UNDERSTANDING OF THE LEGAL NATURE OF A LAWSUIT IN A PROCEDURAL LAW

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Abstract. The article is deals with the problems of determination of legal nature of a lawsuit rooted in the issue of the ratio of the substantive and procedural law because depending on the scientific interpretation of the substantive and procedural scientific view of the integral or heterogeneous (double) nature of the lawsuit is formed. From the point of view of modern Ukrainian legal doctrine action is determined by a universal specialized procedural form of trials in which all cases are present. There is a dispute about the law, each of these proceedings has its own procedural structure the commencement of which is linked to the lawsuit.

Keywords: *lawsuit, procedural and legal regulation, court proceedings, exercise of the right to judicial protection, legal mechanism, method of protection.*

Introduction

Ukrainian legislation prolawsuits and guarantees the judicial form of protection of subjective rights and freedoms. According to Art. 55 of the Constitution of Ukraine and human and civil rights and freedoms are protected by the courts. The right to judicial protection is enshrined in the of Civil Procedural Code of Ukraine (hereinafter referred to as the CPCU) and other codes governing judicial proceedings. Under procedural law everyone has the right to apply to the courts for protection of his or her violated, unrecognized or disputed rights, freedoms or interests. These rights are exercised in the course of legal proceedings by means of a legal action. The content of such a right is, on the one hand, a wide range of procedural guarantees that ensure this right and, on the other hand, a number of separate procedural forms within which protection is exercised. In modern legal doctrine

lawsuits are determined by a universal specialized procedural form of litigation within which all cases in which there is a dispute of law are considered. Each of these proceedings has its own procedural structure the commencement of which is linked to the lawsuit. The problems of the lawsuit and the lawsuit form of protection of rights constantly attract attention of both scholars and practitioners (Yasynok, Kurylo, Kiriiak, Karmaza, Zapara & others, 2016, p. 82). First of all these problems relate to the legal nature of the lawsuit which is rooted in the ratio of substantive law and procedural law. Since, depending on the scientific interpretation of the substantive law and procedural lawa scientific view of the integral or heterogeneous (double) nature of the lawsuit is formed. At the same time, the research of the legal nature of a lawsuit in civil proceedings is necessary not only for theoretical interpretations but for practical activities in the judicial process also. The analysis of the legal nature of the lawsuit contributes to the effective enforcement and correct interpretation of the legal rules of procedural legislation which create opportunities for homogeneous jurisprudence and legal certainty together. In addition, the use of the term «statement of lawsuit» in administrative, economic, criminal and civil proceedings requires the development of unified approaches to the application of this category in the procedural sphere of legal relations.

The article is aimed at systematization of theoretical approaches in the understandings of the legal nature of a lawsuit in procedural law and complex analysis of the concept of a lawsuit in the science of civil procedural law.

The purpose of the research led to the need to set and solve the following tasks:

- analyze the historical way of formation of theoretical and legal approaches to the legal nature of the lawsuit in procedural law;
- to determine the prevailing approach in the modern procedural law of Ukraine to the scientific interpretation of the legal nature of the lawsuit;
- to develop the definition of the concepts of «subject of lawsuit» and «lawsuit» on the basis of the analysis of legislative changes.

Literature review.

The concept, types, elements, attributes, object, grounds and content of the lawsuit were the subject of research by such scientists as Y. Belousov, R. Gukasian, M. Gurych, A. Dobrovskyi, V. Drishliuk, P. Yeliseikin, N. Zeider, S. Ivanova, A. Kleynman, V. Komarov, O. Ivanenko, D. Luspenik, O. Isaienkova, G. Osokina, A. Paskar, Ye. Pushkar, V. Riazanovskyi, N. Tkachova, V. Tertyshchnikov, S. Fursa, M. Shtefanov, O. Shtefan, M. Yasenok, etc.

Among modern Ukrainian studies attention is drawn to the publication of A. Bratel in which he analyzed the term "lawsuit" in terms of belonging to civil procedural and substantive legal facts (Bratel, 2016, pp. 3-10); scientific and practical developments are devoted to the conceptual foundations, legal nature and principles of formation of mass (group) and derivative lawsuits, their types and procedural and legal status of the collective as a plaintiff in civil proceedings (Yasynok, Zapara, and others (2019); publication by D. Luchenko devoted to the study of the legal nature of the lawsuit in administrative proceedings (Luchenko, 2019, pp. 148-158); article O. Gankevich devoted to the study of the legal nature of the lawsuit for recognition of paternity, maternity in it the legal nature of a lawsuit is considered through the prism of classification of lawsuits on the criterion of the way of protection of civil rights and interests (Hankevych, 2017, pp. 86-88). The absence of comprehensive studies of the legal nature of the lawsuit in civil procedural law makes this research and prospects for further theoretical developments relevant.

Research methodology.

The research applied a dialectical method that allowed the definition of the lawsuit and the subject of the lawsuit. The historical and legal method gave an opportunity to analyze the historical way of formation of theoretical and legal approaches to the legal nature of the lawsuit in procedural law. From the standpoint of synergy an analysis of the links of such categories as law dispute, lawsuit, legal regulation was conducted. It allowed to identify the dynamics of the legal nature of the lawsuit. The system and structural method was used to identify the features of the lawsuit as a holistic procedural and legal institution.

Research results.

It is impossible to establish the legal nature and nature of the lawsuit without reference to theoretical legal approaches regarding the notion of a lawsuit in the science of civil procedural law.

According to the theory of legal process established in the 1960s the lawsuit was

considered a purely procedural category. It was justified by the impossibility of limiting the functions of procedural law to the regulation of coercion or the authorization of civil law and that legal disputes and that the substantive branches of law also contain numerous rules and institutions on the basis of which the implementation of substantive rules is carried out (Kaliuzhnyi, Atamanchuk, 2015, p. 39). The proponents of these scientific positions considered the lawsuit solely as a means of violating the activities of the judicial body. Considering that the formation of the theory of legal process took place against the background of the separation of the first procedural branches as independent, the appearance of such views on the legal nature of the lawsuit was promising for the development of the science of civil procedural law. It should be considered that these views in some way reflected the socio-economic State system and had to conform to the prevailing socialist one.

Together with purely procedural views on the legal nature of the lawsuit there were other views on the content of the legal nature of the lawsuit (the so-called "dualist theory" (Bezliudko, Bychkova, Bobryk, 2006, p. 177) according to which the lawsuit was considered as a legal category inherent in the separate substantive and procedural law. This theory was based on the work of M. Gurvych "The right to lawsuit" which was published in 1949 in the content of which he noted that he was considering "the right to lawsuit exclusively in a procedural context, guided by actual jurisprudence and the material content of the lawsuit is completely separate from it" (Gurvych, 1949, p. 45). In the final provisions of that work the scientist substantiated the new meaning of the concept of "right to lawsuit" in accordance with the Soviet ideology. It is the procedural aspects of the judicial process and the need to distinguish the right of action from the substantive content and the content of the legitimization of the caseю He believed that "mixing these concepts entails distortion of the Soviet law, its violation" (Gurvych, 1949, p.211) From the modern point of view such approaches are not considered to be able. Since over time theoretical and legal research has progressed significantly against the background of fundamental changes in legislation but it may pay attention to the context of the retrospective analysis of the legal institution of the lawsuit as well as the theory of legal process in general within which such views were formed.

Most modern scholars consider the lawsuit as a unified concept for the substantive and procedural law which corresponds to monistic theory (Bezliudko, Bychkova, Bobryk, 2006, p. 176) according to which the lawsuit has two parties – substantive and procedural-legal. As a supporter of this view M. Shtefan believes that "the essence of the lawsuit can be determined correctly only taking into account its substantive and procedural-legal sides which relate to each other as the above mentioned areas of law, the rules of which these sides to the lawsuit are settled" (Shtefan, 2001, p. 325). Sharing this theoretical approach we consider the lawsuit to be a whole procedural-legal institution containing the substantive content and when applying to the court the relations acquire a civil-procedural character. From a practical point of view, the action is a civil procedural form ensuring the implementation of the rules of substantive law, specially authorized by the State judicial body. The plaintiff applies to the court for the purpose of legal proceedings. He formulates his lawsuit in a statement of lawsuit on the basis of such an application begins procedural activity which can be considered as the essence of the procedural-legal side of the lawsuit. At the same time, as noted by I. Bezliudko, S. Bychkova, V. Bobryk, etc. "the primary trigger for a person to apply for judicial protection is the fact of violation, non-recognition or challenge of his rights and legitimate interests which are in the plane of substantive legal regulation. The lawsuit arises and is realized within the law enforcement relations which are essentially substantive. With an appeal to the court they become the subject of procedural activity but do not change their material content. Thus the content of the lawsuit is affected by the essence of the subjective substantive law on which the dispute arises" (Bezliudko, Bychkova, Bobryk, 2006, p. 178). The criterion of personal interest is the violation of his rights and legitimate interests, the presence of legal conflict on the principle of "no violation of interest – no lawsuit" as S. Vasiliev notes (Vasyliev, 2015, p. 165]. At the same time another group of the researchers as for category of "lawsuit production" in modern procedural doctrine and practice comes to the conclusion that "lawsuit

– is an appeal of a person to the court for the purpose of notifying the state about the violated right, freedom or interest with a request for legal protection" (Yasynok, Kurylo, & others, 2016, p. 83), the authors believe that "lawsuit proceeding can be called protective or restorative production". At the same time, the authors remark that "historically it happened that the appeal to the court got the name "lawsuit" from the word "to sue", that is, to make lawsuits, to make a lawsuit (lat. actio)". They highlight the objective side of the suit like the legal regulator of contentious public relations between natural and legal persons, between these persons and the State in matters of protection of rights, freedoms and interests. There is the obligation of the State, determined by the Constitution, on the consideration of the lawsuit under a special procedure which is called a court session and the subjective side of the lawsuit as a substantive lawsuit of the plaintiff to the defendant (Yasynok, Kurylo, & others, 2016, p. 83). A. Bratel's viewing the lawsuit as a "civil procedural and substantive legal fact, he attributes the lawsuit to procedural phenomena which inextricably combines procedural and substantive legal components thus being in the plane of legal facts". He considers the completed legal facts of the substantive content as preconditions for the case seeing the completeness of the legal facts in that the disputed relationship at the time of the application to the court was not resolved peacefully. At the same time, bringing a lawsuit in court A. Bratel considers as a "process-building legal fact which determines the emergence of civil procedural legal relations" (Bratel, 2016, p. 9). Thus, in modern legal theories the legal nature of the lawsuit is mainly examined as a double requirement – for the court and the defendant; but there is a view of the lawsuit as a communication of the State in the person of the authorized body for the administration of justice – the court, a violation of a right, freedom or interest to seek a remedy. In addition, the lawsuit is treated as a procedural and substantive legal fact. Thus, while there is disagreement as to the nature of the lawsuit all the studies cited agree that the lawsuit is an integral procedural and legal institution with different views on the relationship of the structural characteristics of the institution.

Taking into account the scientific discussion on understanding the legal nature of the lawsuit various definitions of the concept of lawsuit have been formed in the science of procedural law: thus, the lawsuit is defined as "application to the court for the protection of the violated or disputed right which was caused by the actions or omissions of a specific person to whom the demands for the termination of the offence are made" (Yasynok, Kurylo, Kiriiak, Karmaza, Zapara & others, 2016, c. 389). V. Tertyshnikov defines the lawsuit as a "substantive lawsuit addressed to the defendant by the court for renewal of the violated or disputed right" (Tertyshnik, 2002, p. 128). There is also a definition of lawsuit as «the lawsuits of the interested person based on the disputed substantive legal relationships on the protection of his or her legal interest or that of another person subject to consideration and decision in the manner established by law» (Rezvorovych, Yunin, Yunina & others, 2020, p. 100). From these definitions, there is a homogeneous approach to the understanding of the lawsuit as the content of the lawsuit or recourse to the court while the lawsuit is treated as a procedural form of such treatment. Art. 175 of the CPCU does not contain a general definition of the lawsuit but it has found a fix to the detailed settlement of issues of its content, such as the paragraph 4.2 of Section 2 of Art.175 CPCU defines the content of lawsuits: as a way (means) of protection of rights or interests, provided by law or contract or other way (means) of protection of rights and interests, not contradicting the law which the plaintiff requests the court to define in the decision; if the lawsuit is filed against several defendants - the content of the lawsuit for each of them. Previous version of the paragraph 3 of Section 2, of Art. 199 of the CPCU contained only an indication that the statement of lawsuit should indicate the content of the lawsuit, the identical wording was contained in Section 3 of Art. 137 of the CPCU adopted in 1963 (Civil Procedure Code of Ukraine. Approved by the Law dated 18.07.1963 of the Government of Ukraine).

Changes in the legislative regulation entail changes in scientific and theoretical approaches. Since 2017 significant changes have been made to the judicial system in terms of its structural and functional characteristics and the modification of

individual proceedings and procedures. These changes were embodied in the Laws of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)" dated 02.06.2016 No. 1401, "On Judicial Organization and Status of Judges" dated 02.06.2016 No. 1402, "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts". They significantly expanded the procedural tools and theoretical categories of lawsuit proceedings. Among the most significant publication of D. Luspenik highlights "diversification of lawsuit production on the simplified and general order increasing the importance of preparatory proceedings in the structure of lawsuit production, etc." (Luspenyk, 2018).

In our view, the changes that have taken place in Ukrainian legislation fully correspond to the best practices in the civil, economic and administrative justice in the European region. These changes are designed to ensure compliance of domestic mechanisms of protection violated, unrecognized and disputed rights, freedoms and interests international standards of fair trial.

Conclusions

Modern legislative regulation of the content of the statement of lawsuit has been clarified and expanded in the latest version of the Civil Procedural Code of Ukraine compared with the previous legislative regulation, the list of requirements to the content of the lawsuit in particular because the lawsuitant must determine the manner (means) of protection of rights or interests provided by law or contract or other means (method of solution). From the content of Art. 175 of the Civil Procedural Code of Ukraine undoubtedly sees the relevance of the theoretical approach which considers the lawsuit as two substantively combined requirements – substantive and procedural. This position is confirmed by the case law, for example in court decisions (Decision on case No. 755/6927/18 dated June 4, 2020) and can be seen in the treatment of the lawsuit in civil proceedings as a written and addressed written lawsuit to the court, a procedural requirement of a substantive nature (to protect an unrecognized, contested or violated right). That is why we propose to consider the subject of the action as a complex substantive and procedural requirement, the material content of which is disclosed through the substantive lawsuit of the plaintiff against the defendant in respect of which the plaintiff requests the court decision. This material content of the plaintiff's lawsuit manifests itself in the substantive interest – to receive a certain material benefit. The procedural requirement relates to the realization of a person's right to judicial protection which must take place in the form of an application to the court in accordance with the procedure established by the procedural legislation respecting the requirements regarding the form and content of the lawsuit and attached documents. We believe that the lawsiut should be considered as an integral procedural and legal institution containing the substantive content and when applying to the court the relations acquire a procedural character.

The given approach to understanding the legal nature of the lawsuit in procedural law leaves the way for further scientific research into the impact of the processes of legal convergence on the principles of the institution of lawsuit, suit proceedings in civil proceedings, theoretical and legal understandings of the prerequisites of the right of action, etc.

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