

SUMMARY

Key Words: class action, legal proceedings, legal basis of the claim

Subject matter: Lawsuit in civil proceedings: actual problems of theory and practice

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The relevance of the research topic: The Constitution of the Russian Federation stipulates that everyone is guaranteed judicial protection of their rights and freedoms (part 1 of article 46). This rule is a development of the idea of a legal state, in which the individual, his rights and freedoms and - most importantly - the guarantee of these rights and freedoms should be in the foreground. One of these guarantees is the rule stipulated in part 3 of article 17 of the Constitution of the Russian Federation that the exercise of human and civil rights and freedoms must not violate the rights and freedoms of others.

Article 12 of the civil code of the Russian Federation among the ways to protect civil rights calls recognition of the right, restoration of the situation that existed before the violation of the right and suppression of actions that violate the right or create a threat of its violation, recognition of the disputed transaction invalid, etc. In accordance with article 11 of the civil code of the Russian Federation, the body that protects violated or disputed rights is the court. The above-mentioned articles do not mention remedies, and for the first time the claim is mentioned only in art. 179 of the civil code, which establishes that a transaction made under the influence of fraud, violence, threats, malicious agreement of one party and the representative of the other or the combination of adverse circumstances null and void by a court on suit of the victim. Article 195 of the civil code of the Russian Federation refers to the Statute of limitations as a term for protecting the right to claim the victim.

Although the Russian legislator rarely uses the term "claim" and its derivatives in material legislation, this category has a basic meaning for the implementation and protection of civil rights. This is explained by the fact that the need to use the claim arises only at the time of violation or challenge of someone's rights, i.e., when the implementation of the right requires the intervention of the competent authority-the court, which is not a party to the disputed material legal relationship.

The search for criteria of external and internal identity of claims has been in the focus of the science of civil procedure law for many years. However, the level of development of the studied issues is unsatisfactory: to date, no concepts of the subject and grounds of the claim have been developed that meet the needs of practice, which, as a result, are not fixed in the current procedural legislation. Existing doctrinal views on the elements of the claim based on the doctrine of the lawsuit, which was formed largely during the Soviet period, as a result are characterized by the fact that, in considering the individualization of the claim is not adequately captured by its close relationship with the principles of competition and optionality. At the same time, it seems that it is the adversarial principle proclaimed in article 125 of the Constitution of the Russian Federation that determines the understanding of the elements of the claim.

The purpose of the work: The purpose of the research is to try to develop a new conceptual approach to understanding a claim as a way to protect the right, to legal qualification in order to individualize the claim, and to disclose the types of claims.

Objective: - define the concept and characterize the right to judicial protection;

- to reveal the concept of a claim in modern Russian law;

- to reveal the theory of legal and actual individualization of the claim, the value of legal qualifications for individualization of the claim;

- analyze the types of claims, reveal the concept of claims for recognition, claims for award, transformative claims.

The theoretical and practical significance of the research: The theoretical significance of the

work consists in a comprehensive and systematic coverage of the issues of the object of research, the concept of the right to judicial protection, individualization of the claim, its types. The practical significance lies in the fact that the conclusions formulated by the results of the research allow us to solve a number of scientific theoretical issues of civil procedure law and can serve as a basis for developing a unified approach to the problems related to the use of methods of protection of violated rights in adversarial proceedings, the legal qualification of claims and the identity of claims. This approach, in turn, can be used to improve the practice of applying the norms of the current Russian civil legislation when considering disputes of various legal nature.

Results of the study: The claim is not a thing, it cannot be possessed, its essence should be sought in the so-called activity (procedural). Only the disputed right is subject to protection. The claim process was and remains purely judicial.

Definitions of the concept of a claim can be divided into four main groups according to the criterion from which position - substantive or procedural-the claim is considered.

The concept of a claim in the substantive sense is explained by a change in the essence of some civil law terms (in particular, a claim), borrowed from procedural law. It is impossible to completely exclude from the institution of the suit and the rules governing cassation, Supervisory production, etc.

Action as a remedy has two objectives: low - to lead to the initiation of the process, high (objective) - to the right. An important aspect of ensuring the right to judicial protection is the mandatory execution of a judicial act adopted by the court. Thus, parts 1 and 2 of article 6 of The law on the judicial system fix the provision that judicial acts that have entered into force are subject to strict enforcement throughout the territory of the Russian Federation. Failure to comply with a court order, as well as any other manifestation of contempt of court, entails liability.

The legal basis of the claim is taken into account not only in the proceedings and making a decision, but also when making a statement of claim, preparing the case for trial, choosing the direction of investigation of the circumstances of the case, etc. The material legal relationship affects the determination of the basis of the claim and to some extent forms it.

Having defined the basis of the claim as a set of legal facts and rules of law, according to which the court determines whether the plaintiff has the right to full or partial satisfaction of its claims, it is necessary to find out what occurs first: the claim or its basis, what is the cause (premise), and what is the consequence?

The claim is there a remedy, alleged applied to the court for protection of violated or disputed against the alleged infringer based on the claimant disputed the civil (in the broad sense) relationship.

The court is not bound by the preliminary legal qualification determined at the stage of preparing the case for trial. Recognizing the study and evaluation of the evidence in the present case, can be applied other law, other than those defined by the court at the stage of preparing the case for trial, the court shall resume the proceedings and to invite the plaintiff to amend the claim or claim alternative claim and to submit additional evidence if necessary. Registration of the plaintiff's refusal to change the claim or the presentation of an alternative claim can be carried out by obtaining the signature of the plaintiff in the ruling on the resumption of the trial, in which the court must specify the possible options for legal qualification.

If the statement of claim does not specify how to protect the violated right or legally protected interest of the plaintiff with reference to laws and other normative legal acts, and the plaintiff refuses to clarify the subject of the claim in response to the relevant proposal of the court, the court leaves the statement of claim without consideration.

The new legislation on class actions has significantly changed the Russian model of class action. The qualitative changes were the consolidation of clearer conditions for initiating group proceedings, as well as the establishment of a group certification procedure (preliminary court session).

Recommendations: If the statement of claim does not specify how to protect the violated right

or legally protected interest of the plaintiff with reference to laws and other normative legal acts, and the plaintiff refuses to clarify the subject of the claim in response to the relevant proposal of the court, the court leaves the statement of claim without consideration.

A special clause on the understanding of civil legal relations in a broad sense is necessary in the definition due to the current vagueness of the concept of a claim and the attribution of clearly non-searchable cases to claim disputes.

Additional guarantees for potential participants in a class action are securing the time to join the group during the entire period of consideration of the case and the possibility of filing an independent claim. Unfortunately, the Law contains a number of shortcomings and contradictions, and there are still unresolved issues of the content and completeness of the decision on class actions, its execution, as well as the specifics of concluding a settlement agreement.