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Claim and its modern modifications: definitions of the future

Nataliia Melnychenko

PhD in Law, Associate Professor Department of International, Civil and Commercial Law, Faculty of International Trade and Law, State University of Trade and Economics, , 19, Kyoto str., Kyiv, 02156, Ukraine, Melnychenko.n@knute.edu.ua, ORCID: 0000-0002-8482-9339

Abstract: Institutionalization of the right of action at the inter-national level is going on systematically with the formation and provision of the rights of access to the lawsuit for all persons. The purpose of the study is the analysis of algorithms of modern modifications of the lawsuit based on theoretical-methodological and practice-oriented tools. The methodological basis is formed with the help of general scientific methods of knowledge (dialectical, analysis, synthesis, generalization) and special methods (formal-legal, comparative law, interpretation of legal norms). For the proper protection of the rights, freedoms, and interests of individuals and legal entities, legislators have proposed a separate legal mechanism aimed at adapting the claim form of proceedings depending on the specifics of public-law disputes. In the period of rapid social transformations, there is a rapid increase in the number of those who intend to exercise their right to claim, which determines the modification of appropriate structures of justice, ensuring the balance of public interests of all participants of judicial protection. The result of the study are the author's definitions of the modification of the claim and ways of their implementation. The conducted study allowed to formulate of conclusions reflecting the main characteristics of claim modification, place, meaning, and their functional orientation and directions of improvement. Modern science offers different tools that can be used to modify a claim. Among them are administrative actions of the parties stipulated by law, specific procedural actions affecting the development of legal relations, the right to perform which is given to the parties as a result of a dispute, procedural possibility of an interested person to modify a claim by choosing the best ways.

Keywords: lawsuit, claim modification, claim security, claim forms of defense, ways to modify a claim.

Introduction

So far, the implementation of the right of action and its legislative boundaries is qualitatively new construction, modified independently of the will of lawmakers and under the influence of a number of objective factors (global, generally acceptable standards in the field of human and civil rights). Consequently, the determination of directions and qualitative characteristics of such modification and their reinforcement by legislative norms is reasonable. At the same time, the problem of modern claim

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modifications is one of the key and most important topics in the legal doctrine of a number of countries. Lawsuits as methods of judicial protection of subjective rights and legitimate interests belong to the fundamental category of legal systems. The problem of implementation of claim forms of protection constantly requires both theoretical and practical research and modification.

Research Problem

The study of the nature, genesis of legal regulation of action, as well as existing approaches to the modernization of this category of legal doctrine will provide a basis in defining this phenomenon as an element of constitutionalism; institutional and functional component in the system of checks and balances; component of the mechanism of social and legal control of public administration; an instrument of judicial protection of the rights and legitimate interests of man and citizen; ensuring the accessibility of justice; a functional element of rule-making monitoring, capable of contributing to the modification of legislation and law enforcement practices, interpreted activities of constitutional and judicial control bodies.

Research Focus

Modern modifications of the legal nature of the claim are extremely necessary to solve the problems that have arisen in both substantive and procedural law. Specifically, the regularity of rethinking the right to claim as a fundamental component of the right to protect the rights, freedoms, and interests of people determines our reference to the stated topic. Also, the introduction of theoretically grounded proposals on the modifications of the claim by determining the forms of claim modification; development of scientifically grounded proposals and recommendations on modern modifications of the claim for the purpose of the fullest realization of the right.

Research Aim and Research Questions

The purpose of this study is to develop an algorithm for the implementation of organizational and legal means of modern modifications of the lawsuit based on theoretical and methodological and practice-oriented tools included in the protection of the rights and legitimate interests of subjects of legal relations for subsequent improvement of practice in enhancing the effectiveness of rule-making and law enforcement activities.

Research Methodology

General Background

Methodological basis is the general scientific method of knowledge of legal concepts, complex structures, legal process, which are used in judicial practices to ensure a claim (dialectical methods of knowledge, analogy, analysis, synthesis, generalization, abstraction, formalization, system analysis);

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special method of research, developed and tested by legal doctrine. General and special method of scientific knowledge were used in the course of research. The main method of cognition served as a dialectical method, with the help of which the theoretical approaches in determining the legal nature and specificity of the claim were investigated.

The method of analysis and synthesis, deduction, and induction was used in the formulation of modern modifications of claim security, explanation of the levels of effectiveness of filing an opinion. The formal-legal method was used in researching the current legislation, which came in handy in comparing and analyzing the norms of securing the claim. Comparative legal methods were used in the study of practices of claim modifications of foreign countries.

The specified methodology and the specified methods of research allowed to analyze of the claim in a complex way, provided reliability of scientific position, the accuracy of scientific knowledge, and development of theoretical generalization.

The essence of comparative methods consists in comparing the legal regulation of the claim under the legislation of EU states. The significance of the conflict of laws method was determined by the fact that it allowed to analyze of conflicts in the settlement of the issue under study.

To work out the recommendations of modern modifications of the claim and in the process of formulating the conclusion and in the course of the study used the method of logical semantics, which provided an opportunity to clarify the meaningful content of the studied category.

Sample / Participants / Group

The scientific and theoretical basis was provided by scientific research of domestic and foreign scientists. The documentary and actological basis was a statistical study, current legislation, and empirical base of research - generalization of judicial practices, reference publications, court decisions.

Literature review

The right to sue as a democratic institution reflects the historical, cultural, political, and other specifics of the formation of the human rights mechanism. European practice shows that the lawsuit is the most important element of the mechanism for protecting the rights of individuals and legal entities, which provides judicial control over the legality of activities.

The completeness of the scientific analysis of modern aspects of the modification of the claim is based on the procedural studies of scholars of foreign states, such as Bell (2016), Szaszi (2020), Egilmez & Naylor-Tincknell (2017), Ertugrul-Akyol (2019), Kocaturk & Bozd. Studies on the principles of organization and lawsuit are contained in Van Meter (2020), Ngozwana (2018).

The modern stage of the development of claim doctrine is marked by the existence of several points of view on the understanding and modification of the claim:

1) suit is a procedural category through the statutory ability to go to court to enforce one's rights (Vazire & Holcombe, 2020);

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(2) suit, a right that combines the right to sue and the right to be sued (Webber & Ovedovitz, 2018; Porat, Chelsey, 2021; (Faruk et al., 2019);

(3) a lawsuit with two powers: to sue and to obtain relief, i.e., the right to satisfy the lawsuit (Wulandari, Suharno & Triyanto, 2018; Meter, Heather, 2020; Bell, 2016; Haven et al., 2020).

Melnyk Ya. (2018) notes a successful example of claim modification in her study, pointing out that in Great Britain any individual is entitled to apply for protection of his rights to any public institution with the competence to consider disputes. Among these authorities, the leading mechanisms in ensuring the protection of the rights of the private person against the arbitrariness of the executive authorities are the courts, which already have a long legal tradition and accordingly guarantee the protection of the rights of individuals through the implementation of procedural forms of consideration and resolve public law disputes in the event that the acts adopted by the competent executive authorities affect the legal interests of the private person.

Barritt & Sediti (2019), conducting research on the theoretical-legal basis of the modification of the claim, write that a number of special characteristics of the French model are also inherent in the Italian, Greek, the Netherlands, and other EU states.

Research Results

Currently, the implementation of the right of action and the limits of its modification is a qualitatively new construction, transformed under the influence of objective factors (global, universally accepted standards in the field of human and civil rights). Therefore, a clear definition of the direction and quality of such modifications and their simultaneous reinforcement by legislative norms is a justified necessity. The issue of rights of action is a central and, at the same time, the most important topic of procedural law in many countries (Courtney et al., 2020).

It becomes obvious that the existing legal norms in this aspect need not only improvement but also a thorough analysis. The method of such assessment and, accordingly, the basis for determining the directions of modification is the borrowing of foreign practices. The progressive influence of foreign legislative norms is also confirmed by the fact that domestic practitioners are increasingly turning to the experience of foreign (European) law, which is provoked by the emergence in recent years of several opportunities to study regulations, judicial practices, and doctrine. Interest in this issue is due to the large number of lawsuits filed by citizens and organizations in court, and often such appeals are aimed at unfair purpose. And also, as court practice shows, the right of action is not realized by bona fide participants of legal relations due to a number of gaps in legislation.

The issue of modification of the right of action, primarily in comparative-legal aspects in modern doctrine is little researched. Most works contain theoretical developments (Barritt & Sediti, 2019). A minor place among them is occupied by scientifically qualified and monographic works of the modern period. However, they deal only with particular aspects of the modification of the institution of the suit and, to a lesser extent, with the modification of the enforcement process.

Another important aspect for the modification of the claim is the analysis and settlement of collision issues of procedural law, especially through the prism of improvement of practices of application of certain legal norms. Thus, the issue of improving the right of action and their comparative analysis contains relevance both from a theoretical and from an applied point of view.

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Currently, we can distinguish three main lines of modification of the most significant judicial systems (Akpur, 2020; Rodríguez-Garavito, 2020). Two of these arose directly from the virus and are therefore new to some extent, while the third has been around for a long time. The first challenge is to maintain a sufficient level of claim service while traditional courts cannot operate at full capacity. The extent of this problem is unknown and varies from country to country. The optimistic view is that the worst we have gone through, and normal service is already being restored. The more realistic view is that the virus, one way or another, will hit us for many more months and possibly years. The most significant problem here is that we do not yet have alternative methods of filing and handling many lawsuits, for example, regarding felonies (Schultheis & Rooney, 2019, October 2).

The second area is directly related to the first. There is a large backlog of lawsuits that are piling up by the day, and the courts are not able to handle such an overload. (Wulandari, Suharno & Triyanto, 2018). The current justice systems of most countries, which were thought to be doing fine even during the crisis, have now lost about one-third of their normal productivity. Postponements and delays in the adjudication of claims are increasing at a directly proportional rate.

Even in the justice systems we consider the most advanced, dispute resolution in state courts usually takes too long, costs too much, and the process is not understood by everyone but lawyers (Ngozwana, 2018).

The second direction, relatively old, stems from a disturbing truth: even in the justice systems we consider to be the most perfect, litigation in state courts usually takes too long, costs too much, and the process is incomprehensible to everyone. In the most general terms, this direction of modifying "plaintiff access to justice" (Porat, Chelsey, 2021) can be distinguished.

"We can blame the widespread reduction in public legal funding, we can argue that the current judicial and litigation machinery is disproportionate in many cases, we can argue that lawyers are sometimes a problem because they can inflame disputes, we can lament that little with their availability to help us even understand the dilemma, we can condemn the system for being outdated and mysterious, and so on. But whichever avenue of lawsuit modification we prefer, the basic dilemma is that most people on our planet trivially cannot afford to sue, thereby asserting their legal rights in the state courts" (Humby, 2019). Globally, the statistics are staggering. According to the Organization for Economic Cooperation and Development, only 46% of people live under the protection of the law (Conference of Chief Justices and Conference of State Court Administrators, 2021).

There is much to be proud of in domestic and foreign law and legal institutions: our performance, dedication, impartiality, honesty, but we cannot let vanity overshadow our view of how alienated most people are from courts limited to the right to file.

Another way to modernize the lawsuit and transform our courts is through technological improvements. It should be understood, however, that it may take a decade to make changes that will improve the procedures for filing and adjudicating lawsuits. It should also be noted that the problem of access to justice by filing a lawsuit is quite common in many countries.

The role of technology here is not to support and improve our old ways of doing things, but to review and often replace our practices in the electronic filing and adjudication of claims.

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Discussion

Consideration of practices in the field of modernization of action as a tool to protect the rights, freedoms, interests allows to state that there is no unity in the understanding of the legal nature and purpose of this category. Although modern interpretations of the legal nature of claim modernization and judicial protection are extremely necessary in solving the problem of both substantive and procedural law. It is known that the claim and the judicial defense are on the verge of substantive and procedural law and reflect the dialectical relationship between them in different branch fields. These two meanings ... coexist together. Comprehension of the purpose of the legal nature of "lawsuit" will be impossible without understanding its place in the general system of protection of individual rights and will depend on the types of proceedings (economic, civil, administrative court proceedings, etc.), but unequivocally, it is extremely numerous. The state of justice indicators for 2020 vividly illustrate the totality of individuals' exercise of their right to sue (Paluck et al., 2021). The relevance of the modernization of the lawsuit is also increased by the facts that the new challenges of the present (for example, all public spheres are penetrated by digitalization; great financial costs; recession of economic processes) determine the extreme need to change the format of relations between all participants, and this, in its turn, generates the need for a substantial theoretical analysis of the legal nature of the right of action and the development of a modern paradigm of conceptual understanding of the essence of the right of action in the system of protection of rights of persons and already then its modification Another disadvantage of the abstract right-to-sue theory, according to many practitioners, is that the power of judicial coercion has been transferred to the field of public law and separated from the content and key ideas of subjective law. However, the concept of abstract law retains the notion of a claim in the sense of a forfeited coercive force (Courtney et al., 2020).

Moreover, the theory of claim law in the abstract sense does not fully answer the question of the relationship between private law and the public right of enforcement. In contrast, an essential characteristic of the right of action, the mentioned theory recognizes its detachment from substantive law, and therefore its lack of connections to it (Bell, 2016).

The strategic directions of justice development and modernization of judicial processes provide for the improvement of the protection of the rights and legitimate interests of individuals and legal entities if disputes with public authorities are held in accordance with the standards established by the European Commission on the efficiency of judicial proceedings (Humby, 2018). The research carried out by the Institute of securing claims will allow to formulate the directions of modernization of claims, reflecting the basic characteristic, place, role, and functional purpose of securing claims in legal systems; to outline the ways of modifications of the said institute.

The analysis of the legal nature of modern claim modernization by studying the practices of institutionalization of mechanisms by which the protection of a non-powerful subject in disputes with the public administration body occurs in the legal systems of EU states allows to determine the legal characteristics of this phenomenon, to highlight the stages of modification, to indicate the place and purpose of this phenomenon in the legal state (Jurva, 2020).

The study of the nature, the origin of the legal regulation of modernization of claims, available approaches to it in the legal doctrine gives grounds to define this phenomenon as an element of constitutionalism; institutional and functional element in the system of checks and balances, included in the mechanism of implementation of the powers; a component of the social and legal mechanism of

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control of public administration activities; an instrument of judicial protection of rights and legitimate interests of man and citizen in providing access to the justice system;

Another peculiarity of organizational actions that ensure the modification of claims is the procedural forms of local courts (first instance) and district administrative courts in considering and settling the case for the protection of the claim, based on the principle of court action with the limited adversarial nature of the parties (May & Albert, 2018).

This confirms the specificity of the content of the organizational means of action in litigation and the litigation model characterized by the structure of the judiciary with jurisdiction to hear and resolve state law disputes (CCJ/COSCA Post-Pandemic Planning Technology Working Group, 2021).

It is appropriate to classify all types of procedural claim modification measures based on the following criteria: the purpose and function of the modification measures; the procedural regime; the nature of the entity authorized to modify the claim; the nature of the subject against whom the measures are applied; the nature of the measures applied and the consequences; the means of implementing the claim modification measures; the subject of modification and the nature of the protected interest; the characteristics of the subjects against whom the measure is introduced (Eksi et al., 2020).

The variety of types of modern claim modification depends on the complexity and diversity of legal relations in which the participants of state-legal relations are included (Filiz, 2020). Thus, any type of claim modernization reflects, to a greater or lesser extent, the specifics of the legal relationship in question.

Despite the many types of modern claim modification measures, they are all characterized by urgency and temporality. The urgency reflects a focus on immediate implementation, preventing violations, and avoiding significantly negative consequences. Temporality is characterized by the delayed nature that prevents the arbitrary and unrestricted application of claim modification, which is prevented from becoming a means that will serve to abuse rights (Aczel et al., 2020).

General criteria for evaluating the effectiveness of claim modification include purpose, organizationally legal means, and outcome. Accordingly, specific evaluation indicators are accessibility of claims; the speed of litigation; quality of judicial acts; and enforcement.

Conclusions and Implications

Organizational means to ensure modern lawsuit modification is a set of organizational and legal actions carried out by the courts and reflected in the systematic and consistent implementation by the judiciary measures to introduce a more efficient operation of the court for quality justice through the adoption of judicial acts, which solve the problem of ensuring the modification of claims in cases under the jurisdiction of the court.

The legal remedies that ensure the modification of claims in the judicial process is a multifaceted theoretical and legal phenomenon, considered in the legal aspects as a set of legal tools and a formalized result of actors' actions, and in the social aspects as a reflection of an interest that contributes to certain results (Wulandari et al., 2018).

Modern claim modifications are universal legal remedies that are practiced in part by EU countries in disputes involving private and public law actors. As a remedy, claim modifications are twofold in nature: it is an effective tool to prevent non-compliance with legal requirements and to restore violated rights, and at the same time it can become a tool in the abuse of procedural law. In such a case, the

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purpose of the claim is distorted (Vazire & Holcombe, 2020). A key element of measures guaranteeing the protection of rights will be the limitation and burdening of subjects by the authorities. At the same time, the discriminatory nature of this element is counterbalanced by the compensatory element, which gives the parties concerned the tools to prevent the redundancy of the prohibitions imposed.

The legal significance of organizational-legal modifications of the claim, which characterizes the legal nature of these measures, consists in the logical elimination of gaps in the legal system, guarantees of completeness of the future final court decision on the case; ensuring real execution on the merits of the court decision.

Claims modification becomes a procedure for implementation of procedural institutions and legal means, which provide judicial protection of rights, freedoms, and legitimate interests of people, performing special tasks, bringing the system of organization, and functioning of state power into proper order.

Pluralism in the study of the effectiveness of lawsuit modification is associated with the discussions and ambiguity of interpretation of the existing diverse views on the application of organizational and legal measures. The departure from traditional approaches in the understanding, development of legal theories determines the modification of a variety of approaches to the problem of the parameters of a particular norm, in particular, problems with productivity, which causes the need to establish directions of improvement of organizational-legal means. The development of stable judicial practices on the adoption of claim modification measures is a matter of time because without a remedy of claim it is impossible to protect the rights of litigants effectively and quickly. There are positive trends and prospects for the development of claim modification in the national judicial process, allowing to unlock the potential of effective functioning of claim modification and adapt to the requirements of the European Union.

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