

SCIENTIFIC-THEORETICAL FOUNDATIONS OF CIVIL PROCESS STAGES

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Abstract

This article presents the concept of stages of civil proceedings and the opinion that the execution of judicial acts is the last stage, as well as relevant scientific and theoretical recommendations.

Keywords: civil process, court, stage, judge, judicial act, car.

Introduction

The current Civil procedure code of the Republic of Uzbekistan does not cover the concept of the stage of the civil process. Articles 44, 47, 105, 166 of this Code use the term "stage", but this does not clearly define what the stage of civil proceedings is.

Different definitions of the stages of the civil process have been given by legal scholars in the legal literature.

According to legal scholar M.M. Mamasiddikov, the stages of civil proceedings are a set of procedural actions aimed at an important goal, such as the conducting of the tasks of court proceedings, the correct and timely consideration and resolution of civil cases¹.

According to A.A. Vlasov's opinion, the stages of civil proceedings mean the set of procedural actions that unite the purpose of court proceedings.²

According to M.S. Shakaryan's opinion, it is understood that the stages of the civil process include a set of procedural actions aimed at achieving the final goal.³

Joining the opinions of these scientists, it can be said that the stage of civil proceedings is a set of independent goals, tasks and procedural actions that ensure the continuity of civil court proceedings.

In the theory of the science of civil procedural law, there are two different approaches to dividing the civil process into stages. Legal scholars P.V. Loginov, V.K. Puchinsky, V.F. Kovin say that the criterion for dividing the process into stages is the goal of the stage⁴. According to

1 Civil procedural law. Textbook // Author team. Ph.D., prof. Under the general editorship of M.M. Mamasiddikov. - Tashkent. "Adolat" publishing house. 2022. -B.36.

2 Vlasov A.A. Civil law: Uchebnik. -M.: TK Webly, 2004. -S. 28-29.

3 Civil law: Uchebnik / S.A. Alexina, V. V. Blajeev and dr. Pod ed. M.S. Shakaryan. - M.: TK Welby, Izd-vo Prospekt, 2004. - 22 p.

4 Korshunov N.M. Grajdansky process: uchebnik / N.M. Korshunov. – M.: UNIT-DANA; Zakon i pravo, 2012g. 53 p.



the supporters of the first approach, the stage of the civil process is a set of procedural actions directly aimed at one goal.

According to this approach, the stages of the civil process are as follows:

institution of the cases;

preparation of civil cases for court trial;

court trial;

proceeding with appeals and protests against court decisions and rulings that have not entered into legal force;

review of decisions, rulings and decisions entered into legal force;

processing of a newly opened case;

conducting enforcement proceedings

proceedings in the court of appeal

proceedings in court of cassation instance;

proceedings in the court of supervision;

reopening of judicial acts that have entered into legal force upon discovery of new facts;

execution of judicial acts.⁵

Legal scholar M.M. Mamasiddikov shows the following stages of the civil process, taking into account the norms provided by the Civil procedure code, the sequence and systematicity of the procedural actions of the court and the persons participating in the case:

institution of the cases (Chapter 20);

preparation of civil cases for court trial (Chapter 21);

court trial (Chapter 22);

filing appeals (protests) against court decisions. (Chapters 23, 44, 45, 46, 47);

enforcement of judicial acts (Section 5)⁶.

Joining the opinions of these scientists, we also support the division of the civil process into the above stages.

Proponents of the second approach argue that the stage of the process is a specific part of the process, a set of procedural actions aimed at achieving an independent (final) goal corresponding to the stage of the court process where the dispute or complaint should be considered on the merits. The decisive factor in dividing the process into stages is that the process can be completed at any stage. Proponents of this approach divide the civil process into the following stages:

Proceedings in court of first instance;

Proceedings in the court of (second) appeal instance;

Proceedings in court of cassation instance;

Proceedings in the court of supervision instance;

Reopening of judicial acts that have entered into legal force upon discovery of new facts;

Execution of judicial acts.

⁵ Civil Code of Russia: Uchebnyk dlya vuzov. P.V. Aleksey, N. D. Ervili, V. N. Guluzo and dr. Pod ed. Prof. P. V. Alexia, Prof. N.D. Amaglobeli. - M.: UNITIDANA, 2005. - 5 p.

⁶ Civil procedural law. Textbook // Author team. Ph.D., prof. Under the general editorship of M.M. Mamasiddikov. - Tashkent. "Adolat" publishing house. 2022. -B.36.



We can see that there are controversial opinions on the division of civil court proceedings into stages. In particular, V.M. Semenov shows that the first three stages of the above civil process occur in the process of substantive consideration of civil cases in courts of first instance, and they cannot be a separate stage of the civil process. In his opinion, this stage of the civil process is considered basic and mandatory for all civil cases, and it has its own characteristics based on the types of civil court proceedings. They emphasize that the remaining stages are not mandatory and they only apply when certain situations arise. In particular, the case is considered in the court of the second instance based on the complaints of the interested parties (parties, third parties and their representatives) or the prosecutor's protest. Review and check of court documents entered into legal force in the supervision procedure or upon discovery of new facts can be carried out in rare cases, only when there are legal grounds. Also, there is a need to conduct enforcement proceedings only if court documents are not executed voluntarily by the debtor.⁷

There are different views, approaches, and opinions about whether the execution of court documents in civil cases should not enter the stage of civil proceedings.

Some scholars believe that the execution stage is not a stage of the civil process, it is regulated by a separate field of law - execution law or execution procedural law.⁸

Other legal scholars recognize the execution stage as the final stage of the civil process. For example, according to the legal scholar Sh.Shorakhmetov's opinion, the execution of acts issued to protect the rights of citizens and organizations is the final stage of the civil process⁹.

According to the legal scholar Z.Esanova's opinion, civil procedural legislation regulates not only the relations related to consideration and resolution of civil cases, but also issues of execution of court acts and acts of other bodies. In his opinion, the purpose of the enforcement stage is to protect the violated rights and interests of citizens through the methods of voluntary and mandatory execution of decisions of courts and other bodies based on the procedures established by law¹⁰.

Legal scholars V.Yarkov and M.Treushnikov also emphasize that the execution of court acts is the last stage of the civil process¹¹.

Legal scholar U. Tukhtasheva also recognizes the execution of court decisions as a necessary and final stage¹².

Joining the opinions of the above legal scholars, we can say that the execution of court acts is the final stage of the civil process:

⁷ Grazhdanskoe sudoprizvodstvo // Uchebnoe posobie. Pod red. prof. V. M. Semenova. - Sverdlovsk. 1974. - 17 p.

⁸ Labygin A.N., Grajdansky process: uchebnik / UNIT-DANA; Zakon i pravo, 2012g.

⁹ Shorakhmetov Sh.Sh. Civil procedural law of the Republic of Uzbekistan. - Tashkent. 2001. -B.395. Shorakhmetov Sh.Sh. Comments on the Civil Procedure Code of the Republic of Uzbekistan. - Tashkent. 2010. - B.903.

¹⁰ Civil procedural law. Special part. Textbook for university students. - Tashkent: TDYuI publishing house, 2013. Author team. -B.315.

¹¹ Civil process. Textbook. Pod. ed. V.V. Yarkova. 6-e izd, per i dop. -M.: Walters Kluwer, 2006. -S. 540-575; Civil process. Textbook. / Pod.ed. M. K. Treushnikova. 2-e izd, per i dop. -M.: Gorodets, 2007. -S. 580-585.

¹² Tukhtasheva U.A. Executive proceedings. Textbook. - Tashkent: 2008. - 227 p.



In the Civil procedure code of the Republic of Uzbekistan exist a Section 5 called "Execution of judicial acts", in this section, focusing on nforcement of judicial acts, the procedure and term of issuing a writ of execution, delaying the execution of the decision or its partial execution, changing the method and procedure of its execution, suspension and termination of execution proceedings, resolution of the matter on reversal of execution of the judicial act by the court of first instance, peculiarities of the reversal of execution by certain categories of cases; execution of entered into legal force judicial acts in accordance with the Civil procedure code of the Republic of Uzbekistan, the Law of the Republic of Uzbekistan "On execution of court resolutions and acts of other bodies;

the fact that the court has the authority to approve court documents, stop and terminate enforcement actions when the parties enter into an agreement in the execution of court documents, when they refuse to execute them, indicates that the execution of court documents is the final stage of the civil process.

The fact that when the parties enter into a settlement agreement, if the parties refuse to execute, the court is authorized to approve such procedural actions and the fact that the court has the power to suspend and terminate enforcement proceedings indicate that the execution of judicial acts is the final stage of the civil process.

