**Artículo de investigación**

# General characteristics of the claim in the countries of the anglo-saxon and continental law

Загальна характеристика позову в країнах англосаксонського та континентального права

"Características generales del reclamo en los países del derecho anglosajón y continental"

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**Abstract**

The relevance of the article is to investigate the concept of lawsuits and class actions in the leading countries of the world. The object of the study is the public relations that arise when civil actions are brought in court. The subject of the study is the law of foreign countries, which define the civil lawsuit, its legal nature.
In accordance with the goals and objectives set, the basis of the methodology of the study were general scientific and special methods of knowledge of legal phenomena. The authors analyzed the legal acts of the USA, Germany, the United Kingdom, the Netherlands, Sweden, France, and the Netherlands.
Based on the research, the authors made conclusions about the legal nature of the lawsuit, defining the concept of the lawsuit in the acts of normative-legal acts of foreign countries. The conclusion about the status of the class-action lawsuit in foreign countries and the further improvement of the domestic class-action lawsuit was also made.

**Анотація**

Актуальність статті полягає в дослідженні поняття позову та групових позовів в провідних країнах світу. Об'єктом дослідження є суспільні відносини, які виникають при подачі цивільних позовів до суду. Предметом дослідження є норми законодавства зарубіжних країн, яка надають визначення цивільном позову, його правовій природі.
Відповідно до поставлених мети і задач основою методології дослідження стали загальнонаукові та спеціальні методи пізнання правових явищ. Авторами проаналізовані нормативно-правові акти США, Німеччини, Великобританії, Нідерландів, Швеції, Франції та Нідерландів. На основі дослідження авторами були зроблені висновки щодо правової природи позову, визначення поняття позову в актах нормативно-правових актах зарубіжних країн. Також зроблено висновок про стан інституту групових позовів зарубіжних

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**Keywords:** The civil lawsuit, the concept of the lawsuit, nature of the lawsuit, class-action lawsuit.

країнах та про подальше удосконаленні вітчизняного інституту групових позовів.

**Ключові слова:** цивільний позов, поняття позову, природа позову, групові позови.

**Resumen**

La relevancia del artículo es investigar el concepto de demandas y acciones colectivas en los principales países del mundo. El objeto del estudio son las relaciones públicas que surgen cuando se inician acciones civiles en los tribunales. El tema del estudio es la ley de los países extranjeros, que definen la demanda civil, su naturaleza legal.
De acuerdo con las metas y objetivos establecidos, la base de la metodología del estudio fueron los métodos generales científicos y especiales de conocimiento de los fenómenos legales. Los autores analizaron los actos jurídicos de los Estados Unidos, Alemania, el Reino Unido, los Países Bajos, Suecia, Francia y los Países Bajos.
Con base en la investigación, los autores sacaron conclusiones sobre la naturaleza legal de la demanda, definiendo el concepto de la demanda en los actos de actos normativos-legales de países extranjeros. También se llegó a la conclusión sobre el estado de la demanda colectiva en países extranjeros y la mejora adicional de la demanda interna.

**Palabras clave**: La demanda civil, el concepto de la demanda, la naturaleza de la demanda, la demanda colectiva.

## Introduction

Each state has its own judicial system and its own civil procedural legislation. In each country, the claim, its requirements, and history of its development in the country are different. To highlight the positive experience of foreign countries, it is important to analyze the foreign legal framework.

The identification of positive foreign experience is important for further improvement of national legislation. During the analysis is an important factor for the deep understanding of the basic nature of legal norms, it is important to consider the historical aspect of their adoption.

## Methodology

In accordance with the goals and objectives set, the basis of the methodology of the study were general scientific and special methods of knowledge of legal phenomena.

Dialectical method as a general method of scientific knowledge and historical method allowed to consider all issues of the topic in dynamics, to identify their interrelation and interdependence, to study the genesis of current procedural legislation of the countries of the continental and Anglo-American system.

The use of the comparative legal method allowed us to explore the foreign experience of regulating the relations in the context of reforming domestic legislation.

The method of system analysis, as well as the system-structural and formal-logical methods made it possible to: clarify the concept and essence of the claim, investigate the subjective composition of the relations in the filing of the claim, justify the need for improvement of certain definitions on the chosen research issues. The formal legal method investigated the legal norms of foreign and domestic legislation governing the relations under investigation, clarified the meaning and meaning of the concepts and terms used in them, substantiated the conclusions and proposals for their changes and additions.

Structural and functional method was used to analyze the content of the claim, the procedure of its submission to the court, formulation of proposals for improvement of the current legislation on the investigated issues.

## Presentation of key research findings

First of all, we will talk about the development of the concept of the lawsuit in the United States. In the United States of America, the

application of the person to the US Justice Department for the protection of violated civil rights is made by filing a claim. There is no single definition of "lawsuit" in US civil law.

Under Rule 2 of the Code of Civil Procedure in US Federal District Courts (hereinafter referred to as the Rules), a lawsuit is a "civil claim". The same rules set out the requirements for a civil claim and a competitive process. American law, jurisprudence, and procedural theory are characterized by the interpretation of a claim as part of a procedure called the exchange of competition papers. Rule 8 of the Rules states a claim for judicial protection but does not specify whether it is a definite claim. It is further stated that the paper in which the claim is made, regardless of whether it is an initial claim, a counterclaim or cross or a claim by a third party, should include:

1) A brief and clear statement of the grounds for appeal to the court, provided that these reasons were not stated earlier, the court agreed with them and no new justification is needed to confirm the right of appeal to the court;

2) A brief and clear statement of the claim, stating that the party is entitled to judicial protection;

3) A request for a decision in his favor. The claim may be alternative or varied (Private International Law: Foreign Legislation, 2000).

Thus, having conducted a systematic analysis of the said Rules of Civil Procedure in US federal district courts, it is possible to determine the claim in civil procedural law of the United States of America.

A US civil lawsuit is a civil lawsuit that complies with statutory requirements and requires a court to grant judicial protection of rights.

As we have already noted, Article 8 of the Rules of Civil Procedure of the US Federal District Courts states that the author of a claim must briefly and clearly state his claim, stating that the party has the right to a judicial remedy and a request for a decision in his favor. The claim may be alternative or varied. The phrase "stating that the party is entitled to judicial protection" means the grounds of the claim, which are a set of facts. Article 84 of the Rules of Civil Procedure of the Federal District Court of the United States contains annexes, which are examples of procedural documents, including claims. Besides, in the statement of claim the interested person also indicates the form of protection, i.e. what the court should do in its favor: the prohibition to take actions, compensation for damage, fulfillment of obligations, recognition of property rights and others (Federal Rules of Civil Procedure USA, 2018).

German procedural law was formed under the influence of Roman law, i.e. the reception of Roman law was held.

German civil procedural law has its origins in both Roman law and the law of various Germanic tribes. German civil procedural law after the reception of Roman law became the so-called continuation of Roman law, its evolution. In 1877 the Code of Civil Procedure was adopted. In the 1990s, following the unification of the GDR into Germany, the Code of Civil Procedure underwent significant changes and unification. In German civil procedure law, a lawsuit is defined as a claim by the plaintiff for the legal protection, i.e. the claim is a remedy. Due to the German reception of Roman law, the types of the lawsuit are somewhat similar to the same types of lawsuits that existed in Roman law. The main types of lawsuits in the Civil Code of the Federal Republic of Germany include substantive claims and personal claims, based on the same right and aimed at eliminating violations by a third party, claims based on property rights, petitioner and possessor. The petition was called a lawsuit, the subject of which is the law itself. Possessor was claimed for possession of rights. In addition, claims in civil procedural law of Germany are divided according to the generally accepted classification, ie the subject matter and content of the claim (Davtyan, 2000).

However, in the science of German civil procedural law, the definition of a claim is somewhat different.

The term of the claim is defined as the plaintiff's application or a procedural act aimed at initiating proceedings to clarify the circumstances of the case and reaching a decision on the dispute (Elyseev, 1989).

In Austria, civil proceedings are conducted under the rules of the Austrian Civil Procedure Statute of 1895 (hereinafter referred to as the Statute).

According to the second chapter of Art. 256 of the Statute, a claim is made by way of a writ of the petition, which must state a specific claim and all the circumstances on which the claimant's claim is based, as well as all the evidence that the plaintiff intends to use in the case to confirm the circumstances they have.

Article 228 of the Civil Procedure Statute of 1895 states that the claim may be a claim for recognition of the existence or non-existence of the right, of the recognition of the authenticity of the document or of the recognition of the document as a forgery, if the plaintiff has a legal interest in the existence or non-existence of the right, the veracity or falsity of the document was established by a court decision.

The said Statute also allows the plaintiff to make changes to the court's claim to increase the claims, before adopting a lawsuit before the court. However, after the acceptance of the claim for judicial review, the said right can only be exercised with the consent of the opposing party (Article 235 of the Charter) (Tur, 1986).
In the UK, there is no single codified act stating a well-defined notion of a claim.

Definition of the claim is given in Art. 24 of the Supreme Court Act, 1925. According to the said article, a claim is a document of civil proceeding which begins with a court order on the defendant's appearance in court or in any other way provided for by the rules of procedure other than criminal cases of the Crown. The UK Courts Act 1959 sets out the content of the lawsuit. According to Art. 201 of the said law, the claim contains a claim and signifies any proceedings that may be instituted by the claim. Also, the content of the claim stated in Art. 19 of the Administration of Justice Act, 1925, which states that the claim includes any matter or case that deserves consideration at a court hearing (Puchynskyj, 2008).

In English legal publications, a claim is defined as a proceeding where one party seeks to enforce in a court any subjective rights against the other party or to eliminate its offenses (Puchynskyj, 1974).

In the UK, claims are divided into three broad groups:

Real actions, or actions in rem, is the obtaining of a judgment against any person who has a disputed property.

Personal actions (actions in personam) - These actions are always directed against a specific person and are intended to recover damages. They arise from breaches of contracts and statutory obligations or torts.

Mixed actions - such actions have features of two other groups of actions. With the help of a mixed claim, the interested person has the opportunity to demand the protection of the property right and compensation for damages from its violation (Puchynskyj, 2008).

An interesting feature of the English system of law is that, in some cases, the claimant is still allowed to re-claim (Shmyttgoff, 1993).

In France, the situation is the opposite. There is already a single codified act. However, it does not define the claim. It only establishes a person's right to sue.

Article 30 of the Code of Civil Procedure of France states that the right to sue is the right of the person claiming to be heard on the merits of that claim so that the judge can decide whether it is justified or unjustified.
Concerning the opposing party, the right to sue is the right to challenge the validity of this claim.

Article 53 of this Code states that the initial claim is a claim by which a party to the dispute initiates a lawsuit by filing his claims in court. They are disrupted by the proceedings (Dovger, 2004).

The types of the lawsuit in France are set out in the French Civil Code (hereinafter - FCC). Specifically, the types of the lawsuits include claims on a substantive basis: suits under the guarantee (Article 886 of the CCF), claims for the recognition of the section invalid (Articles 887, 888 of the FCC), claims based on fraud and violence (Article 888 of the FCC), claiming a share allowance (Art. 889 of the FCC). (French Civil Code, 2008).

A feature of UK, US, and other common law is the lack of vindication and negatives. Ownership rights are protected in the UK by certain types of infringement claims, most notably property infringement claims. It also implies the forced seizure of someone else's land and simply the entrance to a fenced area, in someone else's apartment or garden. Possession violations may also apply to move things, including keeping them without the intention of turning them into their property. When

considering such lawsuits, the courts either seize things from the offenders, or prohibit their possession, or impose a fine on the offenders. (Zenyn, 2013).

In the countries of continental law, the Institute of group (representative) actions have undergone considerable development.

With this type of claim, the plaintiffs or defendants can protect not only their interests but also the interests of many other persons in a similar position. The decision, in this case, affects the rights and responsibilities of each member of the group, even if they did not participate in the process and knew nothing about it (Yarkov, 2004).

The institute acquired the greatest development in the United States of America. It not only allows to substantially streamline and simplify the procedure for protecting the interests of a group of persons in court. Pursuant to Rule 23 of the Rules of Civil Procedure in US Federal District Courts, a class action lawsuit is a petition filed on behalf of an indeterminate number of petitioners, requesting to consider a dispute arising out of a common-law fact, a claim to recover the infringed law, change the status of specific legal or physical persons for the benefit of all members of the group on the basis of adequate representation. A group of persons is recognized as an aggregate of persons so numerous that the appearance of all its members in court individually becomes impossible for practical reasons. Another indispensable feature of this vague circle of persons is their general interest in filing a lawsuit. According to the court, the legal fact common to the members of the group prevails over the facts affecting the interests of its members. The legal grounds for applying the legal mechanism of group actions include all those situations in which one legal fact or one person acts in the interests of a large group of other persons (Abolonyn, 1997).

In the US, class action lawsuits are divided into two types.

1. Small class claims lawsuits that combine the many petty claims of various claimants whose litigation is not favorable in the face of the high cost of litigation in the United States, as in most other common law countries.
2. Class action for an injunctive action brought on behalf of participants of numerous groups of persons whose rights and legitimate interests were violated as a result of the unlawful act of the defendant.

American legal theory refers to the grounds for bringing this category of class action lawsuits: racial discrimination against the employer against a large group of employees; causing damage to shareholders by unlawful actions of management bodies of a joint-stock company; causing harm to the health of many residents of a certain area as a result of violation of environmental legislation.

Class action, along with derivative lawsuits, refer to the US legal theory as a general category of representative lawsuits, given that one of the most important requirements of the US civil procedure requirements for such lawsuits is the requirement of having a proper plaintiff or an adequate representative of a large group of persons (Abolonyn, 2011).

One of the first countries in the European Union to introduce a group lawsuit based on the US model was Sweden. In 2002, Sweden adopted the Group Proceedings Act of 2002. This law enshrined certain types of class actions, namely:

1. Private class actions lawsuits;
2. Class actions lawsuits by organizations;
3. Public class actions.

A private class-action lawsuit can be initiated by an individual or legal entity that is also a member of the group and has its claim.

Public class action lawsuits are only filed where the Swedish government empowers a specific public authority to act as a plaintiff and to act on behalf of the injured party. The relevant authority shall bring a class action lawsuit if it is in the public interest. Accordingly, private class action lawsuits are filed by a group of individuals who are united by a specific claim against a particular defendant. Group lawsuits from organizations are filed by relevant private entities (Majstrenko, 2015).

In the Netherlands, there are two modes of protection for group interest. The first mode is governed by the Act on Collective Action, 1994, and Art. 3: 305a of the Civil Code. The second

regime is enshrined in the Collective Settlement of Mass Damage Act, 2005. Considering the first regime, it should be noted that in the Netherlands group lawsuits can be brought by special associations. The group must prove that it is determined and pursues a specific goal. Article 3: 305a of the Civil Code of the Netherlands stipulates that an association with sufficient legal capacity may bring actions for the protection of the equal interests of others insofar as the claim of such persons ensures the protection of such interests. A class action decision is binding on all members of the group, except for those who have left the group. In the second mode, under the Law "On Collective Settlement of Mass Disputes Disputes", a class action lawsuit is filed to settle a dispute for damages by amicable settlement (Dolganychev, 2015).

In the UK, the class action institute is called "representative". The procedure for conducting class actions is regulated in the third section of the Rules of Civil Procedure "Group Procedure" (Maleshyn, 2011).

According to these rules, a class action lawsuit is a lawsuit in which, with the permission of the court, the claims for defense two or more persons acting as plaintiffs or defendants are combined.

Also, the rule states that without the permission of the court, it is impossible to combine the claims of several persons.

However, in Section 5 of the Rules of the Courts of England, another concept of representative action is enshrined. Pursuant to the said rules, a representative claim is a statement of claim initiating litigation against a plurality of persons who may be appointed by the court for defense or against one or more members of a large group, acting as representatives of all members of a large group or all members of a group defendants with the exception of one or more of them (Abolonyn, 2011).

**Conclusions**

Thus, based on the study it is possible to highlight the following conclusions.

Under Rule 2 of the Code of Civil Procedure in US Federal District Courts, a lawsuit is a "civil claim". The civil claim should include: a brief and clear statement of the grounds for appeal to the court, provided that these reasons were not stated earlier, the court agreed with them and no new justification is needed to confirm the right of appeal to the court; a brief and clear statement of the claim, stating that the party is entitled to judicial protection; a request for a decision in his favor. In the US, class action lawsuits are divided into two types. Small class claims lawsuits that combine the many petty claims of various claimants whose litigation is not favorable in the face of the high cost of litigation in the United States, as in most other common law countries. Class action for an injunctive action brought on behalf of participants of numerous groups of persons whose rights and legitimate interests were violated as a result of the unlawful act of the defendant.

In German civil procedure law, a lawsuit is defined as a claim by the plaintiff for the legal protection.

According to the Austrian Civil Procedure Statute, a claim is made by way of a writ of the petition, which must state a specific claim and all the circumstances on which the claimant's claim is based, as well as all the evidence that the plaintiff intends to use in the case to confirm the circumstances they have.

Under the UK legislation, a claim is a document of civil proceeding which begins with a court order on the defendant's appearance in court or in any other way provided for by the rules of procedure other than criminal cases of the Crown.

**References**

Private International Law: Foreign Legislation. (2000). Moscow: Statut.
Federal Rules of Civil Procedure USA. (2018). *U.S. Courts.* Retrieved from https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure.
Abolonyn, G. (1997). Class actions in US law and practice. Russian law journal, 1, 141 – 147.
Abolonyn, G. (2011). *Mass Claims.* Moscow: Walters Clover.
Davtyan, A. (2000). *Civil Procedural Law in Germany*. Moscow.
Dolganychev, V. (2015). *Procedural features of the initiation and preparation of the group litigation: a comparative legal aspect.* Yekaterinburg.
Dovger, A. (2004). *New French Code of Civil Procedure*. Kyiv.
French Civil Code. (2008). Moscow: Prospekt.

Elyseev, Ya. (1989). *The Civil Procedure of Germany*. Moscow.
Majstrenko, L. (2015). *Group lawsuit in Sweden: a general statutory characteristic.* Law of Ukraine, 9, 38-43.
Maleshyn, D. (2011). *Civil Procedure System of Russia*. Moscow: Statut.
Puchynskyj, V. (2008). *Civil procedure of foreign countries*. Moscow: Zerczalo.
Puchynskyj, V. (1974). *English civil procedure*. Moscow.
Shmyttgoff, K. (1993). Export: International Trade Law and Practice. Moscow: Jurid. lit.
Tur, N. (1986). *The Austrian Charter of Civil Procedure of 1895 in comparison with our Charter*. SPb.: Printing House of the Governing Senate.
Yarkov, V. (2004). *Civil Procedure*. Moscow: Walters Clover.
Zenyn, Y. (2013). *Civil and commercial law of foreign countries.* Moscow: Yurait Publishing House.