Court of the Russian Federation.

5. The defendant has the right to declare that the limitation period has expired or that pre-trial proceedings for settling the dispute have not been observed before the consideration of the case on the merits. The other would violate the balance of the rights and interests of the plaintiff and the defendant, as well as aggravates the violation of the defendant's right.

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