

Legal Issues of Claims in Civil Proceedings of Central Asian States

Ibratova Feruza Babaqulovna
Professor at Tashkent State Law University

Orishev Oktambek Khasanboy son
Student of Tashkent State Law University

Abstract

This article provides an analysis of the work carried out in the order of the claim, in particular the concept and elements of the claim, the means of combining and separating the claims of the claim, the means of protecting the interests of the defendant, the basis and procedure for securing the claim, as well as feedback, materials of practice. In addition, the similarities and differences and the specifics of the claim issues were discussed in the civil proceedings of the Central Asian States.

Keywords: claim, subject of claim, basis of claim, unification and separation of requirements, objection, counter-claim, provision of claim.

INTRODUCTION

Currently, most of the disputes arising are resolved by consideration in civil, economic, arbitration courts according to the rules of relevance and jurisdiction. Also, the practice of resolving disputes through the mediation procedure is being formed. As a general rule, the resolution of disputes between citizens and citizens, citizens and legal entities belongs to the jurisdiction of the courts of civil affairs. In this regard, Article 26 of the code of Civil Procedure of the Republic of Uzbekistan, including civil cases, concerns the following cases: civil, family, labor, housing, land cases and other disputes arising from relations, if at least one of the parties is a citizen, then the law provides for the exclusivity of cases when the resolution of such disputes is delegated to other courts or other bodies¹.

According to Article 1 of the Code of Civil Procedure of the Republic of Uzbekistan, the hearing of cases in the order of claim is considered one of the important and main types of civil court proceedings. Any interested person has the right to sue in accordance with the procedure established by law in order to protect his violated or disputed right or interests protected by law². The right to bring a lawsuit is a procedural means of protecting the interests of citizens, the state and the personal and property rights of organizations. The person who initiated the lawsuit shall appeal to the subject of the obligation to voluntarily satisfy his request before filing a lawsuit, if the person's request is not completely satisfied or partially satisfied, or if the request is not met, the interested person, citizen or organization shall file a special application on the protection of the violated or disputed right or interest protected by law³. In civil

¹ Скобелев В. П. К вопросу о сущности иска в гражданском процессе. – 2005.

² Иноценко В. А., Гужов Е. А. Иск в гражданском процессе: проблемы теории и практики //Семья. Общество. Государство: история и современность-III. – 2014. – С. 116-120.

³ Ibratova F. TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN.



proceedings, a claim case is seen as a contentious case. In such cases, of course, the parties to the dispute: the plaintiff and the defendant participate, and there will be a disputed legal requirement between them. In the absence of such a contentious legal requirement, the claim will not be a contentious court case either⁴.

In the case of a lawsuit, a dispute about a certain right is resolved, and in this regard, the requirements of the plaintiff and the objection of the defendant are checked to be legal and justified. As a result of this, the court either satisfies the claim in whole or in part, or dismisses the claim⁵. Any civil action has two sides:

The first roof consists in the fact that the material and legal side of the claim can first of all be the claimant's material legal requirement for a particular dispute with respect to the defendant, such as the submission of any item, payment of money, service and reimbursement of damage.

As for the second side, the procedural legal side of the claim is an example in which the content of the dispute arising between the parties is resolved and the appeal to the court with a request to guard the violated or disputed right⁶.

Only when both sides of the claim are joined together does the claim serve as a means of defending the disputed right. In doing so, making a claim is the basis for civil proceedings to be brought in court. From the date of receipt of the statement of claim for the conduct of the case, civil proceedings will begin to proceed on this case, and a civil procedural legal attitude will arise.

When we say the right to a claim, we understand the right to the satisfaction of disputed civil law, the right to family, Labor, Housing and other issues, the right to receive judicial protection in the order of civil procedure, as well as the requirement of a claim found by the court to be legal and justified⁷.

There are specific material and procedural features of the proceedings in the order of claim:

- disputes of such a Category arise mainly as a result of violation of the norms of material law (civil, family, housing, labor, land and other relations⁸;
- on the basis of the appeal to the court of general and special entities in cases of such a Category, a case is initiated⁹;
- as a means of protecting the right, the terms of the lawsuit as well as the procedural deadlines (terms of appeal to the court) are established;

⁴ Колосова В. В. Виды исков в гражданском судопроизводстве. Групповые и производные иски //Гражданин и право. – 2010. – №. 11. – С. 44-62.

⁵ Ibratova F., Ahadova M., Rozmetova A. APPLIED JURISPRUDENCE //Editorial team. – 2021. – №. 2021. – С. 45.

⁶ Белков М. Ю., Хвалева В. В. Проблемы понятия иска в гражданском процессе //Актуальные проблемы юриспруденции. – 2017. – С. 31-35.

⁷ Ibratova F. Foreign Practice of Use of Mediation on Collective Labor Disputes //American Journal of Social and Humanitarian Research. – 2022. – Т. 3. – №. 10. – С. 57-62.

⁸ Николаенко В. С. Классификация исков в гражданском процессе //Вектор развития юридической науки. Образование: мировая и отечественная практики. Развитие экономики и бизнеса. Юридические науки: проблемы и перспективы развития. – 2020. – С. 26-32.

⁹ Ibratova F., G'ulomov A. VORISLIK HUQUQINING XORIJIY MAMLAKATLAR HAMDA O'ZBEKISTON QONUNCHILIGIDAGI TAHLILI: AMALIYOT VA NAZARIYA //Science and innovation in the education system. – 2023. – Т. 2. – №. 12. – С. 108-117.



- disputed entities (plaintiff, defendant, third parties, partner participants, etc.) and the existence of an appropriate disputed requirement¹⁰;
- the appeal to the court is made on the basis of a statement of claim formalized in the appropriate order and provides the basis for the initiation of a case¹¹;
- the presence of elements of claim and types of claim in the composition of cases of such a Category¹²;
- the presence of the right to a claim and the right to bring a claim in cases of such a Category;
- the presence of means of objection and counterclaiming against a claim in cases of such a Category¹³;
- application of reconciliation procedures in such categories of cases;
- the existence of procedures for the unification and separation of the claim;
- it is significant in the fact that the measures to ensure the claim in such a category of cases are established, etc.

Plaintiff cases arise mainly as a result of violation of the norms of material law (civil, family, housing, labor and other norms), on the basis of the appeal to the court of general and special entities in cases of such a category of cases¹⁴.

Considering that each case has its own specificity, that is, in order to distinguish one claim from the other, the claims are divided into two elements, namely the structural part: the subject of the claim and the basis of the claim. These two elements constitute the content of the claim¹⁵.

The subject of the claim will be the claimant's claim, that is, what he demands from the defendant through the court. The subject of the claim is a request to collect something. This requirement can be: the collection of a certain amount, the transfer of any property, a request based on the material and legal or personal right to service¹⁶.

The basis of the claim is the evidence that confirms the claim. In the plaintiff's application, it is necessary to indicate the circumstances in which the claim is based and the evidence that confirms the existence of these cases. Such cases are those that create or modify or cancel a certain legal fact. There are a lot of legal facts that will be the basis for filing a lawsuit, there may be violations of certain conditions of the concluded contract, non-payment of the borrowed

¹⁰ Кашкарова И. Н. Индивидуализация иска в гражданском судопроизводстве : дис. – СПб. : дис.... канд. юрид. наук, 2015.

¹¹ Ibratova F., Tuxtayev G. O 'ZBEKISTONDA MEROS, VASIYATNOMA VA UNING QO 'LLANISHI ASOSIDA KELIB CHIQAIDIGAN HUQUQIY MUAMMOLAR //Science and innovation in the education system. – 2023. – T. 2. – №. 12. – C. 101-107.

¹² Кривова Т. А. Групповые иски и их особенность в гражданском процессе //Форум молодых ученых. – 2021. – №. 1 (53). – C. 156-159.

¹³ Ibratova F. B. et al. Special features of modern legal systems: cases and collisions. – 2017.

¹⁴ Иванова В. В. Виды исков в гражданском процессе //Современные тенденции развития науки и технологий. – 2016. – №. 4-6. – C. 51-53.

¹⁵ Ibratova F., Jumanazarova M. VASIYATNOMALARNI NOTARIAL TASDIQLASH SHARTLARI VA AHAMIYATI //Science and innovation in the education system. – 2023. – T. 2. – №. 12. – C. 91-100.

¹⁶ Ibratova F., Axunova D. O'ZBEKISTON RESPUBLIKASI QONUNCHILIGIDA BOLA HUQUQLARINING KAFOLATLARI: NAZARIYA VA AMALIYOT //Theoretical aspects in the formation of pedagogical sciences. – 2023. – T. 2. – №. 19. – C. 106-113.



thing or money, non-fulfillment or poor quality of the assignment, changes in the terms of the residential lease agreement, termination of the legal entity and a number of such cases¹⁷.

As for the types of claim, it is known that the plaintiff pursues some procedural purpose when filing a lawsuit. Its purpose will be to achieve a court's decision on the protection of a violated or disputed right, or of an interest protected by law. Such a decision may be whether to charge someone the appropriate money or to be recognized as the owner of any milk. Depending on what purpose the plaintiff seeks, what he pleads with the court to decide what, the claims are divided into two types: recovery and recognition treatments¹⁸.

In recovery – claims, the plaintiff pleads, firstly, to establish that he will have the right to receive a certain right, to take ownership of the property, to have the right to use the dwelling, and secondly, to make certain actions by the defendant, for example, to surrender the disputed property to the plaintiff, to vacate the dwelling. If the decision of the court is not voluntarily fulfilled by the defendant, the decision is submitted for execution in the prescribed manner. Because of this, such a claim can also be called an enforceable claim¹⁹.

In recognition-to-claim cases, the plaintiff pleads only if he or she accepts that the disputed right belongs to him or her, whether or not the disputed legal relationship exists. In such suits, for example, the plaintiff asks the court to determine whether the Will is invalid, to be recognized as the author of the work. In such suits, the plaintiff asks for a decision to force the defendant to take any action, for example, to separate the inheritance contribution, to pay the author a pen fee.

Regarding the content of the statement of claim, the statement of claim must state:

- 1) the name of the court in question;
- 2) the plaintiff's last name, first name, patronymic, place of residence, if the plaintiff is an organization, her name, her husband (postal address) and requisites, as well as the surname, first name, patronymic and address of the representative if the application is filed by the representative²⁰;
- 3) the defendant's last name, first name, patronymic, place of residence, if the defendant is the organization, his name, the husband who is located (postal address) and props;
- 4) claimant's claim;
- 5) the valuation of the claim if the claim needs to be assessed;
- 6) evidence supporting the circumstances in which the plaintiff makes a claim and the circumstances stated by the plaintiff²¹;
- 7) information on compliance with the procedure for resolving the dispute with the defendant before the court, if the forecast is provided for by this law or contract;

¹⁷ Рязанцева Т. В. Особенности искового производства в гражданском процессе //Территория науки. – 2018. – №. 3. – С. 154-156.

¹⁸ Ibratova F. Marriage contracts in the post-Soviet states: Problem statement and prospects for further implementation //Адреса редакції. – 2023. – С. 51.

¹⁹ Мицык Г. Ю. Проблема классификации исков в гражданском процессе //Теоретические и практические проблемы развития современной науки. – 2015. – С. 153-157.

²⁰ Лошкарев А. В., Морозова А. А. Сущность встречного иска в гражданском процессе //Развитие современной науки и технологий в условиях трансформационных процессов. – 2023. – С. 832-835.

²¹ Ibratova F. Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts //Middle European Scientific Bulletin. – 2021. – Т. 16.



8) list of documents attached to the application²².

The application is signed by the plaintiff or his representative. If the application is made by a representative, a power of attorney or other document confirming the authority of the representative must be attached to the application.

The application may indicate the phone and fax numbers, electronic address of the plaintiff or his representative, as well as the other party²³.

The fact that an electronic address is indicated in the application is the applicant's consent to receive subpoenas and other notifications, copies of court decisions and judgments in the form of electronic documents.

According to the content of the statement of claim, its structure is almost uniform in all three cases²⁴.

Regarding the presentation of the claim to the court, the Republic of Kazakhstan in Article 148 of the Code of Civil Procedure provided for the application of the claim to the court in written or electronic form. Article 149 of the code of Civil Procedure of the Republic of Turkmenistan establishes that the application of the claim is made to the court in writing²⁵. In the Republic of Uzbekistan, such claims as the Republic of Kazakhstan can also be filed in writing and electronically in order to avoid excessive time, paperwork and excessive spending of citizens, in this aspect we can see the difference with the Republic of Turkmenistan, in the near future the neighboring Republic of Turkmenistan will also establish the acceptance of claims in electro form, which will prevent In addition, Article 150 of the Code of Civil Procedure of the Republic of Kazakhstan for the admission of a claim to a court hearing after it comes to court, establishes that the judge must make a decision on the basis that he will receive it within five working days. Article 151 of the code of Civil Procedure of the Republic of Turkmenistan establishes that the statement of claim will resolve the issue of its acceptance within three days after its appearance in court²⁶. The code of Civil Procedure of the Republic of Uzbekistan, on the other hand, establishes that it will receive within ten days. It can be seen from this that there are differences between states in terms of the deadline for accepting a claim²⁷.

As for the documents attached to the statement of claim, the Republic of Uzbekistan and the Republic of Turkmenistan are almost similar in this respect, but in the Republic of Kazakhstan we will witness that the requirements in this regard are somewhat greater. Article 150 of the

²² Асаевич М. В. Понятие и виды исков в гражданском процессе. – 2020.

²³ Ibratova F. B. The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity //Middle European Scientific Bulletin. – 2022. – Т. 20. – С. 143-147.

²⁴ Исаенкова О. В. и др. Иск и исковая форма защиты в гражданском процессе. – Общество с ограниченной ответственностью Издательство ЮРАЙТ, 2019.

²⁵ Ibratova F. B., Erezhepov B. I., Ortikov S. S. ECONOMY, ORGANIZATION AND MANAGEMENT OF ENTERPRISES, INDUSTRIES, COMPLEXES //Editorial team.–2019. – 2019. – Т. 1. – С. 13-19.

²⁶ Терехина Д. В. ПОНЯТИЕ, ВИДЫ И ЭЛЕМЕНТЫ ИСКА В ГРАЖДАНСКОМ ПРОЦЕССЕ //ИННОВАЦИОННЫЕ ИДЕИ МОЛОДЫХ ИССЛЕДОВАТЕЛЕЙ ДЛЯ АГРОПРОМЫШЛЕННОГО КОМПЛЕКСА. – 2021. – С. 215-217.

²⁷ Ibratova F. B. et al. Effective and Reasonable Implementation and Application of the Principle of Ability to Be Heard Under Foreign and National Legislation of the Republic of Uzbekistan //Middle European Scientific Bulletin. – 2021. – Т. 18. – С. 485-501.



code of Civil Procedure of the Republic of Turkmenistan provides documents attached to the statement of claim they:

- 1) copies of claims in accordance with the number of defendants and third parties;
- 2) document confirming payment of state duty;
- 3) a power of attorney or other document confirming the powers of the plaintiff's representative²⁸;
- 4) documents confirming the circumstances in which the plaintiff substantiated his claims, if there are no copies, copies of these documents for the defendants and third parties;
- 5) deferring the plaintiff's legal costs, paying in installments, exempting them from payment, or reducing their amount, securing the claim, seeking evidence, etc. unless they are specified in the statement of claim.

As I mentioned above, the Republic of Uzbekistan and Turkmenistan are almost similar in this respect, but documents confirming the fact that in the Republic of Kazakhstan there were actions aimed at reconciliation by the party (parties) in addition to these, if such actions were carried out, the plaintiff's procedural request to obtain evidence, if the evidence is in the defendant or in, copies of the investment agreement concluded between the investor and the authorized state body are also prescribed to attach documents confirming the investment activity of the investor.

In the Civil Proceedings of the Republic of Uzbekistan, the law allows the unification, concomitant consideration and resolution of several requirements of the plaintiff, which are joint with each other. Article 196 of the Code of Civil Procedure of the Republic of Uzbekistan States: "the plaintiff has the right to combine several requirements that are interconnected in one application." The legislation of Turkmenistan and the Republic of Kazakhstan does not say anything about this. It can be seen that the Republic of Uzbekistan differs from the rest of the countries in this regard²⁹.

As for the grounds for securing the claim, the court or judge will be able to take measures to secure the claim at the request of the persons involved in the case or on their own initiative. Failure to take action to secure a claim will make it difficult for the court to enforce a decision or cause it to fail, in any case of the case it will be allowed to secure the claim. As a rule, the measure to secure the claim will be seen after the lawsuit has been brought³⁰. The provision of the claim can be divided into two types. The material basis for the provision of the claim is preempted by the emergence of the need to ensure the claim, on the grounds that the subsequent execution of court decisions issued directly in the case becomes difficult or the execution of the claim is not ensured at all. The procedural basis for the provision of a claim is provided for the implementation and provision of a judicial initiative or according to the application of persons participating in the case³¹.

²⁸ Тарасенко М. Э. ИСК В ГРАЖДАНСКОМ ПРОЦЕССЕ: ПРОБЛЕМА ОПРЕДЕЛЕНИЯ ПОНЯТИЯ //Отв. за выпуск: Навальный СВ, канд. юрид. наук., профессор, и. о. директора ЮИ. – С. 268.

²⁹ Исаенкова О. В. и др. Иск в гражданском судопроизводстве. – 2020.

³⁰ Ibratova F., Ahadova M., Rozmetova A. APPLIED JURISPRUDENCE//Editorial team,(2021).–2021.

³¹ Зинковский М. А. Необоснованные иски и заявления как искусственные споры в гражданском процессе //Современное право. – 2016. – №. 3. – С. 77-81.



The award of the provision of the claim is executed immediately in the manner prescribed for the execution of the decisions of the court. A motion to secure a claim is decided by the judge or court hearing the case without informing the respondent or other persons involved in the case as early as the day of the case.

Measures to secure the claim include:

- 1) correspondence of property or funds belonging to the defendant and standing in him or in another person;
- 2) to prohibit the defendant from carrying out certain actions;
- 3) to prohibit other persons from giving property to the defendant or fulfilling other obligations to him;
- 4) in the event of a claim for the exclusion of property from the correspondence, it is necessary to stop its realization;
- 5) if the debtor is in dispute in judicial order over the executive document, and if such a dispute is allowed in the legislation, stop the collection under this document;
- 6) to impose on the defendant the obligation to carry out certain actions in order to prevent the violation of disputed property, deterioration of its condition;
- 7) transfer of disputed property to a third party (custodian) for safekeeping.

If necessary, the court (judge) may also take other measures to secure the claim³².

The claim is not allowed to provide wages, income, pension and stipend by mistake, except for claims of alimony, crippling or otherwise crippling health, as well as compensation for damages caused by the death of the breadwinner, compensation for damages caused by looting the property of others³³.

The measures to secure the claim must be proportional to the demand made by the plaintiff *arz*. If necessary, the court may apply several types of the provision of the claim, but their total amount should not exceed the valuation of the claim.

The measures to secure the claim are similar in content to each other in the legislation of all three states³⁴.

The application for the provision of the claim is decided by the judge (court) on the day of the application, without informing the defendant and other persons participating in the case. This provision is uniformly relevant in all three state legislatures, except in the legislation of the Republic of Uzbekistan on the results of consideration of the application for the provision of the claim. In the republics of Kazakhstan and Turkmenistan, however, a decision is made³⁵.

³² Boboqulovna I. F., Orif o'g'li R. B. MEDIATSIYA–OILAVIY NIZOLARNI HAL ETISHNING MUQOBIL USULI SIFATIDA //SCIENTIFIC ASPECTS AND TRENDS IN THE FIELD OF SCIENTIFIC RESEARCH. – 2022. – T. 1. – №. 4. – C. 80-85.

³³ Feruza I., Madina A., Asal R. LEGAL ISSUES OF JUDICIAL PROTECTION IN THE ECONOMIC COURT IN UZBEKISTAN //International journal of professional science. – 2022. – №. 4. – C. 5-10.

³⁴ Радько Т. Н. Основы гражданского процессуального права. – " Издательство"" Проспект""", 2013.

³⁵ Babakulovna I. F. Ibratova FB, Yerkebayeva Zh. A. Mediation as an alternative way to resolution of economic disputes //Editorial team.



As for the enforcement of the claim enforcement award in all three states, the claim enforcement award is immediately executed in the manner prescribed for the enforcement of court documents.

The cancellation of the claim enforcement measures the claim enforcement measures can be overruled by the court considering the case. The issue of the termination of the provision of the claim is decided at a hearing with the notification of the persons involved in the case³⁶. However, the failure of these persons to show up does not prevent them from considering the issue of canceling the provision of the claim. The decision of the arbitration court to refuse to satisfy the claims of the claim provides the basis for the cancellation of measures to ensure the claim by the court. A ruling is issued on the results of consideration of the issue on the cancellation of measures to ensure the claim. An extract of the award is sent to the persons involved in the case no later than the day after the issue of the award.

The shelf life of measures to ensure the claim is listed only in the code of Civil Procedure of the Republic of Uzbekistan. In the event of a claim being dismissed, the measures to secure the claim are retained until the decision to settle comes into legal force. However, the court may issue a ruling at the same time as the decision to overturn the measures to secure the claim, or once it has been passed. In the event that the claim is satisfied, the measures to secure the claim will remain in force until the decision to settle is actually executed³⁷.

It is possible to appeal against the provisions of the claim. A private complaint may be filed against the judgment of assuring the claim. The deadline for the issuance of a private complaint (protest) on the provision of a claim is from the date of filing or sending an extract of the claim. The issuance of a private appeal (protest) of the court's ruling on the provision of the claim does not prevent the enforcement of this ruling. The issuance of a private appeal (protest) of the court's ruling on the abolition of the provision of the claim, or on the replacement of one type of provision of the claim with another, suspends the enforcement of this ruling. The appeal of the claim enforcement award shall be of substantive uniformity in all three state legislatures. In conclusion, the material and legal requirement of the plaintiff does not arise by itself. In civil proceedings, the word "claim" represents an appeal to a court or other progressive organizations for the protection of a person's rights. This appeal shows the requirements of the person and the content of the claim and provides information and reasons for their implementation. In addition to realizing who is right in a controversial situation, the claim also serves to restore the violated rights of individuals and legal entities whose rights and legitimate interests are violated. Above we have seen their analysis of the issues of claim in the legislation of several states by considering the similarities and differences in their legislation, their specifics. We have witnessed that the legislation of the Central Asian states is close and similar, and some sources do not repeat each other. As for the differences between them, the legislation of almost all states is close to each other, only we have witnessed the difference in procedural deadlines between them. The Republic of Uzbekistan has a ten-day period to consider the claims received in the process of civil proceedings and accept it for proceedings. And in the

³⁶ Ермолаева В. О., Ермолаева В. О. Косвенный иск в гражданском процессе (понятие, общие признаки). – 2015.

³⁷ Иванова Л. В. К вопросу о содержании понятия иска в гражданском процессуальном праве. – 2021.



civil process of the rest of the states, we saw three and five-day periods. The reduction of this period in the Republic of Uzbekistan also serves to ensure reasonable acceleration in civil proceedings.

The concept of the right to a claim is closely related to each other, with the concept of a claim arising from a contentious material and legal relationship and initiated in a court or other competent body for viewing and resolving in a specific procedural order. There will be no claim if there is no conflict situation.

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