

COMMENTS

SUMMARY PROSEDURES AND OPTIMIZATION OF COMMERCIAL COURT PROCEEDINGS IN RUSSIA

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This article deals with the problems involved in implementing simplified forms of legal proceedings in the Russian civil process, which is one of the important directions for optimizing commercial court proceedings. The study is largely based on the analysis of previously unpublished statistical information on the commercial courts of three districts for the period of 2016–2018, showing the results of their procedural activities in the framework of the procedures of simplified and writ proceedings in the context of court data of the commercial court system as a whole. The obtained results are highlighted taking into account domestic, foreign and international experience, doctrinal approaches and the existing need for the optimization of commercial court proceedings. The authors substantiate the conclusion that the consideration of cases in the procedures of simplified production facilitates significantly reducing the caseload burden on the commercial courts of first instance, both by simplifying the procedures for the consideration of these cases and by drawing up judicial acts on them. The article formulates proposals for the development of the current commercial procedural law, in particular the proposal to unify the procedural order of commercial court cases on the recovery of compulsory payments and sanctions. It further proposes possible variants of such unification.

Keywords: forensic statistics; caseload; summary proceedings; writ proceedings; court proceedings in commercial litigation; court proceedings refinement.

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At the present stage, one of the key problems with the Russian judicial system, including the system of commercial courts, is the need for optimization, which will demand overcoming the excessive caseload burden on judges and court staff.

A heavy caseload negatively affects the quality of justice, significantly increases the likelihood of judicial errors, especially in complex and non-standard cases, leads to staff turnover of the judiciary, especially court staff, and ultimately undermines the prestige of the judicial profession and citizens' confidence in justice.

In this regard, it should be noted that the Committee of Ministers of the Council of Europe in Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts, adopted on 16 September 1986, outlined measures to prevent and reduce excessive caseload as one of the key objectives of the judicial policy of Member States.¹

Currently, the commercial courts are dealing with a huge number of cases. Moreover, in recent years there has been a significant increase. So, whereas in 2013 the commercial courts of the first, appeal and cassation instances dealt with 1,737,213 cases, in 2017 they dealt with 2,164,078 cases. Thus, the increase was about 20% in just four years.²

Although the overwhelming majority of cases are considered by the courts in compliance with applicable legal procedures, and in established and fairly short time periods, court work is often judged in the society and by the mass media through consideration of the results of complex, high-profile cases, where the probability of error is much greater than in relatively simple, standard cases. Hence, a negative opinion as to the quality of the work of the Russian judicial system is sometimes heard both in Russia and abroad.

The work of the commercial court judges in modern conditions is in many ways reminiscent of the work on a conveyor, where it is necessary to perform a huge number of very different tasks in a short time: simple and complex, standard and unique. With such tension, of course there are breakdowns, and mistakes, primarily in complex, not standard, cases, especially if the judge is faced with gaps in the legal regulations of economic relations.

¹ Совет Европы и Россия: Сборник документов [Council of Europe and Russia: Collection of Documents] 684–686 (Moscow: Yuridicheskaya literatura, 2004).

² See Сводные статистические сведения о деятельности федеральных арбитражных судов за 2017 г. [Summary statistics on the activities of federal commercial courts in 2017] (Apr. 28, 2019), available at <http://www.cdep.ru/index.php?id=79&item=4430>; Сводные статистические сведения о деятельности федеральных арбитражных судов за 2013 г. [Summary statistics on the activities of federal commercial courts for 2013] (Apr. 28, 2019), available at <http://www.cdep.ru/index.php?id=79&item=2884>.

An illustration of this, in particular, is a well-known case of insolvency in which a judge of a commercial court considered the issue of including a cryptocurrency (Bitcoin) in the bankruptcy. There arose before the court a rather complicated question about the civil legal nature of cryptocurrency. Unfortunately, the judge, in the face of a large, and in many respects, stressful caseload, essentially avoided addressing this issue, indicating in the court order that cryptocurrency cannot be considered property since its current legal status was not defined by the legislation of the Russian Federation. This court order was later found to be erroneous and reversed at the appellate instance.

The overall reduction in the caseload burden on judges will allow more time to be spent analyzing complex and non-standard disputes and, accordingly, there will be fewer judicial errors in such cases.

Recently, many practical steps have been taken to optimize commercial court proceedings and reduce the burden on the system of commercial courts. This is, first of all, the expansion of the application of simplified proceedings, the expansion of the use of pre-trial procedure and claim procedure, *inter alia*, the settlement of disputes, the development of conciliation procedures, etc. The measures undoubtedly had a positive effect and made it possible to stop a substantial increase in the workload of the system of commercial courts to a certain extent. However, they failed to change the overall situation.

Thus, it is necessary to take additional measures based on impartial and scientific criteria determining the optimization of commercial court proceedings.

These measures should be based on an adequate understanding of the specifics of the subject matter of jurisdictional activity, the main element of which, in the aspect of judicial activity on the consideration and resolution of economic cases, is the resolution of various kinds of legal conflicts (legal disputes). At the same time, it should be borne in mind that the procedural form of resolving legal conflicts cannot be established at will, but must be objectively determined by the nature of the legal conflicts to be resolved.

As is known, the procedural form is aimed at ensuring a certain level of procedural guarantee of the rights of the participants in a particular process. To resolve a certain type of legal conflict a certain level of procedural safeguards is objectively required and, accordingly, the procedural form ensuring this level must be applied.

Obviously, the higher the required level of procedural safeguards is the more difficult the procedural form will be. At the same time, it is erroneous to either underestimate or overestimate the level of procedural safeguards for resolving a certain type of legal conflict. In the first case, this leads to an unjustified simplification of the procedural form and thus to a possible violation of the rights of the participants in the process. In the second case, it may cause unreasonable complication of the procedural form and excessive costs of financial, human, temporary resources and, accordingly, an unreasonable increase in the workload on the courts. In other words, the procedural form must be optimal for resolving this type of conflict.

It is clear that legal conflicts, legal disputes that require a judicial form of their resolution are quite heterogeneous. They differ in the nature of the disputed legal relations, the subject of the dispute, the legal and actual complexity of the case, etc. This, of course, affects the level of procedural safeguards, which should be provided by the procedure of consideration, which, in turn, explains the objective need for differentiation of the procedural form of their resolution. At the same time, it is important to find optimal procedural forms for the respective categories of commercial cases.

At the present time, the commercial courts consider a large number of the most varied both simple and complex cases in common and the most time-consuming, expensive and complicated procedure in the oral proceedings.³ In other words, the most complicated procedure has become universal for most legal disputes, which is obviously not correct. For a significant number of disputes it is redundant in recruiting procedural guarantees and only leads to unreasonable pressure on the judicial system.

This circumstance, incidentally, does not take into account the criticism to the introduction of simplified judicial procedures, which argues that because the proposed measures to simplify the procedural form do not correspond to the nature of justice they lead to a violation of the rights of citizens and organizations. They, in fact, deny the impartial character of the procedural form and fetishize the existing general procedure for litigation. In this regard, it is important to emphasize once again that the procedural form should be optimal for this category of litigation.

Naturally, the cases that are complex in terms of factual and legal aspects, possessing, so to say, high disputability, require a more complex procedural form. Notably, we are talking about the objective complexity and disputability of the case, and not the external conflict, which can be created by the disputing parties.

Sometimes the defendant cites numerous but completely contrived and unreasonable objections, with the only aim of delaying the execution of his objectively indisputable material and legal duties. Thus, the defendant uses justice for purposes not related to the protection of rights and legitimate interests. The lack of professional competence of the parties' representatives, who declare *de jure* and *de facto* unreasonable demands and objections, can also create a conflict. Under these circumstances, it might be wrong to provide the parties with the opportunity to use the expensive and complex procedural form, and the court should be allowed to apply a simpler and faster procedure for handling such objectively indisputable cases.

On the other hand, in the adversarial process the passive behavior of the parties to substantiate the factual and legal basis of their position in the case, failure to fulfill the obligation to prove the actual circumstances of the case, failure to submit a response to the claim, etc., can serve to provide the court the basis to make a decision in a simplified manner.

³ Dmitry Maleshin, *Overview of Russian Civil Justice*, 3(4) BRICS Law Journal 41 (2016).

Thus, the modern social and cultural reality requires the Russian legislator to find the optimal models of legal proceedings that will most accurately correspond to the task of ensuring the protection of the rights and legitimate interests of persons applying for remedy.⁴

As noted, one of the areas of Russian civil proceedings to be optimized is the introduction of the forms of civil legal proceedings that are collectively referred to as simplified. Certain achievements have already been realized, while difficulties still exist.

The introduction of simplified models of legal proceedings initially affected the Russian civil process rather than the commercial process although it was the latter that was traditionally considered as especially in need of prompt action. The first attempt to simplify the traditional legal proceedings was made in civil proceedings more than thirty years ago in 1985, when a procedure for judges at their own discretion were permitted to decide on the recovery of alimony for minor children was introduced. Of course, one can hardly dispute the primacy of the civil process in this regard, bearing in mind the introduction of writ proceedings in 1995, which is now represented by a rather detailed regulation enshrined in a dozen articles of the "Court Order" under chapter 11.

Probably, this paradox is explained by the fact that, on the one hand, it was the civil process that turned out to be a procedural form serving the most overloaded segment of Russian judicial procedure. On the other hand, the fact that since the commercial process in the early 1990s turned into a legal process itself, the desire of the supporters of its preservation was seen to endow this kind of process with such full procedural form as would equalize it with a related civil process, eliminating disappointment in some procedural inferiority. The latter, in turn, was obviously linked to the risk relating to its further independent development. This is clearly seen from a comparison of the Commercial Procedure Code of the Russian Federation of 1992, 1995 and 2001. Moreover, at first, the array of cases considered by the commercial courts, judging by the caseload burden on one judge, especially in the 1990s, was significantly less than in the courts of general jurisdiction. Only at the end of this period did the situation begin to change in the commercial process. This is reflected in the fact that a summary procedure was introduced in the Commercial Procedure Code of the Russian Federation in 2002. Notably, it took a form which was not known to either the civil or the commercial process in Russia and, perhaps, did not look like a really necessary modernization at first.

However, the subsequent experience of legal regulation showed that the way to adequately simplify the forms of legal proceedings in the commercial process was not a spontaneous step by the legislator, but the result of a correct prediction of the developmental trends of the commercial court system. In particular, the judicial

⁴ Dmitry Mareshin, *The Russian Style of Civil Procedure*, 21(2) Emory International Law Review 556 (2007).

caseload increased significantly and became perceived as excessive at the beginning of the 21st century. This, as a result, in the subsequent period entailed not only the expansion of the scope of application of the simplified proceedings in the commercial process, but also the introduction of writ proceedings as a new form in 2016.⁵

Since then, the modern Russian judicial system, including the commercial court segment, has become one of those national judicial systems that exist in the market economy countries that have introduced various simplified procedure options. However, in all fairness it should be noted that certain types of simplified procedures, in the forms of trial in absentia and summary procedure, have been innate to Russia, at least since the end of the 19th – beginning of the 20th centuries.⁶ In a report by the Ministry of Justice, for 1866 2,834 civil cases were resolved, of which 1,450 were considered under simplified procedure; and for 1867 5,547 cases out of 12,579 civil cases were considered in a fast-track order.⁷

Moreover, on 3 July 1891, the Law “On the Simplified Procedure of Judicial Proceedings” was introduced; it was canceled in 1912.

At the same time, it should be noted that in the doctrine, the attitude towards simplified production was quite critical. This is evident from the work of the pre-revolutionary Russian proceduralists, who noted that the simplified, including the fast-track, procedure of consideration of cases does not guarantee their proper resolution.⁸

In the Soviet period, accelerated and simplified proceedings were practically never used in the judicial process. The writ proceedings (Arts. 210–219) appeared in the Code of Civil Procedure of the RSFSR in 1923 but did not gain traction. In fact, this judicial institution was rather quickly transformed into a notarial act.

Similar mechanisms exist in the USA in the special courts for small claims suits. France, Germany, Spain and others use procedures setting out substantial

⁵ Федеральный закон от 2 марта 2016 г. № 47-ФЗ «О внесении изменений в Арбитражный процессуальный кодекс Российской Федерации» // Собрание законодательства РФ. 2016. № 10. Ст. 1321 [Federal Law No. 47-FZ of 2 March 2016. On Amendments to the Commercial Procedure Code of the Russian Federation, Legislation Bulletin of the Russian Federation, 2016, No. 10, Art. 1321].

⁶ Устав гражданского судопроизводства 1864 г. (ст. 145) // Судебные уставы 20 ноября 1864 года, с изложением рассуждений, на коих они основаны. Ч. 1 [The Statute of Civil Proceedings of 1864 (Art. 145) in Judicial Statutes of 20 November 1864, Outlining the Reasoning on Which They Are Based. Part 1] (St. Petersburg: In the printing office of the Second Division of His Own Imperial Majesty's Office, 1866).

⁷ Кутафин О.Е., Лебедев В.М., Семизин Г.Ю. Судебная власть в России: история, документы. Т. 3 [Oleg E. Kutafin et al., *Judicial Power in Russia: History, Documents. Vol. 3*] 566 (Moscow: Mysl, 2003).

⁸ For more on this, see Неведьев Е.А. Учебник русского гражданского судопроизводства [Evgeny A. Nefediev, *Textbook of Russian Civil Proceedings*] (Moscow: Printing house of Moscow Imperial University, 1908); Энгельман И.Е. Курс русского гражданского судопроизводства [Ivan E. Engelman, *The Course of Russian Civil Proceedings*] (Yuryev: Printing office of K. Mattisen, 1912); Исаченко В.П. Русское гражданское судопроизводство: Практическое пособие для студентов и начинающих юристов. Т. 1 [Vasily P. Isachenko, *Russian Civil Proceedings: A Practical Guide for Students and Novice Lawyers. Vol. 1*] (St. Petersburg: Printing office of M. Merkushev, 1910), and others.

simplification of the procedural form (standard application forms). Such simplification makes the trial clearer for the people, increases the role of written documents, decreases the judicial stamp duty, etc. Foreign legal doctrine supports the development of the simplified proceedings taking into account that this facilitates reducing the caseload burden on the courts and decreases the costs not just to the parties but to the state as well.⁹ All of these advantages of the simplified proceedings made such proceedings very popular, as American researchers have noted in respect of the courts for small claims suits in the USA.¹⁰

As a rule, the problems associated with simplified proceedings are analyzed on the basis of trends in the practice of considering relevant cases in the light of the existing legal regulation. At the same time, a sociological approach is also important, for it makes it possible to evaluate judicial-legal realities somewhat differently from using traditional methods (formal legal, comparative jurisprudence, etc.).

The present work, based on the application of the method of forensic statistical analysis, as a type of sociological approach, is seen as a partial filling of this gap in relation to the simplified and writ proceedings in the commercial court process.

It is advisable to comprehend the judicial statistical aspect of the commercial court process, starting with the appearance of simplified proceedings. However, this requires more extensive research. In this case, the published and unpublished statistical data on the simplified and writ proceedings for the years 2016–2018 provided by the relevant commercial courts are analyzed.¹¹

It should be noted that the analysis of officially published statistical information on the commercial court system shows only the number of cases that were considered in simplified and writ procedures in the courts of first instance. There is no collected or published information about the number of decisions that were later appealed to higher authorities nor about what the results of the appeal were.

At the same time, the data obtained by these commercial courts are quite informative, not only by virtue of their figures, which is important in itself, but also by the diversity of territories, in relation to disputes over which they exercise law

⁹ Dame Hazel Genn et al., *Twisting Arms: Court Referred and Court Linked Mediation Under Judicial Pressure*, Ministry of Justice Research Series 1/07 (May 2007), at 108 (Apr. 28, 2019), available at <http://bristol-mediation.org/wp-content/uploads/2011/03/Twisting-arms-mediation-report-Genn-et-al.pdf>.

¹⁰ Arthur Bestf et al., *Peace, Wealth, Happiness, and Small Claim Courts: A Case Study*, 21(2) *Fordham Urban Law Journal* 343, 347 (1994); John A. Goerd, *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions* 4 (Williamsburg: National Center for State Courts, 1992).

¹¹ Статистические данные предоставлены Арбитражным судом Уральского округа, Арбитражным судом Западно-Сибирского округа и Двадцатым арбитражным апелляционным судом Центрального округа [Statistical data are provided by the Commercial Court of the Ural District, the Commercial Court of the West Siberian District and the Twentieth Commercial Court of Appeal of the Central District].

enforcement practice. They can be important in understanding the state of affairs in the courts and in the commercial court system as a whole for the relevant period. Therefore, they deserve the attention of the professional community. Moreover, the data contain the results of the verification of acts adopted in the framework of simplified and writ proceedings in higher instances for the relevant period.

Understanding all of these forensic statistics is especially important in the context of the emerging trend to streamline the court proceedings, which also applies to the commercial process.

In 2016, the Ural District commercial courts considered 73,255 cases applying summary proceedings, which is 34.4% of the total number of cases examined by the district courts in the first instance; 79,792 cases (32.1% of the total number of cases examined) were considered in summary procedure in 2017.

The largest percentage of the total number of such cases in 2016 in the Udmurt Republic Commercial Court was 54.3%, while the smallest percentage was in the commercial court of the Kurgan region (25.9%); in 2017, the highest percentage was also in the Udmurt Republic Commercial Court – 45.4%, the smallest in the commercial court of the Kurgan region – 14.8%.

The West Siberian District considered 49,953 cases in summary procedure in 2016, and in 2017 49,677 cases, which is, respectively, 38.4% and 31.2% of the total number of cases considered by the courts of the district.

According to the data of the Kemerovo Region Commercial Court, the highest percentage of the total number of such cases was seen in 2016 – 52.48%. The smallest percentage was in the commercial court of the Republic of Altai – 23.1%. In 2017, the largest percentage of the total number of these cases in the Commercial Court of the Yamalo-Nenets Autonomous District was 52.16%, and the smallest (22.46%) was registered in the Altai Republic Commercial Court.

The Twentieth Commercial Court of Appeal considered 11,275 cases over a period of nine months in 2018 in summary procedure, which represents 20% of the total number of cases considered in the appeals district. At the same time, according to the commercial court of the Bryansk region, summary procedure cases reached 40.56%, while in the commercial court of the Ryazan region only 16.8% of the total number of cases were registered.

For comparison: the number of cases in summary procedure in the whole of the Russian Federation commercial court system amounted to 35.7% in 2016 and 42.2% in 2017 of the total number of cases examined by commercial courts.

Another indicator worth evaluating is the number of cases in which the procedure started in a simplified manner, and then the transition to adversary proceedings (part 5, Art. 277 Code of Civil Procedure (CPC) of the Russian Federation (RF)) was made. In 2016, the commercial courts of the West Siberian District carried out the transition in 16,773 cases, and in 16,787 cases in 2017, which is, respectively, 33.5% and 33.7% of

the total number of cases which started in a simplified manner. It should be noted that this is a higher figure than in the judicial and commercial system as a whole. A similar transition occurred in 20.2% of cases in 2016 and in 27.4% of cases in 2017.¹²

As is known, the decision of the commercial court in a case that is considered in summary procedure is taken immediately after the hearing of the case by the judge signing the operative part of the decision (part 1, Art. 229 CPC RF). A reasoned decision is made by the commercial court at the request of one of the interested parties involved in the case (part 2, Art. 229 CPC RF).

From the aspect of making motivated decisions in simplified proceedings, the situation with the commercial courts of the Ural District is as follows. In 2016, they were applied in 14.7% of cases (the most, in the Udmurt Republic Commercial Court – 47.5% of cases; the least, in the commercial court of the Sverdlovsk region – 3.8%), and in 2017 in 14.1% of cases (the most – 32.3% made in the commercial court of the Perm region; and the least, in the Republic of Bashkortostan Commercial Court – 6%).

The commercial courts of the appellate district of the Twentieth Commercial Court of Appeals made 531 motivated decisions in a period of nine months in 2018, which is only 4.7% of the total number of cases considered in summary procedure; in the commercial court of the Bryansk region this was 1.88%, and in the commercial court of the Ryazan region this was 7%.¹³

The percentage of appeals checked in the appeals instance cases in 2016 in this category of cases on commercial courts of the West Siberian District averaged 3.3% of the number of cases considered in summary procedure in the first instance, and in 2017 5.8%. At the same time, the rate of appeal of judicial acts on appeal in all categories of commercial cases in the West Siberian District was significantly higher: in 2016 19.20%, in 2017 16.33% of the total number of cases considered by the courts of first instance.

The percentage of appealed cases considered in a simplified manner by the commercial courts in the appellate district of the Twentieth Commercial Appeal Court for nine months in 2018 was 3.92%. The average percentage of appeals in all categories of commercial cases in the appeals district in the same period was 20.84%.

One hundred seventy-nine judicial acts were annulled or amended on appeal in the case of summary proceedings in the West Siberian District in 2016, which

¹² Обзор судебной статистики о деятельности федеральных арбитражных судов в 2016 г. [Overview of judicial statistics on the activities of federal commercial courts in 2016] 8 (Apr. 28, 2019), available at <http://www.cdep.ru/index.php?id=80&item=4131>; Обзор судебной статистики о деятельности федеральных арбитражных судов в 2017 г. [Overview of judicial statistics on the activities of federal commercial courts in 2017] 9 (Apr. 28, 2019), available at <http://www.cdep.ru/index.php?id=80&item=4761>.

¹³ Official published statistics on the motivated decisions in summary proceedings on the commercial court system as a whole are not currently available.

amounts to 0.35% of the number considered at the first instance. Two hundred forty-five judicial acts were examined in summary procedure in 2017, which is 0.49% of the number of acts adopted at the first instance and annulled on appeal in this district. For the commercial courts of the appellate district of the Twentieth Commercial Court of Appeal for the first nine months of 2018, 34 decisions of the court of first instance on cases of simplified proceedings were cancelled, which is 0.30% of all judicial acts adopted in the simplified procedure at first instance.

At the same time, it should be noted that the average percentage of decisions reversed or appealed on the whole in all categories of commercial cases was significantly higher. Thus, the courts of the West Siberian District abolished 4.84%, and in 2017 – 1.94% of all judicial acts adopted at the first instance in 2016. In general, according to the commercial court system data, the percentage of reversals in 2016, 2017 and the first half of 2018 was, respectively, 2.75%, 2.53% and 2.34% of all judicial acts considered at first instance.

In 2016, 120 cases in summary procedure, which is 0.24% of the number of cases considered in this procedure at the first instance, were appealed and checked in the commercial court of the West Siberian District in cassation. One hundred nineteen were checked in the cassation procedure in 2017, which is 0.23% of the number of cases examined in this order at the first instance.

At the same time, the rate of appeal in cassation in all categories of commercial cases in the West Siberian District was significantly higher: in 2016 – 5.98%, in 2017 – 4.87% of the total number of cases considered by the courts of first instance. According to the commercial court system data as a whole, in 2016 and 2017 the percentage of cassation appeals was also significantly higher and amounted to, respectively, 6% and 5.38% of the total number of cases considered by the courts at first instance.

In 2016 and 2017, in the West Siberian District, six judicial acts adopted in cassation order were adopted by way of summary proceedings, which was 0.012% of the number considered at the first instance.

The percentage of reversals or changes in the cassation instance of judicial acts adopted in summary procedure for the same period in the Ural District was 0.013% of the total number of cases considered in the first instance.

It should also be noted that the average percentage of canceled or altered cassation decisions in general in all categories of commercial cases was significantly higher than in simplified cases. Thus, in 2016, the courts of the West Siberian District abolished 1.19%, and in 2017 1.14% of all judicial acts adopted at first instance. In general, the percentage of reversals in the commercial court system in 2017 was 1.29% of all judicial acts adopted at first instance.

The above data on cases of simplified proceedings, considered in 2016–2018 by the commercial courts of the Ural District, the West Siberian District and the Twentieth Appeal District, show that these cases occupy a significant place in the

total number of economic disputes considered by the commercial courts (20% – 38, 4%), which is somewhat less than that in the judicial commercial system as a whole (35.7% – 42.2%). In the courts of first instance there is a significant variation in this indicator – from 14.8% to 54.3% of the total number of economic disputes considered by these courts, which indicates the need for additional analysis of the reasons for such discrepancies.

Attention is drawn to the relatively large number of cases (about 30%) examined in a summary manner, and then the transition was made to the consideration of the dispute per standard procedure. On the one hand, this may indicate the absence in a number of cases of sufficient grounds for the application of the simplified procedure. On the other hand, it may indicate that the current procedural legislation provides the interested parties with ample opportunities to take advantage of a general court judicial procedure, giving more substantial procedural guarantees to protect their rights and legitimate interests than simplified proceedings. Thus, such persons actively use the opportunity.

The statistical data relating to the revision of judicial acts in cases of summary proceedings in the appellate and cassation instances are quite interesting.

It should be noted that judicial acts in cases considered in the summary procedure are much less likely to be appealed and canceled or changed by higher courts in comparison with other categories of commercial cases.

Thus, in the West Siberian District, the percentage of cases of simplified procedure on appeal was in 2016 almost six times and in 2017 almost three times lower than the average percentage of cases on appeal in all cases, both in the district and in the commercial court system in general. The percentage of appeals in this category in the appellate district of the Twentieth Commercial Court of Appeals for the first nine months of 2018 was more than five times lower than the average percentage of appeals in the district and more than four times lower than in the first half of 2018 in the commercial court system in general.

The percentage of cassation appeal of such acts is even lower. In the West Siberian District the percentage of cassation decisions on simplified proceedings by the commercial court of the West Siberian District was in 2016 almost 25 times and in 2017 21 times lower than the average percentage in all cases considered by this cassation court. This ratio almost coincides with the data on the commercial court system as a whole: 2016 – 25 times and in 2017 – 23 times lower than the average percentage in all cases considered in cassation.

The percentage of decisions on summary proceedings in the West Siberian District that were canceled or changed on appeal in 2016 was 13.8 and in 2017 4.5 times lower than the average percentage of reversals in all cases considered by the district appellate courts and, accordingly, 7.8 and 5.8 times lower than the average percentage of reversals for the commercial court system as a whole. For the commercial courts of

the appellate district of the Twentieth Commercial Court of Appeals for the first nine months of 2018, this percentage was lower by a factor of almost eight.

As for the reversal or change of decisions in cassation, in the case of simplified proceedings reviewed by the commercial courts of the West Siberian District in 2017 it was 95 times lower in the district and 105 times lower in commercial court system proceedings as a whole.

Another type of simplified procedure in the commercial process is the order of proceedings (chap. 29.1 CPC RF), which was introduced in the practice of the commercial courts by the Federal Law of 2 March 2016 No. 47-FZ.

In 2016, the West Siberian District commercial courts considered 4,111 cases by the writ procedure, in 2017 this number increased to 38,490 cases, which is largely due to the fact that the writ began to be used only in the second half of 2016.

The number of cases considered in the writ proceedings in the commercial courts of the first instance of the Ural District in 2016 was 5,219, while in 2017 it was 51,923 cases. In the total number of cases considered by the Ural District courts, the writ proceedings examinations in 2016 were 21.9%, in 2017 they reached 33%. In the first half of 2018, the commercial courts of the Ural District considered 30,158 cases in the writ proceedings, which was 26.1% of the total number of cases.

In connection with the timely receipt of the objections of the defendant against the execution of the issued writs (part 4, Art. 229.5 CPC RF), the commercial courts of the Ural District reversed 361 cases in 2016, 3,157 cases in 2017 and 1,873 court orders or 6.91%, 6% and 6.2% of the total number of issued orders for the first half of 2018 in the district, respectively.

Thirty-seven orders were appealed in the cassation procedure to the Ural District Commercial Court in the first half of 2018, which is 0.12% of the total number of cases examined by the commercial courts of this district by way of the writ procedure.

In 2016, the West Siberian District courts had only one court order appealed in cassation, and in 2017 there were 29 orders, totaling 0.02% and 0.08% of the number of issued orders, respectively.

The figures show that in the Ural District Commercial Court seventeen orders were canceled in the first half of 2018, which is 0.05% of the total number of cases considered in the writ procedure during this period in the district commercial courts.

Orders issued in the West Siberian District Commercial Court were not canceled in 2016, while in 2017 thirteen orders were canceled, which is 0.03% of the number of orders.

The analysis of the statistical data shows that in the Ural District and West Siberian District commercial courts a significant number is currently decided in the writ proceeding, which is from 21.9% to 33% of the total number of commercial cases. There is also a small number (within 6%) of reversals of judgments on the basis of part 4 of Article 229.5 of the CPC RF by the commercial courts that issued them. It should also be noted that court orders, as well as judicial acts in cases of simplified

proceedings, are ten times less often appealed and reversed in cassation compared with other categories of commercial cases.

Summing up the analysis of forensic statistical data on simplified and writ proceedings, from the aspect of streamlining proceedings in commercial courts, it seems possible to state the following.

Summary and writ proceedings are now no longer experimental, but rather well-established and, from the practical side, justified and, most importantly, procedural forms of resolving legal disputes by the commercial courts in demand among participants in economic relations. Cases of simplified and writ proceedings in their totality in some courts occupy a significant and, in a number of courts, the prevailing share among the total number of cases considered by the commercial courts of first instance. In this case, we can talk about the trend in the gradual expansion of the use of these types of proceedings in the commercial process.

In addition, from the above statistics it follows that the consideration of cases in the simplified procedures presents the opportunity to reduce significantly the caseload burden on the commercial courts of first instance, both by simplifying the procedures for the consideration of these cases and by drawing up judicial acts.

The introduction of a simplified proceeding also reduces the judicial burden on the two main verification judicial instances – the appellate and cassation.

In this case, the appeal of judicial acts in the overwhelming majority of summary judgments ends with the stage of appeal proceedings. This suggests that the appellate level with the current regulation copes quite effectively with the verification function for this category of commercial cases.

Comparative statistics on appeal and cassation checks of judicial acts adopted in cases of summary proceedings also confirm a higher level of stability of judicial acts adopted in this procedure.

All of this in the aggregate points to the substantial contribution of simplified proceedings to streamlining proceedings in the commercial court process.

This fully applies to the writ proceedings in the commercial court process. The above forensic statistical information on the order of the proceedings in the three judicial districts gives grounds for a rather high assessment of the real as well as the promising contributions of this procedure to streamlining the judicial procedure in the commercial courts.

The above statistical data for 2016–2018, which relate to the reversal of judgments under part 4 of Article 229.5 of the CPC RF, show that more than 90% of orders issued by the commercial courts of first instance were confirmed despite the fairly simple procedure for their reversal.

In this regard, it is impossible not to take into account that the Russian model of filing objections and, accordingly, canceling the order issued by the court to them only for this reason, indicating the existence of a dispute, and not being an instance reversal, corresponds to the most simplified versions of such reversal in foreign

judicial systems. Such a model, providing for automatic transition under certain circumstances different from the usual one, as a general rule, legally more complex, the procedure for consideration of a case, is present, for example, in France (Arts. 1405–1425 CPC) and in Germany (Art. 696 CPC).

In a number of countries this transition is much more complicated. It provides for consideration of the relevant statements of the respondent with the establishment of, for example, procedural violations during the issuance of the act and/or the presence of a worthy consideration of the reason for the defendant or his representative's failure to appear and, accordingly, providing protection for the latter (as is the case with the decision civil proceedings). There are even more complicated options when the condition for such a reversal is to establish a violation of the procedural constitutional norms or fundamental principles of law (e.g. in Italy).

It should be added that, based on statistical data, the stability of the issued court orders during their cassation verification is very high, since the number of reversals in 2016–2018 does not exceed 1% of the number of issued orders, which is significantly less than the average percentage of the same period in the commercial court system as a whole.

In this regard, there is a reason to consider the above indicators for the three districts as largely confirming the realization of most of the goals of implementing this variant of simplified consideration of the case in the commercial court process, including: improving the efficiency of judicial protection of the law and the effectiveness of the execution of judicial acts; the release of commercial courts from those cases that do not need a detailed review procedure; an increase in the awareness of the responsibilities the economic relations participants undertook, thus, consequently, of the level of their legal consciousness; and reduction of the current caseload burden in the commercial courts.¹⁴

One of the grounds for attributing a legal conflict to those categories of commercial cases that can be considered in the order of a writ or a simplified procedure is their relatively indisputable or low-conflict nature. In many ways, this explains the possibility and necessity of applying simplified procedures to these cases. Judicial statistics data confirm the relatively indisputable nature of cases considered in the form of simplified production models. This is evidenced, in particular, by the fact that only an insignificant number of orders issued are disputed by the debtor, and in the overwhelming majority of simplified production cases the interested parties do not raise the question of drawing up a reasoned decision or a transition to a general lawsuit order for resolution of the case. In other words, the

¹⁴ Пояснительная записка к проекту федерального закона № 638178-6 «О внесении изменений в Арбитражный процессуальный кодекс Российской Федерации» [Explanatory note to the draft Federal Law No. 638178-6 "On Amendments to the Commercial Procedure Code of the Russian Federation"] (Apr. 28, 2019), available at <http://www.duma.gov.ru>.

application of simplified procedural forms to the specified categories of commercial cases was, on the whole, fully justified.

At the same time, it should be noted that in the procedural doctrine, the attitude towards the current simplified models of legal proceedings is not unambiguous: in particular, claims are made in the absence of a set of necessary procedural guarantees to the participants of the process, the conveyor nature of these procedures, there are concerns that simplifying the procedural forms will lead to a decrease in the level of judicial protection of rights and legitimate interests, etc.¹⁵

Meanwhile, the results of the analysis of the above statistical data, in our opinion, do not provide sufficient grounds for the stated claims and concerns. This, in particular, is evidenced by information about the appeal of judicial acts in cases of simplified and writ proceedings to higher judicial instances. According to them, the specified acts are much less frequently appealed against and canceled in the appellate and cassation procedures in comparison with other categories of commercial cases. This means that the participants of the process are in the majority satisfied with the results of justice, by judicial acts issued on the basis of the results of consideration of these cases in the courts of first instance. This, among other things, testifies to the effectiveness of applying these procedural forms to protect the rights and legally protected interests of persons participating in cases of simplified and order proceedings.¹⁶ Moreover, in these cases a certain level of adversarial process is preserved, although for obvious reasons it manifests itself in varying degrees, it is implemented in different forms and at non-identical stages of the process.

At the same time, it is important to note that when taking summary judgments at the first instance, there is a mechanism for the transition to their consideration in the order of general production. A similar transition, as can be seen from statistical data for the last several years, occurs on average in every fourth case. This indicates that there are no significant or even insurmountable obstacles to such a transition, in cases where it is justified by the need to protect the rights and legitimate interests of the persons concerned.

¹⁵ See Скуратовский М.Л. О пределах оптимизации арбитражного процесса // Арбитражный и гражданский процесс. 2018. № 7. С. 13–17 [Mikhail L. Skuratovsky, *On the Limits of Optimization of the Commercial Court Process*, 7 Commercial and Civil Procedure 13 (2018)]; Князькин С.И. Проблемы проверки судебных актов, принятых в упрощенном порядке, в цивилистическом процессе // Арбитражный и гражданский процесс. 2018. № 2. С. 59–64 [Sergey I. Knyazkin, *Problems of Verification of Judicial Acts Adopted in a Simplified Manner, in a Civil Process*, 2 Commercial and Civil Procedure 59 (2018)], etc.

¹⁶ In this regard, it is difficult to disagree with G. Zhilin, who points out that any changes in the civil procedural form are permissible only if there is more effective judicial protection of the rights, freedoms and legally protected interests of citizens and organizations. Other interests, such as simplification of proceedings for the court itself... should recede into the background. See Жилин Г.А. Цели гражданского судопроизводства и их реализация в суде первой инстанции: Автореф. дис. ... докт. юрид. наук [Gennady A. Zhilin, *The Objectives of Civil Proceedings and Their Implementation in the Court of First Instance: Synopsis of a Thesis for a Doctor Degree in Law Sciences*] (Moscow, 2000).

It is also difficult to agree with the reproach in the so-called conveyor approach when dealing with cases in a simplified procedure. It seems that in conditions where the judicial form of resolving legal conflicts has become dominant and, consequently, there is massive recourse to the court, the conveyor element inevitably becomes inherent in any dispute resolution procedure, including general lawsuit proceedings.

Moreover, the introduction of simplified forms of legal proceedings is just one of the real ways to minimize this “assembly line” in cases considered by way of a lawsuit, since the introduction of simplified and writ proceedings in the commercial process creates essential prerequisites for a more thorough consideration of cases in the ordinary lawsuit form of cases for which the latter is truly optimal.

These types of proceedings of commercial court cases contribute to the optimization of court proceedings in the commercial courts and a significant reduction in the caseload burden on judges and court staff, if only because they greatly simplify and speed up court proceedings in the commercial courts. This, in particular, manifests itself in these categories of cases in refusal or minimization of oral proceedings, the release of the registration of motivated judicial acts in cases corresponding to the procedural law, etc.

In this connection, the idea of M. Shvarts deserves much attention: the simplified procedure, the removal of certain duties from the court, the refusal to perform certain actions, which, in turn, speeds up the consideration of the case, increases the risks to the parties.¹⁷ However, we note that, taking into account the parties involved in the commercial court process these risks may not be decisive.

It is also important to note that the use of simplified and writ proceedings seriously reduces the caseload burden not only on the judges of the commercial courts of the first instance, but also on those of a verification instance. The introduction of various models of simplified production, as confirmed by the above statistics, is one of the most effective options for reducing this burden. Therefore, a positive attitude towards these models of legal proceedings in a number of Recommendations of the Committee of Ministers of the Council of Europe is understandable. Thus, it is indicated in the Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe to Member States on measures facilitating access to justice of 14 May 1981, that court proceedings are often so complex, lengthy and expensive that individuals, especially those who are economically disadvantaged, have difficulty in exercising their rights in Member States (preamble, para. 2 of the Recommendation). In this regard, it is noted that it is desirable “to take all necessary measures to simplify the procedure in all cases in order to facilitate private access to the courts, while respecting the proper order of

¹⁷ Шварц М.З. Систематизация арбитражного процессуального законодательства (проблемы теории и практики правоприменения): Автореф. дис. ... канд. юрид. наук [Mikhail Z. Shvarts, *Systematization of the Commercial Procedural Legislation (Problems of the Theory and Practice of Law Enforcement): Thesis for a Candidate Degree in Law Sciences*] (St. Petersburg, 2004).

administration of justice" (preamble, para. 5). To this end, it is stated that in order to facilitate access to justice "it is desirable to simplify court documents" (preamble, para. 7). Among the principles of this activity, the Recommendation indicates simplification, speeding up proceedings and the rationalization of legal costs.

Other Recommendations of the Committee of Ministers of the Council of Europe, in particular, Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice of 28 February 1984, must also be taken into account.¹⁸

In this state of affairs simplified and writ proceedings correspond not only to the idea of streamlining proceedings in commercial courts, but also to the basic guidelines of the European legal space which modern Russia shares. It is also important to note that in today's interconnected world legal space, the orders of simplified commercial court proceedings discussed above, by virtue of the principle of equality (Art. 7 CPC RF), are relevant for all individuals applying to Russian the commercial courts for judicial protection, including foreign investors, especially those representing medium and small businesses, and for the latter it is particularly important to apply affordable, understandable, in form and the terms of implementation, i.e. predictable, and prompt legal proceedings.¹⁹

At the same time, summary procedures must consider the peculiarities of the progress of the procedure, due to the participation of foreign persons in the affairs, including, in particular, those related to their location as well as notices and a special time period for the consideration of the case involving foreign persons (part 2, Art. 26 and part 3, Art. 253 CPC RF).²⁰

It is hardly possible to imagine the successful development of the commercial process in the foreseeable future without differentiation of the judicial procedure or introduction and development of its simplified models established in the procedural law in the form of precisely defined conditions as to when and in what cases they should be implemented in particular (taking into account the will of the persons applying for judicial protection in relevant cases).

¹⁸ *Council of Europe and Russia, supra* note 1, at 681–684. Moreover, not only the experience of certain foreign countries in which summary procedures were implemented (the USA, Germany, France, etc.), but also the legal experience of associations of states, in particular the European Union, where it was implemented in the Rules Procedures for the consideration of small claims in the European Union (Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, 2007 O.J. (L 199) 1) and the abovementioned Rules of the European Payment Order, although it should be noted that a lot of foreign and international experience is already taken into account by the domestic legislator.

¹⁹ It is known, for example, that the small claims courts in the USA minimize the duty when filing a relevant application to the court (e.g. when filing a lawsuit in the small claims court in New York State, the state duty is \$15 to \$20, though the full routine will cost over \$45), provide an opportunity for the parties not to exchange pleadings.

²⁰ Решетникова И.В. Упрощенное производство. Концептуальный подход // Закон. 2013. № 4. С. 93–98 [Irina V. Reshetnikova, *Simplified Production. Conceptual Approach*, 4 Law 93 (2013)].

At the same time, it is clear that the current commercial procedural legislation cannot remain unchanged, including from the aspect of regulating simplified production models, and, of course, it will require appropriate modernization. This last point may concern its various components. We believe it is possible to formulate certain approaches in some of the most frequently discussed areas.

First of all, this is a question concerning the criteria for classifying cases as the ones to be considered in the framework of simplified procedure. Without going into the details of the well-known discussion over the concept of the “indisputability” of requirements, as well as “insignificance” to be considered in simplified production models,²¹ we note the following.

The real absence of a dispute is an important point in determining the category of cases submitted for consideration in summary procedure. It is difficult to explain the use of a general-market model for cases in which there is no real dispute between the participants in a legal conflict with any private or public interest. In addition, from the aspect of the criterion of “insignificance” in determining the categories of cases to be considered in simplified proceedings, it seems arguable to use the factor of the level of per capita income.²² In any event, it can hardly be generally applicable to all types of civil processes. So, in the commercial court process, considering the peculiarities of the parties involved, this factor is not a priority, rather it has an auxiliary value.

According to some researchers, who point out the experience of foreign legislation, thus denying the expediency of a normative fixation of the notion of the “insignificance” requirement, the simplest and most effective means is to indicate a fixed upper limit in the number of claims that allow the use of a certain simplified procedure.²³ The rationality of such an approach is hardly worth arguing over, although it cannot be universal. In some cases, in particular, with obvious signs of the lack of a dispute, it is hardly acceptable.

As an example in this regard, we consider it expedient to consider in more detail the legal regulation and published judicial and statistical data concerning cases of claims for the recovery of compulsory payments and sanctions, for which there is often no dispute. Meanwhile, a certain limitation is established in such cases. For their simplified models consideration it is established in clause 5 of part 1 of Article 227 of the CPC RF that cases on the recovery of compulsory payments and sanctions are to be considered in summary order if the total amount of money to be collected is between 100,000 and 200,000 rubles. The writ proceedings require the

²¹ On the issue of the category “indisputability,” see Юдельсон К.С. Советский нотариат. Избранное [Karl S. Yudel'son, *Soviet Notaries. Selected Writings*] 297 (Moscow: Statut, 2005), etc.

²² Соломеина Е.А. Упрощенное производство в арбитражном процессе: пути совершенствования // Арбитражный и гражданский процесс. 2018. № 7. С. 38–40 [Elizaveta A. Solomeina, *Simplified Production in the Commercial Court Procedure: Ways to Improve*, 7 Commercial and Civil Procedure 38 (2018)].

²³ Сивак Н.В. Упрощенное производство в арбитражном процессе: Монография [Natalia V. Sivak, *Simplified Proceedings in the Commercial Court Procedure: Monograph*] (Moscow: Prospekt, 2011).

maximum number of mandatory payments and established sanctions of 100,000 rubles indicated in the application (cl. 3, Art. 229.2 CPC RF).

Such restrictive regulation in these types of cases is debatable. In support of this conclusion, we present a number of statistical data.

Judicial statistics show that in the total number of cases considered in the commercial courts, cases on claims for the recovery of compulsory payments and sanctions are among the most massive. So, 295,200 of such cases were considered in the commercial courts in 2017, at the first instance, which is about 17% of the total number of commercial cases or 48.9% of the cases arising from administrative and other public legal relations.²⁴ Consequently, cases on claims for the recovery of mandatory payments and sanctions are among those that create a fairly large caseload burden on the commercial courts.²⁵ At the same time, it is noteworthy that 284,234 legal actions were satisfied in 2017, which is 96.3% of the total number.

The absolute majority of such cases can hardly be considered truly disputable, and, accordingly, worthy of consideration in the procedure, which corresponds in its procedural complexity to the routine case (chap. 26 CPC RF). This is confirmed not only by the above high percentage of satisfied claims, but also by the fact that in the same year only 601 appeals were considered in these cases, which is only 0.20% of the number of similar cases examined at the first instance, as well as the fact that in 2017 only 70 judicial acts were annulled or changed, which is 0.02% of the number of cases examined in the court of first instance.

One hundred eighty of such cases were considered on appeal for this period, which amounts to 0.06% of the cases examined at the first instance, and eighteen judicial acts were reversed or amended, which represents 0.006% of the cases reviewed in the courts of first instance.²⁶

At the same time, the statistics on the appeal and cassation on litigation, considered in the adversary proceedings, give a completely different result.

For example, in disputes arising from sales contracts, the number of which in 2017 was more than a quarter of the total number of commercial cases, 11.6% of the number of judicial acts adopted at the first instance were appealed, while the number of canceled or amended cases was 1.58% of the total number of cases considered at the first instance.²⁷ In cassation, 2.7% of the number of judicial acts adopted at the first instance were appealed, and 0.35% of the number of cases of this category considered at the first instance were canceled or amended.²⁸

²⁴ Overview of judicial statistics on the activities of federal commercial courts in 2017, *supra* note 12, at 4, 9.

²⁵ *Id.* at 3, 6–7.

²⁶ See Summary statistics, *supra* note 2.

²⁷ See *Id.*

²⁸ See *Id.*

Whereas, in cases of the recovery of a penalty, ranked third in quantitative terms (12.09% of the total number of commercial cases), 21,512 appeals or 9.95% of the cases examined at the first instance were considered. Three thousand one hundred thirty-three judicial acts or 1.44% of the number considered at the first instance were canceled or amended. In the cassation procedure, 3,839 complaints were considered, which is 1.44% of the number of cases considered at the first instance and 482 judicial acts were canceled or amended, which is 0.22% of the number considered at the first instance.²⁹

Consequently, the results of the appeal and cassation checks are clearly in favor of cases on recovery of mandatory payments and sanctions, especially in terms of the number of appeals and the sustainability of the judicial acts taken on them.

The above results of the procedural activities of the commercial courts of the first, appellate and cassation instances in cases of recovery of mandatory payments and sanctions show that the restrictive criteria set forth in the norms of the CPC RF for the amounts of requirements established for classifying these cases to be considered in the order of simplified procedure models can hardly be considered really optimal.

It is quite possible, in our opinion, to abandon the current procedural variation, when the same cases are of the same legal nature, depending on the amount of the stated requirement are considered in three procedural orders: adversarial (chap. 26 CPC RF) and two simplified procedure models.

As an option to change the procedure in cases of applications for the recovery of compulsory payments and sanctions from organizations and citizens, they can be proposed to be considered subject to consideration only in a simplified procedure and at the same time, with the complete removal of the ones now established in paragraph 5 of part 1 of Article 227 CPC RF restrictions on the number of claims the presence of which is difficult to explain in the commercial court process.

In addition, bearing in mind the abovementioned specifics of cases involving claims for recovery of mandatory payments and sanctions from organizations and citizens, a second, more radical option is possible: the inclusion of all cases of this category in the number of cases to be considered in order of writ proceedings without any threshold amounts of a restrictive nature, for their consideration in this order, particularly, considering that with regard to the recovery of compulsory payments and sanctions for citizens such restrictions are not established by procedural law (chap. 32 Administrative Court Procedure Code RF).

In addition, it is worth mentioning the proposals made in the literature on the need to completely abandon the judicial recovery of arrears, fines and penalties for violation of the obligation to pay taxes, fees and other obligatory payments and

²⁹ See Summary statistics, *supra* note 2.

transfer the said cases to the relevant fiscal or supervising state bodies with the possibility of subsequent appeal of their decisions in court.³⁰

The proposed options for modifying the regulation of the procedure for the consideration of cases on applications for the recovery of compulsory payments and sanctions for organizations and citizens have their pros and cons. However, ultimately all of them are aimed at further optimization of the commercial procedural law and a significant reduction of the judicial caseload burden.

When improving the procedural forms of simplified proceedings, it is important to develop the necessary standard, including electronic forms of expression of the will of the participants in the process. The introduction of standard forms in the cases to be taken is perhaps one of the obvious reserves for the development of legal regulation in domestic commercial procedure. Such forms are implemented to some extent, as is well known, in the national legislation of France, Germany and the United States, as well as in well-known international procedures, as seen, in particular, from the EU Rules of Procedure for Considering Small Claims in the European Union, which contain the corresponding models in the form of enclosures.

As noted earlier, the drafting of a motivated court decision in summary proceedings in the commercial process is not an ordinary or inevitable result of legal proceedings. The above statistics indicate a rather small percentage of manufactured motivated judicial acts in cases of summary proceedings. At the same time, there is no reason to believe that this is connected with any regulatory barriers for persons participating in commercial cases, since they are given only the option to decide whether to ask for a reasoned decision or not, which in itself is a significant positive factor, ensuring a fair degree of fairness.

However, there might be a need for some clarification of the regulation, which is now enshrined in part 2 of Article 229 of the CPC RF, and provides for the relevant person to file an application for drafting a reasoned decision of the commercial court within five days from the date of posting the decision taken in summary procedure on the official website of the commercial court. Interested persons, in our opinion, should have the right to declare this at any stage of the process until the end of the proceedings at the first instance. That will increase the degree of protection of the rights and legitimate interests of persons involved in the relevant cases.

It should be noted that the Russian judicial system as a whole, including its commercial court segment, in terms of the specifics of making motivated decisions in simplified proceedings, cannot be recognized as having certain unique features. It is known that in the English civil procedure in cases involving the consideration of "small claims" court decisions are traditionally substantiated by judges shortly and simply, based, of course, on the essence of the dispute (often orally). Written

³⁰ Тимофеева О.Ю. Совершенствование порядка взыскания обязательных платежей и санкций // Известия ИГЭА. 2011. № 5(79). С. 159–163 [Oksana Yu. Timofeeva, *Improving the Procedure for Collecting Compulsory Payments and Sanctions*, 5(79) News of ISEA 159 (2011)].

substantiation of the decision becomes the duty of the judge only if the party fails to appear and the court is notified of this in accordance with clause 27.9 of the Rules of Civil Procedure, in which case a court order is issued to the parties.

As for the writ proceedings, in relation to the decisions taken on the basis of its results, the requirement of motivation for understandable reasons is hardly applicable. This is also not a feature of the domestic commercial court system. Foreign experience of making decisions on similar matters through the design of standard (template) forms is known. According to the procedure for issuing a European order for payment, orders are formed in accordance with the standard forms contained in the annex to the relevant rules of the petition procedure.

Another issue worthy of assessment is the formation of optimal ways to verify judicial acts in cases of simplified and writ proceedings. In this regard, referring to such an aspect as the features of the appeal of judicial acts, adopted in the order of simplified models, the following shall be taken into account. As is known, in the civil procedure in France the possibility of appeal against cases with a claim amount not exceeding €4,000 is excluded. In Germany, it is not allowed to appeal the decision in cases with the sum of claims up to €600 if such a possibility was not reflected in the decision itself being appealed. In Austria, with a few exceptions, it is not allowed to go to a third court instance in cases where the value of the claim €4,000 or less.³¹

Moreover, in relation to certain foreign legal orders, the illusory nature of the appeals procedure in such cases is noted. Thus, J. Lebowitz points to this in the American court of a petty lawsuit, referring to the high cost of initiating an appeal, which is clearly disproportionate to the essence of a petty lawsuit. In some states, the possibility of appeal is limited. For example, in California and Massachusetts it is only the respondent who has the right to file an appeal. In Virginia, there is no right to appeal if the disputed amount is less than \$50 (however, for all other disputes there is no restriction on appeal). Washington state does not allow appeal of decisions on claims up to \$100. At the same time, in initiating appeal proceedings the party must pay a fairly high fee. In some states it is not available at all. For instance, in Arizona there is no right to appeal.

In this situation, the conclusion by E. Nosyreva looks logical. She claims:

The use of the appeal is disadvantageous to the parties from the procedural and financial points of view. The increasing complexity of the procedure, the need to use traditional procedural mechanisms require the participation of lawyers and entail significant new costs that are inconsistent with the nature

³¹ See Проверка судебных постановлений в гражданском процессе стран ЕС и СНГ [*Verification of Court Decisions in Civil Proceedings in the EU and the CIS*] 26 (E.A. Borisova (ed.), Moscow: Norma, INFRA-M, 2007).

of the dispute. For these reasons, as practice shows, decisions of small courts are appealed very rarely.³²

From the aspect of admissibility of limiting appeals to relevant judicial acts, clause 15 of the Appendix to the Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe of 14 May 1981 is to be considered, which states that

for disputes on claims, a small amount there must be established a procedure that allows the parties to go to court without incurring costs disproportionate to the amount of the dispute. With that in mind, it would be possible... to limit the right of appeal.

At the same time, however, the Committee of Ministers of the Council of Europe indicates the need for a principled possibility of supervision over any decision of a lower court by a higher court.³³

In general, restrictions on the appeal of judicial acts adopted in simplified procedures in the commercial process are an inevitable price for other advantages associated with them (speeding up the proceedings in relevant cases, etc.).³⁴ At the same time, it is important that when introducing the relevant rules in procedural rules the acquisitions and losses associated with their implementation are adequately weighed. From the statistics provided in this paper it does not appear that the existing options for appealing against judicial acts adopted in the considered simplified production models contain obvious or significant flaws.

When searching for the optimal legal regulation of legal proceedings in the commercial courts, it is necessary to take into account the so-called financial factor. Despite the fact that the financial costs of society (budget) for the administration of justice cannot be considered to be a fundamental factor determining the nature of the court proceedings, it is difficult to ignore it completely as a factor affecting its quality.

An increase in the quantitative indicators inevitably entails an increase in the financial costs of the administration of justice. For the period from 2014 to 2017, the volume of budget funds allocated to the Judicial Department at the Supreme Court of the Russian Federation to support the activities of the courts increased by

³² Носырева Е.И. Альтернативное разрешение споров в США: Дис. ... докт. юрид. наук [Elena I. Nosyreva, *Alternative Dispute Resolution in the United States: Thesis for a Doctor Degree in Law Sciences*] 226–227 (Voronezh, 2001).

³³ Российская юстиция. 1997. № 6. С. 4 [6 Russian Justice 4 (1997)].

³⁴ Incidentally, this is not anything new for our procedural regulation. As is known, in accordance with Article 162 of the Charter of Civil Procedure, all decisions of the justice of the peace could be appealed within a month. At the same time, appeals against decisions of the congresses were allowed only in cases with the cost of a claim exceeding 100 rubles (Art. 186). As for the decisions of Zemstvo chiefs and city judges, they were not subject to appeal in cases of up to 30 rubles (Arts. 90, 111 Charter of Civil Procedure).

an average of 26%. Therefore, it is not by chance that the development of simplified procedures for the implementation of justice allows achieving the goals of legal proceedings with less financial expense, among other things.³⁵

Thus, the presence of claims to the current models of simplified and writ proceedings should entail not a rejection of them, but a further improvement of the related legal regulation and commercial practice, since they are a promising factor for streamlining court proceedings in the commercial courts.³⁶

The optimal legal proceedings in any country and at any time are, on the one hand, achieved at an appropriate stage as the result of adapting the judicial mechanism to the needs of persons applying for judicial protection. On the other hand, they are a very complicated and sometimes a very painful process of considering the main components of the legal development of society.

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³⁵ Hazel Genn et al., *supra* note 9.

³⁶ Stuart Sime, *A Practical Approach to Civil Procedure* 250 (6th ed., Oxford: Oxford University Press, 2003); Theodore Eisenberg & Charlotte Lanvers, *Summary Judgment Rates Over Time, Across Case Categories, and Across Districts: An Empirical Study of Three Large Federal Districts*, Cornell Law School Research Paper No. 08-022 (May 2008) (Apr. 28, 2019), available at https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1107&context=lsrp_papers.