

# Issues For Improving The First Instance Court Decisions On Civil Cases

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***Abstract: In this article, the concept of first instance court decisions in civil cases and their types have been analyzed. In particular, the concept and types of court decisions, the scientific and theoretical views of legal scholars in this area were studied. The first instance court decisions, its peculiarities, the requirements to them have scientifically and theoretically been analyzed. Some items have been revealed in the final part of the court decision as well as a comparative analysis of the foreign countries' experience in this regard, and suggestions and recommendations for improving the national civil procedural legislation have been discussed in the article. The work also analyzes the concept, objectives and specific procedural features of external proceedings, foreign experience in external proceedings, and comments that do not necessarily need to improve national procedural management. In addition, in this research work, the concept of court rulings and their classification have been studied in scientific theory. The scientific views of legal scholars were analyzed and the criteria for classifying court rulings were indicated. As another document of the first instance court, the court order and its significance, its role in court decisions, comparative analysis of civil procedural legislation of foreign countries, judicial practice, court statistics were analyzed.***

***Keywords: court, judge, justice, civil court, court documents, court decision, ruling, court order, absentee decision, absentee proceedings.***

## **1. Literature survey**

Decisions of the court of first instance on civil cases and certain procedural aspects of the problems related to them in Uzbekistan were studied by legal scholars Sh.Sh.Shorakhmetov, E.Egamberdiev, M.Mamasiddikov, Z.N.Esanova, S.A.Maripova, D.Yu. Studied by Khabibullaev, H.A. Kuchkarov, H. Yodgorov and others.

In Russia, lawyers G.M. Minasyan studied the decisions and rulings of the court of first instance of general jurisdiction in a monograph, while E.V. Klinova studied the legal force of court decisions, MS Borisov studied the theoretical and practical problems of the entry into force of court decisions, and A.A. Knyazev studied the legal force of court decisions, V.A. Vlasenko analyzed the issues as a basis for determining the rights and obligations of citizens in the court decision [1].

M.A. Cheremin's "Command Proceedings in Russian Civil Proceedings," It should be noted that O.D. Shadlovskaya conducted a separate monograph on "Order proceedings in a simplified form of civil proceedings." [2].

Legal scholars Maslennikova NI, Zagaynova SK, Yu.Yu. Gribanov also studied the specifics of the institute of work in general [3]. J. Maxwell Atkinson, Paul Drew studied abroad [4].

Based on the above, it can be said that each type of the first instance court decision has been studied in foreign countries in a separate monograph. However, for the first time in our country, the issues related to the of first instance court decisions on civil cases were studied on the basis of the new Code of Civil Procedure of the Republic of Uzbekistan.

## 2. Introduction

As a result of the judicial and legal reforms carried out in our country, the guarantees of impartiality and independence of the courts in the implementation of fair trial have been legally strengthened. In this regard, the Decree of the President of the Republic of Uzbekistan dated October 21, 2016 No PD-4850 "On measures to further reform the judicial system, strengthening guarantees of reliable protection of the rights and freedoms of citizens" and February 7, 2017 "On the Action Strategy for the further development of the Republic of Uzbekistan" No. PD-4947 has raised to a qualitatively new level in the further democratization and liberalization of the judicial system in the country, the administration of justice.

These decrees aim to set important tasks such as further improving the quality of justice in civil proceedings, ensuring the true independence of the courts and increasing their responsibility to make lawful, reasonable and fair decisions.

Therefore, the correctness of court decisions, rulings, court orders, full expression of the facts of the case in the decisions, the correct legal assessment of the evidence and legal observation of the facts, the conclusions of the court on the dispute are consistent with the facts of the case, the correct statement of substantive and procedural law is one of the most important points.

However, in current judicial practice, there are some errors in the application of substantive law by the courts in making rulings and decisions. Some court decisions do not fully reflect the circumstances identified by the court in the case and do not contain the conclusions of the court arising from the circumstances of the case, the reasoning part of the decision does not always state the grounds for rejection, especially partial rejection, due to the fact that sometimes the concluding part of the decision is unclear and it leads to make difficulties in their implementation.

In addition, the increase in the workload of judges from year to year has led to delays in the resolution of civil cases in court, as well as a decline in the quality of court decisions.

At the same time, the lack of separate research on the first instance court decisions in civil cases, the presence of errors in the correctness of court decisions, in turn, requires the development of recommendations to improve procedural mechanisms in this regard. The scientific-theoretical study of the above problems reveals to the relevance of the topic.

## 3. Discussion

Any interested person has the right to apply to the civil court in the manner prescribed by the legislation on civil proceedings to protect the violated or disputed right or legally protected interest. The court, as a body of state power, makes one of the court decisions (sentence, ruling, decision and order) on the issue under consideration and being resolved.

Documents of the court that have entered into force are binding on all state bodies and other bodies, organizations, officials and citizens and must be executed throughout the territory of the Republic of Uzbekistan (Article 16 of the Civil procedure code).

According to the legal literature, according to the issues to be resolved in civil cases, court decisions are divided into the following types: decision, ruling, court order [5].

Focusing on court decisions, Sh.Sh. Shorakhmetov points out that in considering and resolving civil cases, the court's opinions and conclusions are expressed in the form of court decisions issued in a certain procedural form in the prescribed manner [6].

According to the lawyer M.M Mamasiddikov, the first instance court decisions are a document aimed at the exercise of judicial power, and are in the form of decisions and rulings. He noted that the decisions of the court of first instance have the following characteristics that characterize its content:

Firstly, the first instance court decisions are made by the body authorized to administer justice - the court and are binding on all government agencies, organizations, officials and citizens and are enforced throughout the territory of the Republic of Uzbekistan.

Secondly, the first instance court decisions are issued on the basis of applicable law and are a document of law enforcement. Decisions of the court of first instance are made in the procedural form provided by the civil procedure legislation. This shows that it has a procedural character.

Thirdly, the court adopts an act of law enforcement directed at specific individuals and based on concrete facts.

Fourthly, the decisions of the court of first instance are required to be formalized in writing. Depending on the type of the decision of the court of first instance, it is also different (the decision is made as a separate document in the deliberation room (separate room) and limited to recording in the minutes of the court session).

Fifth, the first instance court decisions are required to be enforced [7].

According to Russian lawyer G.M Minasyan, no court documents are considered normative-legal documents. The judiciary, as one of the state authorities, has the power to exercise law [8]. Adding to this opinion, it can be said that the process of adoption of normative legal acts is completely different from judicial documents in terms of their subject, their force, scope.

In addition to the opinion of the above legal scholars, it can be said that the decisions of first instance courts are a document adopted by the court as a result of the administration of justice, which is characterized by its issuance, individuality, binding nature.

As a type of court decision, a last court decision is a substantive document that protects the violated or disputed rights or legally protected interests of each person who appeals to the court.

According to Shorakhmetov, it requires a lot of attention to the process of decision-making and preparation, and increases the confidence of citizens in the decision [9].

According to Mamasiddikov, the first instance court decision has the following characteristics:

First of all, a court decision is a decision of a body that administers justice. Although this feature is characteristic of all first instance court decisions, this feature is of particular importance for the decision. After all, the decision (sentence) is a procedural document of the court, which resolves the content of the dispute. Unlike other court decisions, the decision is made on behalf of the Republic of Uzbekistan.

Secondly, the sentence concludes the trial as an act of law enforcement resolves the material-legal dispute between the parties restores the interests and violated rights protected by law. Like other documents, the court decision is made on the basis of applicable law and does not create a rule of law.

Thirdly, the court's decision is based on the content of the case and the procedural form. The court shall determine the circumstances relevant to the case directly at the hearing and, at its conclusion, resolve the dispute substantively. The legislation on civil procedure determines the procedure for issuing court decisions and the issues to be resolved in this process [10].

Based on the above, it can be said that the first instance court decision is a procedural document of the court, which is aimed at ensuring the protection of the violated rights or legally protected interests of the parties to the case. Today, the reliable protection of the violated or disputed rights and freedoms of citizens through the courts is increasing year by year. In particular, if we look at the case law, in the first half of 2019, 91,744 cases were considered by the civil courts, of which 79,420 decisions were made. More than 84.4% of the requirements for these decisions were met. In order to ensure openness and transparency of the courts, 304,951 pieces of information were posted on the website of the Supreme Court in the first half of this year. Of these, 304,180 court decisions, 771 information were published [11].

Based on these statistics, it can be said that the announcement of court decisions on the principles of openness and transparency leads to the strengthening of public control over court decisions, increasing public confidence in the court.

In fact, it is necessary to improve the procedural norms related to future court decisions and their content, to study the civil procedure legislation of foreign countries in this regard, to make a comparative analysis, to identify their advantages and to implement their positive aspects in

national legislation as well as ensuring the right to judicial protection in practice is highly required in the recent days.

According to the fifth part of Article 253, the Code of Civil Procedure of the Republic of Uzbekistan, the concluding part of the decision does not contain any instructions on the issue of enforcement of the court decision. If we study the foreign experience in this regard, Article 204 of the Code of Civil Procedure of the Russian Federation [12]., Article 226 of the Code of Civil Procedure of the Republic of Kazakhstan [13]., Article 306 of the Code of Civil Procedure of the Republic of Belarus [14]., Article 445 of the Code of Civil Procedure of the Republic of Estonia [15] clearly define the term or immediately deem it necessary for execution or indicate in the concluding part of the court decision on taking measures to ensure execution. In our opinion, it is expedient to make appropriate amendments to the fifth part of Article 253 of the Code of Civil Procedure of the Republic of Uzbekistan.

In order to ensure the principle of adversarial proceedings in civil cases, to increase the procedural responsibility of the parties, it is important for the court to issue a decision in absentia.

In this regard, the legal literature also recognizes the decisions made in absentia as a liability applied to the defendant who did not fulfill his obligations to appear in court, did not notify the court about the reasons for failure to appear [16].

Lawyer Sh. Shorakhmetov focused on the purpose of the decision in absentia, to strengthen the additional guarantees of the principle of adversarial proceedings in civil proceedings, to increase the level of responsibility for the actions (inaction) of the parties, to speed up the resolution of disputes, as well as that the review is aimed at protecting the legal rights of the parties concerned [17].

Indeed, the main purpose of external proceedings is to increase the procedural responsibility of the parties in civil proceedings, especially for the actions (inaction) of the defendant, to expedite the resolution of the dispute, as well as to protect the legal rights of stakeholders through timely review and resolution.

There will be an opportunity to perform simple and concise procedural actions to work on the absentia and make a last decision.

Currently, the institute of external decision-making operates in many legal systems around the world. In England, for example, the Supreme Court, as well as county courts has a numerical advantage over adjudication than simple cases. A similar situation exists in the civil procedure law of the United States, France, and Germany. The reasons for the existence of the institution of absenteeism are, firstly, the priority of human rights, and secondly, the strict adherence to the principle of "time is money." After all, every canceled last minute can lead to huge losses [18].

In the legal literature, in particular, in judicial practice, the concepts of "external proceedings", "external decision-making", "external proceedings" are used in this regard, but the main content is based on the external resolution of the case. In fact, this concept is considered a form of proceedings and is based on general procedural procedures (with some exceptions) provided for in civil procedural law.

In this regard, if we look at the case law, the majority of civil cases reviewed, canceled and reconsidered on the surface are civil cases related to debt collection, housing disputes, demolition of arbitrarily constructed buildings [19].

It should be noted that the decision made in absentia strengthens the rights of the plaintiff with additional guarantees, increases the sense of responsibility of the parties, especially the defendants for their actions or inactions. It also promotes the restoration of the plaintiff's violated rights and legitimate interests, and most importantly, prevents the defendant from postponing the trial on unjustified grounds during the period of consideration of the case within the law.

In turn, the literature argues that if the plaintiff does not appear in court, the issue of a decision in absentia is somewhat controversial. It should be noted that the civil procedure law of some

foreign countries stipulates that if the defendant and the plaintiff do not appear in court without good reason, the case will be heard in absentia and a decision will be made in absentia.

For example, paragraphs 330 and 331 of the Code of Civil Procedure of the Federal Republic of Germany provide that the absence of one of the parties (whether the defendant or the plaintiff) without good cause shall be grounds for a decision in absentia [20].

However, there are also legal scholars and various experts who disagree the strengthening of this rule in the legislation. For example, according to the Russian scientist G.V. Moleva, in the process both parties can not be considered as the same, equal - there is a significant difference between the procedural status of the plaintiff and the defendant. Therefore, the consequences of their non-appearance in court should also be different [21].

An important rule of Roman law is: "There can be no judge without a plaintiff." In fact, the plaintiff decides to initiate litigation, the subject of the claim is in his or her favor, and he or she manages it. That is why the well-known procedural scholars in the legal literature argue that the plaintiff's activity is the base, the engine that initiates litigation. The same scholars also reiterate that as long as the plaintiff has paid the state duty, it is not fair to deprive him of rights such as managing the claims [22].

Some scholars argue that the plaintiff's absence from the trial means that he is not interested in the outcome of the case and, in a sense, does not need to dispute the law [23].

Analyzing the above-mentioned views, I.V. Utkina puts forward some reasonable arguments on the application of the institute of external proceedings against the plaintiff. They are following:

1. The persons involved in the case have the same obligation to notify the court of the reasons for their inability to appear in court. Therefore, if both parties have the same obligation in this regard, it means that the same consequences should arise for not fulfilling it properly.

2. When a court hears a trial with or without the participation of both parties, it shall perform the function entrusted to it, such as the administration of justice, and shall not assume the procedural status of either party.

3. The respondent is one of the important actors involved in the case who influences how the case is resolved. The initiative of the defendant is also one of the decisive factors in the further movement and development of the case after the submission of the statement of claim by the plaintiff. For example, the defendant has the right to admit the claim or has the right to file a counterclaim against the plaintiff. Thus, it argues that the subsequent fate of the case in court cannot be fully agreed with the view that it depends solely on the will of the plaintiff [24].

In addition, the applicable civil procedural law gives the plaintiff the right to abuse his procedural rights. In particular, the plaintiff may also attempt to deliberately prolong the trial by presenting an unsubstantiated claim to the court and then failing to appear in court. The absence of the plaintiff will result in the postponement of the proceedings and the appointment of a new time for the proceedings. This is not only in the interests of the defendant, but also leads to an increase in the workload of judges, the occurrence of unpleasant situations, such as prolongation of the case without resolving the content.

The law-abiding respondent, in turn, can incur financial costs, waste time, and, worst of all, mental oppression. After all, it is no secret that the involvement of the defendant in the home or workplace as a defendant in a particular case can lead to various adverse events.

The norms of application of the institute of absentee proceedings not only as a result of absenteeism, but also as a result of the plaintiff's failure to appear in court without good reason are called "External decision-making" of the Code of Civil Procedure of the country. It is suggested to be included in Chapter 26.

As another type of court document, a court order plays an important role in resolving cases in a simplified manner. The recognition of a court order as a type of court document has also caused various controversies and debates in the legal literature.

In particular, according to N.A. Gromoshina, the court order is not the same as the decision, i.e. it is not considered a court decision [25].

Some legal scholars, on the other hand, hold a different view. According to V.I. Reshetnyak and I.I. Chernykh, court orders belong to the types of court decisions [26].

In our opinion, in addition to legal scholars V.I. Reshetnyak and I.I. Chernykh, according to Article 6 of the Code of Civil Procedure of the Republic of Uzbekistan, the court makes decisions, rulings, decisions and orders on the issues under consideration and being resolved. This indicates that the civil procedure legislation of the country stipulates that a court order belongs to a type of court document.

In civil courts, the court order plays an important role in reducing the workload of judges, saving time, not bothering the parties, protecting them from excessive costs, protecting their violated rights and legally protected interests in the short term. In turn, practitioners also talk about the importance of the institution of the court order, noting that it has created an opportunity to regulate non-conflict civil relations between citizens without excessive red tape [27].

Sh.Sh. Shorahmetov noted that the consideration of some cases by court order allowed to resolve the application without initiating a case without violating the procedural rights of interested parties established by law. This procedure of consideration of cases not only facilitates the process, but also guarantees the legal rights of individuals [28].

In this regard, if we look at the statistics on the number of applications related to court orders, we can see that in 2017, 788,349 court orders were issued in civil courts alone, while in January-June 2018, 188,387 court orders were issued by republican courts [29].

This, in turn, requires further improvement of the institution of order proceedings, one of the most important forms of simplified proceedings in the legislation on civil proceedings, the effective use of its capabilities.

Article 170 of the Code of Civil Procedure, entitled “General Rules on Judicial Orders”, also states that a court order is a court document issued without a trial on non-disputed claims [30].

A similar definition given to a court order is found in the Civil Procedure Codes of other foreign states. In particular, the first part of Article 394 of the Code of Civil Procedure of the Republic of Belarus provides a similar definition of a court order [31].

However, in Article 121 of the Code of Civil Procedure of the Russian Federation, the definition of a court order states that a court order is a court decision issued individually by a judge on the application of the claimant to recover money or to demand movable property from the debtor [32].

The first part of Article 134 of the Code of Civil Procedure of the Republic of Kazakhstan states that the court order is “a court document issued by a judge on a petition to extort the debtor and the claimant without summons and without a court hearing” [33].

The first part of Article 175 of the Code of Civil Procedure of Azerbaijan stipulates that “a simplified procedure for recovery of money or extortion of property is allowed, and a water document is issued in the form of a court order on these cases. In the legislative practice of the above-mentioned states, there are no significant differences in the definitions given to the court order [34].

The legislation of these countries differs in the requirements for the issuance of a court order, the similarities in the definitions of a court order in the rules of execution of a court order, its form and content. For example, in the second part of Article 394 of the Code of Civil Procedure of Belarus, the completion of the proceedings in the order of the judge by the issuance of a ruling on the court order, mentioning in Article 121 of the Code of Civil Procedure of the Russian Federation stipulates that a court order is a court decision issued individually by a judge on the application of the claimant to recover money or to claim movable property from the debtor, this situation differs from the norms of the civil procedure legislation of Uzbekistan, the Russian Federation, Azerbaijan and Kazakhstan. Article 134 of the Code of Civil Procedure of

Kazakhstan states that a court order is a document issued by a judge, while Article 175, paragraph 2, of the Code of Civil Procedure of Azerbaijan states that in such cases the courts accept documents in the form of a court order.

Based on the above considerations, it can be said that a court order is a separate document issued by a court of first instance in civil cases and differs from other court decisions by the following features:

- the court order is issued without a trial on uncontested claims;
- the judge who issued the court order has the right to revoke it;
- the court order is issued only on the grounds established by law;
- the court order is issued on behalf of the court;
- the court order consists of two parts, i.e. the introductory and concluding part.

At present, in order to further simplify the process of issuing court orders, it is necessary to introduce more widespread information and communication technologies. For example, a German scholar, Judge Heinrich Schnitger, noted that in Germany, a court order is issued six times more than in a lawsuit.

In Germany, a judge is not involved in the proceedings. These cases are handled by court staff (not judges). Also, this process is carried out systematically on the basis of electronic technology. The application can be submitted online [35].

Based on the above positive experience, it is expedient to reduce the workload of judges, to introduce a provision in **Chapter 18 of the Code of Civil Procedure of the Republic of Uzbekistan "Judicial order" on the issuance of a court order by an assistant judge.**

Unlike the decisions of first instance court, there are also decisions that do not resolve the case in substance, which are called rulings.

At the same time, the timely and correct issuance of rulings on issues arising in civil proceedings, its preparation for the trial, the exercise of the rights of participants in the proceedings, helps to make a lawful, reasonable and fair decision [36].

In fact, court rulings are issued from the beginning of the civil proceedings until the execution of the court documents, i.e. acceptance of the application, dismissal of the application, return of the application, refusal to accept the application, initiation of civil proceedings, adjournment of the case, termination of the proceedings, termination of the case, dismissal of the application, dismissal of the appeal (protest), cassation appeal (protest), termination of the enforcement proceedings, rulings on termination, etc.

In the legal literature, it is common to classify court rulings according to various criteria. A.A.Mokhova classifies court rulings according to their subject, form, and content [37].

In our opinion, it is expedient to classify court rulings according to their content, subject, form, place of issue and the procedure for filing a private complaint (protest) as **follows:**

**-according to the content:** complementary, determinative, termination of work, termination of work, refusal, application of coercive procedural measures, etc.;

-according to **the subject:** to rulings issued individually and collectively;

- to the **form:** rulings in the form of a separate procedural document and in the minutes of the court session;

-depending on the **place of release:** rulings issued in a separate room and in a court session;

-according to the **procedure for filing a private complaint** (protest): it is divided into rulings that can be filed a private complaint (protest) and those that cannot be filed a private complaint (protest).

## Conclusion

1. The concept of decisions of the court of first instance was scientifically analyzed and the following author's definition has been developed: The decisions of the court of first instance

are the decision, ruling, court order and decision made by the court in civil cases on the administration of justice.

2. The types of decisions of the court of first instance have been analyzed scientifically and it has been concluded that no court document is a normative legal document, the court as one of the state authorities is its jurisdiction.

3. The court order was scientifically and theoretically analyzed and it was argued that it is an independent type of decisions of the court of first instance, which differs from other court decisions by its specific features.

4. The court rulings were analyzed and it was noted that it is expedient to classify them according to their content, subject, place of issue, the procedure for filing a private complaint (protest).

### **Recommendation**

1. It is expedient to state the fifth part of Article 253 of the Code of Civil Procedure of the Republic of Uzbekistan to explain: in the concluding part of the decision, the court's decision to satisfy or reject the claim in full or in part, the distribution of court costs, the time and procedure for appealing the decision, **the order and time of execution of the decision, if the decision is enforceable immediately the order of its execution should be specified.**

2. It is proposed to include in the Chapter 26 of the Code of Civil Procedure of the Republic of Uzbekistan "Decisions in absentia" **on the application of the institute of absenteeism not only the defendant, but also the plaintiff as a result of failure to appear in court without good reason.**

3. In order to further simplify the process of issuing court orders, it is necessary to introduce more widespread information and communication technologies. In Germany, for example, a judge is not involved in the proceedings. These cases are handled by court staff (not judges). Also, this process is carried out systematically on the basis of electronic technology. **Based on the above positive experience, it is expedient to reduce the workload of judges, to take into account the issuance of court orders on uncontested claims, to include a provision in Chapter 18 of the Code of Civil Procedure of the Republic of Uzbekistan "Judicial order".**

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