

CLAIM AS A MEANS OF PROTECTION OF RIGHTS, FREEDOMS AND INTERESTS

The article deals with the concept and features of the claim. The existing approaches in the legal science to the definition of “claim” are analyzed. The correlation between the claim and the statement of claim is disclosed. Characteristic features of the claim are established. The classification of claims according to different criteria is carried out. The author comes to the conclusion that the claim is expressed in the statement of claim and appealed to the court request of the plaintiff to provide him with state assistance in the implementation of his violated or disputed rights, freedoms and interests.

Keywords: claim; statement of claim; protection of rights, freedoms and interests; litigation.

ПОЗОВ ЯК ЗАСІБ ЗАХИСТУ ПРАВ, СВОБОД ТА ІНТЕРЕСІВ

У статті досліджено поняття та характерні риси позову. Проаналізовано існуючі в юридичній науці підходи до визначення поняття «позов». Розкрито співвідношення позову та позовної заяви. Встановлено характерні ознаки позову. Здійснено класифікацію позовів за різними критеріями. Автор доходить до висновку, що позов є виражене у позовній заяві і звернена до суду прохання позивача надати йому державну допомогу в реалізації його порушених чи оспорюваних прав, свобод та інтересів.

Ключові слова: позов; позовна заява; захист прав, свобод та інтересів; судовий процес.

Problems of the claim form of protection of violated rights traditionally cause in the scientific literature a lot of discussions. First of all, issues concerning the notion of claim and litigation, the classification of claims as procedural means of protecting the rights, freedoms and interests of individuals and legal entities remain relevant. On December 15, 2017, new editions of procedural codes came into force in Ukraine, which also require research in terms of legal regulation of proceedings.

Questions of the claim and the claim proceedings were the subject of research by such scholars as: Y. Belousov, O. Belyanevych, O. Bratel, N. Kolyadina, V. Reznikova and others.

There is no definition of “claim” in the legislation. Therefore, scholars offer their own doctrinal definitions.

As a rule, in legal science it is customary to group judgments about the essence of the claim in four separate areas.

The first direction is related to the submission of a claim as a material legal claim of the plaintiff to the defendant.

In contrast, a number of other scientists supported the so-called procedural conception of understanding the claim. According to its supporters, the claim is an appeal to a court of first instance with a claim for the protection of a controversial subjective law or interest protected by law, an appeal for a resolution of a rights dispute.

The third area of understanding of the claim is connected with attempts to combine the material and procedural aspects of the claim. Lawyers believed that the lawsuit is a complex concept, which combines two requirements: one (material) is directed to the defendant and is simultaneously the subject of the claim, and the second (procedural-legal) – on the protection of rights, sent to the court.

In a number of works of scientists developed a concept of claim, which implies its existence in the material (civil law) and procedural sense.

N. Kolyadina in her dissertation examines the notion of a claim as an inseparable unity of two requirements: the procedural (requirements to the court) and material and legal (requirements to the defendant), which leads to the conclusion of the inextricable unity of the two most important categories: the right to a claim in the procedural sense and law to a lawsuit in the material sense. However, the right to sue in the procedural sense and the right to sue in the material sense – the categories though interrelated, but absolutely do not coincide in their content, grounds, subject structure and legal consequences¹.

In the opinion of O. Bratel, the claim is a procedural phenomenon that inextricably combines procedural and material-legal components, thus being in the plane of legal facts. The prerequisites for the appearance of the claim are completed legal facts of substantive content. The completeness of the legal facts is that the dispute at the time of the appeal to the court failed to settle peacefully. At the same time, bringing a claim to court is a process-forming legal fact that causes the emergence of civil procedural legal relationships².

During analyzing the notion of a claim the issue of the ratio of the claim and the statement of claim is also important. In this case, the statement of claim serves as an external form of expression of the claim. A claim is a material claim of a plaintiff, appealed to a court, by filing a statement of claim. The claim as a claim for the protection of rights has its form (statement of claim) and the content (subject and basis).

¹ Kolyadina N H, 'Realizatsiia prava na pozov u tsyvilnomu protsesi Ukrainy ta okremykh derzhav Yevropeiskoho soiuzu: porivnialno-pravove doslidzhennia' [Realization of the right to sue in the civil process in Ukraine and certain states of the European Union: comparative law research] (avtoref dys kand yuryd nauk, Natsionalnyi universyter "Odeska yurydychna akademiia" MON Ukrainy, 2016) 5 (in Ukrainian).

² Bratel O, 'Pozov – tsyvilnyi protsesualnyi ta materialno-pravovyi yurydychnyi fakt' [The claim is a civil procedural and substantive legal fact] (2016) 1 Pidpryemnytstvo, gospodarstvo i pravo 9 (in Ukrainian).

In the statement of claim the plaintiff sets out his claims regarding the subject of the dispute and their justification. The statement of claim shall be submitted to the court in writing and signed by the plaintiff or his representative or another person who has the right to apply to the court in the interests of another person.

The Commercial Procedural Code of Ukraine defines the requirements for a claim in art. 162. Thus, a statement of claim must contain:

1. the name of the court of first instance to which the application is filed;
2. the full name (for legal entities) or the name (for the natural persons) of the parties and other participants of the case, their location (for legal entities) or place of residence or stay (for individuals); ZIP Code; the identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities registered under the legislation of Ukraine), as well as the registration number of the tax card's account holder (for individuals), if it is available, or the number and series of passports for natural persons – citizens of Ukraine (if such information is known to the plaintiff), an indication of the status of an individual – an entrepreneur (for individuals – entrepreneurs); known communication numbers, official web-site address and e-mail address;
3. indication of the price of the claim if the claim is subject to monetary valuation; reasonable calculation of the amounts collected or disputed;
4. the content of the claim: the method (methods) of protecting the rights or interests envisaged by law or agreement, or another method (methods) for the protection of rights and interests that does not contradict the law and which the plaintiff asks the court to determine in the decision; if the claim is filed to several defendants – the content of the claims for each of them;
5. a statement of the circumstances in which the plaintiff substantiates his claims; indication of evidence, confirming the specified circumstances; the legal basis of the claim;
6. information on the implementation of measures of pre-trial settlement of a dispute – in the event that the law establishes a mandatory pre-trial procedure for settling a dispute;
7. information on taking measures to provide evidence or a claim before filing a claim, if any;
8. a list of documents and other evidence attached to the application; indication of evidence that cannot be filed together with the statement of claim (if any); an indication of the existence of the original or electronic evidence from the plaintiff or other person, copies of which are attached to the application;
9. preliminary (indicative) calculation of the amount of court costs incurred by the plaintiff and which he expects to incur in connection with the consideration of the case;
10. confirmation of the plaintiff that he has not filed another claim (claims) to this same defendant (defendants) with the same subject and for the same reason³.

³ HospodarskyiprotsesualnykodeksUkrainy; ZakonUkrainy [EconomicProceduralCodeofUkraine] vid 6 lystopada 1991 r. № 1798-XII. VidomostiVerkhovnoiRadyUkrainy. 1992. № 6. St. 56 (in Ukrainian).

If the claim is filed by a person exempted from payment of a court fee in accordance with the law, it shall state the grounds for the release of the plaintiff from payment of the court fee. In the case of a claim submitted by a person who has the right to apply to the court in the interests of another person, the application must state the grounds for such appeal. Other information necessary for the proper resolution of the dispute may be indicated in the statement of claim.

On December 15, 2017, new editions of the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine and the Code of Administrative Proceedings of Ukraine came into force in Ukraine, which unified the procedural rules governing the review of cases in these processes. Therefore, the requirements for a claim in civil and administrative proceedings are not much different from the requirements that are presented in the economic process.

In its legal nature, the claim is a complex phenomenon, which is characterized by:

1. a claim as a requirement is always associated with the existence of a dispute about a right;
2. the presence of a dispute about the right necessarily involves the presence of at least two disputed subjects;
3. the presence of two disputed subjects necessarily requires the existence of a third party – a court, that is an independent arbitrator to which the parties apply for a resolution of the dispute between them;
4. procedural equality of the parties before the court, which considers and resolves the dispute between them.

Thus, a lawsuit is possible where there is a dispute between at least two procedural parties and an independent court that can resolve this dispute.

Classification of claims can be made on several criteria. So, according to the branch affiliation, claims can be divided into:

- administrative;
- commercial;
- civil.

Moreover, separate consider it expedient to allocate a civil claim in criminal proceedings, since such a suit even though filed under the rules of the civil process, but is resolved by the rules of criminal proceedings.

Depending on the nature of the claims and the method of protection, claims can be divided into claims for recognition, claims for awards and conversion claims. The claim for recognition is intended to protect the plaintiff, who believes that he has a certain subjective right that is contested by another person. For example, a claim for the recognition of property rights. The claims of recognition, in turn, are divided into positive ones to negative ones. Positive claims

are conditioned by the fact that the plaintiff makes a claim for recognition of a certain right for him (for example, recognition of property rights). Negative claims include a situation where the plaintiff objects to the existence of a certain right in the defendant (for example, a claim to contest the property right). Thus, for claims for recognition, it is characteristic that the plaintiff does not ask the court to collect anything in his favor, but only requires a legal the recognition of a subjective right or a denial of the existence of a certain right in the defendant.

The claim for awards is characterized by the fact that the plaintiff asks for recognition of certain subjective rights under him and in accordance with this right to oblige the defendant to perform certain legally significant actions (to transfer funds or property, to release premises, etc.). This group of actions by its nature is wider than the previous one, as the plaintiff asks the court not only to recognize a certain right for him, but also to oblige the defendant to perform certain actions related to the implementation of the disputed right. The subject of a claim for award is the material claim of the plaintiff to the defendant, whose enforcement is required by the plaintiff. Both the claim for recognition and the suit for award are directed to judicial confirmation of the rights and obligations of the parties in the form in which they were formed and existed prior to and irrespective of the trial, but which require official confirmation.

Convergence claims are actions directed at the emergence, change or termination of material relationships. The court decision in this case acts as a legal act of substantive law, which changes the structure of material relations, for example, a lawsuit on changing the terms of the contract. Unlike claims for awards, the plaintiff requires no action by the defendant, but changes in the legal relationship between the plaintiff and the defendant. For example, when a court changes the terms of a party contract in the future, they must comply with the new terms of the contract, established by the court.

By the nature of protected interests, claims are divided into:

- personal (claims directed on the protection of subjective rights – on the divorce, on the recovery of alimony);
- group (claims directed at protecting a group of persons whose personal membership can be determined);
- appeals for the protection of an unspecified number of people (environmental claims, claims for consumer rights protection etc.).

Personal claims are the most common type of claims. However, at the present stage, group claims are being made. A group suit may allow the protection of a significant number of individuals whose rights and interests have been violated; reduce the burden on the courts through small claims; save material and time resources of process participants; at the same time to provide protection of public-legal and individual interests, etc.⁴

⁴ Bilousov Y V, 'Hrupovyi pozov: zarubizhnyi dosvid ta perspektyvy yoho vykorystannia v Ukraini' [Group suit: foreign experience and prospects of its use in Ukraine] (2012) 1 Universytetski naukovi zapysky 297 (in Ukrainian).

The purpose of claim proceedings is to protect subjective rights by recognizing rights, restoring the situation that existed before the violation of right, and termination of violating the right to award a duty in kind, to terminate or change the legal relationship, to recover damages in cases stipulated by law or contract – penalties (fines, penalties), as well as other means provided by law.

In case of hearing a case by a court in the procedure of legal proceeding, the participants of the case shall in writing set forth their claims, objections, arguments, explanations and arguments regarding the subject of the dispute exclusively in statements on the merits of the case, determined by the relevant procedural law. Thus, in the economic process, the merits of the application are: a statement of claim; reference to a statement of claim (reference); response to the reference; denial; explanation of a third party regarding a claim or a claim.

According to M. Kurilo, the claim form of the protection of law is a procedure for the consideration of disputes over a right that arose in connection with a possible violation or disputing of the rights and interests of legal entities in order to protect or restore them, which involves competition between the parties and equal procedural possibilities of justification of a legal position⁵.

Thus, the claim is expressed in the statement of claim and appealed to the court requesting the plaintiff to provide him with state assistance in the implementation of his violated or disputed rights, freedoms and interests. An appropriate remedy is only a well-founded claim, the requirements of which are supported by appropriate, admissible and sufficient evidence.

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⁵ Kurylo MP, 'Do pytannia pro sutnist pozovu ta pozovnoi formy zakhystu prav' [To the issue of the substance of the claim and the claim form of rights protection] (2016) 1 *Sudova apeliatyia* 83 (in Ukrainian).

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