

PROBLEMS OF SUBJECTIVE PRECONDITIONS FOR THE IMPLEMENTATION OF THE RIGHT TO APPEAL TO COURT (INITIATE A CLAIM) IN CIVIL PROCEEDINGS

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Abstract. In this article, the author has analyzed the issues related to the legality of the exercise of the right to appeal to court by interested persons. As a result of the study of legal literature, case law of the European Court, and the best practices of countries with Anglo-Saxon and Romance and Germanic legal systems, it was found that modern legal regulations on civil procedure, as a rule, provide for mechanisms that exclude the possibility of appeal to court by non-interested persons, which are absent in the legal system of the Republic of Armenia. The author has found that the implementation of the Convention standards for the effective protection of subjective rights and the need for the legitimate exercise of the right to apply to court require the introduction of civil procedural mechanisms and legal remedies in the RA legal system that exclude the examination of claims submitted by non-interested persons, such as the provision in the RA Civil Procedure Code of legal regulations to refuse to accept a claim on this basis and terminate the proceedings, as well as the application of judicial sanctions and the establishment of a disproportionate burden for the distribution of judicial costs.

Keywords: *interested party; applying to court; refusing to accept a claim; sanction; legal remedy; abuse of rights; compensation for damage; disproportionate burden.*

Article 39 of the Constitution¹ of the Republic of Armenia, preserving the right to a fair trial, that is, everyone has the right to restore his/her violated rights (the emphasis is made by the author), as well as to have his/her case openly examined by an independent and impartial court in order to regulate the validity of the accusation brought against him/her, under conditions of equality, with all the

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¹ Constitution of the Republic of Armenia, adopted on 06.12.2015, RA State Bulletin 2015.12.21/Special Edition, Art. 1118.

requirements of justice, at the same time, has defined the main precondition or legal criterion for the subjectivity of the realization of the right - the circumstance of being the holder of the violated right, which was manifested in the Civil Procedure Code of the Republic of Armenia² (hereinafter referred to as CPC of the Republic of Armenia) by indirectly defining the requirement of an interest in the case for the holder of the right to apply to court. In particular, Article 3 of the RA Civil Procedure Code, entitled “The Right to Apply to Court”, specifies that every person has the right to apply to court in accordance with the procedure established by this Code for the protection of his/her rights and legitimate interests established by the Constitution, laws, and other legal acts or provided for by contract. Moreover, the definition of the right to apply to court in the previous Civil Procedure Code³ directly stated about the possibility of interested persons applying to court for the protection of their rights, but the condition of the existence of a subjective right violated by the current legal regulations is itself a manifestation of the requirement of interest, which is unequivocally manifested by the guarantee of the legal initiative of the holder of the substantive right to act in his/her protection.

The aforementioned approach to this issue is conditioned by the content of the right to judicial protection, which assumes the synchronized presence of two conditions: the possibility of applying to court in accordance with the procedure established by law and the presence of a violated right (interest), without which applying to court will become an end in itself and devoid of object. Therefore, the right to judicial protection includes the legal possibility of applying to court in accordance with the procedure established by law (procedural side) and the restoration of a violated or disputed subjective right (substantive side). It should be noted that in the legal literature, the analyses of the right to judicial protection mainly focus on its substantive elements without emphasizing the fact that it contains certain qualities or preconditions for the realization of the right, which is the criterion of interest in the case or the protection of the right.

The main research

The approaches formed as a result of the analysis of the substantive elements of the right to judicial protection in jurisprudence can be classified into three groups:

1. The right to judicial protection is a universal institution of substantive and procedural rights, as it includes not only the right to apply to the court for the protection of rights and legitimate interests but also the obligation of the court to

² Civil Procedure Code of the Republic of Armenia, adopted on February 9, 2018, RA State Bulletin 2018.03.05/16 (1374), Article 1, Part 2.1.

³ Lost power on 09.04.2018.

obtain satisfaction of the legitimate claims of a person in the presence of sufficient bases⁴.

2. The institution of the right to judicial protection has not only substantive but also procedural content⁵. According to the mentioned approach, the substantive content is the right to satisfaction of the presented claims, that is, the right to restore a violated or disputed subjective right or a legitimate interest protected by law. And the possibility of protecting and forcibly implementing a subjective right is the procedural-legal content of the right to judicial protection.

3. The constitutional right to judicial protection includes the right of every interested person to apply to the court without any obstacles for the protection of his/her rights, freedoms, and interests protected by law, as well as the rights to have his/her case examined by an independent and impartial court within a reasonable time and to have a judicial act executed⁶. The aforementioned position is also substantiated by the fact that with the assertion that the right to judicial protection in civil proceedings is identical in its content and legal nature to the right to judicial protection of the accused in civil proceedings. For this reason, the right to judicial protection in civil proceedings is not conditioned by the adoption of a favorable judicial act, likewise as the right to judicial protection of the accused is not conditioned by the acquittal of the accused.

Without pursuing the goal to analyze the pros and cons, the right and wrong sides of the declared approaches, it should definitely be highlighted that in all cases the qualitative characteristic of the exercise of the right to judicial protection is the criterion of subjective interest, which is conditioned by the existence of a dispute regarding a violated or contested subjective right or an interest protected by law.

The aforementioned is also verified by the case law of the European Court of Human Rights (hereinafter referred to as the ECHR). The positions of the ECHR on the European Convention on Human Rights (hereinafter referred to as the

⁴ S. Yu. Katz, Constitutional right of citizens to judicial protection (Civil procedural aspect), Problems of socialist legality at the present stage of communist construction. Brief theses of reports and scientific communications of the republican scientific conference on November 21-23, 1978, Kharkov, Publishing House of the Kharkov Law Institute, pp. 135-137

⁵ E. A. Adzinova, Ensuring the constitutional right to judicial protection in the economic sphere: Abstract of the dissertation for obtaining a scientific degree of candidate of legal sciences. M., 2006; V. V. Butnev, On the concept of the mechanism for protecting subjective rights, Subjective right: Problems of implementation and protection. Vladivostok, 1989, p. 9; O. V. Ivanov, On the relationship between substantive and civil procedural law, Jurisprudence, 1973, No. 1, p. 50.

⁶ V. M. Zhukov, (Viktor Martenianovich), Theoretical and Practical Problems of the Constitutional Right to Judicial Protection: Dissertation for the obtaining of a scientific degree of Doctor of Law in the form of a scientific report, which also functions as an abstract. Moscow State Law Academy, M., 1997, Bibliography, p. 49-51.

Convention)⁷ state that the first paragraph of Article 6 guarantees everyone the right to a judicial review of any case affecting their civil rights and freedoms. Therefore, the Convention preserves the “right to a court”, one of the aspects of which is the right to a civil dispute in court⁸.

Moreover, the concept of “Civil Rights and Obligations” cannot be interpreted exclusively by reference to the domestic legislation of the respondent state: it is an “autonomous” concept arising from the Convention. Article 6 § 1 of the Convention applies regardless of the status of the parties, the nature of the law (civil, commercial, administrative law, etc.) deciding how the “dispute” should be resolved, and the nature of the body (court, administrative body, etc.) having jurisdiction in that matter (Georgiadis v. Greece, § 34). (Bochan v. Ukraine (no. 2), 2015, § 43; Naït-Liman v. Switzerland, 2018, § 106; Georgiadis v. Greece, 1997, § 34).

Moreover, the applicability of Article 6 § 1 in civil cases depends primarily on the nature of the “dispute” (French: “controversy”) [contestation]) from the existence of the right. Second, the dispute must relate to a “right”, which, even if disputed, can be said to be recognized by domestic law, whether or not it is protected by the Convention. The dispute must be real, have a serious nature, and relate to the actual existence of the right and its scope or the manner in which it is exercised. Finally, the result of the proceedings must be directly decisive for the “civil” right in question, so that a slight connection or remote consequences are not sufficient to put into operation Article 6 § 1 (Károly Nagy v. Hungary, 2017, § 60; Regner v. the Czech Republic, 2017, § 99; Naït-Liman v. Switzerland, 2018, § 106; Denisov v. Ukraine, 2018, § 44).

*So, the analysis of the case law of the European Court also directly shows **that the right to apply to court or bring a claim is directly conditioned by the qualitative criterion of subjective interest, which must be real, aimed at the protection of rights and interests guaranteed by legal norms or arising from contracts.***

In the context of the aforementioned, the issue of the extent to which the legal regulations existing in the RA civil procedural legislation guarantee the real possibility of filing a lawsuit or applying to court exclusively by interested persons deserves special attention. In particular, does the CPC contain such mechanisms that would allow the court to exclude, by appropriate means of procedural

⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 04.11.1950, RA State Bulletin 2002.06.05/17 (192), Art. 367.

⁸ Paragraph 36 of the aforementioned judgment, case of Philis v. Greece, judgment, 27 August 1991, paragraph 59.

influence, the examination of civil cases with claims filed by non-interested sides or the unnecessary burdening of the proceedings? Although the criterion of subjective interest necessary for the exercise of the right to apply to court directly follows from the content of Article 3 of the CPC, nevertheless, no procedural toolkit is provided for excluding the unnecessary examination of cases with claims filed in violation of the specified condition or the unnecessary examination of cases with claims that have already been accepted for proceedings. Besides, the Code of Judicial Procedure, having determined the procedural status of the parties in the composition of the persons who are the participants of the case, formulated the definition of the plaintiff in Article 34, according to which the plaintiff is the person participating in the case who, in cases provided for by law, has filed a claim with the court of first instance for the purpose of protecting his or her rights or the rights of another person. During the examination of the case, the replacement of the plaintiff is not allowed, except in cases of legal succession. With the mentioned formulation, the legislator has emphasized the criterion of subjective interest in the exercise of the right to apply to the court, which proceeds from the existence of a dispute regarding the violated or disputed right or the exercise of the powers reserved by law. Excluding the procedural possibility of changing the plaintiff, the legislator has considered the criterion of interest for the plaintiff to the court to be dominant in determining the composition of the persons participating in the case, successfully organizing civil proceedings, and predetermining the set of tools provided to the court. Such an approach is conditioned by the primacy of the exercise of the right to judicial protection, which also implies a legislative guarantee of the possibility of applying to court with baseless claims, under which conditions the court must examine and reject the baseless claims filed against the defendant. However, by defining the criterion of subjective interest, the legislator has not established any procedural rules to ensure it. Such legal regulation becomes especially problematic in all cases when the claim is filed by a person who definitely does not have the right to it and who in no way meets the requirement of being interested in the case or the protection of the right. Moreover, the discussed provision is also not included in Article 303 of the Civil Procedure Code, which defines the bases for the application of expedited trial, which is at least puzzling in the context of the lack of jurisdiction by the court to reject obviously baseless claims in an expedited manner. It is a well-known truth in jurisprudence that the court has the jurisdiction to dismiss manifestly baseless claims through expedited proceedings, which primarily includes cases of claims filed by uninterested persons⁹ (inappropriate plaintiffs), while the provision under discussion in the

⁹ Simplification of the civil procedural form: problems of theory, legislation, judicial practice and

procedural law is not included among the bases for applying expedited proceedings.

We are of the opinion, that the examination of cases by expedited trial procedure corresponds to the positive obligation of the state to provide judicial protection of a person in accordance with the procedure established by law, and according to the logic of the legislator, non-interested persons do not have the right to apply to court at all, since Part 1 of Article 3 of the Civil Procedure Code considers the interest to be the holder of the right for the protection of which the person applies to the court as a mandatory condition for the right to apply to court. *Therefore, the idea formed in the legal literature, according to which the claims of persons who are obviously not interested in the case are subject to rejection by expedited trial procedure, cannot be considered acceptable and justified (italics are made by the author).*

It should be noted that the study of the best practices of other countries (foreign) also substantiates the need to ensure civil procedural mechanisms for the exercise of the right to apply to court exclusively by interested subjects. In particular, in countries with a common (Anglo-Saxon) legal system, procedural mechanisms that exclude the examination of claims submitted by non-interested persons include the opportunity of the court not examining the claims, leaving them without examination, as well as the possibility of applying procedural measures, including a court fine. Moreover, the filing of a claim by non-interested persons can be regarded an abuse of rights, in which case the party that committed the abuse is obliged not only to pay a court fine but also to compensate the defendant for legal costs and damages incurred. In other words, the court, by simply recording the fact of abuse of rights without making a final judicial act on the case, establishes substantive legal measures for the party¹⁰.

organization of judicial activity: collection of scientific articles based on the materials of the International scientific and practical conference (St. Petersburg, North-West branch of the Federal State Budgetary Educational Institution of Higher Education "Russian State University of Justice", June 2, 2023) / Comp. and editor L.V. Voytovich. - St. Petersburg: Asterion, 2023, 496 pages; N.A. Gromoshina, Differentiation and unification in civil proceedings: dissertation of a Doctor of Law. Moscow, 2010, 99-292 pages; D.A. Fursov, I.V. Kharlamova, Theory of justice in a brief three-volume presentation on civil cases: in 2 volumes. Moscow, 2009, Vol. 2: Civil proceedings as a form of administration of justice, 33-57 pages and so on.

¹⁰ <https://www.lexisnexis.co.uk/legal/guidance/strike-out-no-reasonable-grounds-for-bringing-or-defending-the-claim-cpr-3-42a> , <http://wbus.westlaw.co.uk/parts/3pd.shtml> , <http://disputeresolutionblog.practicallaw.com/strike-out-and-summary-judgment-saeed-and-another-v-ibrahim-and-others/> , <https://lawdit.co.uk/readingroom/strike-out-under-cpr-3-4> , <https://www.mills-reeve.com/publications/issuing-claim-forms-can-involve-abuse-of-process/> , <https://www.lexisnexis.co.uk/legal/guidance/strike-out-for-failure-to-comply-with-a-rule-practice-direction-or-order-cpr-3-42c> , <https://www.casemine.com/judgement/uk/5a938b3e60d03e5f6b82badf>

Ensuring civil procedural mechanisms for the exercise of the right to apply to court by persons with exclusively substantive legal interests or interests at least implies the provision of legal regulations in the RA Civil Procedure Code for refusing to accept claims submitted by non-interested persons and terminating the proceedings on already accepted claims, the absence of which in judicial practice has led to the judicial system being burdened with claims submitted with obvious abuse of rights.

Now, there are numerous cases in judicial practice when a claim has been submitted by a person whose right has not been violated or the fact that the latter is interested is not substantiated in the claim, but the court, lacking the tools to adequately respond to such situations, examines such claims in civil proceedings and spends unnecessary judicial resources on the examination of such cases¹¹.

It turns out that on the one hand, the legislator considers the right to apply to the court exclusively to entities with a material legal interest, but on the other hand, it does not provide the court with any civil procedural tools or opportunities to exclude the judicial examination of claims submitted by non-interested persons. Moreover, the precedents formed by the RA Court of Cassation, as well as the practice of resolving disputes on subordination of the RA Court of Cassation and Chamber Presidents in accordance with the procedure¹² provided for in Article 26 of the CPC, do not provide an opportunity to refuse to accept the claim or terminate the proceedings of the case on the basis provided for in Parts 1 of Articles 126 and 182 of the CPC. The case is not subject to examination in civil proceedings, since according to the positions expressed by the RA Supreme Judicial Court, the application of the above-mentioned bases is conditioned by the fact that the case is subject to examination in another procedure¹³. That is, the court refuses to accept the claim or terminates the proceedings if the claims or the case are reserved to the jurisdiction of another administrative, bankruptcy, constitutional, or any specialized court established on the basis of law. Such an approach simply excludes the spatial interpretation of Article 3 of the CPC, according to which, in civil proceedings, the court shall examine exclusively the claims submitted by

¹¹ Civil Case No. ED/28676/02/19, Civil Case No. ED/8708/02/21, etc.

¹² When deciding on the issue of accepting the redirected claim for proceedings, in case of disagreement with the jurisdiction, the judge shall make a decision to send the case to the Court of Cassation of the Republic of Armenia, under which conditions the President of the Court of Cassation and the Presidents of all chambers of the Court of Cassation shall decide on the jurisdiction of the case within ten days from the moment of receiving the case at the Court of Cassation, effectively resolving the dispute regarding jurisdiction.

¹³ Decision of the RA Court of Cassation on civil case No. ARAD/2024/02/14 of 10.10.2024, Decision of the RA Court of Cassation on administrative cases No. VD/7101/05/20 and civil cases No. 2/6443/02/24 of 10.09.2024 on Subordination

interested persons, regardless of whether they are subject to examination in any other proceedings. And the interest is already justified by the presence of a real dispute over the right, a violated or disputed right, or a subjectively disputed obligation.

Therefore, only the claims of persons who have a real, not a formal, right to apply to the court and who have a substantive legal interest in the outcome of the case are subject to examination in civil proceedings. Moreover, the legitimate exercise of the right to apply to the court must be ensured not only by procedural mechanisms that exclude the examination of cases with claims submitted by non-interested persons but also by means of legal action provided for by law, especially in cases where there is a need to secure or restore state resources spent on the examination of civil cases initiated on the basis of claims of such persons and the material and non-material means of other persons participating in the case. So, in accordance with Part 3 of Article 183 of the RA Civil Procedure Code, the issues of distribution of court costs among the participants in the proceedings and the elimination of means of securing the claim are also resolved by a judicial act on the termination of the proceedings. Therefore, when terminating proceedings in civil cases initiated on the basis of claims filed by non-interested persons, it will be quite effective to establish a disproportionate burden of court costs as a legal remedy equivalent to the abuse of the right to apply to court, which may, depending on the degree and multiplicity of the abuse, be more than the actual court costs incurred in the case. The fact of abuse of the right to apply to court by non-interested persons, on the basis of applying appropriate procedural remedies, can also be recorded when resolving the issue of accepting the claim for proceedings in all cases where the court has already made a decision to refuse to accept the claim in a case between the same persons on the same subject and on the same factual bases¹⁴.

Moreover, in foreign civil procedural practice, there are many cases when the legislator has established the possibility of courts imposing a judicial fine in case of the fact of abuse of rights being established by a final (resolving the case on the merits) judicial act or a decision to refuse to accept the claim. In particular, if a person has filed a baseless claim, appeal, or cassation complaint or has abused his rights through other procedural conduct and the fact of abuse of rights has been established by a final (resolving the case on the merits) judicial act or a decision to refuse to accept the claim, then the court may impose a judicial fine on the person

¹⁴ Article 126, Part 1, Clause 4 of the RA Civil Procedure Code effectively excludes the possibility of filing an identical claim in the presence of a decision to reject the acceptance of a claim already made between the same persons on the same subject and on the same factual bases. Therefore, in such a case, access to the court is possible exclusively as a result of appealing and overturning the decision to reject the acceptance of the claim for proceedings.

who abused the right. Moreover, in this case, the explanatory part of the relevant judicial act states the circumstances that served as the basis for imposing a judicial fine, and the conclusion is made in the concluding part about the application of a judicial fine¹⁵.

Conclusion

We are of the opinion that the implementation of the Convention standards for the effective protection of subjective rights and the need for the legitimate exercise of the right to apply to court require the introduction of civil procedural mechanisms and legal remedies in the RA legal system that exclude the examination of claims submitted by non-interested persons, such as the introduction of bases for refusing to accept a claim and terminating the proceedings on this basis in the RA Civil Procedure Code, as well as the application of judicial sanctions and the provision of legal regulations to establish a disproportionate burden for the distribution of judicial costs. The positive obligation of the state is to ensure the realization of the rights to judicial protection and fair trial of persons endowed with the right to apply to court, having a real interest or a substantive interest in the result of the case; therefore, the establishment of legal criteria that regulate and substantiate the interest directly follows from the essence of the right, which is first of all conditioned by the presence of a real dispute about the right, a violated or disputed subjective right or obligation. Therefore, it is necessary to form a procedural requirement and practice for the plaintiff to indicate the circumstances underlying the interest in the case within the framework of the factual bases of the claim. The solution to the mentioned problems will also create favorable conditions for excluding or minimizing abuses of the right to apply to court and unnecessary burdening of the courts.

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

¹⁵ For example, according to Article 34, paragraph 1, of the Albanian Civil Procedure Code, developed within the framework of the Council of Europe Legal Reform Support Programme, if the parties or their representatives in a conscious manner abuse the right to file a claim, complaint, application or demand, that is repetitive and is submitted in bad faith or when they deliberately try to delay the proceedings or when it is found that the parties or their representatives have dishonestly concealed or distorted the facts or important circumstances of the case, the court shall, at the end of the proceedings, decide to impose a judicial fine on those persons. An appeal against such a decision shall be allowed in the manner prescribed for final or interim judicial acts, depending on the type of decision that concludes the relevant proceedings.

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