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TYPES OF LAWSUITS IN THE CIVIL PROCEDURE RULES

Maia Tskitishvili, PhD candidate

Grigol Robakidze University, Tbilisi, Georgia

Abstract:

For the purpose of protection or recovery of one's rights and obligations, according to the nature of a relation, any person is entitled to apply to a court through a lawsuit or a claim form. According to the Civil Procedure Rules of Georgia, there are several types of lawsuits: claims for alteration of legal relations, declaratory (defining right) lawsuits and the so called "Transforming Lawsuits". The article provides a short scientific review of each aforesaid kind of claim.

I.

For protection or recovery of one's rights and obligations, any person is authorized to apply to a court at times when concrete rights are violated, or the rights are considered to be disputable.

According to the specifics of a relation, one can apply to a court through a lawsuit or a claim form. Protection of the right through a court's procedures is provided by the Civil Procedure Rules which state that a court is obliged to accept and discuss a claim of each citizen despite of the latter's work position, religious beliefs or ethnic background. A court can refuse to discuss a case when there is a legal reason for this which is solely defined by the Civil Procedure Rules (Article 2).

When we mention a lawsuit, we should refer to classification of lawsuits and their division into different types. Classification of lawsuits or their division into types in accordance with different features is made according to legal procedure features. It is remarkable that deriving from its nature, the procedural aim of each and every lawsuit is the same – protection of the plaintiff's violated or disputable rights, whereas the plaintiff's goal is to get a positive court's decision. If the claim is approved, a court obliges the defendant to conduct some kind of an action, or to abstain from its conduction in favor of the plaintiff.

According to the Civil Procedure Rules, there are the following types of lawsuits: claims for alteration of legal relations, declaratory (defining right) lawsuits and, also, the ones which can be called “Transforming Lawsuits”.

Let us discuss each type separately:

1. The claims for alteration of legal relations are the most popular ones in the court’s practice. Sometimes these are called “Executive Lawsuits”. Mainly, individuals and legal entities refer to the latter kind of claims.

The phrase “Claim for Alteration of Legal Relations” clearly indicates the type of the lawsuit. Thus, to be more precise, it applies to the kind of a claim, through which the plaintiff demands from the defendant to fulfill a concrete action or to refrain from its fulfillment, e.g.: the plaintiff requests from the defendant to return a concrete subject, or to compensate the caused damage, etc. This type of lawsuits otherwise are referred to as “Executive Lawsuits”.

The aim of the above mentioned lawsuit is fulfillment of rights in forcible manner. Claims for alteration of legal relations are for instance: vindictive lawsuits, lawsuits filed because of a wrongful act, or on loans or due payments, on claiming filling up of gaps at work and so forth. The plaintiff is given an executive paper on payment of a sum, on getting back of possessions, on compensation for caused damages, etc.

A claim for alteration of legal relations differs from a declaratory lawsuit by having more complicated subject. Here, in case of a claim for alteration of legal relations, the plaintiff brings a complaint not only on declaration of the fact of existence of disputable material right, but also requests from a court to force the defendant to fulfill a concrete action or abstain from its fulfillment. Accordingly, it’s forbidden for the defendant to implement an action, because a form of protection of a right is defined by the extent of its violation.

By Civil Procedure Rules the lawsuits filed on the future obligations are also permitted. This means that a right has not been violated yet, but this type of a claim applies to the case when there is the threat of breach of a right, which can cause non-fulfillment of an obligation. Here, the defendant can be forced to conduct some action. So, it should be mentioned that a claim for alteration of legal relations can be approved only in case if there are legal preconditions for this.

The basis for a claim for alteration of legal relations is the legal fact, on the existence of which depends creation of a right on a claim.

Thus, claims for alteration of legal relations, according to their specifics and contents, are the kind of means of protection of rights. In favor of the plaintiff, together with a claim, there is an obligation fulfilled, or there is a refrain from its fulfillment.

In some cases, the plaintiff claims not on conduction of a certain action, or refrain from its fulfillment, but on declaration of some legal relations by a court, or declaration of forgery or authenticity of some documents.

2. Declaratory lawsuit:

It is mentioned in the legal literature that every time, when the plaintiff applies to filing a claim for alteration of legal relations, it is prohibited to use a declaratory lawsuit, which should be taken into consideration in civil case court's practice.

Declaratory or otherwise called "Right Defining" lawsuits were known even to the Roman law. The declaratory law existed under the name of "Prejudicial Claim". Gordon mentioned that "declaratory lawsuit is nothing more than a claim on approving a right through litigation".

In a declaratory lawsuit the plaintiff claims on declaration (approval) of the existence of a disputable right, or disputable legal material relation or on its non-existence by a court. This kind of claims differ from other lawsuits and are called "Declaratory Lawsuits", or otherwise, "Defined Lawsuits".

There are two kinds of declaratory lawsuits: positive and negative. This is defined by the nature of a claim of a plaintiff, e.g.: when a plaintiff requests to define the fact of the existence of the legal material relation, this is called a positive declaratory lawsuit. A lawsuit on declaration of the right on using a subject, or on defining paternity, recognizing as a co-author etc. is the positive declaratory lawsuit.

Through negative lawsuits a plaintiff claims on the existence of legal relations. In this case the existence of a relation should be approved by a defendant. Also, through the latter kind of the lawsuit a plaintiff requests to recognize some relations as void (such are, for instance: a lawsuit on declaring a deal as void, or marriage or a will as void).

According to the Article 180 of the Civil Procedure Rules, a lawsuit can be filed on the following: on defining the existence, or non-existence of a right and legal relations, on recognition of authenticity or forgery of a document. This can be conducted only if a plaintiff has a legal interest in making such a declaration through a court's decision.

The legal practice showed that the bigger share of claims consists of negative declaratory lawsuits - this can be, for instance, declaration of some deal, or a will as void etc. Though, there are not always preconditions existing for accepting such lawsuits.

Thus, we can conclude from the above mentioned that the declaratory lawsuit is the means of protection of a right which has not been violated yet. It aims to avoid a dispute on a certain right or vagueness caused by a legal relation, where the sole goal of a plaintiff is to

achieve a desired aim through the declaratory lawsuit and to ensure the future indisputability of a right. As for a defendant, when there is a declaratory lawsuit brought to a court against the last mentioned, he/she is not forced to fulfill any kind of action in favor of a plaintiff.

All the positive and negative preconditions for accepting a declaratory lawsuit are defined by the Article 180 of the Civil Procedure Rules. Besides, there is another, additional precondition for a declaratory claim; this is – a legal interest. This means that if there is no precondition for bringing or accepting a lawsuit (by a court) and there is no legal interest for it, a plaintiff should get rejection on acceptance and discussion of a lawsuit by a court.

Here, also, we should distinguish from each other claims for alteration of legal relations from declaratory lawsuits. Claims for alteration of legal relations are directed to the protection of violated rights. As for a declaratory lawsuit, in this case, a right of a plaintiff has not been breached, but there is a threat of its violation in the future.

To be clearer, let us separately discuss features of a declaratory lawsuit:

- The aim of a declaratory claim is to define the existence or non-existence of a legal relation.
- A court's decision made on the basis of a declaratory lawsuit will not be executed in a forcible manner, though, it has compulsory force.
- A declaratory claim is not filed because of violation of a right, but it is for the purpose of avoidance of probable wrongful action in the future.
- If a lawsuit, according to its aim and contents, carries declaratory nature, then (just like in case of claims for alteration of legal relations) on the stage of accepting a lawsuit, a magistrate judge, should check under which jurisdiction it falls. If the declaratory lawsuit goes beyond the competence of the magistrate judge and belongs to the jurisdiction of the district court, the magistrate judge, according to the Articles 186-187 of the Civil Procedure Rules of Georgia, should reject the lawsuit on the basis of a conformable court's decision. The magistrate judge, within the same court's decision, should justify the reasons for rejection of the claim and should identify a court of corresponding jurisdiction. (Practical Recommendations of the Supreme Court of Georgia on Civil Procedure Law Related Issues for the Judges of Courts of General Jurisdiction).

3. Transforming lawsuits.

As for the kind of a claim called “Transforming Lawsuit”, it's completely directed to the transformation of the existing relation which can be achieved through alteration or

termination of the last mentioned, and which can occur only on the basis of legal facts. The clear example of this is any kind of a deal. Let us say, putting a sales agreement is a legal fact that creates a legal sales relation, by force of which one party, the purchaser, is obliged to pass the other party, the supplier, a definite sum, and the other party has to pass the first party the subject (the subject of sales).

Transforming lawsuits, as one of the independent types of claims are not recognized by many scientists – the latter consider that these are actually declaratory lawsuits. For instance, Avtandil Kobakhidze states, that according to the Georgian legislation, in contrary to the German and Russian Federation’s legislations, the so called transforming lawsuits are not distinguished as a separate type. And, the last mentioned should be referred to as a right approach, deriving from the fact that such claims are the ones aiming at alteration or termination of a legal relation.

T. Liluashvili gives a clear definition and distinguishes transforming lawsuits and says that “transformation of the existing relations, their alteration and termination, as already has been mentioned, is allowed only upon the mutual agreement of the parties. If such an agreement cannot be reached, an interested person can apply to a court.

Sometimes, the necessity of a transforming lawsuit, its alteration or termination can be defined only through a court. If there is a difference in scientific opinions regarding the above stated claims, how they should differ from each other, or in other words, what is the difference between transforming lawsuits and declaratory claims?

T. Liluashvili explains in his work that “the core idea of the claim defined by the declaratory lawsuit is that a court should declare, or define a concrete right, or legal relation. And, by the transforming lawsuit a plaintiff claims on alteration or termination of the existing relation”.

These claims are often referred to as “Constitutional Lawsuits”. This naming is allowed to be used when the law considers the possibility of alteration or termination of a relation.

From the point of view of the final purpose of a lawsuit, it should be mentioned that its aim is to get a court’s decision on protection of a violated or disputable right. And the form of protection of the right is defined by the nature of a plaintiff’s claim which the latter brings to a court.

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