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THEORETICAL AND PRACTICAL ISSUES OF DEFINING THE ESSENCE OF AN ADMINISTRATIVE CLAIM

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Introduction:

The theoretical and practical implications of the jurisprudential definition of administrative claims have primarily been investigated within the paradigm of predefining the appropriate claim type. Nevertheless, it is imperative to acknowledge that the administrative claim's definition carries significance not only in the context of addressing legal issues that arise during the claim acceptance stage but also in the comprehensive examination of the case concerning the proper exercise of a spectrum of judicial rights.

While the examination of the essence of claims has been a subject of study in the realm of Rome private law, the reinterpretation of the essence of administrative claims in the contemporary world serves as the initiation point for judicial protection of rights in public legal relations. This reinterpretation is a consequence of the introduction of new claim types within the procedural framework for rights protection, driven by the legal necessity to differentiate between proper claim types. Subsequently, this distinction becomes pertinent during the case examination stage within the context of executing judicial rights.

Hence, the seemingly only scholarly matter of defining the essence of a claim holds practical implications, as it foresees the potential change of the claim's grounds and subject. This is influenced by legislative constraints on such modifications. On one hand, it affects the overall fate of the case, as determining the elements constituting the essence of a claim unveils whether there is an ongoing case between the same parties, involving the same subject and grounds, in another court. Additionally, it elucidates whether a court has already issued a legally binding judgment. Depending on the stage of the case, this information can serve as the grounds for rejecting claim acceptance[1] or terminating case proceedings[2].

In jurisprudential analysis, the essence of a claim is principally elucidated and defined within the framework of examining its two constituents: the grounds and subject of the claim: this methodology is adopted by both legal doctrine and judicial practice. Nevertheless, the change of these two elements proves insufficient for a comprehensive definition of the essence of the claim. The application of this aproach gives rise to various practical issues, outlined as follows:

[1] ՀՀ վարչական դատավարության օրենսգիրք, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Հոդ.1186.1, ընդունված՝ 05.12.2013թ., 80-րդ հոդվածի 1-ին մասի 2-րդ և 3-րդ կետեր:
Aadministrative procedure act of the RA, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Art.1186.1, passed՝ 05.12.2013թ., the 2nd and the 3rd points of the 1st part of art. 80.

[2] ՀՀ վարչական դատավարության օրենսգիրք, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Հոդ.1186.1, ընդունված՝ 05.12.2013թ., 96-րդ հոդվածի 1-ին մասի 3-րդ կետ:
Aadministrative procedure act of the RA, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Art.1186.1, passed՝ 05.12.2013թ., the 3rd point of the 1st part of art. 96.

- how the grounds and subject of the claim can be changed so that the essence of the claim remains unchanged, if in domestic practice the essence of the claim itself constitutes the unity of these two elements?
- what procedural tool is used to change the type of claim, and does it always imply a change of the grounds and/or subject of the claim or not?
- What is the definition of the essence of the claim in the context of the definition of the elements that are part of the claim?

The research conducted within the framework of the scientific study titled “Theoretical and practical issues of defining the essence of an administrative claim” is geared towards addressing the previously outlined issues. This endeavor relies on an analytical approach that extends beyond domestic practices and legislation to encompass international best practices, as well as insights derived from practical and doctrinal sources. The comprehensive analysis undertaken in this study facilitates the elucidation of the claim's essence within the contextual parameters of identifying its constituent elements. Furthermore, the study aims to provide scientific and practical interpretations of these elements, thereby contributing to a refined understanding of the fundamental nature of the administrative claim.

Research:

The disclosure of the above-mentioned questions is, in a well-known sense, dependent on the definition of the concept and essential elements of an administrative claim.

"Partially, the violation of the material legal norm, and partly, the institutions directed against it have a negative effect on the content and existence of the law itself, and a number of changes arising in it are united under one common name: "Right of Claim"[1].

In jurisprudence, the claim, serving as an initial instrument for the exercise of the administrative entitlement to procedural safeguarding, is characterized by diverse definitions. In domestic jurisprudence, the claim is defined as "*a substantive legal plea initiated by the claimant against the respondent, stemming from contentious legal relations and grounded in facts of particular legal import. It is submitted to the court, which makes a final decision on granting or rejecting the claim.*"[2].

An administrative claim is articulated as a “*juridical plea presented by an individual to a public authority or its representative concerning the infringement of their rights or the potential jeopardy to their rights resulting from the illegitimate conduct, deed, or failure to act by the aforementioned entity. Additionally, as stipulated by law, the legal claim directed at a natural or legal person or one of the specified administrative bodies is subject to scrutiny and resolution by the court in accordance with the prevailing legal provisions.*”[3].

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[1] Савиньи Ф.К. фон. Система современного римского права: В 8 т. Т. III / Пер. с нем. Г. Жигулина; Под ред. О. Кутателадзе, В. Зубаря. - М.: Статут, 2013, стр. 355.
Saviny F.K. Fon. System of modern Roman law: In 8 vols. T. III / Transl. from germany. G. Zhigulina; Ed. O. Kutateladze, V. Zubarya. - M.: Statute, 2013, p. 355.

[2] Հայաստանի Հանրապետության քաղաքացիական դատավարության դասագիրք, Հայրապետ հրատարակչություն, 2022թ., խմբ.՝ Հովհաննիսյան Վ.Վ., Մեղրյան Ս.Գ., էջ 347:
Textbook of Civil Procedure of the Republic of Armenia, Hayrapet Publishing House, 2022, ed. V.V. Hovhannisyan, S.G. Meghryan, page 347.

[3] Հայաստանի Հանրապետության վարչական դատավարության դասագիրք, Հայրապետ հրատարակչություն, 2022թ., խմբ.՝ Հովհաննիսյան Վ.Վ., էջ 148:
Textbook of Administrative Procedure of the Republic of Armenia, Hayrapet Publishing House, 2022, ed. Hovhannisyan V.V., page 148.

In Roman law, a claim was characterized as a petition submitted to the court with the objective of safeguarding rights that had been infringed upon.[1].

As stated by G. L. Osokina: “administrative claim is a request to protect the established legal order, the rights and liberties of citizens, organizations and the statefrom administrative offenses arised from public legal relations”[2]:

U. A. Popova defines an administrative claim as a *"procedural request to the court to verify the legality of administrative acts, decisions, actions, which, according to the claimant, violate the latter's public legal interests or material rights"*[3].

Thus, the definition of the administrative action should be carried out in the context of revealing the purpose of the administrative action, which is *"not only the confirmation of the legality of the act, but also the protection of the subjective public rights of private individuals"*[4].

In light of the foregoing, we can infer that the general features of the definition of an administrative claim come down not only to the exercise of a procedural rights but also its manifestation as a response to a material legal violation. Consequently, the claim functions not solely as a consequence of a material legal violation but also as an instrument for the assertion of procedural rights. It is the amalgamation of these rights that allows the characterization of an administrative claim as a substantive legal plea against the respondent within the realm of public legal relations, denoted by a petition presented to the court.

When a breach of material rights occurs due to the exercise of executive-regulatory powers in public relations, and an individual, leveraging the right derived from the principle of disposition, opts to approach the court seeking confirmation of the violation through a judicial act, at this stage the procedural aspect is revealed within the confines of procedural rights, predetermining the procedural regime for asserting the defense of the violated rights.

If this method is not guaranteed by a stable and specific legal instrument, the right to claim cannot be considered complete.

Unless this method is safeguarded by a steadfast and clearly defined legal instruments, the right to fill an action cannot be deemed comprehensive.

Such an approach in jurisprudence appears to integrate both the legal interest to be safeguarded, considering both its material dimensions, and a plea to the court for the protection of that interest from a procedural standpoint[5].

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[1] Савиньи Ф.К. фон. Система современного римского права: В 8 т. Т. III / Пер. с нем. Г. Жигулина; Под ред. О. Кутателадзе, В. Зубаря. - М.: Статут, 2013, стр. 351.
Saviny F.K. Fon. System of modern Roman law: In 8 vols. T. III / Transl. from germany. G. Zhigulina; Ed. O. Kutateladze, V. Zubarya. - M.: Statute, 2013, page 351.

[2] Осокина Г.Л. Иск (Теория и практика). - М,. 2000. с. 46
Osokina G.L. Claim (Theory and Practice). - M,. 2000. p. 46.

[3] Попова Ю.Д. Административное судопроизводство в системе судов общей юрисдикции / Государство иправо. - 2002.- No5, с. 311.
Popova U.D. Administrative proceedings in the system of courts of general jurisdiction / State and law. - 2002.- No5, p. 311.

[4] Зеленцов А.Б., Понятие и виды административного иска, Кафедра административного и финансового права
Российский университет дружбы народов, Ул. Миклухо-Маклая. 6, 117198 Москва, Россия.
Zelentsov A.B., Concept and types of administrative claim, Department of Administrative and Financial Law, Nations' Friendship University of Russia, St. Miklouho-Maclay. 6, 117198 Moscow, Russia.

[5] Առավել մանրամասն Տե՛ս՝ Гурвич М.А. Учение об иске (состав, виды) // Избранные труды. Т. 1. Краснодар, 2006, р 271-273:

"*The distinct nature and unique attributes of administrative-legal relationships delineate the particularities of legal claims encapsulated in the essence of the administrative claim. These characteristics, in turn, define the procedural features of the proceedings.*"[1].

The disclosure of the essence of the claim actually determines the procedural mode by which the case should be examined in court, which predetermines the type of claim that should be presented to the court.

The elucidation of the essence of the claim, both in theory and in the precedent decisions of the court of cassation leads to the discovery of two elements: the grounds and the subject of the claim. These elements play a decisive role in determining the selection of the claim type. However, it is noteworthy that theoretical discussions also introduce a third element, often neglected in practice: the *"pleading point of the claim"*[2].

Legislative practice has evolved in a manner where the grounds and subject of the claim serve as determinants for various procedural outcomes, including case proceedings termination and the acceptance of claim within the context of examining cases with similar subject compositions. These elements are presently recognized and widely acknowledged as means of personalizing claims, often overlooking the imperative to identify the third element.

In both domestic literature and practice, the subject of the claim is explicated as the claimant's substantive legal plea against the respondent.

This practice is likewise reflected in several precedent decisions of the Court of Cassation.

The RA Court of Cassation, when addressing the grounds and subject of the claim, has articulated legal principles as follows: "*the subject of the claim pertains to the material legal plea presented by the plaintiff against the respondent, forming the basis for the court's decision. It is crucial to distinguish the object of the claim from its subject; the former denotes the entity toward which the claim is directed, while the latter constitutes the content of the claim. The factual grounds of the claim involve the circumstances to which substantive legal norms link the emergence, alteration, or termination of legal relations. Essentially, the factual grounds encompass legal facts and circumstances foundational to the claimant's plea. Alongside the factual grounds, the elements of the claim encompass legal grounds, representing the legal norms regulating the contested legal relationship. Despite the absence of a requirement in the Civil Procedure Code of the Republic of Armenia mandating the plaintiff to specify the legal norms underlying the claim, the plaintiff may choose to include such norms in the claim. This addition enables the claimant to elucidate the legal grounds for the relevant legal relations between the parties and, in conjunction with existing factual grounds, submit an appropriately substantiated claim. The RA Court of Cassation, in its decision dated July 22, 2016, in the administrative case No. VD1/0223/05/13*

See details in Gurvich M.A. The doctrine of a claim (composition, types) // Selected works. T. 1. Krasnodar, 2006, p 271-273.

[1] Зеленцов А.Б., Понятие и виды административного иска, Кафедра административного и финансового права Российский университет дружбы народов, Ул. Миклухо-Маклая. 6, 117198 Москва, Россия. Zelentsov A.B., Concept and types of administrative claim, Department of Administrative and Financial Law, Nations' Friendship University of Russia, St. Miklouho-Maclay. 6, 117198 Moscow, Russia.

[2] Гурвич М.А. Учение об иске (состав, виды) // Избранные труды. Т. 1. Краснодар, 2006, 52p 271-276.

Gurvich M.A. The doctrine of a claim (composition, types) // Selected works. T. 1. Krasnodar, 2006, 52p 271-276.

against A/D Arsen Yesayan from the Goris Territorial Tax Inspectorate of the State Revenue Committee under the RA Government, underscored that the aforementioned position concerning the subject and basis of the claim is applicable to claims filed under both civil procedure and administrative procedure rules."[1].

Consequently, the grounds of the claim comprises two sub-elements: the legal and the factual grounds of the claim. The legal and factual grounds of the claim are occasionally intertwined with the subject of the claim, and the legal basis, in a discernible sense, foreordains the nature of the substantive claim against the respondent.

The object of the claim is distinct from this; it represents a value that has material nature, concerning which a public legal relationship arises between the parties based on specific legal facts.

Does the change of the object, subject or grounds of the claim result in a change of the essence of the claim and if so, in which cases?

The legal significance of this issue is substantiated by Article 88 of the Code of Administrative Procedure of the Republic of Armenia (hereinafter referred to as the APC), which outlines that *"1. The claimant has the right to alter the grounds and/or subject of the claim during the preliminary court session or within seven days after receiving the decision of the administrative court to schedule a trial. Such changes to the grounds and/or subject of the claim are permissible within the confines of the administrative court's examination of the case.*

2. The administrative court may not allow such a change if it leads to a change in the essence of the claim. In that case, the administrative court makes a decision.".

In contradistinction to the prohibition on changing the ground and subject matter of the claim as prescribed by Article 88 of the APC, Part 5 of Article 170 of the Civil Procedure Code of the Republic of Armenia (hereinafter referred to as the CPC) specifies: *"The court shall dismiss the motion on seeking permission to change the subject matter or the grounds of the claim, where granting thereof shall change the right or the interest protected by law, for protection of which the claim has been initially filed (...)".*

The same article also defines what is considered to be a change in the subject and grounds of the claim, in contrast to the APC. Thus, within the framework of the civil procedure changing the subject matter of the claim shall mean substituting the substantive claim of the plaintiff brought against the respondent with another claim, changing the claim or supplementing it, including increasing or reducing the scope of the claims, which the Court of First Instance shall allow. Changing the grounds of the claim shall mean substituting by the plaintiff the facts, whereon the claim is initially based, with other facts, as well as clarifying the scope of the facts whereon the claim is based, by expanding or constricting it.

The deduced inference from the aforementioned article posits that civil proceedings limits the change of the essence of the claim with regard to the right or the interest protected by law, for protection of which the claim has been initially filed. Within the realm of theory, this phenomenon is characterized as the pleading component of the claim.

The study of the international best practice on changing the subject of a claim reveals that, whereas domestic legislation may construe the subject of the claim as the material legal claim directed against the respondent, German jurisprudence, for instance, interprets the subject of the claim in accordance with the material legal

[1] Թիվ Նախ/0126/05/23 վարչական գործով ՀՀ վճռաբեկ դատարանի որոշումը:
The decision of the RA Court of Cassation in the administrative case No. Նախ/0126/05/23.

request—equivalent to what is regarded as the object of the claim within domestic legislation[1].

Hence, when addressing a predetermined administrative penalty, the subject of the claim is the penalty itself. Conversely, if the legal action is aimed at an administrative act that has already been executed, the subject of the claim shifts to the acknowledgment of unlawful actions, with the objective of preventing potential transgressions in the future.

The delineated approach entails both advantages and gaps. By defining the subject of the contesting claim within the context of the administrative act itself rather than the substantive request, it becomes feasible to discern a legislative framework for petitioning a modification in the claim's subject. This involves indicating the necessity for such a modification within the court's jurisdiction, thereby revealing certain advantages on one hand, and, on the other hand, it underscores the need to alter the type of claim in instances where the nature of the substantive legal request undergoes changes, thereby revealing inherent limitations in this approach.

It provides an opportunity to apply the powers of the court within the framework of the principle of ex officio ascertainment of the factual circumstances of the case with a broader interpretation as well, because according to the mentioned approach, if the substantive legal requirement regarding the subject of the claim is changed, it still does not imply a deviation from the subject of the claim, therefore the Court refers to the administrative act to all possible grounds for being recognized as illegal.

This is further supported by the German legal practice, where it is underscored that the Administrative Court, lacking the authority to independently investigate the factual circumstances of a case, possesses restricted powers to scrutinize the actions of administrative bodies concerning their legality and validity.

Nevertheless, it becomes problematic in this instance as both the object and subject of the claim are identified as the same, leading to a significant reduction in the

[1] Пуделька Й., «Административная подсудность в Германии», судья г. Берлин (Германия), Глава Представительства GIZ в Республике Казахстан, Директор программы GIZ «Содействие правовой государственности в странах Центральной Азии», https://online.zakon.kz/Document/?doc_id=34319813&pos=5;-88#pos=5;88&sdoc_params=text%3D%25D0%25B8%25D0%25B7%25D0%25BC%25D0%25B5%25D0%25BD%25D0%25B5%25D0%25BD%25D0%25B8%25D0%25B5%2520%25D0%25BF%25D1%2580%25D0%25B5%25D0%25B4%25D0%25BC%25D0%25B5%25D1%2582%25D0%25B0%2520%25D0%25B0%25D0%25B4%25D0%25BC%25D0%25B8%25D0%25BD%25D0%25B8%25D1%2581%25D1%2582%25D1%2580%25D0%25B0%25D1%2582%25D0%25B8%25D0%25B2%25D0%25BD%25D0%25BE%25D0%25B3%25D0%25BE%2520%25D0%25B8%25D1%2581%25D0%25BA%25D0%25B0%26mode%3Dindoc%26topic_id%3D34319813%26spos%3D0%26tSynonym%3D0%26tShort%3D0%26tSuffix%3D1&sdoc_pos=0, 15.12.2023р..

Pudelka J., “Administrative jurisdiction in Germany”, judge of Berlin (Germany), Head of the GIZ Representative Office in the Republic of Kazakhstan, Director of the GIZ program “Promoting legal statehood in the countries of Central Asia”, https://online.zakon.kz/Document/?doc_id=34319813&pos=5;-88#pos=5;88&sdoc_params=text%3D%25D0%25B8%25D0%25B7%25D0%25BC%25D0%25B5%25D0%25BD%25D0%25B5%25D0%25BD%25D0%25B8%25D0%25B5%2520%25D0%25BF%25D1%2580%25D0%25B5%25D0%25B4%25D0%25BC%25D0%25B5%25D1%2582%25D0%25B0%2520%25D0%25B0%25D0%25B4%25D0%25BC%25D0%25B8%25D0%25BD%25D0%25B8%25D1%2581%25D1%2582%25D1%2580%25D0%25B0%25D1%2582%25D0%25B8%25D0%25B2%25D0%25BD%25D0%25BE%25D0%25B3%25D0%25BE%2520%25D0%25B8%25D1%2581%25D0%25BA%25D0%25B0%26mode%3Dindoc%26topic_id%3D34319813%26spos%3D0%26tSynonym%3D0%26tShort%3D0%26tSuffix%3D1&sdoc_pos=0, 15.12.2023.

realization of the individual's right derived from the principle of disposition. Consequently, domestic practice has evolved to the extent that, in a case initiated through a contesting claim, the administrative court must, irrespective of the legal grounds presented by the claimant, identify all potentially applicable legal norms whose violation could serve as the basis for rendering the administrative act invalid. The court then suggests to the plaintiff the inclusion of pertinent factual data to support these identified legal norms.

Yet, this change is contingent on the plaintiff's voluntary disclosure, particularly when it does not pertain to exposing the grounds for nullity. However, the domestic approach fails to definitively address the crucial question of under which circumstances the change of the subject and grounds of the claim results the change of the essence of the claim and when it does not.

Russian judicial practice has evolved along the following trajectory:

- The subject of the claim lies in the plaintiff's substantive legal request against the respondent, to commit certain actions, or refrain from such actions, recognize the presence, or absence of a relationship, change or terminate the relations[1].
- Changing the subject of the claim entails modifying the substantive legal demand made by the plaintiff against the respondent[2].
- An augmentation of the claim's monetary value should not be regarded as a change in the subject of the claim, as the substantive subject of the claim remains unchanged; only the amount is expanded within the confines of the existing claim[3].
- Typically, introducing new evidence and highlighting the circumstances established by this evidence by the plaintiff should not be construed as a change in the subject or grounds of the claim[4].
- The introduction of new evidence and the identification of the associated circumstances do not imply a change in the grounds of the claim[5].

Concerning the change of the basis of the claim, domestic practice has evolved in a manner that *"acknowledges the plaintiff's right to alter both the grounds and/or subject of the claim. Adhering to the principle of disposition, the legislator has granted the plaintiff the flexibility to make such changes. Simultaneously, the administrative*

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[1] Постановление Президиума ВАС РФ от 27.07.2004 N 2353/04 по делу N А60-14530/03-С4
Resolution of the Presidium of the Supreme Court of the Russian Federation dated July 27, 2004 N 2353/04 in case N A60-14530/03-C4

[2] Постановления Пленума Верховного Суда РФ от 23.12.2021 N 46, Верховного Суда РФ от 04.07.2016 N 305-АД16-8893 по делу N А40-134966/2015, Постановления Пленума Верховного Суда РФ от 23.12.2021 N 46, Верховного Суда РФ от 04.07.2016 N 305-АД16-8893 по делу N А40-134966/2015, Президиума ВАС РФ от 27.07.2004 N 2353/04 по делу N А60-14530/03-С4
Resolutions of the Plenum of the Supreme Court of the Russian Federation dated December 23, 2021 N 46, Supreme Court of the Russian Federation dated July 4, 2016 N 305-AD16-8893 in case N A40-134966/2015, Resolutions of the Plenum of the Supreme Court of the Russian Federation dated December 23, 2021 N 46, Supreme Court of the Russian Federation dated 07/04/2016 N 305-AD16-8893 in case N A40-134966/2015, Presidium of the Supreme Arbitration Court of the Russian Federation dated 07/27/2004 N 2353/04 in case N A60-14530/03-C4

[3] Постановления Пленума Верховного Суда РФ от 23.12.2021 N 46
Resolutions of the Plenum of the Supreme Court of the Russian Federation dated December 23, 2021 N 46

[4] See in the same dicision.

[5] Постановление Президиума ВАС РФ от 09.10.2012 N 5150/12 по делу N А10-4975/2010
Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated October 09, 2012 N 5150/12 in case N A10-4975/2010

court possesses the discretion to prevent such changes if they result the change of the essence of the claim. In other words, the plaintiff has the autonomy to define the grounds and subject of the claim. After filling and action into the court, the plaintiff retains the right to amend either or both elements of the claim, ensuring compliance with the stipulations of the Code and exercising the right to judicial protection. This voluntary motion by the plaintiff is deemed lawful, and the corresponding changes are permissible until the administrative court explicitly indicates the inadmissibility of such changes, particularly when it pertains to a change in the essence of the claim"[1].

In the context of changing the grounds of the claim, the Russian judicial practice puts forward the following two main directions:

- The introduction of new substantive legal interpretations and the inclusion of additional legal grounds do not signify a change in the grounds of the claim[2].
- Changing the grounds of the claim entails a shift in the factual grounds of the claim, unless the plaintiff, while altering the legal grounds, also amends the claim itself (the subject of the claim) and cites different factual circumstances (the grounds of the claim) [3].

Such approach is also rooted in the interpretation of the RA legislation, as highlighted by the Court of Cassation in its precedent interpretation. The court emphasized that *"in administrative proceedings, the plaintiff is not obligated to specify the legal grounds of the claim. The legislator has mandated the plaintiff to indicate only the request and the justifying arguments of it. Conversely, to ensure effective judicial protection of the rights of individuals and legal entities against unlawful administrative acts, actions, and inactions of administrative bodies, and to minimize the inherent advantages of entities endowed with public authority over them, the legislator has assigned an active role to the administrative court. Accordingly, the administrative court is required to autonomously identify the legal norms applicable to resolve the dispute and subsequently take appropriate measures to examine the case ex officio."*[4].

Indeed, an individual, exempt from the obligation to specify the legal grounds in the claim, should not encounter specific procedural constraints due to additions or changes to the legal grounds. However, an exception arises when the change of the legal grounds involves a reference to different factual circumstances and/or a change of the subject. In such specific cases, there is the possibility of a change in the grounds or subject of the claim.

The evolution of Russian judicial precedent is noteworthy in disallowing the concurrent alteration of both the grounds and subject of a legal claim. This prohibition is predicated on the rationale that such simultaneous modifications are inherently

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[1] Թիվ ՎԴ/8454/05/21 վարչական գործով ՀՀ վերաքննիչ վարչական դատարանի որոշումը:
Decision of the Administrative Court of appeal of the RA in administrative case No. ՎԴ/8454/05/21.

[2] Постановление Президиума ВАС РФ от 16.11.2010 N 8467/10 по делу N A19-12205/09-58.
Resolution of the Presidium of the Supreme Court of the Russian Federation dated November 16, 2010 N 8467/10 in case N A19-12205/09-58.

[3] Постановления Пленума Верховного Суда РФ от 23.12.2021 N 46.
Resolutions of the Plenum of the Supreme Court of the Russian Federation dated December 23, 2021 N 46.

[4] Թիվ ՎԴ/2976/05/15 վարչական գործով ՀՀ Վճռաբեկ դատարանի 30.11.2018 թվականի որոշումը:
Decision of the RA Court of Cassation dated 30.11.2018 in administrative case No. ՎԴ/2976/05/15.

bound to effectuate a consequential transformation in the essence of the claim. While the legislative framework of the Republic of Armenia does not explicitly proscribe this practice, it does impose a prohibition on the change of both the grounds and subject of a claim in response to a substantive modification in the essence of the claim. This juncture underscores the imperative elucidation of the claim's essence, particularly within the context of divulging the third element of the claim.

Thus, the third pleading element or content integral to a legal claim is occasionally distinct from the claim's subject, or not, depending on the nature of the claim type—whether it be cognitive or executive. This pleading element delineates the objective sought by the plaintiff in petitioning the court.

Within the ambit of Article 3 of the Code of Administrative Procedure of RA, this element is largely omitted, as the article predefines the underlying purpose of the plaintiff's exercise of the right to judicial protection. It anticipatorily identifies the actual objective driving the plaintiff's pursuit of legal recourse and the specific legal interest the plaintiff endeavors to safeguard through the initiation of legal proceedings.

However, the determination of the legal protection method is directly contingent on the fate of the claim, as the selection of an inappropriate remedy and the subsequent refusal to change such remedy within the the principle of disposition can serve as grounds for the rejection of the claim at the culmination of the case investigation.

Despite the fact that the Code of Administrative Procedure defines four types of claims: contesting, enforcement, commission and recognition, still, claims are divided into two large groups of types in doctrin: recognitive and executive.

Feeling an executive action into the court, the plaintiff's objective is to secure the acknowledgment of their contested right and enforce the respondent to commit certain actions, or refrain from such actions.

In the context of such claims, it is impossible to protect the rights without specific actions or committing certain behavior, therefore, the respondent is compelled to either unequivocally execute a defined action or refrain from such actions.

The recognitive claim presupposes the recognition of a specific legal relationship or the absence thereof, and it does not entail the execution of a particular action by the respondent or an immediate obligation to refrain from taking a specific action.

In executive claims, the grounds, object, and the pleading element of the claim are differing from each other, whereas in cognitive claims, they coincide.

In the realm of an administrative claim, this classification manifests as follows: contesting, enforcement and commission types of claim fall within the spectrum of executive claims. Conversely, in the instance of a recognition claim, the scenario is nuanced. Specifically, in cases involving the nullification of an administrative act, it encompasses elements akin to an executive action, while the other two categories of recognition claim[1] are inherently recognitive in nature.

Thus, if the subject of the claim with the claims of contesting, enforcement and commission types, as well as with the claim to recognize the nullity of the administrative act, in the first case, the subject of the claim to invalidate the administrative act, in the second case, it is the claim to oblige to adopt a favorable

[1] 1) The recognition of the existence or non-existence of any legal relationship. 2) The nullification of an intervening administrative act that has lost legal validity or an action or inaction that has been fulfilled or exhausted through execution or other means. This is particularly relevant when there is a potential risk of re-issuing a similar interfering administrative act or replicating the action in a comparable situation. The claimant may also pursue compensation for property damage or seek the restoration of the claimant's honor, dignity, or business reputation.

administrative act, in the third case, it is to oblige to perform a certain action or to refrain from performing such an action, and in the fourth case, the demand to recognize the administrative act as null, then the pleading element is the plaintiff's goal regarding the restoration of his violated rights in the context of Article 3 of the Civil Code.

Simultaneously, in case of the other two types of the recognition claim the subject of the administrative claim and the pleading element are delineated. In this context, the subject of the administrative claim, concerning the recognition of a legal relationship, is the pursuit of recognition for the said legal relationship, while the pleading element corresponds to the administrative procedural method of the recognition of legal relationship. In the other type of recognition claim as well the plaintiff's objective is to contest an action or inaction that has transpired, yet no longer yields consequences within the given timeframe. In such instances, the two elements of the claim are identifiable. It is noteworthy, however, that the plaintiff may subsequently initiate an executive action based on the recognition of that fact.

To sum up, it can be asserted that, in the context of three distinct types of administrative claims, the delineation of the essence of the claim from the subject and grounds is feasible, given the larger scope of the essence of the claim, encompassing the pleading element, and the inherent disparity among these elements, in the two types of the recognition claim, such a demarcation is nearly impracticable.

Simultaneously, it is essential to underscore that an administrative claim may exhibit a multifaceted object. For instance, an enforcement claim encompasses both the contest of an unfavorable administrative act, effectively involving two distinct administrative acts. On the contrary, the contesting claim is subsumed through the process of contesting the administrative act, resulting in the retention of a singular object of the claim. In such instances, the claim assimilates multiple objects, coalescing them into a main claim.

In practical scenarios, when a plaintiff submits a contesting claim contesting a new administrative act resulting from an appeal of a prior administrative act, courts often return the claim, emphasizing that the plaintiff should instead fill an action with a subject of contesting the main administrative act, which inherently encompasses the contest of the subsequent administrative act. In such instances, the essence of the claim remains unchanged, as the pleading element remains constant, and the subject of the claim remains consistent, representing the same substantive request. Although the object undergoes a change, this change does not imply a shift in the essence of the claim. It is noteworthy that a change in the object should correspondingly lead to a modification in the material legal request, such as the substitution of one administrative act with another, giving rise to a basis for annulment rather than invalidity.

When discussing enforcement and contesting claims, both types share the ultimate outcome of nullifying an unfavorable administrative act. However, while the annulment of the unfavorable administrative act is the primary objective for the plaintiff in a contesting lawsuit, in the context of a binding lawsuit, such annulment serves as a compulsory prerequisite for the issuance of a favorable administrative act.

The subsequent practical issue revolves around the interplay between the type of claim and alterations in the grounds and subject of the claim. The earlier analysis inherently implies that replacing a claim of the executive type with a claim of a recognitive nature results in a fundamental shift in the essence of the claim itself. Legal precedent has evolved to facilitate the change of claim type through the mechanism of modifying the grounds and subject of the claim. This implies that, firstly, the plaintiff can effectuate such a change only within the time limits prescribed for

modifying the basis and subject of the claim, and secondly, as directed by the court, throughout the hole trial. However, practical scenarios may arise where the shift in claim type precipitates a transformation in the essence of the claim, thereby depriving the individual of the opportunity to effect such a change.

In the first scenario, the imposition of time limits for the exercise of rights, when assessing the good faith of both the court and the plaintiff, does not inherently contradict the right to a fair trial. However, in the second case, where the modification of the type of claim, along with the change in the grounds and subject of the claim, is attempted through procedural mechanisms, it can potentially result in a direct limitation of an individual's right to judicial protection. This is because, in instances where a change in substance is not permitted by the court, and the court does not explicitly define the existence of the pleading element, it may preclude the person from seeking recourse to the court on the same grounds and subject, effectively limiting their access to judicial protection.

Given the aforementioned considerations, we assert that the change of the type of claim entails a distinct procedural process and should be evaluated independently, separate from the examination of changes in the grounds and subject of the claim.

Conclusion.

Summarizing the research conducted regarding the issues explored in this work, the following conclusions can be drawn:

1. The essence of the claim encompasses the coherence of all its elements, including the object, subject, grounds and the pleading element of the claim. A change in the essence of the claim is feasible when modifying the grounds or subject of the claim results in a corresponding change of the pleading element of the claim.

2. The change of the legal grounds of the claim does not necessarily result in a change in the grounds of the claim, unless such alteration in the legal grounds implies a reference to different factual circumstances and/or entails a change in the subject. Only in such instances can there be a consequential change in the grounds or subject of the claim.

3. An escalation in the amount of the object of the claim is not regarded as a change in the subject of the claim. This is because the subject of the claim, namely the material legal request itself, remains unchanged; only the quantum of the claim is augmented within the confines of that specific claim, signifying a quantitative alteration of the object.

4. The introduction of new evidence and the identification of circumstances substantiated by said evidence by the plaintiff should not be construed as a change in the subject or grounds of the claim.

5. While the Code of Administrative Procedure of the RA delineates four distinct types of claims— contesting, enforcement, commission and recognition, still, claims are divided into two large groups of types in legislation: recognitive and executive. In this classification, contesting, enforcement, commission claims fall within the executive category. Within the realm of recognition claim, the nullification of the administrative act is considered executive, while the remaining two types of recognition claims are characterized as recognitive in nature.

6. In executive claims, the subject and essence of the claim are distinguished by the pleading element. Conversely, in cognitive lawsuits, the subject of the claim and the pleading element coincide. Therefore, any alteration in the subject of the claim directly results in a change in the essence of the claim.

7. The change of an executive-type claim into a recognitive-type claim entails a shift in the essence of the claim, given that the pleading element of the claim nature undergoes a change. Consequently, the procedural mechanism for changing the type

of claim should not be confined within the procedural tool of changing the grounds and subject of the claim. It is suggested that the Code of Administrative Procedure of the RA be augmented with a new article, establishing a distinct procedure for changing the type of claim.

Literature

Legal and judicial acts

1. ՀՀ վարչական դատավարության օրենսգիրք (Administrative procedure code of the RA).

2. ՀՀ քաղաքացիական դատավարության օրենսգիրք (Civil procedure code of the RA).

3. Թիվ Նախ/0126/05/23 վարչական գործով ՀՀ վճռաբեկ դատարանի որոշումը (the decision of the RA Court of Cassation in the administrative case No. Նախ/0126/05/23).

4. Թիվ ՎԴ/2976/05/15 վարչական գործով ՀՀ Վճռաբեկ դատարանի 30.11.2018 թվականի որոշումը (decision of the RA Court of Cassation dated 30.11.2018 in administrative case No. ՎԴ/2976/05/15).

5. Թիվ ՎԴ/8454/05/21 վարչական գործով ՀՀ վերաքննիչ վարչական դատարանի որոշումը (decision of the Administrative Court of appeal of the RA in administrative case No. ՎԴ/8454/05/21).

6. Постановление Президиума ВАС РФ от 27.07.2004 N 2353/04 по делу N А60-14530/03-С4 (Resolution of the Presidium of the Supreme Court of the Russian Federation dated July 27, 2004 N 2353/04 in case N A60-14530/03-C4)

7. Постановления Пленума Верховного Суда РФ от 23.12.2021 N 46, Верховного Суда РФ от 04.07.2016 N 305-АД16-8893 по делу N А40-134966/2015 (resolutions of the Plenum of the Supreme Court of the Russian Federation dated December 23, 2021 N 46)

8. Постановление Президиума ВАС РФ от 09.10.2012 N 5150/12 по делу N А10-4975/2010 (resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated October 09, 2012 N 5150/12 in case N A10-4975/2010)

9. Постановление Президиума ВАС РФ от 16.11.2010 N 8467/10 по делу N А19-12205/09-58 (resolution of the Presidium of the Supreme Court of the Russian Federation dated November 16, 2010 N 8467/10 in case N A19-12205/09-58).

Doctrinal sources

10. Հայաստանի Հանրապետության վարչական դատավարության դասագիրք, Հայրապետ հրատարակչություն, 2022թ., Վ.Վ. Հովհաննիսյան (textbook of Administrative Procedure of the Republic of Armenia, Hayrapet Publishing House, 2022, ed. Hovhannisyan V.V.).

11. Հայաստանի Հանրապետության քաղաքացիական դատավարության դասագիրք, Հայրապետ հրատարակչություն, 2022թ., Վ.Վ. Հովհաննիսյան, Ս.Գ. Մեղրյան (textbook of Civil Procedure of the Republic of Armenia, Hayrapet Publishing House, 2022, ed. V.V. Hovhannisyan, S.G. Meghryan).

12. Гурвич М.А. Учение об иске (состав, виды) // Избранные труды. Т. 1. Краснодар, 2006 (Gurvich M.A. The doctrine of a claim (composition, types) // Selected works. T. 1. Krasnodar, 2006)

13. Зеленцов А.Б., Понятие и виды административного иска, Кафедра административного и финансового права (Zelentsov A.B., Concept and types of administrative claim, Department of Administrative and Financial Law, Nations' Friendship University of Russia, St. Miklouho-Maclay. 6, 117198 Moscow, Russia).

14. Осокина Г.Л. Иск (Теория и практика). - М,. 2000 (Osokina G.L. Claim (Theory and Practice). - M,. 2000).

15. Попова Ю.Д. Административное судопроизводство в системе судов общей юрисдикции / Государство иправо. - 2002.- No5 (Popova U.D. Administrative proceedings in the system of courts of general jurisdiction / State and law. - 2002.- No5)

16. Пуделька Й., «Административная подсудность в Германии», судья (Германия), Глава Представительства GIZ в Республике Казахстан, Директор программы GIZ «Содействие правовой государственности в странах Центральной Азии» (Pudelka J., “Administrative jurisdiction in Germany”, judge of Berlin (Germany), Head of the GIZ Representative Office in the Republic of Kazakhstan, Director of the GIZ program “Promoting legal statehood in the countries of Central Asia”).

17. Российский университет дружбы народов, Ул. Миклухо-Маклая. 6, 117198 Москва, Россия (Zelentsov A.B., Concept and types of administrative claim, Department of Administrative and Financial Law, Nations' Friendship University of Russia, St. Miklouho-Maclay. 6, 117198 Moscow, Russia).

18. Савиньи Ф.К. фон. Система современного римского права: В 8 т. Т. III / Пер. с нем. Г. Жигулина; Под ред. О. Кутателадзе, В. Зубаря. - М.: Статут, 2013 (Saviny F.K. Fon. System of modern Roman law: In 8 vols. T. III / Transl. from germany. G. Zhigulina; Ed. O. Kutateladze, V. Zubarya. - M.: Statute, 2013, p. 355).

ՎԱՐՉԱԿԱՆ ՀԱՅՑԻ ԷՈՒԹՅԱՆ ՍԱՀՄԱՆՄԱՆ ՏԵՍԱԳՈՐԾՆԱԿԱՆ ԽՆԴԻՐՆԵՐԸ

Գոհար Ավագյան
«Ի ԷԼ ԷԼ գործընկերություն» իրավաբանական ընկերության ավագ իրավաբան, փաստաբան, ԵՊՀ քաղաքացիական դատավարության ամբիոնի ասպիրանտ

Գործնականում հաճախ իրավական կարգավորումների բացերը վերացվում են տեղային լուծումներով՝ առանց անդրադարձ կատարելու այդ բացերի տեսական հիմքերին՝ արդյունքում հանգեցնելով այնպիսի կարգավորումների սահմանման, որոնք չնայած կարճաժամկետ մակարդակում լուծում են տալիս գործնական խնդիրներին, սակայն երկարաժամկետ մակարդակում հանգեցնում գործնական առավել մեծ բացերի:

«Վարչական հայցի էության սահմանման տեսագործնական խնդիրները» վերտառությամբ գիտական հոդվածը նվիրված է տեսագործնական նշանակության այնպիսի հարցադրումների ուսումնասիրությանը, որոնք հանգում են վարչական հայցի էության բացահայտմանը, այդ համատեքստում վարչական հայցի էության բոլոր՝ հայցի հիմքի, առարկայի, օբյեկտի և բովանդակության (խնդրարկային տարրի) տարրերի սահմանմանը և համեմատական վերլուծությանը, վարչական դատավարության օրենսգրքով սահմանված հայցատեսակներից յուրաքանչյուրի հիմքի, առարկայի և խնդրարկային տարրի վերհանմանը, դրանց բնույթի բացահայտմանը՝ դատավարագիտության մեջ հայտնի երկու՝ կատարողական և ճանաչողական հայցատեսակների համատեքստում:

Նշված հարցադրումների ուսումնասիրությունը իրականացվել է ոչ միայն գիտական, այլ նաև գործնական համատեքստում՝ վեր հանելով այդ հարցադրումների ուղղակի կապը և ազդեցությունը այնպիսի դատավարական գործիքակազմի վրա, ինչպիսիք առաջանում են հայցի հիմքի և առարկայի փոփոխության հետևանքով կամ կանխորոշում գործի քննության հնարավորությունը առհասարակ վարչական դատարանում:

Իրականացվել է միջազգային փորձի վերլուծություն՝ բացահայտելու համար հայցի առարկայի և հիմքի փոփոխության հնարավոր սահմանները, օրենսդրական արգելքները և դատավարական մեկնաբանությունները, որոնք տեղայնացվել են ներպետական պրակտիկայում՝ հնարավորություն տալով զարգացնել ինստիտուտի գիտագործնական դերը և նշանակությունը:

ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ ПРОБЛЕМЫ ОПРЕДЕЛЕНИЯ СУЩНОСТИ АДМИНИСТРАТИВНОГО ИСКА

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На практике пробелы в правовых нормах часто устраняются местными решениями без рассмотрения теоретической основы этих пробелов, что приводит к определению таких норм, которые, несмотря на обеспечение решения практических проблем в краткосрочной перспективе, приводят к еще большим практическим пробелам в долгосрочной перспективе.

Научная статья с подзаголовком “Теоретические и практические проблемы определения сущности административного иска” посвящена исследованию таких вопросов, имеющих практическое значение, которые приводят к раскрытию сущности административного иска, в этом контексте определяя все его элементы: основания, предмета и содержания (элемента ходатайства) иска, а также сравнительного анализа с выделением основания, предмета и элемента требования каждого из видов исков, определенных Административного процессуального кодекса, чтобы раскрыть их природу, в контексте двух известных в юридической науке видов исков: исполнительных и познавательных.

Исследование указанных вопросов осуществлялось не только в научном, но и практическом контексте, подчеркивая непосредственную связь и влияние этих вопросов на такие процессуальные средства, которые возникают в результате изменения основания и предмета судебного иска или возможность рассмотрения дела в целом в административном суде.

Проведен анализ международного опыта с целью выявления возможных пределов изменения предмета и основания иска, правовых запретов и судебных толкований, которые были локализованы в отечественной практике, что позволило раскрыть роль и значение исследования.

Key words: *claim; administrative claim; type of claim; change of the grounds of the claim, legal grounds of the claim; factual grounds of the claim; change in the subject of the claim; pleading element of the claim; essence of the claim.*
Բանալի բառեր – *հայց; վարչական հայց; հայցատեսակ; հայցի հիմքի փոփոխություն, հայցի իրավական հիմք; հայցի փաստական հիմք; հայցի առարկայի փոփոխություն; հայցի խնդրարկային տարր; հայցի էություն:*
Ключевые слова: *иск; административный иск; тип иска; изменение основания иска, правового основания иска; фактическое основание иска; изменение предмета иска; существенная часть иска; существо иска.*