

SPECIAL PROCEEDINGS IN CIVIL PROCEEDINGS

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ОСОБОЕ ПРОИЗВОДСТВО В ГРАЖДАНСКОМ ПРОЦЕССЕ

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В данной статье дается определение понятия особого производство и указываются виды гражданских дел особого производство.

В данной статье описано понятие и сущность особого производства, его от искового производства, проанализирован порядок рассмотрения дел особого производства, описано, какие дела об установлении фактов, имеющих юридическое значение, рассматривается судом, и порядок подачи заявления и сформировать основные требования, предъявляемые к заявлению об установлении юридического факта, названы условия, которые необходимы для установления фактов, имеющих юридическое значение, дано объяснение содержанию составных частей решения по делам об установлении фактов, имеющих юридическое значение, в том числе и содержание резолютивной части решения, по итогам исследования выдвинуты предложения по совершенствованию действующего законодательства.

ABSTRACT

This article defines the concept of special proceedings and specifies the types of civil cases of special proceedings.

This article describes the concept and essence of special proceedings, it is from the action proceedings, analyzes the procedure for considering cases of special proceedings, describes which cases of establishing facts of legal significance are considered by the court, and the procedure for filing an application and form the basic requirements for an application for establishing a legal fact, the conditions that are necessary for establishing facts of legal significance are named, an explanation is given for the content of the components of the decision in cases of establishing facts of legal significance, including the content of the operative part of the decision, based on the results of the study, proposals were put forward to improve the current legislation.

Ключевые слова: гражданское судопроизводство, особое производство, судебный порядок, юридические факты, судебное решение, правовые последствия, подготовка дела.

Keywords: civil proceedings, special proceedings, court order, legal facts, court decision, legal consequences, preparation of the case.

INTRODUCTION

A special proceeding is a judicial establishment of legal facts, not related to the resolution of a dispute about the right.

The difference between special proceedings and action proceedings lies in the fact that special proceedings are unilateral proceedings in which there is no dispute about the right, when there is no substantive legal claim of one person against another.

The absence of a legal dispute and parties in special proceedings makes it impossible to bring a counterclaim, change parties, conclude a settlement agreement, etc.

In the order of special proceedings, the court considers cases:

- 1) On establishment of the facts having legal relevance;
- 2) On child adoption (hereinafter — the adoption);
- 3) On recognition of a citizen as missing and declaration of a citizen as dead;
- 4) On recognition of a citizen as having limited legal capacity or legally incapable;
- 5) On involuntary hospitalization of a person in a psychiatric hospital or extension of the hospitalization period;
- 6) On involuntary hospitalization of a person in a specialized department of a TB hospital or extension of the hospitalization period;
- 7) On declaring the minor as fully capable (emancipation);
- 8) On recognition of property (item) as ownerless;
- 9) On restoration of rights under lost bearer documents (procedure to declare lost documents void);
- 10) On restoration of lost court proceedings.

The order of consideration of cases of special proceedings.

Cases of special proceedings are considered by the courts according to the general rules of action proceedings with exceptions and additions established by the relevant chapters of the Code of Civil Procedure of the Republic of Uzbekistan.

The content of the application must meet the requirements of the relevant article of the Code of Civil Procedure of the Republic of Uzbekistan. The application submitted by the prosecutor, other state bodies, local self-government bodies and other bodies in the state or public interests must contain a justification of what the state or public interest is, what right has been violated, as well as a reference to the law or other legal act. In the event that a prosecutor, other state bodies, local governments and other bodies bring a claim in the interests of a citizen, it must contain a justification for the impossibility of bringing a claim by the citizen himself and must be accompanied by a document confirming consent to file an application with the court, except in cases of filing an application in the interests of incompetent person. The application shall be signed by the plaintiff or the representative if he has the authority to sign and present the application. If a citizen, due to a physical disability or illness, cannot sign with his own hand, then at his request another citizen can sign the application. The signature of the latter must be certified by a notary or other official who has the right to perform such a notarial act, indicating the reasons why the plaintiff could not sign the application with his own hand.

The emergence of a dispute about the law, the consideration of which is referred to the jurisdiction of the courts, excludes the possibility of considering the case in a special proceeding. This is an essential feature of cases of special proceedings.

Example:

By decision of the district court, the application of Ivanov's representative was satisfied. The immovable property located at the address: Tash-Dobo village, Bolnichnaya st., 46, was recognized as ownerless and the right of ownership was recognized for it. Counterclaim of Mr. Yarkov on the recognition of ownership due to prescription was left without satisfaction.

By the decision of the judicial collegium for civil cases of the regional court, the decision of the district court was canceled and the application of the representative of Ivanov was left without consideration. The regional court indicated that the application had been filed under special proceedings, but there was a dispute about the right. If the existence of a dispute is established during the consideration of the case in the procedure of special proceedings, the court shall issue a ruling in which it explains to the applicant and other persons their right to resolve the dispute in the procedure of action proceedings.

ESTABLISHMENT OF FACTS OF LEGAL SIGNIFICANCE

When one or another fact cannot be certified by an appropriate document: due to its loss, impossibility of restoration, or for other reasons, the law provides for a judicial procedure for establishing legal facts.

Cases on the establishment of facts of legal significance.

According to the Code of Civil Procedure of the Republic of Uzbekistan, the court considers cases on establishing the fact:

- 1) Kinship relations of persons;
- 2) Person being the dependent;
- 3) Acknowledgement (establishment) of paternity, the fact that the child's was born from this mother, as well as the time of his/her birth;
- 4) Registration of adoption, marriage, dissolution of marriage and death;
- 5) Being in actual marital relations in cases stipulated by law, if the registration of the marriage in the civil registry bodies cannot be made due to death of one of the spouses;
- 6) Whether Entitlement documents (except for membership cards of public associations, military documents, passport, certificates issued by civil registration authorities) belong to a person whose surname, name or patronymic indicated in the document do not coincide with the surname, name or patronymic of that person under the passport or birth certificate;
- 7) Accident;
- 8) Ownership of the building on the right of private ownership;
- 9) Acceptance of the inheritance and place of opening of the inheritance.

Other facts of legal significance, unless the legislation provides for a different procedure for their establishment.

Conditions necessary to establish facts of legal significance.

In accordance with the requirements of the Code of Civil Procedure of the Republic of Uzbekistan, the court establishes facts of legal significance only if it is impossible for the applicant to otherwise obtain the appropriate documents certifying these facts, or if it is impossible to restore the lost documents.

Submission of the application and its content.

Statement of Establishment of Facts of Legal Significance	the statement was erroneous and
extrajudicial order	case filed
accepting an application	case to be dismissed
should be denied	

Applications in cases of establishing facts of legal significance are filed with the court at the place of residence of the applicant, with the exception of an application for establishing the fact of possession, use and disposal of real estate on the basis of ownership, which is filed with the court at the location of real estate.

If the applicant is a legal entity, then the application is submitted at the place of registration of the legal entity.

Cases on the establishment of facts of legal significance may be initiated in court at the request of both persons directly interested in this, and other citizens and legal entities, when, by law, they have the right to apply to the court in defense of the interests of other persons.

Example:

Galina was in an actual marriage relationship with Asan. In 2008, their son Ruslan was born. In 2009, Asan got into a traffic accident and received serious bodily injuries, later died from his wounds.

Galina applied to the court with a statement establishing the fact of recognition of paternity by Asan in relation to her son Ruslan. Galina's application was satisfied by the decision of the Osh city court.

The application for the establishment of a legal fact must meet the requirements of the Code of Civil Procedure of the Republic of Uzbekistan. In addition to the usual details (name, place of residence or location of the applicant, attached documents, etc.), the application must indicate:

- What fact needs to be established;
- The purpose of establishing this fact;
- Evidence confirming the impossibility of restoring the lost documents.

If the application does not indicate the purpose of applying to the court, the judge has the right to apply the relevant articles of the Code of Civil Procedure and refuse to accept the application. Court decision on application.

The decision made in the case on the establishment of a fact of legal significance must meet all the requirements of the court decision set forth in the Code of Civil Procedure of the Republic of Uzbekistan.

The solution consists of 4 parts:

- Introductory;
- Descriptive;
- Motivational;
- Resolutive.

The introductory part of the decision shall indicate the time and place of the decision, the name of the court that issued the decision, the composition of the court, the secretary of the court

session, the parties, other persons participating in the case and their representatives, the subject of the dispute or the stated requirement.

The descriptive part of the decision must contain an indication of the plaintiff's claim, the defendant's counterclaim, the defendant's objections and explanations of other persons participating in the case.

The reasoning part of the decision must indicate the circumstances of the case established by the court, facts, evidence on which the court's conclusions about rights and obligations are based, arguments on which the court rejects certain evidence, laws and other regulatory legal acts that the court was guided by. The court has the right to refer also to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan on the clarification of judicial practice on the issue being resolved.

The operative part of the court decision must contain the court's conclusion on the satisfaction of the claim or on the refusal of the claim in whole or in part, an indication of the distribution of court costs, the term and procedure for appealing the decision.

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