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## LEAVING A STATEMENT OF CLAIM WITHOUT MOVEMENT AND LEAVING IT WITHOUT CONSIDERATION: PROBLEMATIC ASPECTS OF THE CORRELATION OF CIVIL PROCEDURE INSTITUTIONS

**Abstract.** The article is devoted to a thorough and comprehensive analysis of the correlation between such legal consequences as leaving a statement of claim without movement and leaving it without consideration in cases where the plaintiff applies to the court without fulfilling the condition of exercising the right to file a claim, such as compliance with the legislator's established requirements regarding the form and content of the statement of claim, payment of the court fee for its submission, and the procedure for attaching relevant documents to it.

A systematic and consistent analysis of the provisions of the Civil Procedure Code of Ukraine has been carried out, and it has been noted that the legislator's proposed update to the institution of leaving a claim without movement has, in fact, led to the nullification of the very essence of this institution as a procedural and legal means of preventing the unlawful initiation of legal proceedings due to the plaintiff's (applicant's) failure to comply with the conditions for exercising the right to seek judicial protection, and, consequently, the possibility of the court's dishonest fulfillment of its duty to verify the existence of the legal grounds for opening proceedings in a case.

It is concluded that in cases where deficiencies in the statement of claim are discovered after the opening of proceedings, it would be most appropriate to establish the court's duty to postpone the consideration of the case and grant the plaintiff a period to correct the identified deficiencies. The period during which the plaintiff will have the opportunity to rectify the deficiencies should be determined at the court's discretion, taking into account the reasonable possibility of complying with the court's requirements and the time necessary to notify the plaintiff of the postponement of the case due to the deficiencies in the statement of claim and their correction.

It is proposed, in order to correct the outlined inconsistency in the legislative regulation of the institution of leaving a claim without movement, as well as to



ensure a clear and logical correlation between the institutions of leaving a claim without movement and leaving a claim without consideration, to repeal the provisions of paragraphs 11-13 of Article 185 of the Civil Procedure Code of Ukraine.

**Keywords:** statement of claim, deficiencies, court fee, leaving the claim without movement, leaving the claim without consideration, civil case.

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## ЗАЛИШЕННЯ ПОЗОВНОЇ ЗАЯВИ БЕЗ РУХУ ТА ЗАЛИШЕННЯ ЇЇ БЕЗ РОЗГЛЯДУ: ПРОБЛЕМНІ АСПЕКТИ СПІВВІДНОШЕННЯ ЦИВІЛЬНО-ПРОЦЕСУАЛЬНИХ ІНСТИТУТІВ

**Анотація.** Стаття присвячена ґрунтовному та комплексному аналізу кореляції таких правових наслідків, як залишення позовної заяви без руху та залишення її без розгляду у випадку звернення позивачем до суду без виконання ним такої умови реалізації права на пред'явлення позову, як додержання встановлених законодавцем вимог щодо форми та змісту позовної заяви, сплати судового збору за її подання, а також порядку долучення відповідних документів до неї.

Здійснено системний та послідовний аналіз положень Цивільного процесуального кодексу України та констатовано, що запропоноване законодавцем оновлення інституту залишення заяви без руху фактично призвело до нівелювання самої суті цього інституту як процесуально-правового засобу недопущення неправомірного виникнення судового процесу у зв'язку із недотриманням позивачем (заявником) умов реалізації права на звернення до суду за судовим захистом та, відповідно, можливості недобросовісного виконання судом обов'язку по перевірці наявності передбачених законодавством підстав відкриття провадження у справі.

Зроблено висновок про те, що у випадку виявлення недоліків позовної заяви вже після відкриття провадження у справі найбільш слушним буде закріпити за судом обов'язок відкласти розгляд справи та надати позивачу строк для усунення виявлених недоліків. Строк, протягом якого позивач матиме можливість виправити допущені недоліки, має визначатись на розсуд суду з урахуванням розумної можливості виконання вимог суду та часу, необхідного для повідомлення позивача про відкладення розгляду справи у зв'язку з допущеними недоліками позовної заяви та їх виправлення.

Запропоновано з метою виправлення окресленого алогізму законодавчого регулювання інституту залишення заяви без руху, а також з метою чіткої



та логічної кореляції інститутів залишення заяви без руху та залишення заяви без розгляду скасувати положення ч. 11-13 ст. 187 Цивільного процесуального кодексу України.

**Ключові слова:** позовна заява, недоліки, судовий збір, залишення заяви без руху, залишення заяви без розгляду, цивільна справа.

**Formulation of the problem.** The Civil Code of Ukraine in Part 1, Article 16 guarantees every individual the right to appeal to the court for the protection of his or her personal non-property or property rights and interests [1]. However, to exercise the right to judicial protection, a person must not only have the prerequisites for filing a claim established by the legislator but also comply with certain conditions for exercising this right.

In the science of civil procedure, it is generally accepted that when the prerequisites for the right to file a claim are met, an individual acquires the subjective right to appeal to the court with a specific demand [2, p. 27; 3, pp. 161–162; 4, p. 95; 5, pp. 85–86; 6, pp. 2–3, 112, 122–125; 7, p. 36; 8, pp. 85–87; 9, pp. 76–78]. The presence of these prerequisites is determined by the court during the filing of the claim (although it may sometimes be identified during the process), and if they are absent, the court cannot consider the case. If this is discovered after the proceedings have commenced, the process is terminated. Re-filing the claim on this matter is impossible, as it is not possible to remove the obstacles to the emergence of the subjective right to appeal to the court [2, p. 27].

In addition to the prerequisites for seeking judicial protection, the right to a claim in a procedural sense also depends on the conditions for exercising the right to file a claim. In other words, the procedural right to a claim is absent if the mechanism for applying to the jurisdictional body is not followed [10, p. 76]. Unlike the prerequisites for the right to appeal to the court, the shortcomings related to non-compliance with the procedure for filing a claim can be remedied, which, in turn, removes the obstacles to the commencement of the process [2, p. 27].

One of the conditions for exercising the right to file a lawsuit, as defined by civil procedural legislation, is the submission of a statement of claim in compliance with the established requirements regarding its form and content, as well as the procedure for submitting and attaching the appropriate number of copies of the documents attached to it, along with the payment of the court fee in the proper amount. The duty to verify the plaintiff's compliance with this condition lies with the court, as in cases where the statement of claim does not meet the legal requirements regarding form and content or the court fee has not been paid in the proper amount or in the prescribed manner, the court is obliged to apply one of the legal mechanisms provided by civil procedural law: either leaving the statement of claim without movement or leaving it without consideration.





**Analysis of recent research and publications.** The issues that will be the subject of this study have not been specifically analyzed in the doctrine of civil procedural law. Despite the in-depth study of the procedural institutions of leaving a statement of claim without motion and leaving it without consideration, the problematic questions of their correlation in the context of the legal consequences of failing to meet one of the conditions for exercising the right to file a lawsuit have not been the subject of a separate, thorough analysis.

**The purpose of the article** is to provide a thorough and comprehensive analysis of the correlation between such legal consequences as leaving the statement of claim without movement and leaving it without consideration in cases where the plaintiff applies to the court without fulfilling the condition of exercising the right to file a lawsuit, such as compliance with the legislator's established requirements regarding the form and content of the statement of claim, payment of the court fee for its submission, and the procedure for attaching the relevant documents to it.

**Presentation of the main research material.** With the adoption of the Civil Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) in 2004, the legislator introduced a new, previously unknown ground for leaving a statement without consideration, which was enshrined in paragraph 8, part 1, article 207 of the CPC of Ukraine as of March 18, 2004. As of March 18, 2004, paragraph 8, part 1, article 207 of the CPC of Ukraine was worded as follows: "proceedings in the case were initiated based on an application submitted without complying with the requirements set forth in articles 119 and 120 of this Code, and the court fee or expenses for information and technical support of the case review were not paid, and the plaintiff did not correct these deficiencies within the period set by the court". With the reform of civil procedural legislation in 2017, this ground remained practically unchanged in substance, and its provisions are now reflected in paragraph 8, part 1, article 257 of the CPC of Ukraine. According to this, the court leaves the claim without consideration if the proceedings were initiated based on an application submitted without complying with the requirements established in articles 175 and 177 of the CPC of Ukraine, non-payment of the court fee (hereinafter referred to as deficiencies of the claim) and the failure to correct these deficiencies within the period set by the court [11].

However, the CPC of Ukraine also provides for another consequence of the court identifying deficiencies in the statement of claim, namely leaving it without movement. According to Part 1 of Article 185 of the CPC of Ukraine, if the judge determines that the statement of claim has been submitted without complying with the requirements set forth in Articles 175 and 177 of the CPC of Ukraine, within five days from the date the statement of claim is received by the court, the judge issues a ruling to leave the statement of claim without movement [11].



In the scientific literature, scholars interpret leaving a statement of claim without movement as a temporary measure. The court applies this measure to allow the plaintiff to rectify deficiencies in the statement of claim and comply with the submission procedure [12, p. 152]. One can note that judicial practice similarly defines the concept of "leaving a statement of claim without movement". The court sees it as a temporary measure to allow the plaintiff to rectify the deficiencies in the statement of claim and comply with the procedure for its submission before the opening of proceedings in the case [13].

S. Vasilyev believes that the institution of leaving a statement of claim without movement should be considered in three aspects. First, as assistance to individuals who have approached the court for the protection of violated and contested rights, freedoms, and legitimate interests. The judge must indicate in the order to leave the statement of claim without movement what deficiencies exist in the statement of claim and show ways to eliminate them, thereby providing procedural assistance.

Second, as a preliminary procedural action taken by the court before returning the statement of claim if the interested party does not correct the deficiencies in a timely manner.

Third, as a procedural action that is not only a legal consequence of filing a statement of claim but also a procedural obstacle to exercising the right to judicial protection [12, p. 152].

As a result, scholars have highlighted the following characteristic features of the institution of leaving a statement of claim without movement. Judges can only apply this institution at the stage of filing the claim and opening proceedings in the case. It entails specific procedural consequences: the statement is accepted on the day it is initially submitted to the court if the plaintiff corrects deficiencies in the statement of claim. If the plaintiff does not make corrections, the court returns the statement along with all attached annexes [14, p. 2].

D. Hnap, in his study of the procedural aspects of leaving a statement of claim without movement in administrative proceedings, highlights several points. He notes that leaving a statement of claim without movement is a procedural action performed by the judge. Its purpose is to remind the plaintiff about the necessity of complying with the form and content requirements of the statement of claim and the procedure for addressing the administrative court.

This practice represents a specific institution within administrative procedure. Its role is to encourage adherence to rules and legal requirements, establish procedural norms, and facilitate swift and thorough case reviews. Ultimately, it ensures the protection of rights for all participants involved in the judicial process [15, p. 16; 16, p. 76].

The scholar identifies the following features of the institution of leaving a statement of claim without movement. It necessarily has a temporary nature. Judges



can apply it at any stage of the court proceedings. Solely the judge carries it out. It has an explanatory nature. Judges formalize it through a separate procedural document – an order. It promotes the discipline of the participants in the process.

The acceptance of the statement occurs on the day it is initially submitted to the court, in the case of the plaintiff correcting the deficiencies in the statement of claim. The return of the statement of claim occurs if the requirements of the order to leave the statement of claim without movement are not fulfilled [15, p. 16].

Thus, one of the characteristic features of the institution of leaving a claim without progress is the possibility of applying this procedural institution at any stage of the court proceedings in administrative processes. It should be noted that its manifestation can also be traced in the legal regulation of the institution of leaving a claim without progress in civil proceedings. This is related to the fact that, with the legislative reform of judiciary conducted in 2017, the legislator introduced provisions interesting from the perspective of civil procedure doctrine, which fundamentally changed the approach to the institution of leaving a claim without consideration [17, p. 27].

According to part 11 of Article 187 of the CPC of Ukraine, if the judge, after initiating proceedings in the case, finds that the statement of claim was filed without complying with the requirements set out in Articles 175 and 177 of the CPC of Ukraine, they issue a ruling. This ruling must be issued no later than the next day, indicating the grounds for leaving the claim without progress. The plaintiff is notified and given a period to rectify the deficiencies, which cannot exceed five days from the date the ruling is handed to the plaintiff. If the plaintiff rectifies the deficiencies within the period set by the court, the court continues the proceedings and issues a ruling no later than the next day from receiving the information about the rectification of the deficiencies. If the plaintiff does not rectify the deficiencies within the period set by the court, the statement of claim remains without consideration (part 12-13 of Article 187 of the CPC of Ukraine) [11].

Thus, the legislator has given the court the ability to leave a statement of claim without progress at any stage of judicial proceedings, up to the moment a court decision is made, if deficiencies in the statement of claim, which existed before the initiation of proceedings, are found. This means that regardless of when such circumstances are discovered by the court – whether before the initiation of proceedings or during the judicial proceedings – the court is always obligated to first apply the institution of leaving the statement of claim without progress and only then consider returning or leaving the statement without consideration.

This legislative innovation seems quite controversial to us. Firstly, the legislator effectively removes the necessity for the court to conduct a proper, diligent, and professional verification of the compliance by the person submitting the claim with the conditions for exercising the right to file a lawsuit. Now, the court





has little incentive to hastily check the plaintiff's compliance with the requirements set out in Articles 175 and 177 of the Civil Procedure Code of Ukraine regarding the form and content of the statement of claim and the payment of court fees. This is because the court can perform this check at any stage of the proceedings. More likely, the defendant will undertake this work as it aligns with their interests, leaving the court merely to formalize it in the form of an appropriate procedural document.

Secondly, the main purpose of leaving a claim without progress as a civil-procedural institution is to identify and eliminate deficiencies in the statement of claim or other violations related to non-compliance with the conditions for exercising the right to file a lawsuit before the initiation of proceedings. The timing of applying this civil-procedural institution serves two purposes. On the one hand, it protects the judicial system from unnecessary expenses related to the consideration and resolution of unfounded claims. On the other hand, it ensures the possibility of actual realization of the right to judicial protection. If the plaintiff corrects the deficiencies in the statement of claim, it is considered accepted on the day it was originally submitted to the court [18, p. 116–118].

Thirdly, the current legislative regulation of the institution of leaving a claim without movement contradicts both the established stages of civil procedure and the general principles of civil proceedings. It is evident that a ruling to leave a claim without movement, as an element of this institution, serves as an indicator, in a doctrinal sense, signaling whether the court will accept the case for proceedings (open proceedings) or not. The possibility of applying this institution only before issuing a ruling on the opening of proceedings, as well as the specific legal consequences associated with it, are the distinctive features that align with the logical, systematic, and structured sequence of procedural actions taken by participants in the judicial process.

Thus, the legislator's proposed update to the civil procedural legislation has effectively undermined the very essence of the institution of leaving a claim without progress. This procedural-legal tool is designed to prevent the unlawful initiation of judicial proceedings due to the plaintiff's (applicant's) failure to comply with the conditions for exercising the right to seek judicial protection. As a result, the possibility of the court failing to diligently perform its duty to verify the legislative grounds for initiating proceedings has increased. Many formal deficiencies in the statement of claim (application), non-payment of court fees, or other instances of the plaintiff's (applicant's) non-compliance with the conditions for seeking judicial protection, which are grounds for leaving the claim without consideration, could have been identified during the initial evaluation of the claim, provided the court diligently performed its functions. If the plaintiff refuses to correct these deficiencies, the claim can be returned to the plaintiff without initiating the judicial process, thus preventing unnecessary expenses for both the judiciary and the other participants in the civil process.



The situation is exacerbated by the fact that when a statement of claim is left without progress, an order is issued, which cannot be appealed separately from the court's decision [19, p. 158].

Currently, courts prefer to open proceedings in a case without giving due attention to examining the plaintiff's (applicant's) compliance with the conditions for filing a lawsuit as established by law. It is often later, usually at the behest of the defendant, a third party with an independent claim, or another participant in the civil case, that the court issues an order to leave the claim without movement. As a sanction for non-compliance, the court applies the provisions of paragraph 8 of part 1 of Article 257 of the Civil Procedure Code of Ukraine, issuing an order to leave the claim without consideration.

Thus, the current legal regulation of the institution of leaving a statement of claim without movement allows judges to avoid the duty of conscientiously and properly verifying at the stage of opening proceedings whether the plaintiff has met the prerequisites for exercising the right to file a lawsuit and complied with the conditions for exercising this right. Ultimately, this leads to a violation of the individual's right to access judicial protection and a fair trial.

In our opinion, if deficiencies in the statement of claim are discovered after the opening of proceedings in the case, the most appropriate course of action would be to establish a duty for the court to postpone the consideration of the case and grant the plaintiff a period to correct the identified deficiencies. The period during which the plaintiff will have the opportunity to remedy the deficiencies should be determined at the court's discretion, taking into account the reasonable possibility of complying with the court's requirements and the time needed to notify the plaintiff of the postponement of the case due to the deficiencies in the statement of claim and their correction.

Thus, in the ruling to postpone the consideration of the case, the judge is obliged to specify the following: the grounds for postponing the case (it is important to note that the ruling should not merely state in general terms that the plaintiff failed to comply with the legal requirements regarding the form and content of the claim, but must explicitly list the specific deficiencies made by the plaintiff, explain their nature, and indicate which legislative norms they violate), how the plaintiff can rectify these deficiencies, specify a clear deadline for completing these actions, as well as the time and place of the next court hearing. This ruling is issued as a separate procedural document and is not subject to appeal [14, p. 6]. If the plaintiff complies with the requirements stated in the ruling within the time period set by the court, the case will continue; if not, the court is obliged to leave the claim without consideration under paragraph 8, part 1, article 257 of the CPC of Ukraine.

Therefore, in order to address the outlined inconsistency in the legislative regulation of the institution of leaving a claim without movement, as well as to





ensure a clear and logical correlation between the institutions of leaving a claim without movement and leaving a claim without consideration, we propose repealing the provisions of paragraphs 11-13 of Article 187 of the CPC of Ukraine. Regarding the application of the institution of leaving a claim without consideration based on the grounds provided by paragraph 8, part 1, Article 257 of the CPC of Ukraine, in the context of its correlation with the institution of leaving a claim without movement, it can be confidently asserted that this pertains only to those deficiencies in the statement of claim that, although they arose before the opening of proceedings, were unknown to the court at the time of issuing the ruling to open the proceedings. Any other interpretation of this provision would lead to the substitution of the institution of leaving a claim without movement by the institution of leaving a claim without consideration based on the grounds provided by paragraph 8, part 1, Article 257 of the CPC of Ukraine, and ultimately to the displacement of the former from civil procedural law, which is, in fact, what we are currently observing in practice.

**Conclusions.** The proposed legislative update to the institution of leaving a statement of claim without action, as reflected in the provisions of Parts 11-13 of Article 187 of the Civil Procedure Code of Ukraine, has effectively led to the erosion of the essence of this institution as a procedural-legal means to prevent the unlawful initiation of court proceedings due to the plaintiff's (applicant's) failure to comply with the conditions for exercising the right to seek judicial protection, and, accordingly, to the potential for the court to perform its duty to verify the existence of legal grounds for opening proceedings in the case in bad faith.

To correct the outlined inconsistency in the legislative regulation of the institution of leaving a statement of claim without action, and to ensure a clear and logical correlation between the institutions of leaving a statement of claim without action and leaving a statement of claim without consideration, the ground provided in Clause 8, Part 1 of Article 257 of the Civil Procedure Code of Ukraine should only be applied by the court in cases where, for certain objective reasons, the fact of the non-compliance of the submitted statement of claim with the requirements set forth in Articles 175 and 177 of the Civil Procedure Code of Ukraine is discovered after the proceedings have already been initiated.

Therefore, in the event that deficiencies in the statement of claim are identified after the initiation of proceedings, it would be most appropriate to impose an obligation on the court to postpone the hearing and provide the plaintiff with a period to correct the identified deficiencies. The period during which the plaintiff will have the opportunity to correct the deficiencies should be determined at the discretion of the court, taking into account the reasonable possibility of fulfilling the court's requirements and the time needed to notify the plaintiff of the postponement of the hearing due to the identified deficiencies in the statement of claim and their correction.



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