

SCTCMG 2021
International Scientific Conference «Social and Cultural Transformations in the Context of
Modern Globalism»

LEGAL STATUS OF THIRD PARTIES IN ARBITRATION
PROCESS

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Abstract

The article is devoted to various theoretical and practical aspects related to the involvement of third parties participation in the arbitration proceeding. The regulation of the procedure for attracting third parties is discussed in detail. Special attention is paid to the issues of attracting third parties in arbitration courts. Thus, the possibility of excluding a third party from the number of persons participating in the case is considered, in the case when it obviously follows from the materials of the case that the third party has lost its substantive connection with the subject of the dispute. At the same time, the doctrinal position on this issue and its resolution in the practice of arbitration courts are given. An example of involving a third party in a dispute related to land legal relations is given. The situation is analyzed where the basis for attracting a third party was the presence of an initiated case, the subject of which was the same controversial subject (land plots). The problems of the lack of legislative regulation of the conditions under which it is necessary to attract third parties to participate in the case are revealed. The procedure for attracting third parties to participate in the case and the timing of their involvement as such are considered.

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Keywords: Arbitration process, independent claims, third parties, third parties



1. Introduction

In the arbitration process, there often arise where the involvement of third parties is necessary for a comprehensive and complete investigation of the circumstances of a certain dispute.

The involvement of a person as a third party (declaring or not declaring independent claims regarding the dispute) is aimed at protecting the violated or disputed rights and legitimate interests of these persons.

2. Problem Statement

In theory, a number of questions remain currently unresolved. Thus, the question of the relationship between the legal status of the plaintiff (co-plaintiff) and the legal status of a third party, who declares independent claims regarding the subject of the dispute, remains controversial. In practice, the questions arise, often of a procedural nature, concerning changes in the legal status of a third party already involved in the case.

Other issues requiring clarification are (1) the need for the consent of the disputing parties to involve a third party, as well as the consent of the person involved; (2) who is competent to engage a third party; (3) what is the term for attracting a third party (Stepanova, 2016).

3. Research Questions

Thus, being an important guarantee of the implementation of the principles of procedural economy and the clarification of the actual circumstances of the case by the court, the institution of third parties has always attracted the dissenting opinion of researchers. The study of this institute has not lost its relevance in our time (Skobelev, 2009).

4. Purpose of the Study

Third parties are such subjects of legal proceedings who take part in a process that is someone else's for the purpose of protecting their own rights or legally protected interests.

5. Research Methods

The basis for the participation of third parties in the case is the substantive legal connection of their rights and interests with the legal relations in respect of which a particular case is being considered. Satisfaction of the relevant petition must be mediated by a set of evidence that makes it possible to assess the possible impact of the judicial act on the interests of the person involved as a third party.

One of the evidentiary components of these circumstances may be the existence of a court proceeding regarding the disputed property.

Therefore, questions about the involvement of third parties often arise in disputes related to land legal relations, for example, in the case of challenging a transaction to delimit land plots in municipal ownership, or state ownership of which is not delimited, and land plots in private property. In such cases,

the unconditional basis for involving a third party who does not declare independent claims regarding the subject of the dispute may be the person's claim to the land plot, and the arbitration court or the court of general jurisdiction is pending proceedings on the relevant application.

However, if the evidence of the existence of grounds for attracting a third party was the fact of the existence of initiated proceedings in the case regarding the subject of the dispute, in practice, questions arise about the position of the involved third party in the event that the proceedings are completed with one or another result. Therefore, the case may be terminated, the claims of the third party to the disputed subject may be denied, or an amicable agreement may be concluded in the case, under the terms of which the third party received satisfaction not at the expense of the disputed property. Accordingly, at first glance, there are no grounds that indicate that the consideration of the dispute may affect the rights and obligations of the person involved.

6. Findings

Courts resolve this issue in different ways. So, in a number of cases, rulings are made on the exclusion of a person from the number of third parties. The excluded third party may be questioned by the court as a witness if he can give explanations about the circumstances of the dispute.

The possibility of excluding a third party from the number of persons participating in the case often finds support in the doctrine.

Meanwhile, the issuance of ruling by the arbitration court to exclude him from the number of persons participating in the case is not always assessed by the higher authorities as positive for the following reasons.

The procedural legislation does not provide for the exclusion of a third party from the number of persons participating in the case, whose participation in the case was initially recognized by the court as necessary due to the possible influence of the judicial act on their rights. In the event that the arbitration court has concluded that it was erroneous to involve a third party or the grounds for his involvement in the reasoning part of the judicial act on the merits of the dispute have disappeared, without excluding, however, this third party from among the persons participating in the case. This approach is supported by the litigation practice.

A similar legal approach (absence of possibility to excluding third parties) is proposed in paragraph 13 of the Recommendations of the Scientific Advisory Council at the Federal Arbitration Court of the Volga District of 13–15 October 2009 and paragraph 19 of the Recommendations of the Scientific Advisory Council at the Federal Arbitration Court of the Volga-Vyatka District dated 27 February 2008.

This position is justified by the fact that a third party excluded from the number of persons participating in the case is deprived of the right to exercise the procedural rights provided for in Article 41 of the Arbitration Procedure Code of the Russian Federation, including to appeal against a judicial act adopted in the case on the merits of the dispute in a general manner.

In accordance with Clause 6.1 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 28 May 2009 No. 36 “On the Application of the Arbitration Procedure Code of the Russian Federation when Considering Cases in an Arbitration Court of Appeal”, within the meaning of provisions contained in Part 3 of the Article 39, Part 7 of the Article 46, Part 4 of the Article

50, Part 3.1 of the Article 51, Part 7 of the Article 130 of the Arbitration Procedure Code of the Russian Federation, in conjunction with Parts 3, 5 of the Article 188 of the Arbitration Procedure Code of the Russian Federation, appeal to the court of cassation of decisions of the court of appeal adopted based on the results of consideration complaints against the rulings of the court of first instance named in these articles of the Arbitration Procedure Code of the Russian Federation are not provided for by the law.

It should be borne in mind that with respect to these definitions, objections may be filed when appealing a judicial act, which ends the consideration of the case on the merits, in the court of appeal, the court of cassation, or during the review of the case in a court of supervision.

In cases where the law does not provide for the possibility or obligatory participation of third parties in the arbitration process, they enter into the case in one of the following ways:

- on their own initiative
- by parties
- by court.

Third parties without independent demands, fulfilling the task of helping one of the parties to protect its interests in the arbitration process, can be involved in the case even if they do not have the will to participate in the case: the arbitration court can “force” them to take the position of a person participating in the case. None of the persons participating in the case can become a participant in the process against his or her will, except for an intervener with one of the litigants. In other words, the position of these subjects in the process is so peculiar that their function in the process was defined in the procedural literature in the following way: A third party enters into the process in order for the court to establish the existence of a legal relationship or fact of legal significance (for example, for the right of recourse).

By virtue of the disposition principle, third parties with independent demands can enter the process only on their own initiative, since the decision on the need to protect their subjective rights or interests depends only on the subjects of entrepreneurial (other economic) activity. This provision clearly illustrates the difference in the procedural position of such subjects from the status of third parties without independent claims.

Nevertheless, the issue of involving a third party is decided in each specific case, depending on the circumstances of the case and does not imply the obligatory satisfaction of the received request for the involvement of a third party in the case (RF Government, 2013).

However, the legislation lacks clear criteria, grounds and conditions for the entry into the case of a third party who does not declare independent claims regarding the subject of the dispute.

This circumstance has a somewhat negative impact on judicial practice. In particular, this leads to the fact that in the reasoning part of the ruling the courts limit themselves to the reference of Articles 50 and 51 of the Arbitration Procedure Code of the Russian Federation and a short phrase that the dispute in question concerns the rights and obligations of a person who is involved as a third party who does not declare independent claims regarding the subject of the dispute. In some cases the arbitration courts ignore the division of third parties according to whose side they act on – the side of a plaintiff or a defendant.

Turchinova came to the same conclusion who expressed the point of view that “the uncertainty of the procedural rules governing the procedure for the entry of third parties into the process also leads to difficult practical situations” (Turchina, 2016).

It should be noted that the involvement by the arbitration court of individuals, legal entities, public authorities and local self-government bodies as a third party who does not declare independent claims regarding the subject of the dispute and without specifying the party in whose interests it is involved, is supported by some classical jurist.

Ryzhkov (2017), proposing to expand the grounds for involving third parties in the case in the form of a “separate subject of civil proceedings” who will participate in the process “not on the side of a plaintiff or a defendant” (p. 47), but “possibly in order to eliminate legal uncertainty regarding the subject composition of the material legal relationship, the third person will become the participant based on the results of the consideration of the case” (Ryzhkov, 2017, p. 72).

The Articles 50–51 of the Arbitration Procedure Code of the Russian Federation provide that in the event of a third party entering the case after the trial start, the case is considered in the first instance of the arbitration court from the very beginning. Of course, this provision expands the possibilities of third parties to protect their rights, since only a full trial, taking into account the position and evidence of all persons involved in the case, is an unconditional guarantee of protecting their rights and making a legal and well-grounded decision.

At the same time, the consequence of the involvement of third parties in the process and the consideration of the case from the very beginning is also a significant decrease in the effectiveness of justice, since it entails the need to re-pass the previously passed stages of the process. As a result, this leads to an increase in the terms of consideration of the case in arbitration courts.

In contrast to the previous legislation, which provides for the termination of proceedings on the case (due to its lack of jurisdiction) in the event of the need to involve a citizen who is not an individual entrepreneur as a third party who does not declare independent claims regarding the subject of the dispute, the current Arbitration Procedure Code of the Russian Federation provides other rules.

Part 4 of the Article 27 of the Arbitration Procedure Code of the Russian Federation established that an application accepted by an arbitration court for its proceedings in compliance with the rules of jurisdiction must be considered by it on the merits, at least in the future, a citizen who does not have the status of an individual entrepreneur will be involved in the case as a third a person who does not declare independent claims regarding the subject of the dispute. And thus, the Arbitration Procedural Code of the Russian Federation eliminated the obvious precondition for delaying the consideration of the case, for missing the statute of limitations, etc., creating an opportunity for citizens who are not individual entrepreneurs to protect their rights, including through arbitration procedural forms.

The current Arbitration Procedural Code of the Russian Federation has eliminated the legislative gap that exists in the Arbitration Procedural Code of the Russian Federation of 1995 with regard to the procedural registration of the entry (attraction) of third parties to participate in the case. The Articles 50–51 of the current Arbitration Procedural Code of the Russian Federation establish that a ruling is made on the entry of third parties into the case.

The introduction of this rule had unconditional positive consequences for the goal of implementing the principles of accessibility and efficiency of justice in the arbitration process.

However, the modern legislative regulation of the institution of third parties in the arbitration process also creates a number of obstacles to the implementation of the principles of accessibility and efficiency of justice.

First of all, you should pay attention to the fact that the Arbitration Procedure Code of the Russian Federation does not define the form of appeal to the court of third parties wishing to enter the process. The position of the legislator who ignored such an important issue is rather puzzling.

In accordance with Part 1 of the Article 50 of the Arbitration Procedure Code of the Russian Federation, third parties claiming independent claims regarding the subject of the dispute may intervene before the arbitration court of first instance makes a decision, which, within the meaning of this provision, implies the entry of third parties claiming independent claims regarding the subject of the dispute into the arbitration process only upon their own initiative. The form of appeal, as mentioned above, is not defined by the law.

For the correct resolution of the indicated issue, it is necessary to analyze the essence of appeal to the arbitration process of third parties who declare independent claims regarding the subject of the dispute.

The content of the appeal to the arbitration court of third parties who declare independent claims regarding the subject of the dispute consists, firstly, in the requirement to the court to protect the right or legitimate interest, and secondly, in the substantive legal claim against the parties to the dispute pending before the arbitration court. These two signs of third parties applying to the arbitration process, declaring independent claims regarding the subject of the dispute, coincide, respectively, with the procedural and material side of the claim.

This circumstance allows us to conclude that the appeal to the arbitration court of third parties who state independent claims regarding the subject of the dispute is carried out in the form of a claim. This is also evidenced by the explanations of the judicial authorities, in which it is concluded that a third party declaring independent claims regarding the subject of the dispute enters into the process started by other persons by filing an independent claim in compliance with all the requirements provided for by the Arbitration Procedure Code of the Russian Federation. It has to be mentioned that this approach is quite natural, since even the Charter of Civil Procedure of 1864 established that the form of appeal to the court of third parties with the independent claims on the subject of a dispute is a statement of claim.

Even greater uncertainty exists regarding the form of appeal to the arbitration court by third parties who do not declare independent claims regarding the subject of the dispute, which clearly prevents the implementation of the beginning of the availability of justice.

At the same time, in the case of involving a third party who does not declare independent claims regarding the subject of the dispute, on the initiative of one of the parties, the form of expression of the will of the specified party may be a petition the right to which is granted to it by the Article 41 of the Arbitration Procedure Code of the Russian Federation. The problem does not arise when the involved third party does not declare independent claims regarding the subject of the dispute at the initiative of the arbitration court.

It seems that in relation to the form of appeal to the arbitration court of third parties who do not declare independent claims regarding the subject of the dispute, it would be useful to perceive the relevant experience of the civil procedural legislation of Germany. According to § 70 of the German Civil Procedure Code, “the entry into the process of a third party without independent claims is made by submitting a procedural document to the court conducting the proceedings, and if it involves the use of a remedy, by submitting a procedural document to the court considering the remedy”.

Clause 3 of the Article 51 of the Arbitration Procedure Code of the Russian Federation provides for the issuance of a ruling on the entry into the case of a third party declaring independent claims regarding the subject of the dispute. At the same time, it has not been determined which judicial act is passed in case of refusal to intervene in the case of this category of third parties.

Perhaps this state of affairs is due to the fact that at present there is no institution of refusal to accept a claim in the arbitration process.

At the same time, the legal regulation of the institution of a counterclaim in the arbitration process allows its return in case of non-compliance with the requirements. It seems that the return of the statement of claim is admissible even in the absence of the grounds for the entry of third parties who declare independent claims regarding the subject of the dispute into the arbitration process.

In accordance with Part 3 of the Article 51 of the Arbitration Procedure Code of the Russian Federation on the entry into the case of a third party who does not declare independent claims regarding the subject of the dispute, or on the involvement of a third party in the case, or on refusal to do so, the arbitration court issues a ruling. The absence in the previous legislation of the possibility of appealing against rulings on the involvement or refusal to involve third parties in the arbitration process impeded the full implementation of the beginning of availability of justice in the entrepreneurial field and other economic activities. The modern Arbitration Procedure Code of the Russian Federation provides guarantees of the right to appeal against rulings on the involvement or refusal to involve third parties in the arbitration process, which guarantees the fundamental right, i.e. the right to judicial protection.

For a long time third parties had been distanced from the arbitration procedural legislation, although, they were participants in the arbitration process. The normative consolidation of the concept and types of third parties appeared only with the development of the Russian Federation and the adoption of the Arbitration Procedure Code in 1992.

7. Conclusion

Currently there are many gaps in the legislation governing the legal and procedural position of third parties.

Firstly, this is the lack of a competent definition of the concept of third parties, which does not make it possible to correctly interpret the status of these participants in arbitration proceedings.

Secondly, a modern arbitration court does not fully provide third parties with all the guarantees that this court provides to the rest of the participants in the process.

Thirdly, there is no legislative regulation of the conditions for attracting third parties in the case who do not declare independent claims regarding the subject of the dispute.

Fourthly, there is a need to resolve the disagreements that exist between the position of the doctrine and the established judicial practice regarding the issue of the possibility of excluding a third party from the number of persons participating in the case.

To sum up it should be noted that modern arbitration procedural legislation through the institution of third parties partially ensures the implementation of the principles of accessibility and efficiency of justice, however, the problems identified show that work on legislation improvement in this area should be continued.

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