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Counterclaim - Procedural Mechanism for Defense Against a Suit

Abstract

In line with Article 31 of the Constitution of Georgia, every individual is entitled to seek judicial intervention for the safeguarding of their rights and freedoms, to address violations of civil rights, or to forestall potential infringements. Georgia is in the process of aligning its laws with European standards, an endeavor that reveals certain legal gaps necessitating timely rectification. It is essential for an individual's right to legal recourse to be fully upheld by the courts, not only in the act of petitioning the court but also through the issuance of equitable and well-founded judgments.

Keywords: counterclaim, suit.

Introduction

According to Article 31 of the Constitution of Georgia, every individual possesses the right to contest for the protection of their rights in court. This provision ensures the constitutional guarantee of a just and prompt review of cases.¹ As stipulated by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 14 of the International Covenant on Civil and Political Rights, every person stands equal before the law and judicial bodies.² During the judicial process of right protection, it is imperative for the court to issue decisions that are both equitable and substantiated. In developed nations, the primacy of rights is a fundamental tenet, and Georgia aligns with this standard through the

¹ Constitution of Georgia article 31.

² Tskitishvili, M., Lawsuit in Civil Process p 1.

objectives set forth in its Civil Procedure Code, which is dedicated to the protection of these rights.³

The Civil Procedure Code of Georgia establishes a framework that accommodates the filing of claims, including the initiation of claims, admission of counterclaims, consolidation of multiple claims, and the dismissal of claims, among other provisions. It underscores the importance of maintaining standards that uphold the principles of a fair trial and equality before the law.

A notable aspect of procedural defense within this framework is the option to file a counterclaim. This allows a defendant, from the moment they receive the claim until the end of the preliminary preparations for the oral hearing, to present a counterclaim against the plaintiff. This counterclaim is then reviewed concurrently with the original claim.⁴ It is a critical mechanism that balances the plaintiff's right to seek redress for grievances with the defendant's right to contest the claims made against them, challenging the evidence or facts presented by the plaintiff.

1. Counterclaim

The opportunity to file a counterclaim is subject to specific timing constraints. A defendant is permitted to launch a counterclaim following the receipt of the original claim. This right extends until the conclusion of the preliminary arrangements for the oral hearing. However, should there exist a justified reason, the defendant may be allowed to submit the counterclaim even before the hearing phase commences.

Should the defendant neglect to file the counterclaim within the legally designated timeframe, and if the court does not recognize any valid justification for this delay, the defendant then retains the option to pursue an independent claim. This alternative route enables the defendant to still seek judicial review, albeit through a separate process.

Furthermore, if the defendant believes that a joint review of both the original claim and the counterclaim would expedite the legal proceedings, or if they have any other reason to prefer their simultaneous consideration, they can request the court to merge these two cases into one.⁵ This request aims to streamline the process, potentially leading to a more efficient

³ Kopaleishvili, M., Skhirtladze, N., Kardava, E., & Turava, P. (2008). Manual of Administrative Procedural Law, pp. 36-37.

⁴ Civil Procedure Code of Georgia article 188, part 1.

⁵ Arkhoshashvili, L. Legal Remedies for Defense Against Lawsuits, pp. 166-167.

resolution of the dispute, contingent upon the court's approval and the specific circumstances of the case.

A counterclaim functions as a standard claim, involving both parties but reversing their roles: the original plaintiff becomes the defendant, and the original defendant assumes the role of the plaintiff. For a counterclaim to be considered valid by the court, it must satisfy the criteria outlined in the Civil Procedure Code of Georgia, applicable to any ordinary claim.

Pursuant to Article 190 of the Civil Procedure Code of Georgia, if a counterclaim is lodged and accepted after the initial case's preliminary preparations are concluded, the court, either upon the plaintiff's request or by its own discretion, may decide to defer the hearing to a later date. This provision ensures that all parties have adequate time to prepare for the complexities that a counterclaim introduces into the proceedings.

In the context of this legislation, the reference to a postponement request by the "plaintiff" specifically pertains to the original plaintiff, who, in the scenario of a counterclaim, is required to formally respond within a legally specified timeframe. This includes reviewing and objecting to the counterclaim if necessary and familiarizing themselves with the new case materials introduced by the counterclaim. This procedural safeguard is designed to maintain fairness and ensure that both parties are fully informed and prepared to participate in the legal process.⁶

Article 189 of the Civil Procedure Code of Georgia delineates the conditions under which a counterclaim is accepted by the court. The provisions can be summarized as follows: A counterclaim must be filed in accordance with the standard procedures established for submitting a claim. A judge is mandated to accept a counterclaim if it meets any of the following criteria: a) The counterclaim is intended to be incorporated with the original claim. b) Fulfilling the counterclaim would negate the fulfillment of the original claim, either entirely or partially. c) There exists a substantive connection between the counterclaim and the original claim, and adjudicating them concurrently would lead to a swifter and more accurate resolution of the dispute. When both the original claim and the counterclaim are considered together, the court is obliged to issue a unified verdict, barring exceptions specified in Article 245(2) of the Civil Procedure Code. This clause is perceived as a procedural safeguard against litigation, aiming to expedite the legal process. The essence of this provision is to facilitate the delivery of prompt justice, emphasizing the importance of a swift and fair dispute resolution.⁷

⁶ Arkhoshashvili, L. Legal Remedies for Defense Against Lawsuits, pp. 167-169.

⁷ Civil Procedure Code of Georgia article 189.

The procedural legislation of Georgia upholds the principle of dispositionality, as articulated in Article 3 of the Code, which permits the plaintiff to withdraw their claim at any stage of the case's consideration. This provision underscores the principle that the parties' wills are decisive in the progression and resolution of legal proceedings. It reflects the legal system's respect for the autonomy of the parties involved in a civil case, granting them the latitude to resolve disputes as they see fit.⁸

In this framework, the defendant, selected by the plaintiff for litigation, has the option to mount a defense through either a counterclaim or a counter-defense. A counterclaim is typically filed in response to the original claim, suggesting a direct link to the allegations or demands set forth by the plaintiff. However, should the circumstances warrant, the counterclaim can also stand as an independent claim, separate from the original dispute. This flexibility in procedural strategy allows the defendant to not only address the immediate concerns raised by the plaintiff's claim but also to introduce related or entirely separate issues for judicial consideration, thereby expanding the scope of the legal proceedings to ensure a comprehensive adjudication of all relevant matters.⁹

There is a significant difference between a defense to a claim and a counterclaim. The defendant typically seeks to refute the factual circumstances or legal justification presented in the lawsuit. In contrast, a counterclaim implies acknowledgment of the original claim. In practice, there are instances when the court, without justification, refuses to satisfy a counterclaim. The Court of Cassation, in several of its judgments, has emphasized that the court must consider the merits of the counterclaim.¹⁰

A counterclaim cannot be initiated in court before the main claim is filed. The authority to file a counterclaim arises after a copy of the claim has been delivered to the defendant. The counterclaim represents a defensive measure for the defendant and must adhere to all criteria outlined in the Civil Procedure Code of Georgia. Upon filing a counterclaim, the individual is required to pay the state duty. However, the counterclaimant is entitled to request a waiver from this duty under conditions specified by the law. Additionally, the counterclaimant has the right to petition the court for a deferral of this duty. It is important to note that the opportunity to file a counterclaim is not always available at all court levels.¹¹ What constitutes an honorable reason is delineated in Article 215 (3) of the Civil Procedure Code of Georgia,

⁸ The Decision of the Supreme Court of Georgia No. 1410-1425-2011.

⁹ Liluashvili, T., & Khrustali, V. (2004). Commentary on the Civil Procedure Code of Georgia, p. 326.

¹⁰ Ibid, pp. 324-325.

¹¹ Arkhoshashvili, Ll. Prosecutorial Remedies for Defense Against Lawsuits, pp. 166-169.

which specifies: "The inability of a party to submit a petition or application due to illness, the death of a close relative, or other special objective circumstances beyond their control, rendering them unable to participate, shall be considered an honorable reason. The illness must be verified by a document signed by the head of the medical institution, explicitly stating the individual's incapacity to appear in court."¹² Should the responding party file the counterclaim within the prescribed timeframe, the court is tasked with verifying whether the conditions set forth in Article 189 of the Civil Procedure Code of Georgia are fulfilled.

In practice, it is not uncommon for unscrupulous defendants to file counterclaims that have no relevance to the original claim, as a strategy to delay proceedings. These defendants often challenge the court's decision that the counterclaim lacks connection with the original claim, further prolonging the process and impeding the legitimate plaintiff's access to justice. Consequently, I propose that when a counterclaim is unrelated to the original claim, the involved party should be precluded from appealing the court's decision. This approach would not infringe upon the respondent's rights, given that the respondent retains the option to pursue an independent claim through the court. The legislation mandates the establishment of a specific protocol for evaluating counterclaims, which are to be filed in the same court as the original claim, underscoring the inherent linkage between the counterclaim and the original action.¹³

One of the objectives behind filing a counterclaim is to consolidate the discussion and resolution of interconnected claims. Throughout the litigation process, situations may arise where the circumstances are clear concerning one party but remain unresolved for the other. In such instances, the court has the discretion, upon a party's request, to issue a decision that specifically addresses the party for whom the situation is unequivocal, rather than rendering a collective judgment.¹⁴ The court is tasked with evaluating both the original claim and the counterclaim together, aiming to deliver a comprehensive verdict. However, an exception exists as outlined in Article 245 (2) of the Civil Procedure Code, which allows for a "partial decision." This provision enables the court, if requested by an interested party, to issue a decision even when a counterclaim is present and the matters concerning one of the claims or counterclaims have been conclusively determined.¹⁵

¹² Civil Procedure Code of Georgia article 215, part 3.

¹³ Tskitishvili, M., *Lawsuit in Civil Process* pp 134-135.

¹⁴ Natchkebia, A., *Definitions of Civil Legal Norms in the Practice of the Supreme Court of Georgia*, Case No. as-1003-1304-07, February 13, 2008.

¹⁵ Civil Procedure Code of Georgia article 245, part 2.

The adjudication of a case may be deferred due to the introduction of a counterclaim. Article 190 of the Civil Procedure Code of Georgia stipulates: "If a counterclaim is filed and accepted after the case's preliminary preparation is complete, the hearing may be deferred to a later date, either upon the plaintiff's request or by the court's initiative. The expenses incurred from this postponement shall be borne by the defendant who has belatedly submitted a counterclaim."¹⁶ This provision indicates that, following the acceptance of a counterclaim after initial case preparations, it is incumbent upon the plaintiff to propose a delay in the hearing, a process I find to be flawed. The regulation should mandatorily specify that the case will be postponed, eliminating the need for the plaintiff to make such a request. Furthermore, the imposition of postponement costs on the party filing delayed counterclaims is contentious, particularly when the court has permitted the late submission. In such circumstances, imposing financial responsibilities for the delay on the defendant seems unjust, as the court's acceptance of the late counterclaim implies a waiver of the typical penalties for such delays.

2. Contested Appeal

As outlined in Article 379 of the Civil Procedure Code of Georgia, "the party opposing the appeal may file a counter-appeal within 10 days following the receipt of the appeal, irrespective of their decision to forgo filing an appeal themselves. Should the initial appeal be dismissed or left without consideration, the counter-appeal shall likewise not proceed to review."¹⁷

This provision enables the responding party to challenge aspects of the court's decision that were partially in favor of the appellant, aiming to either overturn such decisions or uphold parts of the ruling that denied the appellant's requests. Contested appeals can be categorized into two distinct types: independent contested appeals and dependent contested appeals. An independent counter-appeal is initiated in direct response to the filing of an original appeal.

Additionally, it is submitted within the legally stipulated timeframe, its monetary value aligns with the legal pricing criteria for the appeal, and it fulfills the legal requirements set for appeals. A dependent counter-appeal refers to a submission that is related to the principal appeal but either does not meet the legal financial valuation or is submitted after the legal filing deadline. The court is obliged to consider an independent counter-appeal regardless of whether the original appellant has dismissed their main appeal, retracted it, or if the main

¹⁶ Civil Procedure Code of Georgia article 190.

¹⁷ Civil Procedure Code of Georgia article 379.

appeal remains unaddressed by the Court of Appeal. Conversely, a dependent counter-appeal will not proceed in the appellate court if, for any reason, the court dismisses the appellant's main appeal or ceases the proceedings.¹⁸

In its Decision No. 293-550-08, the Supreme Court clarifies that "according to the norms referenced, entities specified by law are entitled to challenge the judgment of the first instance court by filing an appeal, or, should the opposing party submit an appeal, they may present a counter-appeal to the court within a timeframe expressly defined by legislation. There exists a distinct difference between an appeal and a counter-appeal. An appeal is lodged independently by a party without regard to whether the opposing party has appealed the decision of the Court of First Instance. Its review is conducted independently of the legal outcome of the opposing party's appeal. On the other hand, a counter-appeal is contingent upon the filing of a primary appeal by the opposing party; in the absence of such an appeal, a counter-appeal cannot be filed."¹⁹

Conclusion

It is imperative for the court to consider the rights of all involved parties. These parties should be afforded the opportunity to defend their rights through various procedural avenues that align with the principles of a democratic state. Given that violations of party rights can manifest under various circumstances and in different ways, it is crucial that parties always have access to a mechanism for seeking justice.

The right to take action encapsulates an individual's ability to initiate a legal claim either to rectify a breached right or to forestall a potential violation. The defendant's right includes defending against such claims, utilizing both direct defenses and counterclaims. Claims and counteractions serve as fundamental components in establishing the basis of evidence. Through these mechanisms, the evidentiary process unfolds, guided by the principles of party autonomy and adversarial proceedings.

A counterclaim serves as a procedural tool for the defendant to defend against the plaintiff's accusations. It allows the defendant to not only present a defense but also to seek expedited justice from the court, as it enables simultaneous consideration of both the original claim and the counterclaim.

¹⁸ Liliashvili, T. (2005). Civil Procedural Law, pp. 469-472.

¹⁹ Decision of the Supreme Court of Georgia No. 293-550-08.

However, it is not uncommon for courts to reject a counterclaim on the grounds that there is no substantive connection between the original claim and the counterclaim. Following such a decision, the defendant is entitled to appeal against this ruling within a legally prescribed timeframe. Often, the authors of counterclaims pursue appeals as a strategy to prolong the proceedings. I argue that the court's decision to reject a counterclaim due to the lack of a connection between the original and counter claims should not be subject to appeal. This stance is predicated on the belief that such a limitation does not infringe upon the rights of the counterclaimant, given that they are legally entitled to initiate a separate and independent claim in court.

According to Article 190, Part 1 of the Civil Procedure Code of Georgia, the acceptance of a counterclaim after preliminary case preparation necessitates the postponement of the case hearing, either upon the plaintiff's request or by the court's initiative. I argue that the legislation should mandatorily stipulate the postponement of the hearing, eliminating the need for a formal request from the petitioner. Furthermore, Article 190, Part 2 specifies that the expenses incurred due to the postponement fall upon the defendant who has belatedly filed a counterclaim. I contend that this legal provision is flawed. When the court permits the filing of a counterclaim, the defendant should not bear the financial consequences of the resulting delay in the hearing.

An examination of judicial practices uncovers several deficiencies that necessitate further refinement through scientific research and comprehensive analysis. Consequently, an in-depth review of these practices indicates that they have not been adequately investigated, adversely impacting the efficiency and fairness of the civil process in Georgia.

