

THE DISCRETIONARY RIGHT OF THE CLAIMANT TO BE PART IN THE CIVIL LAWSUIT

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ABSTRACT: *The study is intended for the research of the issue of the claimant in the lawsuit and its possibilities to abandon civil action, not to support the action, to conclude the reconciliation or, in other ways to express attitudes through legal instruments available in legislature. In particular, I will refer to the claimant's situation for procedural binding co-participation, the limits of civil action against the acts of disposition of the court, the debtor's locus standi in the case of indirect claim, to other situations that we consider to be unsuitable for applicant status, especially in terms of interest or lack of interest in supporting civil action. We propose consolidation of the concept of freedom involvement of the claimant in the civil lawsuit and legal assignment of this quality only to the person who makes or, at least, support material claims which are subject of the civil action.*

KEY WORDS: *civil lawsuit, claimant, plaintiff, Civil Procedure Code of the Republic of Moldova,*

JEL CODE: K 1

Given topic of interest in terms of appearance or conventional fictions that assign "unwillingly" plaintiff procedural uninteresting person generally or in respect of some of the claims, as I hope to manage to reflect on aspects of reference.

Plaintiff in the lawsuit is that, being part of the legal material at issue, the court addressed a claim that the lawsuit will ask the court achievement legal interest that it has in relation to the defendant that assumed that violated his rights and interests. Availability of civil proceedings in the sense assumed by default, but primarily, that a civil action may be initiated only at the initiative and express the will of the applicant and any person may be forced to turn to the courts if that's not showed an explicit interest by depositing an instrument to reveal interest. Moreover, the plaintiff is only entitled to modify, supplement or withdraw the civil action pending before a court, and the exercise of those

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powers do nothing to strengthen the applicant's discretionary option to make use of his procedural rights through action that formulated it.

On the other hand, institutions such as co-participation mandatory procedural right to appeal to court to defend the rights, freedoms and legitimate interests of others or of any number of persons, the right of the court to reject the applicant's waiver action and so on are able to limit the discretion of the applicant which I mentioned earlier. Through their established legal exceptions to the discretion of the applicant and its quality is a fact that was not wanted by the applicant, and in some cases even supported it. At the same time, if the above events legislature expressly specified way of giving the plaintiff out of his will (in the sense that it will not be expressed to acquire standing) or retain this quality even against the will applicant (where, according to art. 60, para. 5 of the Civil Procedure Code of the Republic of Moldova (hereafter CPC), the court will materialize its right to reject the applicant's waiver action ... if that act against the law or violate the rights, freedoms and legitimate interests of the interests of society or the state), then in other situations, which we will reference the applicant impression quality can be inferred from the nature of the assumption and procedural relationships sufficiently imprecise that interpretation and it allows local doctrine and judicial practice. We refer here to the standing of the borrower (debtor first) if indirect claim, as well as furthering the applicant's claim for divorce proceedings in the court office in defending the rights of minors common descendants of those seeking divorce. In the following we will refer to each of the situations specified point generically to this level of study.

Mandatory procedural co-participation is regulated in Art. 62 of the CPC of the country and covers standing co-participation and to passive. The court will examine the co-participation-based civil cause binding if:

- the dispute is the common rights and obligations of several plaintiffs or defendants;
- plaintiffs or defendants' rights and obligations arising from the same factual and legal grounds. From the text of the law is deduced, in principle, the court _ process will not necessarily attract the person who is bound by the legal material because of civil litigation but, according to par. 2 of art. 62 of the CPC shall notify, in motion or at the request of trial participants, and the possibility to intervene in the process. From the above actually find ourselves in a dilemma legislator speaks of people standing on the court notifies them, or has the right and obligation to examine the case and inform about their right to intervene in the process is already started at the initiative of others. This makes us believe that regardless of whether or not these persons will arise in the process, they will have this status, which is unsuitable principle of availability. Provision as par. 6 of the same article refers to that resume consideration of the case on merits recognition of the need for interference, not to clarify the actual involvement of these persons after notification.

As for me, I think that the legislature did enough light over the quality of co-participants as co-participation procedural requirements and, in principle, is not in itself a violation of the rights of the person can be an coreclamant in a lawsuit at the request of others who shared with her common rights, but it is unclear in that the two reclaims different situation may arouse doubts regarding the meaning of procedural risk bearing costs and, especially, taking civil action as such. A special bracket in this context is the

disposition by the court to settle the dispute which includes rights reclaim was not involved in the process are informed about this possibility, or even if it was involved, did not participate effectively in civil case .

A civil action may be initiated in the interest of an unlimited number of persons, in accordance with Art. 7, paragraph 2 of the CPC of the country and this will generate the default quality as the applicant itself indefinitely, but determined generically. This form of generalization quality the applicant does not mean that person is part of the circle of those who are concerned and who is acting in the best interests will not be able to materialize standing attached to it by law. Neither case is not likely to affect the rights of people since it is required for the acquisition of rights or risk losing or reducing the amount of rights they already have. Thus, and this has led to is a generic term claimants happy to extend the concept of participation of the person unsolicited lawsuit.

As mentioned above, the court, under Article 60, para. 5 of CPC will not admit giving plaintiff in the action, no action recognition by the defendant, the transaction between the parties will not admit that these acts violate the law or the rights, freedoms and legitimate interests of the interests of society or the state. The interested party of this rule in the context of the discussion is based on the applicant's locus we see a limitation of its legal powers in order to protect in cases where the court will consider the applicant constrained circumstances or without taking into account the interests of other persons who may be affected, decide to stop action. It is hard to imagine a situation in which a court could reject such an initiative on the background of the applicant availability was talking about earlier, but in the context of a procedural institutions that demand the removal of the list. Equally difficult is to understand how they could further examine court proceedings started on the initiative of a person if the same person no longer wishes to examine it, no longer interested in the trial, no evidence and no participate in any way in the proceedings. Private nature of relations materials which entitlement to civil action is conceptually incompatible with the prerogative of the court.

A special situation results from the applicant's art. 38, para. 2 of the Family Code of the Republic of Moldova which provides that in the absence of an agreement between spouses on joint property ownership division of their property and alimony children and husband unable to work requiring material support and determination with which parent will common or minor children living will prove that the agreement violates the rights and interests of minor children or a spouse court is obliged: ... b) to determine which parent pays alimony minor children and its size, .. d) establish who the parents are living minor children after divorce. On the other hand, art. 240 para. 3 of CPC specifies that the court shall decide the limits claims made by the applicant procedural rule is one imperative which leaves no room for interpretation. Thus, we are in a situation where family law establishes an exception to the rule on civil action limits, forcing the court to rule on its own on some claims that were not raised by the plaintiff and the defendant even in the process of selling marriage. Family standard interpretation is ambiguous because the other two categories of claims specified in paragraph. a) and c) of art. 38, paragraph 2 of the Family Code may be examined by the court only at the request of spouses or one of them complicated.

Even if in practice in litigation are suggested to formulate in writing by completing civil action claims on the two categories of claims, except officialdom that establishes law in civil proceedings, arguing protect the rights and interests of children, not nothing but an

echo of the socialist concept of justice, or in a country which respects democracy and the principle of separation of powers such exception is unacceptable and inexcusable. A solution could be referral by the court competent public authorities in the protection of children's rights which will then proceed accordingly if such intervention is generally necessary.

Returning to the discretion of the applicant's ability, it could be affected by the official role of the court where none of the spouses (or plaintiff or defendant) does not want to take custody of children, for example, a situation which will result in the granting of rights to person who has not requested. Obviously intervention of state authorities is imperative in these situations, and the like, but we should not put this task on behalf of the court as long as the state has specialized bodies in this area.

And finally, I will refer to another problematic situation arising from the specific nature and peculiarities of the action proceedings oblique dividing the opinions of specialists in the field of two camps: one that believes that the debtor who, according to art. 599, para. 1 of the Civil Code of the Republic of Moldova, refuses or omits to exercise their rights and claims against debtors in the lawsuit is based on application of the creditor lawsuit plaintiff and second it considers that this is / can be intervening accessory in the same process.

Arguments first, which assigns quality plaintiff debtor under procedural rules of co-participation mandatory, are limited to execution, considering that the decision of the court cannot determine, upheld the action, and only applicant claims that it can act as creditor under the judgment enforcement proceedings. The second group of views speaks oblique indirect nature of the action which excludes the actual participation of the debtor in civil procedure, given that the latter could be affected by the court decision, it reserves the right to intervene in the proceedings as intervener accessory (as a rule, by the defendant, since he refused or failed to exercise personal right of action).

I think it is relevant that the second sentence that leaves the debtor election process not only party (plaintiff or defendant) the party to intervene in the proceedings, and that the intervention itself, or if it does not show any interest in achieving its claims against their debtors, we cannot attribute to a plaintiff need, the more that none of the grounds or conditions of mandatory procedural active co-participation are not applicable in this context. Just through the indirect nature of the action can be explained oblique legal court to order the defendant to judgment enforcement creditor obligations under its Art. 601 of the Civil Code which provides that all property acquired under indirect claim falls in property of the debtor and all creditors receive it, so in general and equal conditions for all creditors, including the creditor who addressed the court with oblique action.

In conclusion to the above, is to note that the legislature has not established a unitary concept regarding the applicant's standing, since it will achieve its legal rights, free trial of the applicant and especially - rigid limits of discretion applicant in formulating and supporting civil action. Thus standing offensive applicant is a process and a generalization appearance and contentious civil procedure object through the action applicant institution relative, unstable and unpredictable. Addressing plaintiff in court should not be marked by surprise inability to withdraw (at will) action, a plaintiff cannot effect the will of others, and the court decision is not fair to offer individual rights or benefits not requested them. If these issues should be considered by the legislature and courts applying the law, the interpretation arbitrary, contradictory and neuniforme not hovering over the judiciary and

provide not only for the applicant but also to other participants in the process, sufficient procedural guarantees basis for trust and justice.