

The Role and Importance of the Claim Institution in Civil Litigation

Abstract

This article addresses the crucial role played by the institution of claims within the context of civil litigation. A court is not empowered to commence proceedings of its own accord; it requires an interested party to present a claim or petition, through which the disputant delineates the matter at issue. This underscores the principle of dispositionality, which affords individuals the autonomy to decide whether to initiate a claim or application. In contemporary society, the mechanism of lawsuits serves as a vital means for safeguarding rights and lawful interests. The paper delves into pivotal aspects such as the nature and definition of a claim, its constituent elements, and its various types—confessional, attributive, and transformative claims. Additionally, it examines the right to lodge a claim, the principle of dispositionality, the burden of proof, notification of a claim, and the potential for settlement.

Keywords: Civil litigation, Claim institution

Introduction

In contemporary society, the mechanism of lawsuits plays an essential role in the protection of rights and legitimate interests. As stipulated in Article 31 of the Constitution of Georgia, "every person has the right to appeal to the court for the protection of his rights and freedoms." Over the years, civil procedural legislation has evolved and undergone transformations. The concept of a claim is elucidated in the "Digests," which states, "Nihil aliud est actio quam ius, quod sibi debetur, iudicio persequendi," meaning a claim is essentially the right of an individual to pursue and defend a cause in a court of law. The term 'action' (actio) was defined in classical Roman law as a means to secure a judgment through a trial that aligns with the

plaintiff's interests. The Constitution of Georgia affirms and ensures the adjudication of a person's violated or contested rights by a court, facilitated by the procedural law institution known as a lawsuit.

1. The Nature of the Lawsuit

Rights represent the scope of actions deemed permissible by law for an individual. This means that the holder of a particular right is entitled to exercise or benefit from this right, though they are not obliged to do so. The crux of civil rights lies in their complete availability to their owner.¹

Courts are established to safeguard the rights of individuals or entities that are either infringed upon or in dispute, as well as interests recognized by law. Courts do not have the authority to commence proceedings autonomously; thus, the initiation of legal action and the hearing of cases necessitate an individual's petition for rights protection. Anyone seeking to claim something from another, compel a particular action, prevent an action, ascertain the existence or non-existence of a right or legal relationship, or alter such a relationship, is required to approach the court with a lawsuit.²

Therefore, a lawsuit is a formal complaint or a claim filed in court concerning a disputed issue, serving as a means to protect rights and legitimate interests. In line with Article 31 of the Constitution of Georgia, every individual is entitled to approach the court to safeguard their rights and freedoms. Integral to the fundamental right to a fair trial is the assurance of case deliberation within a reasonable timeframe and the enforcement of the court's decision.

The purpose and objectives of civil litigation, or civil proceedings, align with those of justice at large. As stated in Article 2 of the Civil Procedure Code of Georgia, the court guarantees the protection of every person's rights. It obliges the court to initiate hearings based on an individual's application seeking to defend their rights or interests as recognized by law.³ The court is dedicated to safeguarding the rights and interests of citizens and organizations through all available means. Furthermore, the same article's latter section specifies that the court may only decline an application or case consideration based on the conditions and regulations

¹ Liluashvili, T., Liluashvili, G., Khrustali, I., & Strongishvili, Z. (2014). *Civil Procedure Law, Part One*. Tbilisi: Law. p. 80.

² Liluashvili, T. (2005). *Civil Procedural Law* (2nd ed.). Tbilisi. p. 270.

³ European Court of Human Rights (2005, September 27). Case No. 2507/03, "Amat" Ltd. and Mebegishvili v. Georgia, for violation of the right to have the case considered within a reasonable time.

stipulated within this code. The prompt and accurate resolution of cases inherently bolsters the rule of law.⁴

The primary objective of civil proceedings is to safeguard disputed or violated rights and legitimate interests that emerge from private legal relationships through equitable and prompt examination and adjudication. The term "correct" examination and resolution of cases denotes that court decisions must be rendered in strict adherence to civil procedural laws. Timely consideration and decision-making require observance of the deadlines prescribed by procedural legislation. "Proper" and timely judicial review entails striking a reasonable balance between thorough judicial examination and the ascertainment of truth within the proceedings, culminating in a definitive verdict and the resolution of the dispute between the parties.⁵

The civil process extends beyond merely issuing a court decision and the release of an execution order for its enforcement. The European Court of Justice has asserted that "the correct and timely implementation of a court's decision must be viewed as a fundamental component of the essence of 'justice'; without this, justice becomes illusory."⁶

A lawsuit serves as the legal mechanism to initiate claim proceedings, standing as the paramount procedural tool for the protection of rights that are either violated or contested. The method through which this right is safeguarded is referred to as the form of the claim.⁷

The lawsuit aims to protect rights and legitimate interests through legally prescribed means. For a legal dispute to be considered within the framework of a civil lawsuit, it is essential that the parties involved share a relationship of legal equality. Such relationships are typical of private law, thereby making disputes of a private-legal nature subject to the claim proceedings process.⁸

2. The Concept of a Claim

⁴ Kobakhidze, A. (2003). Civil Procedural Law. Tbilisi: Herald of Georgia. pp. 19-20.

⁵ Крусс И. А. 2013. Комментарий к гражданскому процессуальному кодексу Российской Федерации (постатейный), общей редактор Л.В. Тумановой, Проспект, Москва, 33. 14.

⁶ European Court of Human Rights (1997, March 19). Case No. 18357/91, *Hornsby v. Greece*, §40. Retrieved from [https://hudoc.echr.coe.int/eng#{"itemid":\["001-58020"\]}](https://hudoc.echr.coe.int/eng#{).

⁷ Kurdadze, Sh., & Khunashvili, N. (2012). Civil Procedural Law of Georgia. Tbilisi. p. 294.

⁸ Tskitishvili, M. (n.d.). Lawsuit in Civil Process. p. 21.

Regarded as a foundational institution within civil procedural law, the realization of rights prescribed by law would be unattainable without the presence of state enforcement mechanisms to ensure compliance with assumed obligations.⁹

Although the current civil procedural legislation of Georgia does not explicitly define the term "claim," Article 3 of the Civil Procedure Code clarifies that parties initiate court proceedings by submitting a claim or application in accordance with the procedures outlined in this code. In doing so, they identify the dispute's subject matter and independently decide to file a claim (or application). The proceedings may conclude with a settlement; the plaintiff has the option to withdraw the claim, while the defendant may admit to it. Consequently, the initiation of proceedings is not within the court's purview but relies entirely on the interested party's action of filing a lawsuit.

Despite varying interpretations of the claim, it is essential to recognize that a claim exists wherever there is an assertion of one. The act of submitting a claim forms the groundwork for commencing claim proceedings. The court initiates civil proceedings based on the application submitted by the concerned individual. The protection of civil rights is effected through the court's various means of rights protection.¹⁰

At the heart of a claim (or request) submitted to the court by an interested party is its articulation in the statement of claim.

In Georgian legal scholarship, there's a prevailing perspective that distinguishes between a claim from a procedural legal standpoint and a claim from a substantive legal standpoint. Contrasting this viewpoint, some argue that a claim is a unified concept with two aspects: procedural legal, i.e., the act of petitioning the court to protect a disputed right, and substantive legal, i.e., the claimant's substantive legal demand upon the defendant. Addressing the procedural norms, authors contend that these viewpoints are not mutually exclusive but rather, they comprehensively understand both the procedural legal and substantive legal facets of a claim. Moreover, what is considered a claim from a substantive legal perspective (the legal demand made upon the defendant) aligns precisely with one of the claim elements known as the subject of the claim. Hence, while a claim is a construct of procedural law, it inherently pertains to the right the plaintiff seeks to defend against the defendant. Through an

⁹ Rosenberg, L., Schwab, K., Gottwald, P., Zöller, R., & Vollkommer, G. (2002). *Zivilprozessordnung*, 49th edition.

¹⁰ Kurdadze, Sh., & Khunashvili, N. (2015). *Civil Procedural Law of Georgia*. Tbilisi: Meridian Publishing House. p. 344.

examination of civil procedural legislation, claims may be categorized into attributive or enforceable claims, transformative claims, and confessional or ascertainable claims.¹¹

A claim represents a substantive legal demand by one party against another, brought before the court for adjudication under the guidelines of procedural law, originating from a contested substantive legal relationship and grounded in legal facts.¹²

3. Elements of the Claim

The elements of a claim constitute its integral components, defining its legal character and distinguishing it from others. In legal scholarship, various views on the elements of a claim have been presented.

A prevailing consensus within Georgian legal theory posits that a claim comprises two primary elements: the subject of the claim and the basis of the claim. These elements enable the differentiation of one claim from another and provide a foundation for accurately elucidating the claim's components, ensuring they are distinct. The court is mandated to adjudicate the claim within the confines of its defined scope, as stipulated in the claim, and in consideration of the facts upon which the claimant has predicated his or her claim.¹³

Subject of the Claim - Article 178 of the Civil Procedure Code of Georgia stipulates that the claim must encompass both the claimant's demand and the subject of the dispute. The subject of the claim refers to the content or essence of the claim, rather than the physical object involved. For instance, if the plaintiff seeks the repayment of a loan from the defendant, the subject of the claim is not the physical money but the act of repaying the debt.¹⁴

Basis of the Claim - This second element of the claim is intertwined with the subject. The basis of the claim refers to the facts that support the claimant's pursuit of rights and legitimate interests protection.¹⁵

As outlined in the Civil Procedure Code of Georgia, specifically the first part of Article 178 (H), the claim must detail the legal grounds upon which the claimant bases his/her claims. Furthermore, Article 102 of the same code mandates that each party must substantiate the

¹¹ Khrustali, V., Liluashvili, T. (2007). Civil Procedural Law, Commentary. p. 271.

¹² Kurdadze, Sh., & Khunashvili, N. (2015). Civil Procedural Law of Georgia. Tbilisi: Meridian Publishing p. 346.

¹³ Liluashvili, T. (2005). Civil Procedural Law (2nd ed.). Tbilisi. pp. 272-273.

¹⁴ Ibid, p. 237.

¹⁵ Die dogmatische Bedeutung des richterlichen Schuldnerschutzes in der Zwangsvollstreckung. Dissertation. Heidelberg. pp. 17-133.

circumstances underpinning his/her claims and counterclaims with evidence. Thus, the claimant's plea must be backed by legal facts, which are those facts that the law associates with a particular outcome desired by the claimant.¹⁶

4. The Right to Claim

The right to claim encompasses two fundamentally intertwined authorities: the procedural (the right to initiate a lawsuit or petition the court) and the substantive legal aspect (the right to have the claim satisfied).

The prerogative to initiate legal action stands as a distinct right of the claimant. This signifies that the capacity to lodge a claim is not contingent upon the claimant's entitlement to have the claim satisfied. Such determination can only be made through the adjudication of the case. The enforcement of rights, whether violated or contested, is facilitated via the exercise of the right to claim. This right underpins the potential for legal recourse in the form of a lawsuit.¹⁷

It is important to recognize that the ability to file a claim is tied to the prerequisites for exercising this right. Moreover, the actual utilization of the claim right is subject to the discretion of the interested party.¹⁸

5. Types of Claims

As delineated by the Civil Cases Chamber of the Supreme Court of Georgia, there are primarily three categories of lawsuits: attributive lawsuits, transformative lawsuits, and confession lawsuits.

Confession Claim: The concept of a confession claim is outlined in Article 180 of the Civil Procedure Code of Georgia, which stipulates that a confession claim can be initiated to affirm the existence or non-existence of rights and legal relationships, to acknowledge the authenticity of documents, or to ascertain document forgery, provided the plaintiff has a legal interest in doing so.

¹⁶ Liluashvili, T. (1992). Commentary on Civil Procedure Law. Tbilisi: Publishing House "Science". p. 275.

¹⁷ Kurdadze, Sh., & Khunashvili, N. (2012). Civil Procedural Law of Georgia. Tbilisi. p. 360.

¹⁸ доровалский А., бова. СА. Основны проблемы исковой фмроы ашзиты права. М.,1979, 33. 94.

Attributive Claim: Attributive claims are prevalent in court practice and possess a more complex subject matter compared to confession claims. In an attributive claim, the plaintiff seeks not only the acknowledgment of a disputed material right's existence but also demands that the defendant either perform a specific action or abstain from such an action.¹⁹

The aim of confession actions is to resolve disputes over rights, rather than to confer a subjective right upon the plaintiff.²⁰

Transformative Claims: Transformative claims refer to those that seek to alter or conclude legal relations via a court ruling, allowing the plaintiff to petition for legal and substantial changes. The categorization of transformative claims as an independent type of lawsuit is a subject of debate among proceduralists and legal scholars.

Some legal theorists argue against distinguishing transformative claims as a separate form of lawsuit, suggesting that they essentially resemble confession claims.²¹ However, a faction within the scholarly community acknowledges the distinct nature of transformative claims while disputing the notion that a court's decision lacks the status of a legal fact. According to legal statutes, there exist transformative lawsuits designed specifically to modify or dissolve existing legal relationships.²²

6. Principle of Dispositionality, Burden of Proof, Notice of Claim, Settlement

In the legal systems of developed countries, the principle of good faith underpins all aspects of civil engagement. Similarly, Georgian civil law upholds the principle of good faith as a core value.²³

The principle of dispositionality in civil procedural law is evident not only at the initiation of proceedings but also leading up to their conclusion.²⁴ When a plaintiff withdraws their claim, it signifies not only a renunciation of their substantive legal demands against the defendant but also a cessation of using procedural legal means for asserting those claims. Thus, the

¹⁹ Practical Recommendations on Civil Procedural Law for Judges of Common Courts. (2010). Supreme Court Edition. p. 33.

²⁰ Kurdadze, Sh. (2016). Discussion of Civil Cases in the Court of First Instance. Tbilisi. p. 479.

²¹ Liluashvili, T. (1992). Commentary on Civil Procedure Law. Tbilisi: Publishing House "Science". p. 236.

²² Добровольский А.А; Иваново С. А.1979.Основные проблемы исковой формы защиты права.Москва.Издю-во Моск ун-та, 83. 94.

²³ Zoidze, B. (2001). Commentary on the Civil Code of Georgia. Tbilisi: Law. p. 269.

²⁴ Weber, K. (2000). Creifelds Rechtswörterbuch (16th ed.). Munich: C.H. Beck. p. 65.

withdrawal of a claim is an act of relinquishing substantive and legal rights, yielding a procedural legal outcome.²⁵

The notice of claim provides an opportunity for parties involved in the proceedings to resolve their dispute with the opposing party without judicial intervention, by reaching a mutual agreement regarding the claim. In such instances, rights and obligations are established solely based on the will and rights of the parties involved, allowing for the possibility of settlement outside the courtroom.²⁶

In a settlement, parties often have the latitude to consider factors that extend beyond the procedural confines, particularly the economic relations between the parties. This could involve concessions on demands, agreements on installment payments, and interest arrangements. An important aspect of settlements is the potential reduction in costs, achievable by circumventing the collection of evidence, which often incurs significant expenses.²⁷

The provision of a claim involves the court's application of a legally stipulated measure (mechanism), manifested in carrying out a specific procedural action aimed at ensuring the enforcement of a subsequent decision. ²⁸The interests of the plaintiff are secured and safeguarded through the provision of the claim, while the protection of the defendant's interests is facilitated by the compensation for damages.²⁹

Conclusion

When an individual, motivated by a legal interest to safeguard a right that has been violated or disputed, seeks redress through a court decision, they approach the court with a claim. Every person, irrespective of gender, nationality, citizenship, or race, possesses the right to petition the court under the provisions of departmental subordination and jurisdiction as established by Georgian legislation. Furthermore, in alignment with the principle of dispositionality articulated in Article 3 of the Civil Procedure Code, they are entitled to initiate legal proceedings by submitting a claim or application, thus defining the scope of their case.

²⁵ Liluashvili, T., Liluashvili, G., Khrustali, I., & Strongishvili, Z. (2014). Civil Procedure Law, Part One. Tbilisi: Law. p. 85.

²⁶ Supreme Court of Georgia. (2012, March 1). Decision on case No. as-1838-1811-2011.

²⁷ Civil Procedure Code of Georgia, Article 37.

²⁸ Kobakhidze, A. (2003). Civil Procedural Law. Tbilisi: Herald of Georgia. p. 300.

²⁹ Liluashvili, T. (2005). Civil Procedural Law (2nd ed.). Tbilisi. p. 220.

Hence, from the analysis presented, it is evident that a claim serves as an efficacious and critically important tool for the protection of parties' rights.

