



THE ROLE OF THE SIMPLIFIED (WRITTEN) PROCEDURE FOR CONDUCTING A PRELIMINARY HEARING IN JUDICIAL PRACTICE

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ANNOTATION

This article analyzes the concept of a simplified (written) procedure for conducting a preliminary hearing, the conditions for its application, the features, advantages, and problematic aspects of the simplified procedure in foreign judicial practice.

In particular, it is explained which categories of cases may correspond to the introduction of this procedure in our national judicial practice, and proposals are made to create mechanisms for the application of this procedure in judicial practice.

KEYWORDS: Preliminary Hearing, Judicial Practice, Judicial Proceedings, Foreign Experience, Simplified Procedure, Written Evidence, Regulatory Document

In accordance with the Decree of the President of the Republic of Uzbekistan dated January 28, 2022 No. UP-60, the "Development Strategy of New Uzbekistan for 2022-2026" was approved, in which special attention is paid to expanding the scope of judicial control by improving the system for considering complaints against decisions of officials in administrative courts¹. However, according to the Code of the Republic of Uzbekistan on Administrative Proceedings, applications received in administrative courts are usually considered in the open court procedure, but in foreign countries, this procedure is not always applied.

If we pay attention to the judicial practice of foreign countries, two main methods are used in conducting a preliminary hearing: on a general basis, an oral open court hearing and a simplified written procedure. Based on this, let's consider the simplified written procedure.

According to A.B. Zelentsov, a simplified procedure is a means of optimizing and improving judicial processes, where the priority task is to accelerate the judicial process and reduce the time of court proceedings by making a lawful and justified decision².

However, A.M. Volkov and E.A. Lyutyagina believe that simplified administrative proceedings are a form of administrative process designed to resolve administrative cases in shortened terms and according to simplified rules, which differ from ordinary proceedings. In this case, simplified proceedings, if there are legal grounds, may be converted into general or full proceedings, if necessary. A decision made within the framework of simplified proceedings, after entering into legal force, does not differ in its legal consequences from a conventional court decision, including in the procedure for its execution³.

Although these views define the general aspects of the simplified procedure, this procedure is applied differently in foreign judicial practice.

According to paragraphs 81-88 of the German Administrative Procedure Code, the procedure for conducting a preliminary hearing and considering the case in writing is established, as far as possible, cases are conducted in the form of a preliminary hearing, but if all the circumstances of the case have been established, additional evidence is not required, and this case does not belong to the category of particularly difficult cases from a legal point of view, the case is conducted in writing based on the consent of the parties, and a decision is made in writing based on the results of the case. In this case, a court hearing is not held. When considering a case in writing, the court also takes an active part and takes measures to ensure a written response from the defendant to the submitted statement of claim.

The court gives the relevant party a 2-week period to prepare and deliver a reasoned response to the court, during which the parties may also submit a written application to reach an agreement.

The importance of considering a case in writing lies in the fact that, for example, if one party is in another region, and the defendant is from another region, the relevant party does not travel from one region to another to participate in the court, but can express their opinion by sending a written letter from their place of residence. This process corresponds to the principle of saving time and resources inherent in German legislation. When a judge, after considering the case in writing, issues a ruling based on the results of the case, this ruling is equated to a court decision, and if a complaint is filed against the ruling within the established timeframe, the ruling is considered not to have entered into legal force.

¹ Development Strategy of New Uzbekistan for 2022-2026"/Decree of the President of the Republic of Uzbekistan No. UP-60 dated 28.01.2022/ <https://lex.uz/docs/5841063>

² <file:///C:/Users/Lenovo/Downloads/uproschennoe-sudoproizvodstvo-po-administrativnym-delam-opyt-sravnitelno-pravovogo-issledovaniya.pdf>

³ Volkov A.M, Lyutyagina E.A/Administrative Procedural Law/ Textbook/ M, 2022 /Yurayt/ ed.



Also, the application of this institution in subsequent unnecessary judicial proceedings -preveIf the parties have not reached an agreement in writing on the conduct of the proceedings, the consideration of the case, of course, begins with the preliminary hearing.

The peculiarity of the German experience is that for the implementation of the simplified procedure, it is necessary to obtain the consent of the parties. According to judicial practice in Kyrgyzstan, initially filed claims are considered in administrative courts in the first instance, where the administrative court conducts the case on the received application in a simplified (written) or oral procedure. According to the Resolution of the Supreme Court of the Kyrgyz Republic dated February 28, 2018, No. 5 "On Certain Issues of the Application of Administrative Norms in Courts," the trial in a simplified (written) procedure is conducted before the process of preparing the case for trial, and the plaintiff's motion to conduct the case in a simplified (written) procedure is filed in the preliminary court session, and the opinion of the participants participating in this court session is requested.

However, regardless of the consent of the participants, the judge may also find it necessary to conduct the case orally, based on general rules, for the correct resolution of the dispute. Conducting cases in a simplified manner is understood as an administrative process related to the consideration and resolution of cases. In this case, it is applied in administrative proceedings in accordance with the procedure of external examination in civil proceedings. Written record keeping has the following features:

- Administrative proceedings in the abbreviated form (without oral proceedings)
- The case is considered in the absence of the parties.
- All work is carried out in writing (in this case, only written evidence is studied).

According to Article 131 of the Administrative Procedural Code of Kyrgyzstan, when conducting a case in court in a simplified (written) manner, the consent of the plaintiff who filed the claim and the absence of objections from the defendant are taken into account⁴.

A distinctive feature of the administrative legislation of Kyrgyzstan is that the defendant has the right of veto, that is, the right to return to the simplified proceedings during the trial. Also, during the consideration of the case, the participant in the case has the right, before the announcement of the decision, to withdraw their application for consideration of the case in a simplified (written) manner.

If the defendant does not object to the simplified (written) consideration of the case or does not give any response, then it is concluded that the opposing party agrees. Thus, the possibility of applying a simplified (written) procedure in court proceedings depends primarily on the will of the parties. The main condition is the presence of a petition from all persons participating in the case for the consideration of the administrative claim in a simplified (written) manner, that is, the consideration of the case without the participation of the parties, unless the law directly indicates their mandatory participation.

The first point to note is that the procedural law obliges all persons to express their will and obliges organizations applying to the court to protect the rights of all participants in the judicial process, third parties, the prosecutor, and other persons to give written explanations to the court. In some cases, this is a convenient and time-consuming process for all persons participating in the case, preventing their appearance in court, participation in court proceedings, and unnecessary hassle.

In addition, there is no clear procedure for submitting written documents submitted by the parties to the court in this manner, that is, the submitted document may also be by mail, electronic system.

Another feature of this type of procedure is that a simplified (written) procedure can be in In this case, the court determines in the ruling that the court may consider the case in a simplified (written) manner and that the parties must give their opinion on this matter, and also indicates the rights and obligations of the parties in conducting the case in this manner, and if the parties disagree, they may submit their objections within the established timeframe.

A judge who concludes that the trial should be conducted in a simplified (written) manner is obliged to issue a corresponding ruling.

This procedure can be carried out by an individual judge (first instance court) or by judges on a panel (appellate court).

In this trial, it should be borne in mind that, unlike oral proceedings, the case is not postponed to the next day, and certain procedural rules established in oral proceedings do not apply, for example, since the proceedings are based only on written evidence, the testimony of witnesses is not troduced only after the completion of the stage of preparing the case for preliminary trial.

Although the administrative legislation of Kyrgyzstan does not establish strict norms on the basis of which the court refuses to conduct a case in a simplified (written) manner, it is indicated that the court has the right to refuse to conduct a case in a simplified (written) manner in order to protect public interests.

After the case is conducted in a simplified (written) manner, as a result of the consideration of the case, a decision is made in full and appropriate form in accordance with the requirements of the Code. Also, the judge, acting in the above-mentioned manner, determines the time and place for the submission of additional evidence to the parties, the time and place for the announcement of the decision, and informs them accordingly. In all actions in this judicial process, the general time limits established by the Code are applied.

After the acceptance of the application filed in accordance with the procedure established by the Administrative Procedure Code of Kyrgyzstan by the court of first instance, the judge accepts the application and prepares it for trial. This process should not exceed one month from the date of application submission.

⁴ *Administrative Procedure Code of the Kyrgyz Republic of January 20, 2017 No. 6 (with amendments and additions, as of 28.02.2025)*
https://online.zakon.kz/Document/?doc_id=38800804



If no objection is received from the defendant within the established timeframe, the case is transferred to a simplified (written) procedure; if an objection is received from the relevant party, the proceedings are conducted in the general procedure. According to the Code, the conduct of the case in the general procedure begins with the convening of a preliminary court session.

According to the administrative legislation of Russia, as a result of the preliminary hearing, the judge, considering the timing of the court proceedings, depending on the nature of the case, may decide to start the main trial as soon as possible or to establish a simplified procedure for the trial.

The Russian Administrative Procedure Code provides for three cases, in the presence of which it is possible to consider the administrative case in a simplified procedure: 1) persons not required to appear or not recognized by the court as compulsory, duly notified of the time and place of the consideration of the case, if not all persons participating in the case appear in the court session; 2) consideration of a claim for challenging a normative legal act (in this case, the challenging of a normative legal act of lesser significance and the fact that the normative legal act is similar in content, repetitive in nature to another normative legal act, recognized as having lost force in whole or in part, or on the basis of it);

- dispute over a "repeated" normative act, similar to a previously invalidated normative act⁵.

Although the simplified procedure in the administrative legislation of Russia is similar to the legislation of Kyrgyzstan, there are also some differences. For example, when considering a case in a simplified procedure, this dispute must be under the jurisdiction of administrative courts, and there should be no dispute on this matter. It is also possible to conclude a settlement agreement between the parties in a simplified manner, in which it is mandatory for the parties to submit a sample of the settlement agreement to the court before the court makes a decision.

Moreover, unlike the legislation of Kyrgyzstan, Russian law stipulates that a decision made as a result of a simplified procedure is not read aloud, but is duly notified, and the party must appeal the decision in the appellate procedure within a reduced period of 15 days from the date of receipt.

Usually, in the judicial practice of this state, a simplified procedure is widely used when issuing a document in the order of a court order.

As a result of the analysis of the simplified procedures existing in the judicial practice of several countries, we came to the conclusion that it would be advisable to include this procedure in our Code of Administrative Proceedings. At the same time, we consider it advisable to apply this procedure in the following cases, which are more specific and less complex than the categories of cases under the jurisdiction of the administrative court:

- 1) performing a notarial act, drawing up a civil status act on refusal to register the entry of civil cases or contesting the actions (inaction) of a notary or an official of the civil registry office;
- 2) resolves cases on appealing an enforcement document or other document, the recovery of which is carried out in an indisputable manner, on claims arising from administrative and other public legal relations;
- 3) in disputed cases on departmental regulatory legal acts;

The reason for this is that in cases of this category, the explanations of the parties, the testimony of witnesses, and the explanations of specialists are of less importance and are usually based on written evidence, legislative and archival documents.

Analyzing the simplified procedure in the judicial practice of the above-mentioned foreign states, it is proposed to introduce the following new article into our Code of Administrative Offenses:

Consideration of a case in simplified (written) proceedings.

1. A case may be considered under simplified (written) proceedings if the petition for consideration of the case under simplified (written) proceedings is filed by the applicant and the other participants in the case do not object to the application of such a procedure. When filing a petition from the applicant in a court session, the opinion of the participants participating in this court session is requested.
2. In simplified (written) proceedings, cases are considered without oral discussion, without summoning to a court session. When considering a case in this procedure, the court is guided only by written evidence (including explanations and objections of the parties).
3. When considering a case in a simplified (written) manner, the court also takes an active part and takes measures to ensure a written response from the defendant to the submitted application.
4. The court may require organizations applying to the court to protect the rights of all participants in the case, third parties, the prosecutor, and other persons to provide written explanations to the court.
5. Regardless of the consent of the participants in the case and the assignment of a case under simplified (written) proceedings, the court may appoint a court session for an oral hearing of the case before a decision is made, if this is necessary for the correct resolution of the case.
6. Persons participating in the case have the right to withdraw their written consent for consideration under simplified (written) proceedings before a decision is made on this matter.

In conclusion, it can be said that in the judicial practice of foreign countries, conducting court cases in a simplified (written) procedure is a practice that is effective, and when applied based on the category, complexity, and specifics of cases, it prevents excessive inconvenience for citizens, saves time and resources, reduces the workload of courts, and stimulates their optimization.

⁵ Zelensov A.B. *Simplified Proceedings in Administrative Cases: Experience of Comparative Legal Research*. Bulletin of RUDN, series "Legal Sciences," 2016, No. 3



Therefore, the application of this procedure in national judicial practice serves to improve one of the tasks defined in the "Development Strategy of New Uzbekistan" - the system for considering complaints against decisions of officials in administrative courts.

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