



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 21

Moscow

13 June 2017

On Court Application of Measures of Procedural Compulsion in Consideration of Administrative Cases

In order to ensure the uniformity of judicial practice of application of measures of procedural compulsion by courts of general jurisdiction in consideration of administrative cases, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

1. The court, preserving its independence, objectiveness and impartiality, is obliged to direct the course of the court proceedings, ensuring the correct and timely consideration and adjudication of administrative cases, which results in the protection of violated or disputed rights, freedoms, lawful interests, strengthening of the rule of law and prevention of violations in the sphere of administrative and other public legal relations (Article 3, Part 2 of Article 14 of the Code of Administrative Judicial Procedure of the Russian Federation, hereinafter – the CAJP RF, the Code).

If participants of the court proceedings and other persons fail to fulfil their procedural duties (abuse their procedural rights), in order to maintain the due direction of court proceedings it may be necessary to take measures of procedural

compulsion – actions performed by the court in regard of persons who violate the stipulated court rules and obstruct the administration of justice (Article 116 of the CAJP RF).

Herewith, violation of stipulated court rules should be understood as failure to fulfil the procedural duties stipulated in the CAJP RF and (or) imposed by the court upon a certain person in accordance with the provisions of the Code (e.g. the duty to realise one's procedural rights in good faith, to appear in a court session, to present a piece of evidence).

Based on the principle of lawfulness and fairness in consideration and adjudication of administrative cases, stipulated in Article 9 of the CAJP RF, measures of procedural compulsions must be proportionate to the committed violation, must be taken with due regard to all the circumstances of the committed violation and to the procedural status of the participant of proceedings.

2. Persons (including citizens who are present in the courtroom but are not persons participating in the case), who fail to fulfil a lawful order of a judge, pertaining to the consideration and adjudication of a concrete administrative case, to cease actions violating the stipulated court rules, are not subject to administrative liability by virtue of Part 1 of Article 17.3 of the Code of the Russian Federation on Administrative Offences, since liability for these actions (failure to act) is stipulated in the special norms of Chapter 11 of the CAJP RF.

3. A measure of procedural compulsion may be taken in regard of a person participating in the case, its representative; another person acting in court in the name of a person participating in the case (e.g. an official who is the head of a public authority); a person assisting in the administration of justice; a citizen present in the courtroom; a person, upon whom a certain procedural duty is imposed in accordance with procedural law or by the court by virtue of procedural law.

Since in accordance with Part 2 of Article 117 of the CAJP RF one violation may only serve as grounds for application of only one measure of procedural compulsion, it is not allowed to take measures of procedural compulsion for one violation both in regard of the public authority (organisation) and in regard of the head of that public authority (organisation).

4. If a measure of procedural compulsion in the form of expulsion from the courtroom, compelled appearance or court fine is taken in regard of a person, entrusted with conducting the administrative case in the interests of a group of persons, the court postpones the trial in the administrative case, notifying the members of the group that they have a right to replace such a person (Part 4 of Article 2 of the CAJP RF, Item 2 of Part 4 of Article 225¹² of the Commercial Procedure Code of the Russian Federation).

5. Where there are grounds for application of a measure of procedural compulsion, the issue of its application is resolved by the court, in particular upon its own initiative.

6. If measures of procedural compulsion are taken in regard of citizens, who are present in the courtroom but are not persons participating in the case, such citizens are vested with the rights and duties of persons participating in the case in the part of proceedings regarding the application of the corresponding measure (Part 4 of Article 2, Article 45, Part 4 of Article 117 of the CAJP RF).

7. A measure of procedural compulsion in the form of limitation of presentation of a trial participant is expressed in setting a reasonable time limit for that participant's presentation. This measure is applied when such a person speaks on issues not pertaining to the trial, i.e. not pertaining to the administrative case as a whole or to a separate application (motion) in the case, pending before the court, e.g. an application for the postponement of execution of the court decision or an application for distribution of court costs (Part 1 of Article 10, Part 1 of Article 92, Item 1 of Article 118 of the Code).

A trial participant, who violates the limit stipulated by the court, may be ruled out of order after a time limit was stipulated by the court for her/his presentation and that time has expired (Item 2 of Article 118, Part 5 of Article 171 of the CAJP RF).

The grounds for ruling a trial participant out of order also include such actions (failure to act), committed by that person during presentation, as violation of the order of presentation, repeated failure to comply with the orders of the presiding judge, use of strong language or abusive comments or call for actions punishable by law (Item 2 of Article 118 of the Code).

If a trial participant fails to comply with the orders of the presiding judge, uses strong language or abusive comments or calls for actions punishable by law during

the court session and at a time when he/she did not have the floor, this constitutes grounds for a warning or expulsion of that participant from the courtroom (Article 119 of the CAJP RF).

8. It should be noted that measures of procedural compulsion in the form of a warning, expulsion from the courtroom are applied after an oral warning of the presiding judge (Part 6 of Article 144 of the CAJP RF).

9. A person may be expelled from the courtroom for a part of the court session without a preliminary warning, if the disturbance of established order in the courtroom, committed by that person, is of significant nature (e.g. threatens the security of other citizens).

If a person participating in the case, its representative is expelled from the courtroom, this does not preclude the further consideration of the case and adoption of a decision in it. This measure may also be taken in regard of persons, whose participation in the court session is obligatory by law or deemed obligatory by the court (Article 119 of the CAJP RF).

After the term of expulsion of a trial participant from the courtroom expires, the presiding judge informs the person participating in the case and readmitted into the courtroom about the procedural actions performed in her/his absence (Part 2 of Article 143 of the CAJP RF).

10. By virtue of Part 2 of Article 119 of the Code, citizens present in the court session are expelled from the courtroom for the whole duration of the court session upon the order of the presiding judge if they repeatedly disturb the order in the court session.

In regard of persons, who are present in the court room but are not persons participating in the case, that order of the presiding judge is made in the form of a minutes decree. The judge may issue that order without prior establishment of identities of those citizens (e.g. in case of mass disturbance of order in the court session). Persons participating in the case may state their objections in regard of that order in an appeal (prosecutor's appeal) against an appealable judicial act adopted in the administrative case (Part 2 of Article 202 of the CAJP RF).

11. The duration of such measures as limitation of presentation of a trial participant, ruling a trial participant out of order, expulsion of a trial participant

from the courtroom for a part of the court session (i.e. a certain stage of the trial) is stipulated by the court in accordance with the principle of reasonableness, which presupposes that the significance of violation, the nature of guilt of the perpetrator and the circumstances in which the violation was committed are taken into account (Part 1 of Article 92 of the CAJP RF).

12. By virtue of Part 2 of Article 120 of the CAJP RF, compelled appearance cannot be used in regard of underage persons, pregnant women, persons who are not able to appear in the court session when summoned due to illness, age or other good reasons.

It must be indicated in the decree on compelled appearance that it is not subject to enforcement, if during the enforcement it is discovered that the person, in whose regard it is issued, is a person not subject to compelled appearance.

13. It should be noted that application of such a measure of procedural compulsion as obligation to appear is not a necessary preceding condition for compelled appearance (Part 8 of Article 51, Part 1 of Article 120, Item 1 of Part 4 of Article 150, Part 3 of Article 151 of the CAJP RF).

The grounds for compelled appearance are stipulated in Part 1 of Article 120 of the CAJP RF. A single violation of obligation to appear cannot by itself entail compelled appearance, but may serve as grounds for imposition of a court fine (Part 15 of Article 49, Part 8 of Article 50, Part 8 of Article 51, Part 7 of Article 52 of the CAJP RF).

14. By implication of Part 4 of Article 120 of the CAJP RF, a decree on compelled appearance is immediately transferred for enforcement and is enforced within the time indicated in the decree. Herewith, if an appeal, prosecutor's appeal is filed against such a decree, its enforcement may be suspended by a judge of the court of appeal or cassation (Part 1 of Article 306, Part 2 of Article 323 of the CAJP RF).

15. In accordance with Part 1 of Article 120 of the CAJP RF, the recovery of costs incurred by compelled appearance is performed upon the corresponding application of a territorial body of the federal executive body tasked with ensuring the stipulated manner of activities of the courts and with enforcement of judicial acts and acts of other bodies, in the manner stipulated in Chapter 33 of the CAJP RF.

Therefore, an administrative statement of claim of the aforementioned body for the recovery of costs incurred by compelled appearance is considered and adjudicated in simplified (written) proceedings, independent of the amount of costs and independent of whether the administrative defendant objects against the consideration of the case in such a manner.

The administrative defendant under a claim for recovery of costs incurred by compelled appearance is the person that was subjected to compelled appearance.

The court may refuse to recover the costs incurred by compelled appearance, if the fact that the corresponding costs were incurred is not proven, and (or) if it is not proven that the incurred costs were necessary to enforce the compelled appearance (Article 84 of the CAJP RF).

16. In accordance with Part 1 of Article 121 of the CAJP RF, a measure of procedural compulsion in the form of obligation to appear may be taken in regard of a person whose participation in the trial is obligatory in accordance with the law or deemed obligatory by the court.

This provision is a special provision as regards the general rule of Part 1 of Article 116 of the CAJP RF, which stipulates that measures of procedural compulsion are taken in administrative court proceedings in regard of persons that violate the stipulated court rules and obstruct the administration of justice. Therefore, where necessary, the obligation to appear may be applied to participants of proceedings independent of whether these persons earlier violated procedural duties, including the duty to appear before the court.

Such a measure may be applied by a judge of a court of first instance immediately after an administrative statement of claim is accepted for proceedings or when the administrative case is appointed for trial; by a judge of an appellate court – during preparation of the administrative case for consideration by a court of appeal; by a judge of a court of cassation – when resolving the issue of transferring the cassation appeal (prosecutor's cassation appeal) with the administrative case for consideration by a court of cassation.

A decree in the form of a separate judicial act is issued in regard of obligation to appear (Part 4 of Article 117, Article 198 of the CAJP RF). Apart from the general information stipulated in Part 1 of Article 199 of the CAJP RF, this decree must indicate the family name, first name, patronymic or the name of the person, in

whose regard the decree is issued, its place of residence or stay (location); the decree must clarify the duty of that person to timely appear in the court session when summoned or to ensure the appearance of its representative in the court session, to inform the court in case of change of place of residence or stay (location); it must be clarified that failure to perform these duties may constitute grounds for compelled appearance or imposition of a court fine upon that person (Article 121 of the CAJP RF).

A copy of this ruling is handed against signed receipt or forwarded to the person, in whose regard it is issued (Article 201 of the CAJP RF).

Herewith, the obligation to appear is regarded as existing (applied) from the moment when the person receives the corresponding court decree or when a copy of this decree is delivered to that person (Article 121 of the CAJP RF, Article 165¹ of the Civil Code of the Russian Federation).

17. Where a procedural duty (e.g. duty to present evidence) must be performed on the day or before the day of the court session (preliminary court session) in an administrative case, it must be clarified to the person, upon whom that duty is imposed, that measures of procedural compulsion may be applied to it, if it fails to perform the duty within the term stipulated by the court without a good reason.

If this condition is fulfilled, the court may resolve the issue of imposition of a court fine in the corresponding court session (preliminary court session), in particular in the absence of the aforementioned person, if it was duly notified about the time and place of the court session and failed to inform the court about the good reasons for its non-appearance.

18. It should be noted that by implication of Part 1 of Article 123 of the Code, the issue of imposition of a court fine is resolved in a court session, even if the administrative case is considered in simplified (written) proceedings.

Since the resolution of issue of court fine imposition is not related to the adjudication of the administrative case on its merits, the court may, where necessary, appoint a separate court session in order to resolve this issue (in particular, after the case is resolved on its merits), notifying the person upon whom the fine may be imposed.

In any case, the person upon whom the court fine is being imposed must be provided with an opportunity to give explanations, present other evidence confirming the absence of grounds for imposition of a fine, in a court session. During such a session, audio recording is performed and minutes are conducted in written form (Article 204 of the CAJP RF).

Failure of the aforementioned person, duly notified of the time and place of the court session, to appear in the court session, does not preclude the consideration of the issue of imposing a court fine.

19. By implication of Part 2 of Article 122 of the CAJP RF, contempt of court is the performance of actions (failure to act) indicating clear disregard for the rules of conduct stipulated in court (e.g. use of obscenities in the text of a procedural document submitted to the court, which do not directly insult the trial participants, the persons assisting in the administration of justice, the court; repeated filing of one and the same motion, which is not based on the change of the facts of the case and other objective reasons, if a court decree has already been adopted and announced in regard of that motion).

Herewith, the actions (failure to act), liability for which is stipulated in other norms of procedural legislation (e.g. failure to present evidence requested by the court, non-appearance of a duly notified person, whose presence in the court session was deemed obligatory by the court), as well as actions entailing criminal liability, must not be qualified as contempt of court.

If during consideration of an administrative case the court discovers elements of crime in the actions of persons participating in the case, of other participants of proceedings, officials or other persons, it informs the inquiry bodies or bodies of preliminary investigation about this (Part 4 of Article 200 of the CAJP RF).

20. Taking into account the facts of the administrative case and in order to solve the tasks of administrative proceedings, realising the principle of equality of the parties and the adversarial nature of administrative judicial procedure supported by an active role of the court, the court may oblige a person participating in the case and vested with public powers to present evidence or objections in written form within a stipulated time. In case of non-fulfilment of that obligation, a court fine may be imposed upon the person participating in the case, including a party to the administrative court proceedings (Article 3, Item 7 of Article 6, Articles 9, 14, 63, Part 5 of Article 135, Part 1 of Article 257 of the CAJP RF).

21. A procedural appeal, prosecutor's appeal against a decree regarding a measure of procedural compulsion, stipulated by Items 2 – 5 of Part 2 of Article 116 of the CAJP RF, is submitted within fifteen days after the decree is issued by the court of first instance, unless other terms are stipulated in the CAJP RF (Part 1 of Article 314 of the CAJP RF).

22. By virtue of Part 3 of Article 123 of the CAJP RF, a procedural appeal may be filed against decree stipulating a court fine by a person, upon whom the court fine is imposed, within a month from the day of receipt of a copy of that decree. Herewith, the copy is also regarded as received, if the corresponding postal item arrived for the addressee, but for reasons within its control was not handed to it, or if the addressee failed to inspect it (Item 1 of Article 165¹ of the Civil Code of the Russian Federation).

In such situations, the term for appeal is calculated from the day on which the addressee refused to receive the postal item or from the day on which the postal item was returned due to expiration of term of storage in the postal office at the point of origin of the copy of the decree. Herewith, the day of return of the postal item may be established with the help of the stamp on the postal item, the system of tracking of registered mail on the official website of FGUP "Russian Post".

23. A procedural appeal, prosecutor's appeal against a court decree regarding a measure of procedural compulsion may be submitted by the person, in whose regard the corresponding measure was applied, by its representative authorized to appeal against judicial acts, legal successor, prosecutor.

If an appeal is submitted by a different person, it is returned to the person that submitted it (Item 1 of Part 1 of Article 301 of the CAJP RF).

24. A writ of execution is issued on the basis of a court decree regarding the imposition of a court fine. Since court fines are recovered to the federal budget, the Russian Federation is indicated as the recoveror in the corresponding writ of execution, represented by the main administrator of the corresponding incomes of the federal budget – the Federal Bailiff Service.

Court fines imposed by the court upon officials of state bodies, local self-government bodies and other bodies, organisations, upon state and municipal

servants are recovered from the personal funds of those persons (Part 3 of Article 122 of the CAJP RF).

A writ of execution containing a request for recovery of a court fine is forwarded by the court to the main administrator of the corresponding incomes of the federal budget – to the Federal Bailiff Service – along with a copy of the judicial act by virtue of which it was issued, for enforcement of that document in the manner stipulated in Federal Law No. 229 of 2 October 2007 “On Enforcement Procedure” or in the budgetary legislation of the Russian Federation.

25. A cassation appeal, prosecutor’s cassation appeal against a decree regarding measures of procedural compulsion, issued by a court of appeal or cassation, is filed in the manner stipulated in Article 319 of the CAJP RF. Proceedings regarding the consideration of such an appeal, prosecutor’s appeal in a court of cassation are regulated by the norms of Chapter 35 of the CAJP RF.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov