

UDC 347

## WRITTEN PROCEEDINGS AS AN INDEPENDENT TYPE OF CIVIL LEGAL PROCEEDINGS

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*This article discusses one of the topical aspects of writ proceedings: the recognition of writ proceedings as an independent type of civil proceedings. The author analyzes the procedural legislation, examines the opinions of a number of procedural scientists and expresses his point of view on this issue.*

**Keywords:** judicial protection, judiciary, legal proceedings, writ proceedings, summary proceedings, indisputable claim, recoverer, debtor, court order.

According to paragraph 2 of Art. 13 of the Constitution of the Republic of Kazakhstan, everyone has the right to judicial protection of their rights and freedoms. Judicial power is exercised through civil, criminal and other forms of legal proceedings established by law [4]. One of the main directions of civil legal proceedings is the establishment and improvement of judicial institutions that allow resolving civil cases in a simplified manner, in particular, in the order of writ proceedings.

The purpose of writ proceedings as a form of judicial protection carried out by the court is to reduce the time for the consideration of the case in court (speed), reduce the burden on the court (without a court session and keeping minutes, without calling the parties); those. the main goal of the institution of writ proceedings is to achieve maximum dynamism and efficiency of the civil process in relation to simple and / or indisputable cases, as well as cases, the consideration of which is inappropriate in the usual manner and is not consistent with the principle of procedural economy.

Currently, in the theory of civil procedural law, there are discussions regarding the essence of writ proceedings. In particular, questions arise as to whether writ proceedings are an independent type of civil proceedings or not?

In this regard, supporters of this idea can be singled out, who define writ proceedings as a procedural action or procedure, although such an understanding and meaning is not provided for in the framework of Kazakhstani legislation.

So, for example, V.N. Argunov proposed to consider writ proceedings as a simplified legal

procedure. In his opinion, this is a specific form of protecting the rights and interests of a creditor as a person relying on indisputable documents against a party that does not fulfill its obligations. That is, this is a documentary production [1, p. 12].

N.I. Maslennikova considered writ proceedings as an activity carried out outside the framework of procedural proceedings. And that a court order is just a quick way to activate state coercion, a surrogate for a court order [8, p. 213]. Thus, the author proposed not to consider writ proceedings as an independent type of civil proceedings.

According to M.K. Treushnikova, «... this is a specific form of protecting the rights and interests of the creditor as a person relying on indisputable documents against a party that does not fulfill its obligations, which is characterized by a simplified legal procedure» [5, p. 211].

As Z.Kh. Baymoldina: «...writ proceedings cannot be considered as a separate type of civil proceedings and put on a par with claims, special claims and special proceedings. The criteria for identifying these types of legal proceedings are the features of the procedure for considering and resolving a certain range of civil cases, due to the subject of judicial activity, the specifics of controversial material legal relations and issues» [2, p. 234]. Legal proceedings in these civil cases, regardless of the order of one or another type of proceedings applied to them in the court of first instance, are subject to general procedural instructions (with separate exceptions and additions) and are characterized by a full judicial (procedural)

form. After the initiation of civil cases, they are prepared for trial and a court session is held to consider and resolve them on the merits. The persons participating in the case are necessarily notified of the time and place of the trial, with exceptions and exceptions in certain cases for certain categories of civil cases [2, p. 234]. In writ proceedings, there are no many procedural institutions, means characteristic of the above types of civil proceedings. The absence of a dispute about the right and the issuance of a court order is carried out on the basis of an application submitted on indisputable requirements. The recoverer and the debtor, who are interested in the outcome of the case, are not notified of the consideration of the claim, their explanations are not heard, judicial proof is not carried out, etc.

Analysis of the works of N.A. Chechina, I.M. Zaitsev directly indicates that they adhered to a completely different position regarding the essence of writ proceedings.

N.A. Chechina considers writ proceedings as simplified and considers it an independent type of proceedings for debt collection on the basis of a court order [6, p. 311].

In his works, I.M. Zaitsev notes that writ proceedings exist along with claims, special and administrative proceedings [7, p. 189].

In our opinion, the position of the authors expressing an opinion on the independence of writ proceedings is correct.

Kazakh legislation, or rather legislators, have identified the following features to determine the position on the essence of writ proceedings. The Kazakh legislator, and the procedural law itself, confirms the provision that writ proceedings are an independent type of civil proceedings, as evidenced by the location of the articles of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the Code of Civil Procedure of the Republic of Kazakhstan) dedicated to this institution.

An analysis of the norms devoted to writ proceedings also allows us to conclude that this type of production is independent and to single out the following stages of writ proceedings:

- initiation of writ proceedings by filing an application;
- consideration of an application for issuance of a court order and issuance of a court order;

- issuance of a court order to the recoverer;
- Cancellation of the court order (if the defendant filed an objection);
- direction of the court order for execution.

By virtue of h. 1 Article. 134 of the Code of Civil Procedure of the Republic of Kazakhstan, a court order is a judicial act, which is issued by a judge at the request of the recoverer to recover money or recover movable property from the debtor on indisputable claims, without calling the debtor and the recoverer to hear their explanations and without trial proceedings [3].

In general, a court order helps to speed up the resolution of a case and restore violated rights; it is an independent type of court order in civil cases, which is issued as a result of writ proceedings, which is a simplified procedure for protecting a violated right in a court of first instance.

Writ proceedings are simplified proceedings, since there is no trial in this case. In this proceeding, there are no plaintiff and defendant, but there is a recoverer and a debtor. Evidence in this proceeding is only written evidence. Unlike action proceedings, where the existence of a dispute is mandatory, in writ proceedings, the claims of the recoverer must be indisputable.

Writ proceedings are initiated on the basis of an application for a court order, and there is a special procedure for canceling a court order. In Art. 135 of the Code of Civil Procedure of the Republic of Kazakhstan, the list of requirements for which a court order is issued has been expanded in comparison with the Code of Civil Procedure of the Republic of Kazakhstan of the old edition.

The Code of Civil Procedure of the Republic of Kazakhstan of the old version did not have the following requirements:

- on the recovery of state grants from persons who terminated their studies or did not return to the Republic of Kazakhstan after graduating from an educational institution in a foreign state or who violated the obligation to return the grant stipulated by the agreement;
- on the recovery of state grants, lifting, benefits from young professionals sent to the countryside, in case of non-fulfillment or improper fulfillment of their obligations under contracts;
- on the recovery of lease payments due to

their non-payment within the time limits established by the lease agreement;

- on the recovery of procedural costs in criminal cases terminated by the criminal prosecution body.

The inclusion of these requirements in the list of requirements for which a court order is issued is an innovation in the Code of Civil Procedure of the Republic of Kazakhstan.

According to Art. 136 of the Code of Civil Procedure of the Republic of Kazakhstan, an application for issuing a court order is submitted to the court according to the general rules of territorial jurisdiction. It is submitted in writing or in the form of an electronic document.

The application must indicate:

- the name of the court to which the application is submitted;
- the name of the claimant, his date of birth, place of residence or location, individual identification number, details of the legal entity, business identification number;
- name of the debtor, his date of birth, place of residence or location, individual identification number (if known to the applicant), details of the legal entity, business identification number;
- claim of the claimant and the circumstances on which it is based;
- a list of attached documents confirming the stated requirement.

In the case of claiming movable property, the application must indicate the value of this property, confirmed by the relevant documents.

The application is signed by the recoverer or his representative, if he has the authority to sign or submit the application. The application submitted by the representative must be accompanied by a power of attorney certifying his authority.

If there is a discrepancy with these requirements, as well as if the application is not provided for by Art. 135 of the Code of Civil Procedure of the Republic of Kazakhstan, there is a dispute about the right, which is subject to consideration in the order of action proceedings, the place of residence or location of the debtor is outside the Republic of Kazakhstan, documents confirming the stated requirement are not submitted, the application is not paid by the state fee, the judge refuses to accept or returns application for a court order. A court order on the merits of the

stated indisputable claim shall be issued by the judge within three working days from the date of receipt of the application by the court. In accordance with Art. 141 of the Code of Civil Procedure of the Republic of Kazakhstan, a court order no later than the next day after its issuance must be handed over or sent to the debtor, while its receipt must be recorded using means of communication. The debtor has the right, within ten working days from the date of receipt of a copy of the court order or from the day when he became aware of its issuance, to send objections to the stated requirement to the court that issued the court order [3].

The judge cancels the court order if the debtor raises objections to the stated requirement within the prescribed period, or if another person, whose rights and obligations are affected by the court order, claims that the issued court order does not comply with the requirements of the law.

The decision of the court and the court order are different. A court order is issued on the basis of an examination by the judge of the submitted documents alone, and a court decision is issued on the basis of an examination of not only written, but also other evidence in a court session in the presence of the persons participating in the case. The court that issued the decision does not have the right to cancel it, it can be appealed to a higher court, the court order must be canceled by the same judge if the debtor raises objections. A court order has the force of a writ of execution - a court decision does not have such force, on the basis of it a writ of execution is issued. Debt collection through writ proceedings saves time for collectors, money for debtors and reduces the burden on judges in lawsuit proceedings. The introduction of the proposed changes to improve writ proceedings will strengthen the position of this institution as an independent type of legal proceedings.

Thus, based on the above points, it should be noted that writ proceedings are an independent type of proceedings for debt collection based on a court order, with its inherent features.

The application in practice of the provisions of the institution of writ proceedings has generated a lot of controversy in comparison with claims proceedings, however, the fact remains that at the present stage of development of Kazakhstani civil proceedings, in conditions of increased court

workload, the full application of the institution of writ will make the trial a truly effective and inexpensive form of protection. rights, simplify and increase the effectiveness of this protection.

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## ПРИКАЗНОЕ ПРОИЗВОДСТВО КАК САМОСТОЯТЕЛЬНЫЙ ВИД ГРАЖДАНСКОГО СУДОПРОИЗВОДСТВА

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*В данной статье рассматривается один из актуальных аспектов приказного производства: признание приказного производства как самостоятельного вида гражданского судопроизводства. Автор проводит анализ процессуального законодательства, исследует мнения ряда ученых-процессуалистов и излагает свою точку зрения относительно данной проблемы.*

**Ключевые слова:** судебная защита, судебная власть, судопроизводство, приказное производство, упрощенное судопроизводство, бесспорное требование, взыскатель, должник, судебный приказ.