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**ACTUAL PROBLEMS OF
DETERMINATION OF
THE OBJECTIVE LIMITS OF THE
PREJUDGMENT**

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ACTUAL PROBLEMS OF DETERMINATION OF THE OBJECTIVE LIMITS OF THE PREJUDGMENT

The article deals with relevant problems of determination of the objective limits of the prejudgment using the prejudgment of the particular types of court rulings as an example. The author concludes that the concept of «circumstances» should be defined as facts and established on their basis legal relations. The author considers that the court orders, the judgments in absentia, the judgments of dismissal due to the approval of the settlement as well as the higher court rulings that verify legality of previous judgments not verifying validity should be excluded from the objective limits of the prejudgment. The author analyzes rules of the draft of the Civil Procedure Code of the Russian Federation of 2000 and comes to the conclusion that Article 61 of the current Civil Procedure Code of the Russian Federation requires to be amended.

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Introduction

A number of dissertations as well as dozens of scientific papers cover the problems of functioning of the institute of prejudgment in the civil procedure.

The institute of prejudgment is the specific procedural rule characterizing by signs of legal fiction and serving both the ground for relief of the burden of proof of facts (circumstances) which have already been established in civil case between the same parties on the same subject and the prohibition to refute these facts (circumstances). The institute of prejudgment is connected with the realization of the principle of procedural economy in the Russian civil procedure. The institute of prejudgment reminds the estoppel by judgment under the civil procedure law of the UK and the USA. It requires the existence of a valid judgment rendered by the court of competent jurisdiction. This is usually applied for the judicial interpretation of facts.

Various theoretical approaches and improvements of the current legislation have been proposed by the scientists. For the purposes of filling the legislative gaps the Supreme Court of the Russian Federation (hereinafter – the Supreme Court of the RF) have provided clarifications on the institute of prejudgment practice publishing Resolutions of the Plenum and the Presidium. However, since the enactment of the current Civil Procedure Code of the Russian Federation (hereinafter - CPC of RF) the Article 61 that stipulates the rules of prejudgment has never been amended. This fact indicates that procedural rules governing prejudgment exist separately from precedents in their application.

Nowadays the problem of the objective limits of prejudgment determination is widely discussed in science of civil procedural law. Doctrinal approaches to the objective limits of the prejudgment had been particularly relevant until the adoption of Resolution of the Plenum of the Supreme Court of the Russian Federation (hereinafter – Resolution of the Plenum of the Supreme Court of the RF «On the judgment») dated December 19, 2003 № 23 «On the judgment»². However, the present research is going to prove that the clarifications on the court practice matter rendered by the Supreme Court of the RF have not settled contradictions concerning determination of the objective limits of the prejudgment.

² Postanovlenie Plenuma Verkhovnogo Suda Rossiyskoy Federatsii ot 19 dekabrya 2003 goda № 23 «O sudebnom reshenii» // Byulleten' Verkhovnogo Suda RF, 2004. № 2.

The concept of «circumstances» in the system of rules of the Civil Procedure Code of the Russian Federation on prejudgment

The legal technique of Parts 2 and 3 of Article 61 of the CPC of the RF is the prime aspect of the problem of determination of the objective limits of the institute of prejudgment. The above provisions apply the definition of «circumstances» without revealing its essence. A. M. Bezrukov was right to draw the legislator's attention to the importance of the problem of the term «circumstance» uncertainty noting that this term has to be specified³. There are several approaches to this problem solving in the theory of civil procedure. According to the one of them, the prejudgment applies only to facts as only facts but not legal relations are the subject of proof in a civil case⁴.

Concerning the normative approach based on the content of the CPC of the RF, Part 2 of the Article 209 specifically, it is necessary to provide the following provision: «After the judgment has entered into force, persons participating in the case, their legal successors cannot claim on the same grounds as well as dispute in another civil procedure facts and legal relations that have already been established by the court». Such approach is traditional that can be confirmed by papers of the following scientists: V. M. Semenov⁵, Y. L. Shtutina⁶, N. B. Zeyder⁷. This approach can also be recognized in the practice of courts of general jurisdiction and commercial courts. Thus, for example, the Judicial Chamber on Civil Cases of the Supreme Court of the RF in its Ruling of February 4, 2004 № 3-G03-16⁸ stated the following: «The Court was right to stipulate that cases on protection of electoral rights belong to cases arising from public relations, therefore, the judgment of the Supreme Court of the Republic of Komi of February 27, 2003 should be recognized as being prejudged in so far as the claims on election legislation infringement have been raised, which according to V. A. Bezruk, the claimant, occurred due to distribution of questionnaires on selection of candidates willing to work in the company «<...>» in the town of Inta and in Inta region, since the judgment of the Supreme Court of the Republic of Komi of February 27, 2003 on the same grounds and on the same subject has been already rendered». As for the Federal Commercial Court of the Volga-Vyatka region, it has been more precise stating that «Prejudgment is one of the

³ Bezrukov A. M. *Preyuditsial'naya svyaz' sudebnykh aktov.* – M. : Volters Kluver, 2007. P. 54

⁴ Kurylev S. V. *Osnovy teorii dokazyvaniya v sovetskom pravosudii.* – Minsk, 1969. P. 79.

⁵ Semenov V. M. *Vzaimnaya obyazatel'nost' resheniy i prigovorov v sovetskom grazhdanskom protsesse // Kratkaya antologiya ural'skoy protsessual'noy mysli. 55 let kafedre grazhdanskogo protsesssa Ural'skoy gosudarstvennoy yuridicheskoy akademii.* Ekaterinburg: Izd-vo Gumanit. un-ta, 2004. P. 496.

⁶ Shtutin Ya. L. *Predresheniya (preyuditsii) v sovetskom grazhdanskom protsesse // Gosudarstvo i pravo.* 1956. № 5. P. 58.

⁷ Zeyder N. B. *Sudebnoe reshenie po grazhdanskomu delu.* – M., 1966. S. 149–150.

⁸ *Opreделение Sudebnoy kollegii po grazhdanskim delam Verkhovnogo Suda RF ot 4 fevralya 2004 goda № 3-G03-16 // Dostup iz SPS «Konsul'tant Plyus».*

consequences of legal action of the Commercial Court judgment that has come into effect; therefore, facts and legal relations established by the Commercial Court and settled in its judgment cannot be impeached and reheard in another legally commenced suit with the same parties according to Part 2 of the Article 69 of the Commercial Procedure Code of the RF»⁹.

To sum up, nowadays both theory and practice define the concept of «circumstances» in the meaning of Article 61 of the Civil Procedure Code of the RF as facts and established on their basis legal relations.

Prejudgment of the particular forms of court rulings

Another essential issue on determination of the objective limits of prejudgment also concerns the legal technique of the CPC of the RF. Thus, Part 2 of the Article 61 of the CPC of the RF prescribes that circumstances established by the court ruling on an earlier considered case which has entered into legal force are obligatory for the court. According to Paragraph 3 of the Part 9 of Resolution of the Plenum of the Supreme Court of the RF «On the judgment», a court ruling provided by the Part 2 of the Article 61 of the CPC of the RF shall be considered as any court ruling adopted by the court pursuant to the Part 1 of the Article 13 of the CPC of the RF (the court order, the judgment, the court decision). The above clarification on the court practice of the Supreme Court of the RF, based on a fairly broad interpretation, is reasonably criticized as well as contradicts the intendment of the current CPC of the RF.

Thus, for example, the draft of the CPC of the RF introduced by the Supreme Court of the RF to the State Duma of the Federal Assembly of the Russian Federation (hereinafter - the State Duma of the RF) on December 25, 2000¹⁰ proposed the following version of the article on prejudgment: «Circumstances established by the judgment on an earlier considered civil case which has entered into legal force are obligatory for the court, they shall not be proved again and shall not be challenged when considering other civil cases involving the same parties¹¹». Herewith, the draft of the CPC of the RF stipulated that «courts of general jurisdiction pass court rulings in the form of

⁹ Postanovlenie Federal'nogo Arbitrazhnogo Suda Volgo-Vyatskogo okruga ot 9 dekabrya 2004 goda № A28-4248/2004-38/20 // Dostup iz SPS «Konsul'tant Plyus».

¹⁰ Postanovlenie Plenuma Verkhovnogo Suda RF № 37 ot 25 dekabrya 2000 goda «O vnesenii v Gosudarstvennuyu Dumu Federal'nogo Sobraniya Rossiyskoy Federatsii proekta Grazhdanskogo protsessual'nogo kodeksa Rossiyskoy Federatsii» // Put' k zakonu (iskhodnye dokumenty, poyasnitel'nye zapiski, materialy konferentsiy, varyanty proekta GPK, novyy GPK RF) / Pod red. M.K. Treushnikova. – M.: OAO «Izdatel'skiy dom “Gorodets”», 2004. S. 613.

¹¹ Ibid. P. 641.

the court orders, the judgments, the court decisions¹²». Basing on the legal technique of rules of the draft of the CPC of the RF we can come to the conclusion that the draftsmen provided the restriction of the objective limits of the prejudgment.

It seems that the clarification of the Supreme Court of the RF does not consider such institute of procedural law as a review of a judgment. Review of a judgment as an institute of procedural law is considered as stages of proceeding, wherein on the parties initiative provides the reconsideration of the case that has already been heard on the merits in the first-instance court, in order to verify the legality and validity of judgments, to eliminate the judicial errors and to recover violated rights¹³. E. A. Borisova reveals the differences of the definitions noting that according to its lexical meaning the word «to review» means to reconsider while the word «to verify» means to assure the correctness of something, to exercise the supervision and control¹⁴. We believe that the proposed approaches of the distinguished scientists entirely reflect the content of the current CPC of the RF which regulates appellate, cassation, supervisory proceedings as well as review of effective judgments due to newly discovered or new facts. According to the civil appeal system reform held in 2010-2012, appellate proceeding means reconsideration on the merits for the verification of legality and validity of judgments of courts of the first instance. As far as the cassation proceeding is concerned, it is intended for eliminating major violations of the rules of material or procedural law that have affected the outcome of the case (Article 387 of the CPC of the RF), i.e. aimed at verification of legality of the considered judgment which has come into effect. As for supervisory proceeding, it intends to eliminate the violation of the following rights (Article 391.9 of the CPC of the RF): 1) the civil and human rights and freedoms guaranteed by the Constitution of the Russian Federation, the generally recognized principles and rules of international law and international treaties of the Russian Federation; 2) the rights and legitimate interests of an indefinite circle of persons or other public interests; 3) the uniformity of interpretation and application of rules of law by courts. Thus, supervisory courts also intend to verify the legality of judgments passed by the lower courts. Finally, the review of effective judgments due to newly discovered or new facts is related to the evaluation of the new legal facts as according to the Part 2 of the Article 392 of the CPC of the RF: 1) newly discovered facts are the circumstances essential for the case indicated in Part 3 of the present Article which had existed when the judgment was passed; 2) new facts are the circumstances essential for the correct judgment, indicated in Part 4 of the present Article, arose upon the adoption of the judgment .

¹² Ibid. P. 625.

¹³ *Peresmotr sudebnykh aktov v grazhdanskom, arbitrazhnom i ugovnom sudoproizvodstve (analiticheskiy obzor normativno-pravovykh dokumentov)* / Pod obshch.red. T.G. Morshchakovoy., – M.: 2013. P. 394.

¹⁴ *Borisova E. A. Apellyatsiya, kassatsiya, nadzor po grazhdanskim delam: ucheb. posobie.* – M.: Norma: INFRA-M, 2013. P. 87.

Thereby, proceeding from the premise that the establishment of facts is possible only upon verification of the validity of prior judgments, we assume that the following court rulings can be prejudged: 1) judgments of the first-instance courts, including judgments of dismissal and judgments on leaving a claim without consideration; 2) appellate rulings; 3) rulings on acceptance (acceptance dismissal) of an application for review of effective judgments due to newly discovered or new facts. Therefore, Part 9 of Resolution of the Plenum of the Supreme Court of the RF «On the judgment» requires to be amended.

E. G. Malyh notes that the term «court ruling» indicated in Part 2 of the Article 61 of the CPC of the RF shall be interpreted restrictively; only the following court rulings can be prejudged: 1) first–instance court judgment; 2) judgment of dismissal due to the approval of the settlement agreement on circumstances confirmed by the terms of the settlement agreement; 3) judgment on leaving a claim without consideration on the grounds provided by Paragraphs 2 and 6 of the Article 222 of the CPC of the RF on circumstances corroborating the corresponding grounds (existence of an agreement on pre-court dispute resolution procedures, on submission to the arbitration tribunal, on validity and enforceability of the above agreements); 4) final ruling (judgment) of the higher court which passed another judgment (or amended the judgment) or substantiated new circumstances without reversing or altering existing judgments (for the appellate court rulings)¹⁵». The stated opinion appears reasonable, except for recognition of judgments of dismissal due to the approval of the settlement agreement as being prejudged, despite the fact that this opinion is supported by the scientific community¹⁶.

From T. V. Gluhova's standpoint, «the legislator of the second part of the XIX century applied the definition «amicable transaction»¹⁷. Consequently, the civil nature of the settlement agreement was stressed, eliminating the obligation of the judicial authority to certify such an agreement¹⁸. According to the current approach, formed early in the XX century, the settlement agreement is recognized not as a common civil transaction but as an agreement on termination of pending dispute on a contractual basis¹⁹.

¹⁵ *Malykh E. G.* Problemy preyditsii v grazhdanskom i arbitrazhnom protsesse: Avtoref. dis. ... kand. yurid. nauk / Mosk. gos. yurid. akad. – Moskva, 2006. P. 7–8.

¹⁶ *Gukasyan R. E.* Problema interesa v sovetskom grazhdanskom protsessual'nom prave / Otv. red.: Vikut M. A. – Saratov: Privolzh. kn. izd-vo, 1970. P. 177; *Bezrukov A. M.* Preyuditsial'naya svyaz' sudebnykh aktov. P. 48–49.

¹⁷ *Glukhova T. V.* Institut mirovogo soglasheniya: ponyatiya i vidy (istoricheskiy aspekt) // *Grazhdanskoe sudoproizvodstvo v izmenyayushcheysya Rossii: Mezhdunarodnaya nauchno-praktich. konf. (14 - 15 sent. 2007 g.) / Pod red. O.V. Isaenkovoy.* Saratov, 2007. P. 212.

¹⁸ *Chekmareva A. V.* Mirovoe soglashenie kak rezul'tat vypolneniya zadachi primireniya storon pri podgotovke dela k sudebnomu razbiratel'stvu // *Zakony Rossii: opyt, analiz, praktika.* 2013. № 10. P. 76–80.

¹⁹ *Ibid.*

From the theoretical point of view, seems reasonable the standpoint of L. A. Terekhova, who divides the judgments on a civil case into two categories: 1) final judgments are the judgments as well as the decisions and orders, terminating settlement of the dispute, which have not come into force yet; 2) ultimate rulings are decisions which have entered into force and are to be executed²⁰. The stated viewpoint of L. A. Terekhova is supported by V. V. Yarkov, who notes that the prejudgment of the court rulings should be determined depending on their nature, i.e. on the basis of certain criteria²¹. Thereby, admitting that the judgment of dismissal due to the approval of the settlement agreement is a final judgment, we draw special attention to its essence which will be considered further.

According to Parts 2 and 3 of the Article 61 of the CPC of the RF the court deems as prejudged circumstances substantiated by the ruling of the court of the general jurisdiction or by the judgment of the commercial court. However, in accordance with the rules of Article 220 of the CPC of the RF, the court terminates proceeding if the parties have entered into the settlement agreement and it has been approved by the court. Thus, from the standpoint of normativity, we presume finding of facts on the basis of the settlement agreement but not finding of facts in a legal proceeding. The same approach is expressed in the Ruling of the Judicial Chamber for Commercial Disputes of the Supreme Court of the Russian Federation of October 15, 2014 № 308-ES14-91²², stipulating that the parties are entitled to use compromise to settle the dispute while the judicial evaluation of evidence and the definition of factual background are not being performed. This argument may also be supported by the fact that the court has no authority to make any amendments or additions to the terms of the settlement agreement²³. Examination of 50 court rulings of the Supreme Courts of constituent entities of the Russian Federation and equivalent areas allows us to provide the statistics: 1) 22 court rulings confirm the opinion that there is no factual background in the settlement agreements approved by the court²⁴; 2) 22 court rulings refute the opinion that there is no factual background in the settlement agreements approved by the court²⁵; 3) 6 court rulings

²⁰ *Terekhova L. A.* Sistema peresmotra sudebnykh aktov v mekhanizme sudebnoy zashchity. – M.: Volters Kluver, 2007. P. 8.

²¹ *Yarkov V. V.* Yuridicheskie fakty v mekhanizme realizatsii norm grazhdanskogo protsessual'nogo prava: Dis. ... dokt. yurid. nauk. Sverdlovsk, 1992. P. 79.

²² Opredelenie Sudebnoy kollegii po ekonomicheskim sporam Verkhovnogo Suda RF № 308-ES14-91 ot 15 oktyabrya 2014 goda. [Elektronnyy resurs] // Rezhim dostupa: http://www.vsrfr.ru/stor_pdf.php?id=612042 - Ofitsial'nyy internet-portal Verkhovnogo Suda Rossiyskoy Federatsii (data obrashcheniya: 25.07.2015).

²³ Opredelenie Tyumenskogo oblastnogo suda ot 15 yanvarya 2014 goda po delu № 33-6151/2013, 33-94/2014 /// [Elektronnyy resurs]. URL: http://oblsud.tum.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=511443&delo_id=5&new=5&text_number=1 – Ofitsial'nyy internet-portal Tyumenskogo oblastnogo suda (data obrashcheniya: 16.04.2014).

²⁴ Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Moskovskogo gorodskogo suda ot 20 sentyabrya 2012 goda po delu № 11-22013; Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Lipetskogo oblastnogo suda ot 7 oktyabrya 2013 goda po delu № 33-2634a/2013; Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Kirovskogo oblastnogo suda ot 18 fevralya 2014 goda po delu № 33-426 // Dostup iz SPS «Konsul'tant Plyus».

²⁵ Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Moskovskogo gorodskogo suda ot 8 iyulya 2013 goda po delu № 11-18452; Opredelenie Sudebnoy kollegii po grazhdanskim delam Verkhovnogo Suda Respubliki Severnaya Osetiya-

indirectly refute the opinion that there is no factual background in the settlement agreements approved by the court²⁶. It appears that the current civil procedural law in conjunction with the court practice does not regard as prejudged the judgments of dismissal due to the approval of the settlement agreement on the circumstances confirmed by the terms of this agreement.

As mentioned above, an obligatory feature of the prejudgment of a court ruling is its entry into force which incurs such consequences as obligatoriness, exceptionalism, enforceability and irrefutability. However, not every court ruling passed in civil proceeding combines all the specified consequences. Passing a court order seems a good example proving this argument. We are to provide the normative background to affirm the stated opinion. According to Paragraph 4 of the Part 1 of the Article 125 of the CPC of the RF, the judge shall refuse to accept an application for the issue of an order in case the application and the submitted documents provide grounds to suspect the existence of an issue in law. Thus, the legislator presumes indisputability of an order²⁷. According to Part 1 of the Article 121 of the CPC of the RF, a court order shall be passed by the judge solely. According to Part 2 of the Article 126 of the CPC of the RF, a court order shall be issued without the legal proceedings and the summons of the parties to appear for hearing the evidence. The rules provided indicate an absence of the principle of controversy in issuing a court order that does not correspond to the supported viewpoint of E. G. Malyh, who presumes that the basis of the institute of prejudgment is its correlation with the principle of controversy²⁸. According to Article 129 of the CPC of the RF, the judge shall revoke an order if the debtor comes up with objections as concerns its execution within the fixed time term. This rule establishes the variant appellate procedure that considers the revocation of an order by the same court but not by a higher court.

Hence, A. M. Bezrukov states that a court order does not fully correspond to such feature as irrefutability due to the possibility of a court order review only in cassation proceeding²⁹. The author also assumes that the entry of an order into force does not entail its exceptionalism as according to law (Paragraph 2 Part 1 Article 134 of the CPC of the RF) the issuance of a court order does not prevent the parties from taking legal action by way of action proceedings with the claims

Alaniya ot 22 fevralya 2012 goda № 33-132/2012; Opredelenie Sudebnoy kollegii po grazhdanskim delam Leningradskogo oblastnogo suda ot 15 maya 2013 goda po delu № a-1859/2013 // Dostup iz SPS «Konsul'tant Plyus».

²⁶ Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Moskovskogo oblastnogo suda ot 26 iyunya 2013 goda po delu № 33-11559/2013; Apellyatsionnoe opredelenie Sudebnoy kollegii po grazhdanskim delam Vladimirskogo oblastnogo suda ot 18 iyunya 2013 goda po delu № 33-1948/2013 // Dostup iz SPS «Konsul'tant Plyus».

²⁷ Grazhdanskiy protsess: Uchebnik / Pod red. M.K. Treushnikova.–5-e izd., pererab. i dop. – M.: Statut, 2014. P. 451.

²⁸ Malykh E. G. Problemy preyuditsii v grazhdanskom i arbitrazhnom protsesse: Avtoref. dis. ... kand. yurid. nauk / Mosk. gos. yurid. akad. – Moskva, 2006. P. 14.

²⁹ Bezrukov A. M. Preyuditsial'naya svyaz' sudebnykh aktov. – M. : Volters Kluver, 2007. P. 34.

similar to the ones in the application for a court order³⁰. L. K. Merenkova and L. A. Terekhova disagree with such a conclusion sharing the approach of A. M. Bezrukov who proposes to solve this problem using the institute of analogy in law (Part 4 Article 1 of the CPC of the RF). The authors consider that A. M. Bezrukov wrongly concludes that the entry of an order into force does not entail its exceptionalism³¹.

It appears that we cannot agree with the conclusion made by A. M. Bezrukov concerning the prejudgment of a court order³² due to the following reasons. Firstly, there is no adversarial principle in issuing a court order whereas according to the evidential significance of the institute of prejudgment and under the implication of Article 61 of the CPC of the RF the adversarial principle is one of the prejudgment conditions. Secondly, in view of irrefutability of court orders proceedings the court does not establish legal facts while issuing a court order and the court order does not include the reasons for judgment. Impossibility to establish the paternity in issuing a court order on alimentary obligations may serve as a classical example confirming this thesis. Thirdly, a court order that has come into force can be revoked by a court decision in cassation proceeding which, as mentioned above, cannot be prejudged as it intends to verify legality not verifying their validity.

The adversarial principle is partially contained in proceedings in absentia involving the defendant's failure to appear in the court session due to valid reasons which he had no opportunity to timely report to the court (Article 242 of the CPC of the RF). The defendant has the right to file to the court which has rendered the judgment in absentia an application for the reversal of judgment within seven days from the day when a copy of the judgment was handed down (Part 1 Article 237 of the CPC of the RF). However, the judgment passed in absentia may be appealed against by the parties in the appellate procedure (Part 2 Article 237 of the CPC of the RF) as contrast to the appellate procedure of a court order. This difference in the appellate procedures cannot be considered as an advantage of proceedings in absentia due to the coherence of presentation of the additional evidence in the court of appeal with the impossibility of its presentation to the court of the first instance for reasons beyond control of the person and if the court finds these reasons excusable (Paragraph 2 Part 1 Article 327.1 of the CPC of the RF). Under the above circumstances we believe that the prejudgment of an appealed judgment rendered in absentia depends on the admission of the complainant's reasons for non-appearance at the court of the first instance and his failure to provide evidence as excusable.

³⁰ Ibid.

³¹ Merenkova L. K., Terekhova L. A. Retsenziya na kandidatskuyu dissertatsiyu A.M. Bezrukova «Preyuditsial'naya svyaz' sudebnykh aktov» // Vestnik Omskogo universiteta Seriya «Pravo». 2006. № 1(6). P. 339-349

³² Bezrukov A. M. Preyuditsial'naya svyaz' sudebnykh aktov. – M. : Volters Kluver, 2007. P. 82–84.

Thus, we may conclude that Paragraph 3 of the Part 9 of Resolution of the Plenum of the Supreme Court of the RF «On the judgment» does not take into consideration particularities of the court order proceedings and the proceedings in absentia in the civil procedure as well as the civil appeal system and, therefore, requires to be amended on the basis of opinions and arguments provided above. However, we suppose that the legislative amendments to Part 2 of the Article 61 of the CPC of the RF would be the preferable.

Conclusion

Summing up the results of the research, we are to make the following conclusions. Upon analyzing the problem of determination of the objective limits of the institute of prejudgment we can reveal a number of legislative gaps being the grounds for the broad interpretation of this legal phenomenon both in the theory of civil procedure and in the judicial practice. The premise of this situation is the lack of regulation of the concept of «circumstances» in the system of rules on prejudgment in the CPC of the RF. Clarification of the term «court ruling» stipulated in Part 9 of Resolution of the Plenum of the Supreme Court of the RF «On the judgment» seems a good example of how the premise mentioned above can serve as the basis for extension of the objective limits of the prejudgment. From our point of view, the court orders, the judgments in absentia, the judgments of dismissal due to the approval of the settlement as well as the higher court rulings that verify legality of previous judgments not verifying their validity should be excluded from the objective limits of the prejudgment. Therefore, the reform the institute of the prejudgment in the civil procedure is required taking into consideration the court practice as well as the draft of the CPC of the RF of 2002, introduced by the Plenum of the Supreme Court of the RF to the State Duma of the RF on December 25, 2000.

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