



<https://doi.org/10.22363/2313-2337-2023-27-4-1065-1078>


EDN: NIQHXP

Научная статья / Research Article

## The legal status of the class members during the group litigation

Egor S. Trezubov  , Natalya S. Zvyagina

Kemerovo State University, Kemerovo, Russian Federation

 egortrezubov@mail.ru

**Abstract.** The article discusses certain rules of group litigation in the civil procedure in the context of the legal status of class members in procedural relations. Attention is paid to the rights and obligations of the person who applies to court with a request to protect the rights and legitimate interests of a group of members. Participants in a class action include the person conducting the case (plaintiff-representative) and group members who joined the collective claim. The comparative legal method and teleological interpretation allow to conclude that there are active procedural relations only between the court and the claimant-representative, which predetermines the possibility of performing administrative actions, proving and appealing judicial acts only by the plaintiff, but not by the other claimants. The extremely curtailed scope of powers of the group members is justified by their voluntary joining a class action lawsuit. Relations within a group of persons are substantive in nature; this allows to highlight the necessity of appropriate private material mechanisms to satisfy the interests of the majority of participants under the rules on decisions in meetings. In view of the possibility of consolidating in a class homogeneous but different in size substantive claims of the group members we believe it is essential to establish the majority criterion, regardless of the price of the claim of each member. The research also reveals the contradiction in legal regulation in the event of a refusal to certify a group of persons after the initiation of proceedings on a class action in civil, arbitration and administrative litigation, substantiates the inexpediency of leaving a class action without consideration, and the need to consider personal claims of group members and allocate relevant cases in a separate production, as provided for in the Arbitration (Commercial) Procedure Code of the Russian Federation. Attention is drawn to the gaps in the legal regulation of group proceedings in terms of establishing the amount and procedure for paying the state fee.

**Key words:** class action, group litigation, plaintiff for the class action, class members, decision on a class action, legal effectiveness, legal procedural relations in group proceedings, group certification

**Conflicts of interest.** The authors declare no conflict of interest.

**Authors' contribution:** inseparable co-authorship.

*Received: 18th January 2023*

*Accepted: 15th October 2023*

---

© Trezubov E.S., Zvyagina N.S., 2023



This work is licensed under a Creative Commons Attribution 4.0 International License


<https://creativecommons.org/licenses/by-nc/4.0/legalcode>

**For citation:**

Trezubov, E.S., Zvyagina, N.S. (2023) The legal status of the class members during the group litigation. *RUDN Journal of Law*. 27 (4), 1065–1078. <https://doi.org/10.22363/2313-2337-2023-27-4-1065-1078>

## **Проблемы правового статуса участников группы лиц при рассмотрении коллективных исков**

**Е.С. Трезубов , Н.С. Звягина**

Кемеровский государственный университет, г. Кемерово, Российская Федерация  
egortrezubov@mail.ru

**Аннотация.** Рассматриваются отдельные правила группового производства в цивилистическом процессе в контексте правового статуса участников процессуальных отношений. Внимание уделяется правам и обязанностям лица, обратившегося в суд с требованием о защите прав и законных интересов группы лиц и ведущего дело (истца-представителя), а также участников группы лиц, присоединившихся к заявленным требованиям и отказавшихся от своего заявления. С применением сравнительно-правового метода и телеологического толкования делается вывод о существовании процессуальных отношений на активной стороне только между судом и истцом-представителем, что предопределяет возможность совершения распорядительных действий, доказывания и обжалования судебных актов только лицом, которое ведет дело, но не иными участниками группы лиц. Предельно урезанный объем полномочий участников группы лиц обосновывается их добровольным присоединением к коллективному иску. Отношения внутри группы лиц являются по своей природе материально-правовыми, из чего делается вывод о необходимости применения соответствующих частных материальных механизмов реализации интересов большинства участников по правилам норм о решениях собраний. Ввиду возможности консолидации в коллективном иске однородных, но разных по размеру, материально-правовых требований участников группы сделан вывод о необходимости установления критерия большинства вне зависимости от цены требования каждого участника. Также авторами выявлено противоречие в правовом регулировании в случае отказа в сертификации группы лиц после возбуждения производства по групповому иску в гражданском, арбитражном и административном судебном процессах. Основывается нецелесообразность оставления коллективного иска без рассмотрения, а необходимость перехода к рассмотрению личных исков участников группы и выделению соответствующих дел в отдельное производство, как это и предусмотрено в АПК РФ. Обращается внимание на пробельность правового регулирования группового производства в части установления размера и порядка оплаты государственной пошлины.

**Ключевые слова:** групповой иск, групповое производство, истец-представитель, участники группы лиц, решение по коллективному иску, правовая эффективность, процессуальные правоотношения в групповом производстве, сертификация группы

**Конфликт интересов.** Авторы заявляют об отсутствии конфликта интересов.

**Вклад авторов:** нераздельное соавторство.

*Поступила в редакцию: 18 января 2023 г.*

*Принята к печати: 15 октября 2023 г.*

**Для цитирования:**

Трезубов Е.С., Звягина Н.С. Проблемы правового статуса участников группы лиц при рассмотрении коллективных исков // *RUDN Journal of Law*. 2023. Т. 27. № 4. С. 1065–1078. <https://doi.org/10.22363/2313-2337-2023-27-4-1065-1078>

## **Introduction**

Class action proceedings are a jurisdictional procedure for resolving claims for the protection of a significant group of creditors in homogeneous disputable legal relations addressed to one or simultaneously several defendants (Domshenko, 2022: 234). The claims of multiple plaintiffs based on homogeneous legal and factual circumstances are resolved uniformly by one court, in one trial and the force of the judgment extends to all members of the group, regardless of their personal participation in the case (Reshetnikova, 2019: 431). This ensures the achievement of greater legal certainty and efficiency than when considering a variety of personal claims or when considering a case with implication on the active side. At the same time, the procedural form of class proceedings also determines a number of significant restrictions on the legal status of subjects of disputable legal relations when considering a case in court.

After the reform of class proceedings in domestic arbitration and civil proceedings in 2019<sup>1</sup>, class action proceedings occur in judicial practice, but they are still few. We believe that the reasons for a small number of class action cases lie in the absence of appropriate economic incentives for participants in disputable legal relations, as well as in the imperfection of the procedural form. The authors attempt to reveal the legal status of the participants of a group of persons and plaintiff-representative as the main subjects of disputable material and procedural relations during the consideration of a class action as well as to assess the effectiveness of certain regulations affecting the procedural form of group proceedings.

## **Procedural aspects of class certification denial**

A fundamentally important procedure in a class action is certification of a group of persons; it allows to consider the case according to the rules of group proceedings, on the one hand, and, on the other hand, to ensure the legality of the judgment binding both the persons who joined the claim and those who did not join it due to the qualities of the prejudicial nature of the court order. Domestic procedural legislation does not pay due attention to the preliminary hearing of a class action. The law also does not establish the court's obligation to determine certification or denial of certification of a group of persons. Formally, these issues should be resolved at the acceptance of application for production and preparation of the case for trial, as well as in determination on the return of application. However, the formation of composition of a group of claimants may occur both at the stage of preparing the case for trial and at the stage of trial, which implies the possibility for new group members to join the submitted application in the process of considering the case and

---

<sup>1</sup> Federal Law No. 191-FZ of 18.07.2019 On Amendments to Certain Legislative Acts of the Russian Federation. Assembly of the Russian Federation legislation. 2019. No. 29 (Part 1). Article 3858.

the possibility of the participants to reject the submitted applications; otherwise, the court may reject administering the case under the rules of class proceedings.

The procedural codes ambiguously resolve the issue of the consequences of refusal to qualify a dispute as collective after the initiation of proceedings. Thus, Part 8, Article 225.14 of the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as APC RF), explicitly establishes that if a group of persons does not meet the specified conditions, the arbitration (commercial) court issues a reasoned ruling on considering the case under the general rules of action proceedings or under the rules of administrative proceedings. Accordingly, Part 8, Article 244.26 of the Civil Procedure Code of the Russian Federation (hereinafter referred to as CPC RF), only establishes that individuals that have joined the claim for protection of rights and legitimate interests of a group of persons are explained the right to legal action with independent claims if the group does not meet the specified conditions. At the same time, the specific procedural decision taken by the judge is not quoted. As V.V. Yarkov points out, in case of refusal to certify the group after the initiation of proceedings the judge renders determination to leave the class action without consideration (Yarkov, 2021: 95, 102). In fact, such a decision is in line with Parts 7 and 8 of Article 244.26 of the CPC RF; the rule is directly enshrined in Part 4, Article 42 of the Code of Administrative Judicial Procedure of the Russian Federation (hereinafter referred to as CAJP RF), but it is impossible to recognize it as logical. Firstly, this issue is resolved more delicately in the APC RF, e.g., *by simply proceeding to the consideration of the case according to the general rules of claim proceedings without commencing new actions*. Considering that Chapter 22.3 of the CPC RF and amendments to Chapter 28.2 of the APC RF were introduced by one law, the difference in approaches is not explicable. Secondly, class proceedings are not an independent type of legal proceedings to speak about the need to initiate a retrial (by analogy with leaving an application without consideration in special proceedings in case of an issue of law). Therefore, in case of refusal to certify the group, it is essential to make a determination to consider the case according to the general rules of claim or administrative proceedings and, if necessary, to separate the claims of the co-plaintiffs into separate proceedings; the procedural codes should be unified as stated.

### **Legal status of plaintiff-representative in class proceedings**

The main participants in the proceedings on the protection of rights and legitimate interests of a group of persons include: a person charged with conducting the case in the interests of a group of persons (plaintiff -representative), other persons who joined the claim to protect the rights and legitimate interests of a group of persons, the defendant (co-defendants), third parties, including members of a group of persons disagreeing with the claim. The procedural status of the defendant in group proceedings, in contrast to the procedural status of the plaintiff, has no fundamental differences in comparison with the general rules of the claim proceedings. At the same time, the specifics of considering cases on the protection of the rights and legitimate interests of a group of persons imposes additional procedural risks on this participant, among which the impossibility to fulfil the claims of a wide range of persons, and consequently, the imposition of all associated court costs and enforcement fees can be single out.

The plaintiff-representative being a member of a group under a general rule protects both his personal interests and represents, by virtue of application for joining the claim, the interests of other group claimants. He bears both the ultimate risk and intermediate procedural risks but at the same time has the maximum possibilities to manage them.

The ultimate risk in the civil process is a loss of the case, that is, the probability of not receiving a court decision corresponding to the interests of the participant in the dispute. Intermediate risks represent the probability of adverse consequences (material, reputational, temporary) as a result of committing or non-committing certain procedural actions during the proceedings (e.g., late application of petitions or presentation of evidence may lead to deprivation of the possibility of exercising this right in the future, including when reviewing judicial acts; passive behavior of a person when appointing an expert examination may lead to incomplete list of issues before the expert and incur additional costs in connection with the subsequent additional examination resulted in longer time of case consideration). All intermediate risks in the lawsuit are procedural, related to implementation of procedural rights and obligations and lead to the final procedural risk – the issuance of an adverse decision which in turn is a substantive legal risk affecting substantive legal relations.

High moral requirements are imposed on the plaintiff-representative since he protects the rights and interests of all the participants in a group of persons and not only his own and it is on his example that the court establishes the facts of the case (Goncharova, 2014:47).

The plaintiff-representative more often referred to as simply “plaintiff” in foreign legal systems (Wolf, 2014; Burbank & Wolf, 2018; Aiken, 2017:975), performs all procedural actions independently or through a representative. It will be fundamentally important for a group of individuals to vest a particular person with the powers of a plaintiff-representative since when interacting with one, rather than with many creditors in a disputed legal relationship, procedural economy in litigation is ensured. In this regard, let us disagree with the statement of M.A. Alieskerov, interpreting the rules of Article 244.22 of the CPC RF (and Article 225.10-1 of the APC RF, respectively) as non-hindering participation of several plaintiffs-representatives on behalf of a group of persons in a case (Alieskerov, 2022:139–140). The procedural form of group proceedings may not allow plurality of plaintiffs-representatives; it should always be one participant who is entitled to engage representatives (including several) for the purpose of performing certain procedural functions. The status of the plaintiff-representative is predetermined by the need to concentrate the procedural relations between the court and the participants of the group of persons; through the person leading the case, the court notifies about the dynamics of the process and receives evidence, claims, petitions, complaints, challenges, etc. The plurality of bearers of the same collective interest, simultaneously participating in the process and having the right to perform procedural actions, will only lead to complication of the process, to the risk of contradictory behavior of the active party of relations, i.e., will not contribute to the effective consideration of class action.

The person responsible for conducting the case on behalf of the group represents the group in court without power of attorney, possesses rights and bears obligations of the plaintiff, including the obligation to pay court costs. Financial risks of paying court costs in a class action proceedings are obviously higher in comparison with ordinary claim proceedings (Sutormin, 2020b:122). In this respect, the plaintiff-representative can

manage this risk by concluding an agreement on court costs distribution with other members of the group (Borisova & Kotelnikova, 2020: 17). However, the legislator provides for a significant restriction on the use of this mechanism: Part 1, Article 225.16-1 of the APC RF and Part 1, Article 244.27 of the CPC RF stipulate the notarial form of such an agreement as mandatory, which implies the need to bear the associated costs of paying tariffs for notarial actions and other payments, in addition to organizational difficulties. In the absence of explicitly stipulated procedure for concluding such an agreement, the establishment of qualified requirements for its form does not incentivize the group members to distribute court costs among themselves.

Class proceedings may settle both property claims, subject to assessment, and non-property claims, or property claims, not subject to assessment. According to the clarification given in paragraph 51 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53 of December 21, 2017<sup>2</sup>, a collective statement of claim is subject to state duty under the general rules of Article 333.21 of the Tax Code of the Russian Federation (and hence Article 333.19 of the Tax Code in relation to an appeal to a court of general jurisdiction) based on the amount of the stated claims. Despite the fact that this clarification is given in relation to bringing a person controlling the debtor to subsidiary liability, the same decision should be made in the case of other claims seeking protection of rights and legitimate interests of a group of persons. Apparently, the procedure for calculating the state fee will be determined in the same way as with active complicity, depending on the substance of the claim under consideration (paragraph 9 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 46 of 11.07.2014)<sup>3</sup>. In other words, when a group member joins the claim, a state fee must be calculated based on the amount of his claims against the defendant. In accordance with Part 2, Article 225.10-1 of the APC RF and Part 2, Article 244.22 of the CPC RF, it is the plaintiff-representative who, as a rule, bears the costs of handling a case, i.e., he must pay the state fee in full. However, the payment of the state fee for his claim by the person who joined the class action can hardly be recognized as inadmissible. If a single claim is stated in the group proceedings, which does not imply the need for individual enforcement in the future, the state fee must be paid once by the person filing a claim in defense of the group of persons. Such a solution is the only permissible since the Tax Code or any other law of the Russian Federation does not establish special rules. However, it should be recognized that the absence of a special rule simplifying the accession of group members to the stated claims does not create incentives for more intensive application of class actions in Russia.

The problem looks similarly in the enforcement of a class action judgment. The literature reasonably criticizes the admissibility of the general approach to fee collection (Maleshin, 2020: 100). On the one hand, to enforce the court decision, a writ of execution will be issued to each of the claimants and, as a result, separate enforcement proceedings will be initiated. But on the other hand, the place of enforcement proceedings generally coincides with the location of the debtor which means that the initiated enforcement

---

<sup>2</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53 of December 21, 2017 On Certain Issues Relating to Imposing Liability on Persons Controlling the Debtor in a Bankruptcy Case. Bulletin of the Supreme Court of the Russian Federation. 2018. No. 3.

<sup>3</sup> Resolution of the Plenum of the Supreme Arbitration (Commercial) Court of the Russian Federation No. 46 of 11.07.2014 On Applying Legislation on State Duty when Considering Cases in Arbitration Courts. Bulletin of Economic Justice of the Russian Federation. 2014. No. 9.

proceedings will be combined into consolidated enforcement proceedings. Today, the legislation on enforcement proceedings does not contain special rules for calculating the enforcement fee in the case of consolidated enforcement proceedings, but at the same time, the number of enforcement actions performed by the bailiff will be significantly less than in separate enforcement proceedings. Therefore, for the purposes of stimulating group proceedings, special rules for calculating the state fee imposed on the losing defendant and the enforcement fee collected from the debtor who has not voluntarily complied with the requirements of enforcement documents may be envisaged. We believe that establishment of special rules for calculating the state fee when applying to court and enforcement fee for enforcing judicial acts issued for the defendant in class actions, would contribute to ensuring defendants' interest in class actions and would not hinder the process of class certification. There should be a reasonable balance between traditional co-participation and consolidated enforcement proceedings where the fees are paid in full, and bankruptcy proceedings where the budget receives only the state fee for filing a bankruptcy petition.

An additional risk of the plaintiff-representative in comparison with the *ordinary* claim proceedings is termination of powers at the request of the majority of persons joining the claim and, consequently, the loss of a significant part of procedural powers.

The imposition of extraordinary restrictions on such a person's legal status compared to the status of a plaintiff in a personal claim is conditioned by the specifics of group proceedings and complies with global standards. At the same time, no additional financial incentives are created for the plaintiff-representative under the general rule. Currently, the relevant material guarantees exist only in relation to certain categories of cases and professional entities. For example, public associations of consumers by virtue of paragraph 2, Article 45 of the Law On Protection of Consumer Rights<sup>4</sup> have the right to apply to court to protect the rights of a group of consumers and by virtue of part 2, paragraph 6, Article 13 of the above law, in case of satisfaction of such a claim, a fine for refusing to voluntarily satisfy the requirements of consumers is collected from the defendant in favor of a human rights organization. In general, in group disputes the issue of remuneration for the activities of the plaintiff-representative remains outside the procedural relations and is resolved on a contractual basis between the members of the group independently.

### **Legal status of group or joint claimants**

In class proceedings the effect of the adversarial principle in relation to other persons joining the lawsuit is limited (Yarkov, Kudriavceva, Maleshin & others, 2019:29). Since in collective claims, the key factor is the protected homogeneous interest (Yarkov & Dolganichev, 2020: 129) and the unity of factual circumstances at issue (Yarkov, 2021:98, 101; Selkova, 2022: 120), the procedural form limits the real possibilities of risk management for most of the group participants. Moreover, foreign legal orders state that group members are not a party to the case (Vatamanyuk, 2021a:28).

The persons who joined the class action on a par with the plaintiff-representative bear the ultimate and all intermediate procedural risks and the possibilities to manage them are significantly reduced. The legal status of such persons is defined in Article 244.23 of the

---

<sup>4</sup> The Law of the Russian Federation No. 2300-1 of 07.02.1992 On Protection of Consumer Rights // Collection of Legislation of the Russian Federation. 1996. No. 3. Article 140.

CPC RF and Article 225.10-2 of the APC RF. They are entitled to petition for replacement of the plaintiff-representative, get acquainted with the case materials, attend the court session and reject the application they submitted to join the claim, i.e., they have an extremely reduced scope of procedural rights. Having a material and procedural interest in the case (Maleshin, 2020: 99), the group participants are the persons involved in the case. At the same time, it is difficult to recognize the power to replace the plaintiff-representative as a sufficient and effective mechanism to influence procedural risks, since changing the representative of a group of persons is not in itself a guarantee of further protection in strict compliance with the interests of other claimants, and the grounds for replacement specified in the law are not objective (e.g., they include the presence of reasonable doubts concerning plaintiff-representative's conducting the case reasonably and in good faith). Moreover, according to Article 225.15 of the APC RF and Article 244.24 of the CPC RF, the replacement of a person who conducts a case in the interests of a group of persons presupposes court authorization, therefore, the will of the participants alone (as would be the case with the revocation of a representative's power of attorney) is not enough.

Two models of their participation are provided for group members: as *passive participants* or as third parties on the plaintiff's side. At the same time, both the group members who rejected the application to join the claim and the persons who initially did not join the claim can participate in the status of third parties (Lukianova, 2019:168). A group participant who has withdrawn his application to join the claim has the right to file a personal claim against the defendant in the future; he does not enter into group proceedings either as an optional plaintiff or as a third party making independent claims regarding the subject of the dispute (since the plaintiffs in the class action do not violate his rights in any way (Strelcova, 2010:726–727)).

The law does not regulate the right of group claimants to perform administrative actions independently or to exercise common rights in accordance with Article 35 of the CPC RF and Article 41 of the APC RF. The silence of the domestic legislator is qualified, since the very idea of group proceedings presupposes that the plaintiff-representative always acts on behalf of a group of persons. In fact, the law does not regulate the procedure where the group members may influence the procedural actions performed by the plaintiff-representative – presentation of evidence, performance of administrative actions, including conclusion of a settlement agreement on the appeal of a judicial act, etc.

The presumption of unity of the group members joining the claim and the standard of good faith of the plaintiff-representative's conduct do not exclude real disagreements between the group members. Thus, it is not clear whether a group member may initiate an appeal against a judicial act, or several participants may force a plaintiff-representative to file a complaint? What can be done in a situation when some of the group members insist on challenging the judicial act and the rest of the group is satisfied with the decision? Obviously, it is inadmissible for a person to withdraw a declaration to join a claim after the trial stage has been completed. Undoubtedly, the general provisions on the procedure for reviewing a case in one instance or another partially give an idea for filing and considering an appeal against court decision on a class action. However, the specifics of this proceeding still require the development of certain norms (by analogy with foreign legal (Sutormin, 2020a:232) or at least, the guiding clarifications of the highest court. By their legal status, the participants of the group of persons are not identical to the co-participants on the plaintiff's side, therefore, the persons who joined the class action do not have an



independent right to appeal the judicial act. This position follows from paragraph 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 36 of 27.09.2016 On Some Issues of Application by Courts of the Code of Administrative Procedure of the Russian Federation<sup>5</sup> and is fair in relation to the civil procedure in general. This approach is often criticized in literature and the opinion is expressed that it is inadmissible to restrict the constitutionally guaranteed right to judicial protection only for the sake of the procedural form. V.A. Kolotov (Kolotov, 2021:72) and M.A. Alieskerov (Alieskerov, 2022:146–147) argue that the right to appeal a judicial act in group proceedings should be granted not only to the plaintiff-representative but also to other joint claimants. We do not agree with such approach.

Foreign experience in class actions testifies to the significant role of the court in determining the procedure for all conciliation and organizational procedures between group members. The Russian civil procedure, on the contrary, is based on the idea of a detailed normative regulation of the procedural form (Reshetnikova, 2019: 437), due to which the discretion of the court in determining the procedure of case consideration is limited. Therefore, it is important to understand what legal relations are between the participants of the group of persons and the court, as well as between the participants of the group of persons.

As is known, procedural relations arise between the court and other participants in procedural relations in the process of considering a case or individual applications. The limited rights of the joint claimants suggest that they may enter into legal relations with the court only in some cases, e.g., when participating in court session (in terms of ensuring the established procedure), when applying for the replacement of the plaintiff-representative, when declaring their refusal to join the class action. For the purposes of influencing the dynamics of the process, such persons should either oblige the plaintiff-representative to perform procedural actions on behalf of a group or refuse to apply for joining a class action. The law does not regulate the consequences of withdrawing from class action and does not specify what determination the court should make in this case. Since a member of the group cannot be deprived of the right to judicial protection by filing a personal claim in the future, it is inadmissible to issue a ruling on termination of proceedings on the claim in defense of this person by analogy with the claim withdrawal (paragraph 4, Part 1, Article 150 of the APC RF, paragraph 4, Article 220 of the CPC RF). In order to ensure the right of such a person to file a personal claim in the future, it is necessary to leave his application for joining the claim without consideration (Part 3, Article 149 of the APC RF, Part 2, Article 223 of the CPC RF) and transform his status into the status of a third person who does not submit independent claims regarding the subject of the dispute, on the plaintiff's side.

The interaction of the group members with each other is outside the procedural form; it is a substantive legal relationship which implies the need for appropriate civilistic mechanisms of collective expression of will in conditions of legal equality (Kurochkin, 2012:271). Under the rules of Clause 2, part 4 of Article 244.22 of the CPC RF and Clause 2, part 4 of Article 225.10-1 of the APC RF, the group members make a decision by majority vote. Thus, they may insist on terminating the powers of the plaintiff-

---

<sup>5</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 36 of 27.09.2016 On Some Issues of Application by Courts of the Code of Administrative Procedure of the Russian Federation. Bulletin of the Supreme Court of the Russian Federation. 2016. No. 11.

representative and, obviously, should also influence the procedural behavior of the person filing a claim in defense of a group of persons.

As mentioned earlier, the Russian model of a class action is based on the principle of voluntary adherence of group members to the claim and does not allow for peremptory adherence. Therefore, it is permissible for the entire group to suffer the consequences of the procedural behavior of the plaintiff-representative. Dispositive actions, conclusion of a settlement agreement and challenge of a judicial act must be carried out with the approval of certain action by the majority of joint claimants, whose consent is presumed by virtue of the fact of joining the class action and empowering of a particular person with the authority of the plaintiff-representative (Vatamanyuk, 2021b:135). Disagreement of individual group members with the dispositive actions should lead to the refusal of such a person to join the class action, which implies the need to allow sufficient time for certain procedural actions. Since group proceedings are based on not one but homogeneous legal relations, conclusion of a settlement agreement not with all plaintiffs (because of their refusal) is permissible. Approving the settlement agreement, the court does not consider the case on the merits and thus does not establish any circumstances of prejudicial importance in the future.

In a situation where the will of the plaintiff-representative does not coincide with the wishes of the majority of the group members, their meeting should have the authority to promptly exercise the rights of the participants and initiate the change of such person. In this case, the former plaintiff-representative becomes a mere participant and is deemed to have joined the claim. And if the former plaintiff-representative disagrees with the modified model of procedural behavior of a group of creditors, he will be entitled to exercise the rights provided for in Articles 225.10-2 of the APC RF and Article 244.23 of the CPC RF to withdraw from the class action (although the plaintiff-representative usually files a lawsuit and did not join the claim but initiated it, this right will be applied by analogy with the law) and transform his status into the status of a third party, or simply exclude his participation in the case. Without replacing the plaintiff-representative, the members of the class may not exercise any dispositive rights on their own behalf, otherwise the effect of group proceedings (characteristic of class action), including the British models of representative proceedings and group litigation order will be leveled (Andrews, 2012:312–313).

It seems that the rules of Chapter 9.1 of the Civil Code of the Russian Federation on decisions of meetings should be extended to the situation of realization of rights by the participants of a group of persons. However, since implementation of procedural rights and obligations presupposes a tight deadline for making such decisions, the substantive logic of decision-making by the meeting of group members must be integrated into the existing procedural form and provide for the main mechanism of interaction of group members. In regulating the relevant procedures for interaction of group participants, it is important to refrain from significant freedoms granted to creditors in insolvency (bankruptcy) cases. The mechanism of group proceedings may not resemble the procedures in insolvency cases; otherwise, it is no longer a civil process, but its own purely social procedure that has nothing to do with class action consideration. Group proceedings should be a simpler procedure, which implies its voluntary initiation with the active right to bring a personal claim in the future, rather than insolvency proceedings with the forced inclusion of creditors' claims in the register and the *legal death* of the debtor, terminating obligations to creditors.

In group proceedings, claims of the group members may be consolidated in terms of value (Kolotov, 2020: 74), which raises the question of identifying the majority criterion when making decisions at the meeting. In insolvency cases, as is known, they *vote with rubles*, i.e., the weight of the creditor's vote is determined by the size of property claims included in the register. This kind of aggravation of settlement rules in group proceedings seems to be inappropriate. Since the initiation of group proceedings requires a certain number of persons to join the lawsuit, the dynamics of the process should depend on the procedural behavior of these persons but not on manipulations with the size of their claims. Moreover, both the non-property claims, and the property claims that are not subject to evaluation may be settled in group proceedings. Therefore, the bankrupt voting model is inappropriate when considering a class action.

It is easy to notice that in the second form of participation, the creditor in disputed homogeneous legal relations participates in the status of a third person, i.e., is a subject of proof (Treushnikov, 2021: 51), may independently challenge judicial acts, be a party to amicable agreements, and in some cases is obliged to reimburse court costs. Such status is conditioned by the existence of a legal interest other than *passive participants* and the active role of such a subject. Therefore, we believe that entry into the process of a class action in the status of a third-party participant in disputable homogeneous legal relations is possible only on his initiative (but not at the request of the persons involved in the case) or on the initiative of the court. Participation of such third party in the process is intended to create the ground for protecting his rights and legitimate interests in the future when filing a personal claim, including through establishing prejudicial facts.

### Conclusion

The domestic model of class proceeding, therefore, is something intermediate between the opt-in model and the opt-out model, since it is possible to initiate proceedings on a class action and consider it only if there is a real minimum number of joint claimants, but at the same time certain qualities of the validity of a court decision (generally binding and prejudicial) will also apply to persons who have not joined the claim.

Class proceeding should become an element of the professional process where the actions of the participants will be based on the principles of adversarial proceedings, therefore, excessively paternalistic approaches of granting the most favored regime to group members are unacceptable. In class proceedings, it is essential to observe a special balance of interests of creditors and debtor in a disputable homogeneous legal relationship, striving to minimize the objective risks of mass default by the defendant. The identified problems of the legal status of participants in procedural relations, the specifics of interaction of participants in a joint claim, the rules for paying the state fee and charging the enforcement fee should be resolved taking into account the purpose of creating the institute of class actions.

### References / Список литературы

Aiken, A.W. (2017) Class action notice in the digital age. *University of Pennsylvania Law Review*. (165), 967–1018.

- Alieskerov, M.A. (2022) Class Action in Adversarial Civil Procedure: Procedural Limits and Restrictions. *Herald of Civil Procedure*. 12(6), 133–151. <https://doi.org/10.24031/2226-0781-2022-12-6-133-151> (in Russian).
- Алиэскеров М.А. Групповой иск в состязательном гражданском процессе: процессуальные пределы и ограничения // Вестник гражданского процесса. 2022. Т. 12. № 6. С. 133–151. <https://doi.org/10.24031/2226-0781-2022-12-6-133-151>
- Andrews, N. (2012) *The system of civil procedure in England: litigation, mediation and arbitration*. Translation from English. Khodykin, R.M. (ed.). University of Cambridge. M.: Infotropic Media Publ. (in Russian).
- Эндрюс Н. Система гражданского процесса Англии: судебное разбирательство, медиация и арбитраж. Пер. с англ. / под ред. Р. М. Ходыкина; Кембриджский университет. М.: Инфотропик Медиа, 2012. 544 с.
- Borisova, A.V. & Kotelnikova, E.A. (2020) Novelty of the Class Action Institution in Russian Civil Proceedings. *Arbitragniy I grazhdanskiy process – Commercial and Civil Procedure*. (4), 16–19. <https://doi.org/10.18572/1812-383X-2020-4-16-19> (in Russian).
- Борисова А.В., Котельникова Е.А. Новеллы института группового иска в гражданском судопроизводстве России // Арбитражный и гражданский процесс. 2020. № 4. С. 16–19. <https://doi.org/10.18572/1812-383X-2020-4-16-19>
- Burbank, S.B. & Wolf, T.B. (2018) Class actions, statutes of limitations and repose, and federal common law. *University of Pennsylvania Law Review*. 167(1), 1–70.
- Domshenko, V.G. (2022) Competence and Jurisdiction of Class Actions in Arbitration and Civil Procedure: Discussion Issues. *Vestnik grazhdanskogo protsesssa – Herald of Civil Procedure*. 12(5), 228–245. <https://doi.org/10.24031/2226-0781-2022-12-5-228-245> (in Russian).
- Домшенко В.Г. Компетенция и подсудность групповых исков в арбитражном и гражданском процессе: дискуссионные вопросы // Вестник гражданского процесса. 2022. Т. 12. № 5. С. 228–245. <https://doi.org/10.24031/2226-0781-2022-12-5-228-245>
- Goncharova, O.S. (2014) *Complicity in the civil process of Russia and the USA: monograph*. Moscow, Prospekt Publ. (In Russian)
- Гончарова О.С. Соучастие в гражданском процессе России и США: монография. М.: Проспект, 2014. 208 с.
- Kolotov, V.A. (2020). Reforming the Institution of a Class Action in Russian Law: Selected Issues. *Aktualnye problemy rossiyskogo prava*. 15(7), 68–75. <https://doi.org/10.17803/1994-1471.2020.116.7.068-075> (in Russian).
- Колотов В.А. Реформирование института группового иска в российском праве: отдельные вопросы // Актуальные проблемы российского права. 2020. Т. 15. № 7(116). С. 68–75. <https://doi.org/10.17803/1994-1471.2020.116.7.068-075>
- Kolotov, V.A. (2021) Protection of the rights and legitimate interests of a group of persons in civil and arbitration proceedings: dis. ... cand. of legal Sciences. Moscow, Moscow State Law University named after O.E. Kutafina (MSAL). (in Russian).
- Колотов В.А. Защита прав и законных интересов группы лиц в гражданском и арбитражном судопроизводствах: дис. ... канд. юрид. наук. М.: Московский государственный юридический университет имени О.Е. Кутафина (МГЮА), 2021. 216 с.
- Kurochkin, S.A. (2012) Private and public beginnings in the civil process. Yarkov, V.V. (ed.). Moscow, Infotropic Media Publ. (in Russian).
- Курочкин С.А. Частные и публичные начала в цивилистическом процессе / науч. ред. В.В. Ярков. М.: Инфотропик Медиа, 2012. 560 с.
- Lukyanova, I.N. (2019) Protection of the rights of citizens by a class action. *Zakon*. (12), 166–175. (in Russian).
- Лукьянова И.Н. Защита прав граждан групповым иском // Закон. 2019. № 12. С. 166–175.
- Mareshin, D.Ya. (2020) Class Action Novels. *Zhurnal rossijskogo prava = Journal of Russian Law*. (5), 94–103. <https://doi.org/10.12737/jrl.2020.058> (in Russian).

- Малешин Д.Я. Новеллы групповых исков // Журнал российского права. 2020. № 5. С. 94–103. <https://doi.org/10.12737/jrl.2020.058>
- Reshetnikova, I.V. (2019) *Reflecting on judicial proceedings: selected works*. Moscow, Statut Publ. (in Russian).
- Решетникова И.В. Размышляя о судопроизводстве: Избранное. М.: Статут, 2019. 510 с.
- Streltsova, E.G. (2010) On some difficulties in the practical application of Chap. 28.2 Commercial procedure Code of Russian Federation. *Law and Politics*. (4), 718–733. (in Russian).
- Стрельцова Е.Г. О некоторых сложностях практического применения гл. 28.2 АПК РФ // Право и политика. 2010. № 4. С. 718–733.
- Sutormin, N.A. (2020a) Class litigation in Finland. *Vestnik grazhdanskogo protsessa – Herald of Civil Procedure*. Vol. 10, no. 4, pp. 217–234. <https://doi.org/10.24031/2226-0781-2020-10-4-217-234> (In Russian).
- Сутормин Н.А. Групповые иски в Финляндии // Вестник гражданского процесса. 2020. Т. 10. № 4. С. 217–234. <https://doi.org/10.24031/2226-0781-2020-10-4-217-234>
- Sutormin, N.A. (2020b). Advantages and disadvantages of a class action. *State and Law*. (7), 119–123. <https://doi.org/10.31857/S102694520010712-4> (in Russian).
- Сутормин Н.А. Преимущества и недостатки группового иска // Государство и право. 2020. № 7. С. 119–123. <https://doi.org/10.31857/S102694520010712-4>
- Treushnikov, M.K. (2021) *Judicial evidence*. 5th ed., add. Moscow, Gorodets Publ. (in Russian).
- Треушников М.К. Судебные доказательства. 5-е изд., доп. М.: Городец, 2021. 304 с.
- Wolf, T.B. (2014) Discretion in class certification. *University of Pennsylvania Law Review*. (162), 1897–1952.
- Vatamanyuk, V. O. (2021a) Conclusion of a Settlement Agreement in the Group Proceedings of Foreign Countries. *Rossiiskoe pravo: obrazovanie, praktika, nauka*. (4), 27–40. (In Russian) [https://doi.org/10.34076/2410\\_2709\\_2021\\_4\\_27](https://doi.org/10.34076/2410_2709_2021_4_27)
- Ватаманюк В.О. Заключение мирового соглашения в групповом производстве иностранных государств // Российское право: образование, практика, наука. 2021. № 4. С. 27–40. [https://doi.org/10.34076/2410\\_2709\\_2021\\_4\\_27](https://doi.org/10.34076/2410_2709_2021_4_27)
- Vatamanyuk, V.O. (2021b) Conclusion of a Settlement Agreement in Group Proceedings. *Vestnik grazhdanskogo protsessa – Herald of Civil Procedure*. 11(2), 127–174. <https://doi.org/10.24031/2226-0781-2021-11-2-127-174> (in Russian).
- Ватаманюк В. О. Заключение мирового соглашения в групповом производстве // Вестник гражданского процесса. 2021. Т. 11. № 2. С. 127–174. <https://doi.org/10.24031/2226-0781-2021-11-2-127-174>
- Yarkov, V.V. (2021) Class Actions in Civil Procedure: Enforcement Issues. *Vestnik grazhdanskogo protsessa – Herald of Civil Procedure*. 11(5), 86–106. <https://doi.org/10.24031/2226-0781-2021-11-5-86-106> (in Russian).
- Ярков В.В. Групповые иски в гражданском процессе: вопросы правоприменения // Вестник гражданского процесса. 2021. Т. 11. № 5. С. 86–106. <https://doi.org/10.24031/2226-0781-2021-11-5-86-106>
- Yarkov, V.V. & Dolganichev, V.V. (2020) Class action in comparative perspective. *Herald of the Euro-Asian Law Congress*. (1), 118–133. <https://doi.org/10.34076/2619-0672-2020-4-1-118-133> (in Russian).
- Ярков В.В., Долганичев В.В. Групповые иски: сравнительный анализ // Herald of the Euro-Asian Law Congress. 2020. № 1. С. 118–133. <https://doi.org/10.34076/2619-0672-2020-4-1-118-133>
- Yarkov, V., Kudryavtseva, E., Mareshin, D., Tumanov, D. & Smola, A. et al. (2019) Class actions in the civil process in Russia. *Zakon*. (8), 24–43. (in Russian).
- Ярков В., Кудрявцева Е., Малешин Д., Туманов Д., Смола А. и др. Групповые иски в цивилистическом процессе России // Закон. 2019. № 8. С. 24–43.

**Сведения об авторах:**

**Трезубов Егор Сергеевич** – кандидат юридических наук, доцент кафедры трудового, экологического права и гражданского процесса, Кемеровский государственный университет; 650000, Российская Федерация, Кемеровская область-Кузбасс, г. Кемерово, ул. Красная, д. 6

**ORCID ID: 0000-0003-2607-0405; Web of Science Researcher ID: N-9078-2017; SPIN-code: 3027-3186**

*e-mail:* egortrezubov@mail.ru

**Звягина Наталья Сергеевна** – старший преподаватель кафедры трудового, экологического права и гражданского процесса, Кемеровский государственный университет; 650000, Российская Федерация, Кемеровская область-Кузбасс, г. Кемерово, ул. Красная, д. 6

**SPIN-code: 4707-1477**

*e-mail:* natalia.sheglova@list.ru

**About the authors:**

**Egor S. Trezubov** – Candidate of Legal Sciences, Associate professor of the Department of Labor and Environmental Law and Civil Procedure, Kemerovo State University (Kemerovo, the Russian Federation); 6 Krasnaya str., Kemerovo, 650000, Russian Federation

**ORCID ID: 0000-0003-2607-0405; Web of Science Researcher ID: N-9078-2017; SPIN-code: 3027-3186**

*e-mail:* egortrezubov@mail.ru

**Natalya S. Zvyagina** – senior lecturer of the Department of Labor and Environmental Law and Civil Procedure, Kemerovo State University (Kemerovo, the Russian Federation); 6 Krasnaya str., Kemerovo, 650000, Russian Federation

**SPIN-code: 4707-1477**

*e-mail:* natalia.sheglova@list.ru