

Theoretical and practical problems of evaluation categories in civil legal proceedings

I V Rekhtina^{1*}, M A Bolovnev¹ and G N Aksenova¹

¹ Altai State University, 61 Lenina pr., Barnaul 656049 Russia

E-mail: jerdel80@mail.ru

Abstract. The article discusses the use and application of evaluation concepts in the consideration of civil cases, fixed both in the text of regulatory acts and in the doctrine. It has been established that the absence of normative guidelines or the specification of a concept in acts of the highest judicial bodies leads to conflicting judicial decisions. This violates the uniformity of judicial practice and reduces the level of guarantees of judicial protection of violated rights and legally protected interests. The authors make a classification and general description of categories that do not have a specific content. Three groups of appraisal concepts are distinguished, such as appraisal categories having specification; general interpretations directly in the norms of the procedural code; evaluation concepts that do not have a normative definition, but which are disclosed and specified in acts of the highest judicial bodies of the Russian Federation; evaluative categories that do not have a transcript either in the procedural rules or in judicial practice. The article emphasizes that in establishing uniformity in the application of evaluation categories in practice, legal conflicts, gaps and contradictions, the multiplicity of which undermines the authority of the judiciary and violates the right to a fair trial, will be minimized. The results can be used for strengthening legal practices in the border regions of Russia and the post-Soviet space.

Keywords: evaluation concepts, judicial practice, evaluation categories, legal doctrine

1. Introduction

Despite the strict regulation of civil procedural relations, due to the requirements of the civil procedural form [1], their variability and diversity determine the presence of evaluative concepts and categories in the norms of procedural branches of law. On the one hand, this circumstance increases the independence of judges in choosing behaviors in certain cases and, accordingly, expands the possibilities of applying a court decision, and on the other hand complicates the enforcement process, since it allows the resolution of various situations that arise in the process, with various, sometimes in opposite ways.

It should be emphasized that the legislator does not welcome the use of mutually exclusive, diametrically opposite approaches in resolving typical procedural cases using assessment categories. Freedom of judicial discretion in interpreting evaluative concepts has certain limits and limits that can be established by law, official court practice, and legal doctrine.

2. Materials and Methods

The study used the formal legal and comparative legal method. They allowed to trace the formation of evaluation concepts in the sphere of civil procedural relations, classify them into groups, identify and analyze the problems of interpretation and application. Among the sociological methods, we relied on analysis and synthesis.

3. Results

An analysis of the norms of the Civil Procedure Code of the Russian Federation revealed a significant number of assessment categories, which is partly due to the diversity of material and procedural relations. The monitoring of the existing evaluation concepts allowed conditionally dividing them into three groups, such as:

The *group 1* is evaluation categories that have a specificity, a general interpretation directly in the norms of the procedural code, which contributes to their uniform application by the judges (respectfulness of skipping the procedural period, necessary evidence, significant violations of the law, fundamental violations of the law, etc.).

The *group 2* is evaluative concepts that do not have a normative definition, but they are revealed and specified in acts of the highest judicial bodies of the Russian Federation: Resolutions of the Constitutional Court of the Russian Federation, Resolutions of the Plenum of the Supreme Court of the Russian Federation, Decrees of the Presidium and Judicial Collegiums of the Supreme Court of the Russian Federation (abuse of procedural law, reasonable timeframes, reasonable limits, inner conviction of a judge, proportionality of measures applied for securing a claim, etc.).

The *group 3* is evaluative those categories which have no explanation either in the procedural rules or in judicial practice. Such evaluative concepts have only a scientific interpretation and definition. Exclusively doctrinal evaluation concepts represent the most complex and controversial cases of their application in civil proceedings, since the only guide for the judge in applying a specific evaluation phenomenon is the principles of the civil process, as well as the statements and comments of prominent legal scholars (a legal doctrine).

4. Discussion

It is necessary to illustrate the selected groups of evaluation concepts with specific examples. The first group of evaluative concepts includes the category of “respectfulness of omitting a procedural time limit.” In part 4 of Art. 112, the Code of Civil Procedure of the Russian Federation contains the rule that the missed procedural period, established respectively by Part 2 of Art. 376, Part 2 of Art. 391.2 and Part 2 of Art. 391.11, can be restored only in exceptional cases when the court recognizes as valid the reasons for his omission due to circumstances objectively excluding the possibility of filing a cassation or supervisory appeal within the prescribed period (severe illness of the person filing the complaint, his helpless state, etc.).

In addition, this issue is specified in the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 19, 2012 No. 13 “On the Application by Courts of Civil Procedural Legislation Governing the Proceedings Before the Court of Appeal”, which states that for persons involved in the case, for valid reasons of missing the deadline in particular, can be attributed the following: (1) circumstances related to the identity of the person filing the appeal (severe illness, helpless state, illiteracy, etc.); (2) obtaining by a person (who was not present at the court hearing, in which the trial of the case ended) a copy of the court decision upon the expiration of the appeal period or when the time remaining until the expiration of this period is clearly not enough for familiarization with the case materials and drawing up motivated appeals; (3) a failure to explain by the court of first instance in violation with the requirements of Art. 193 and Part 5 of Art. 198 of the Code of Civil Procedure of the Russian Federation about the procedure and time limit for appeal; (4) a failure to comply with the court established by Art. 199 Code of Civil Procedure Code of the Russian Federation for which may be postponed the preparation of a reasoned court decision, or established by Art. 214 of the Code of Civil Procedure of the Russian Federation for the expulsion of a copy of a court decision

to persons involved in the case, but not present at the court hearing, in which the proceedings ended, if such violations resulted in the impossibility of preparing and filing motivated appeals and submitting them within the prescribed time limit.

An example of the second group of assessment categories is the criterion of “reasonableness” when reimbursing court costs for the services of a representative. In Part 1 of Art. 100 in the Code of Civil Procedure of the Russian Federation there is a general indication that the party, which favors the decision of the court, uses a written request, on the other hand, the costs of the representative’s services within reasonable limits are also to be covered. However, the Resolution of the Plenum of the Supreme Court of the Russian Federation on January 21, 2016 N. 1 “On Some Issues of the Application of the Law on Reimbursement of the Costs Associated with the Consideration of the Case” specifies that such expenses for the representative’s services, which under comparable circumstances are usually charged for similar services. When determining the reasonableness, the volume of the stated requirements, the price of the claim, the complexity of the case, the volume of services rendered by the representative, the time required to prepare the procedural documents, the duration of the case, and other circumstances can be taken into account. The reasonableness of the legal costs of the representative’s services cannot be justified by the fame of the representative of the person participating in the case.

Another example is the concept of “abuse of procedural law” and the criteria of good faith and reasonableness used for its qualification [2]. So, Art. 35 Code of Civil Procedure of the Russian Federation without any specification establishes that the persons involved in the case must conscientiously enjoy all procedural rights belonging to them. At the same time, the criteria for the qualification of behavior in the norms of the Code of Civil Procedure of the Russian Federation are absent. The concretization of this assessment phenomenon is contained in a number of decisions of the Constitutional Court of the Russian Federation, which not only uses the notions of “abuse of rights,” “abuse of procedural rights” in its acts, regularly drawing attention to the inadmissibility of abuse, but also applies the criteria of “good faith” and “reasonableness” to specific the circumstances of the case when considering the complaint.

For example, Paragraph 3 of the Resolution of the Constitutional Court of the Russian Federation No. 16-P dated June 22, 2017, which analyzes the situation regarding the recovery of property by its owner from a bona fide purchaser, states that “prescribing the limits of exercising civil rights, art. 10 of the Civil Code of the Russian Federation establishes that the good faith of participants in civil legal relations and the reasonableness of their actions is assumed (paragraph 5).”

Simultaneously with focusing on preventing unfair implementation by participants from various groups of relations, the Constitutional Court of the Russian Federation repeatedly stressed the relationship of the estimated categories of “abuse of right” and the criteria of “good faith and reasonableness” with other evaluative concepts and phenomena. Such dependence of the categories “due diligence”, “reasonable diligence” of participants in civil turnover with the notion of “good faith” of their behavior is addressed in a number of decisions of the Constitutional Court of the Russian Federation. This confirms not only the special significance of the proper interpretation of various appraisal concepts, but also, as a rule, the simultaneous use of appraisal categories in combination and inseparable connection. In the Resolution of April 4, 2013 No. 8-P, the Constitutional Court of the Russian Federation points to the relationship between the category of “abuse of right” and the principles of equality and proportionality, the requirements of formal certainty, adequacy and proportionality of the legal means used, as well as the dependence of means of restricting voting rights from the criteria of “excessiveness,” “necessity,” “significance,” and “values.”

The third group of assessment categories is illustrated by the additional requirements for a court decision that are doctrinally elaborated: (1) completeness, as the need for the decision to answer all stated claims and objections of the persons involved in the case; (2) certainty, as a clear expression in the decision of the conclusions of the court on the satisfaction or non-satisfaction of the claim, the definition of the rights and obligations of the parties; (3) unconditional, as the impossibility of making the execution of a decision dependent on the occurrence of a certain condition [3].

This group includes the category of “judicial (judicial) discretion,” which is disclosed in scientific studies and monographs. So, A.T. Bonner understands judicial discretion as the activity of the court in finding the most optimal solution within the general framework of the law, which is determined by the tasks set before the court, meets the interests of the state and society, and is based on the knowledge of objective reality [4]. O. A. Papkova understands judicial discretion of a specific type of law enforcement activity regulated by the rules, the essence of which is to provide the court with the appropriate authority to resolve a controversial legal issue, based on the objectives pursued by the legislator, the principles of law and other general provisions of the law, the specific circumstances of the case as well as the beginnings of rationality, honesty, justice, and the foundations of morality [5].

5. Conclusion

The practice of using evaluation categories in civil proceedings shows that the absence of normative guidelines or the concretization of this concept in acts of the highest judicial bodies leads to contradictory court decisions, which violates the uniformity of judicial practice and reduces the level of guarantees of judicial protection of violated rights and legally protected interests.

In this connection, when a legislator incorporates an assessment category in procedural codes, it should be specified in general terms directly in the norms of the Civil Procedure Code of the Russian Federation, or recommend to the Supreme Court of the Russian Federation to formulate a corresponding explanation on this issue. Unreasonable adoption of procedural rules containing appraisal concepts, creates in practice legal conflicts, gaps and contradictions, the multiplicity of which undermines the authority of the judiciary and violates the right to a fair trial.

In conclusion, it is appropriate to quote Rudolf von Jhering, who stated the following, when formulating the laws of a legal construction, “The simpler the construction, the more perfect it is, i.e. so it is clearer, more transparent, more natural; and here, in the highest simplicity, the highest art is reflected” [6].

References

- [1] Osokina G L 2008 *The civil process: a common part* (Moscow, Russia: Norma)
- [2] Lukyanenko M F 2010 *Valuation concepts of civil law: rationality, integrity, materiality* (Moscow, Russia: Statut).
- [3] *The arbitration process: a tutorial* 2014 (Moscow, Russia: InfortropikMedia)
- [4] Bonner A T 1979 The Soviet law and judicial discretion *Soviet State and Law* 6 pp 46-52
- [5] Papkova O A (2005) *Court discretion* (Moscow, Russia: Statut)
- [6] Jhering R (2008) *Legal technology* (Moscow, Russia: Statut)