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DISMISSAL OF THE CLAIM IN CIVIL LITIGATION: THEORY AND PRACTICE

Abstract:

The initiation of civil litigation requires a party's intention to seek judicial protection of infringed or threatened subjective rights. This intention is expressed by filing a statement of claim before the competent court. A statement of claim constitutes a procedural act that triggers the commencement of litigation. In the absence of a properly submitted claim, no proceedings can be conducted. The required content of a claim is regulated by several provisions of the Civil Procedure Act. Filing a claim entails certain procedural consequences, obligating the court, during the preliminary review stage, to examine whether procedural prerequisites for conducting the proceedings are met. Should such impediments exist, the court is obliged to instruct the parties to rectify the deficiencies within a prescribed time limit; failing that, the court shall dismiss the claim. This paper examines both the normative framework governing the dismissal of claims and the common misconceptions in legal practice where certain situations are erroneously equated with or confused for the institution of claim dismissal. Selected examples from judicial practice are also analysed.

Keywords: *dismissal of claim, statement of claim, defective pleading, procedural prerequisites, Civil Procedure Act*

INTRODUCTORY REMARKS

Civil litigation is inconceivable without the existence of a statement of claim. A claim represents the legally recognised means by which a party seeks judicial protection of violated or threatened subjective civil rights. The legal framework governing the statement of claim, including its required content, is set out in the Civil Procedure Act. In practice, it is not uncommon for a court to dismiss a claim during the preliminary examination stage. Article 101 of the Civil Procedure Act provides that if a submission is unintelligible or incomplete, and the party is not represented by an attorney, the court shall return the submission for correction, unless otherwise prescribed by law. In such cases, the court shall

specify a deadline of eight days within which the corrected or supplemented submission must be resubmitted. If the submission is corrected or supplemented and submitted within the prescribed time limit, it shall be deemed to have been submitted on the date it was originally filed. If the party fails to resubmit the corrected version within the specified period, the submission shall be considered withdrawn. If the submission is returned without the necessary corrections or additions, it shall be dismissed. However, if the submission was filed by an attorney, public legal representative, or public prosecutor and is unintelligible or incomplete, the court shall dismiss it without first returning it for correction.

THE STATEMENT OF CLAIM AS A PROCEDURAL ACT: CONCEPT AND CONTENT

The statement of claim is regulated under Article 192 of the Civil Procedure Act. It is stipulated that the claim must contain a specific request regarding the main subject matter and any ancillary claims, the facts upon which the claimant bases the request, the evidence supporting those facts, the value of the subject matter in dispute, as well as other elements required of all written submissions, in accordance with Article 98 of the Civil Procedure Act, which governs procedural submissions.

Furthermore, the same provision requires that a claimant who resides or has a registered office abroad must appoint a proxy for service of process within the claim. Failure to do so shall result in dismissal of the claim by the court. If jurisdiction or the right to file an extraordinary legal remedy (such as a revision) depends on the value of the subject matter, and the claim does not involve a monetary sum, the claimant must declare the value of the claim in the submission. The court shall proceed with the claim even if the claimant does not specify the legal basis of the claim; however, if the legal basis is indicated, the court is not bound by it.

Article 98 of the Civil Procedure Act defines what constitutes a procedural submission. A statement of claim, counterclaim, response to the claim, and legal remedies must all be submitted in writing. Written form also includes submissions sent by telegram or email, in accordance with special legislation.

A provision particularly relevant to the dismissal of a claim is paragraph 3 of Article 98, which stipulates that all submissions must be intelligible and must contain all elements necessary for the court to act upon them. Specifically, a submission must include: the designation of the court, the full name of the parties, or the business name in the case of legal entities, their residence or registered office, the names of legal representatives and attorneys if applicable, the subject matter of the dispute, the substance of the statement, and the signature of the submitting party.

If the statement contains a request, the party is obliged to specify the facts on which the request is based, and, where necessary, the evidence supporting those facts. Written submissions must be filed exclusively outside of court hearings and no later than 15 days prior to the scheduled hearing date.¹

¹ **Civil Procedure Act** (*Official Gazette of the Republic of Serbia*, Nos. 72/2011, 49/2013 – Constitutional Court Decision, 74/2013 – Constitutional Court Decision, 55/2014, 87/2018, 18/2020, and 10/2023 – other law; hereinafter: CPA)*, Article 98, paragraphs 4 and 5

GROUND S FOR DISMISSAL OF A STATEMENT OF CLAIM

The initial phase of civil litigation consists precisely of examining the admissibility of judicial protection. Since judicial protection must not be granted in the absence of certain procedural requirements—and as compliance with such requirements ensures the legality of the proceedings, which is ultimately justified by considerations of public interest—the court is obliged to assess the existence of these conditions *ex officio*.

Nevertheless, there are situations in which the absence of one or more such conditions can only be established based on an objection raised by the opposing party (e.g., *res judicata*, *lis pendens*, or a court settlement).² As to the existence of *lis pendens*, *res judicata*, a court-approved settlement, waiver of the claim, or lack of legal interest in filing the claim, the court is not authorised to rule at this stage of the proceedings, even if such procedural defects become apparent during the preliminary examination.

These procedural impediments may lead to dismissal of the claim only at the preparatory hearing or, if such a hearing has not been held, at the first main hearing.³

The preliminary examination of the statement of claim is regulated by Article 292 of the Civil Procedure Act (CPA). Following such examination, the court is authorised to issue decisions unless the matter concerns issues that, by their nature or under the provisions of this Act, can only be decided later in the proceedings.

A decision on the dismissal of the claim is issued by the court in the form of a ruling, on the grounds that general or specific procedural prerequisites have not been met. By doing so, the court prevents the possibility of ruling on the merits of the dispute. Should the procedural prerequisites be subsequently fulfilled, the claimant may renew the request for judicial protection.⁴

In this context, the court considers the submitted claim to be procedurally defective to such an extent that it prevents the normal conduct of proceedings by holding the main hearing, establishing facts, and adducing evidence, all with the aim of reaching a conclusion on the substantive validity of the claim.⁵

If the court finds that the claim is unintelligible or incomplete, or that there are defects concerning the capacity of the claimant or defendant to be parties to the proceedings, deficiencies regarding legal representation of a party, or shortcomings related to the authority of a representative to initiate proceedings when such authority is required, the court shall take necessary measures prescribed by this Act (Articles 80 and 101) to remedy such defects.⁶

Upon preliminary examination, the court shall issue a ruling dismissing the claim if it establishes that⁷: the court lacks jurisdiction over the claim; the claim was filed out of

2 Palačković, D. (2004). *Civil Procedural Law*. Faculty of Law, University of Kragujevac / Svetlost, Kragujevac, p. 52.

3 Triva, S., & Dika, M. (2004). *Civil Litigation Law*. Narodne novine, Zagreb, p. 540.

4 Stanković, G. (2018). *Lexicon of Civil Procedural Law*. Službeni glasnik, Belgrade, p. 223.

5 Bodiroga, N. (2008). Dismissal of an unintelligible statement of claim. *Annals of the Faculty of Law in Belgrade*, 56(2), 354.

6 Civil Procedure Act, Article 293.

7 Borovac, J., et al. (2012). *Commentary on the Civil Procedure Act*. Paragraf DOO, Belgrade, p. 198.

time where a deadline is prescribed by law; there is pending litigation concerning the same claim (*lis pendens*); the matter has been finally adjudicated (*res judicata*); a court-approved settlement has been concluded in the same matter; the claimant lacks legal interest to file the claim pursuant to Article 194 CPA; or the claim is unintelligible or incomplete.

Before rendering a ruling on the dismissal of a claim for the reasons stated, the court is obliged to hold a hearing at which the claimant is given the opportunity to respond to the proposed dismissal. In a case decided by the Higher Court in Novi Sad, case no. GŽ-361/15 dated 9 March 2015, which annulled the ruling of the Basic Court in Novi Sad, case no. P-7866714 dated 17 November 2014, it was held that the court must, in every case, regardless of the grounds for dismissal, first hold a hearing at which the claimant may express their position regarding the dismissal of the claim.

The reasoning in the judgment indicated that the first-instance court dismissed the claimant's statement of claim filed on 24 October 2014, which included a motion for interim measures, and decided not to hold the hearing scheduled for 22 December 2014. Pursuant to Article 294 of the Civil Procedure Act, the court is obligated, in every concrete case, regardless of the grounds for dismissal, to hold a hearing that provides the claimant the opportunity to be heard on the dismissal.

The legislator did not foresee any exceptions to this general rule, irrespective of the grounds for dismissal, nor did it prescribe differentiated court procedure in respect of holding the hearing depending on whether the claim is dismissed due to being unintelligible or incomplete, or on any other ground. Although the first-instance court dismissed the claim on the basis that the subject matter did not fall within its jurisdiction, the appellate court held that dismissal without scheduling a hearing, contrary to the cited statutory provision, deprived claimants of the opportunity to be heard in court. This amounted to a substantial violation of procedural rules under Article 374, paragraph 2, item 7 of the Civil Procedure Act.

1) Adjudication of Claims Outside the Jurisdiction of the Court

Throughout the proceedings, the court is obliged to monitor *ex officio* whether it has jurisdiction to adjudicate the dispute. The court shall declare itself incompetent, annul procedural acts already performed, and dismiss the claim if it determines at any stage that it lacks jurisdiction and that another authority is competent to resolve the dispute.

Furthermore, the court shall *ex officio* declare its lack of jurisdiction, annul procedural acts, and dismiss the claim if it establishes that it is not competent as a court of the Republic of Serbia, unless the jurisdiction of the domestic court depends on the defendant's consent and such consent has been given.⁸

2) Untimely Filed Statement of Claim When a Statutory Deadline for Filing Exists

In certain cases, to protect the interests of the parties, specific laws prescribe deadlines for seeking judicial protection. Pursuant to the Law on the Fundamentals of Property Relations,⁹ Article 77 provides that protection against disturbance or deprivation of possession may be sought within 30 days from the date the disturbance and the perpetrator become known, but no later than one year from the occurrence of the disturbance (dispute relating to possession disturbance).

8 Civil Procedure Act, Article 16

9 Law on the Fundamentals of Property Relations (*Official Gazette of the SFRY*, Nos. 6/80 and 36/90; *Official Gazette of the FRJ*, No. 29/96; *Official Gazette of the Republic of Serbia*, No. 115/2005 – other law), Article 77

3) Pending Litigation Regarding the Same Claim

There can only be one active litigation between the same parties concerning the same claim. Parallel proceedings addressing the identical claim between the same parties are not permitted. While litigation on a particular claim is ongoing, no new proceedings may be initiated on the same claim between the same parties. Should such proceedings be initiated, the court shall dismiss the subsequently filed claim.

If a final judgment is rendered in later-initiated proceedings, the court shall dismiss the claim in the earlier proceedings. Throughout the entire process, the court is obliged to monitor whether another litigation concerning the same claim between the same parties is pending.¹⁰

For example, in the decision of the Higher Court in Novi Sad, case no. GŽ1-184/2013 dated 15 November 2013, which annulled the decision of the Basic Court in Novi Sad, case no. P1-1839/2013 dated 17 October 2013, the court, during the preliminary examination of the claim, issued a ruling dismissing the claim if it established that litigation concerning the same claim was already pending.

However, the court noted that, based solely on data from the electronic case management system, it could not conclusively determine whether such litigation was pending between the same parties. The reasoning explained that the first-instance court had reviewed the electronic database of cases at the Basic Court in Novi Sad instead of examining the case file under reference no. P1-552/2013. Consequently, the first-instance court's conclusion that litigation concerning the same claim was already pending was premature, since electronic records alone do not suffice to establish such a fact.

Moreover, data from case file P1-552/2013 showed that the claims were not identical: in that case, the annulment of Articles 3 and 5 of the Agreement was sought, whereas in the present case only Article 5 of the Agreement was contested.

4) Res Judicata

Throughout the proceedings, the court is obliged to monitor *ex officio* whether the matter has been finally adjudicated. If it establishes that the litigation concerns a claim already subject to a final and binding decision, the court shall dismiss the claim.¹¹

5) Court-Approved Settlement in the Same Matter

The court must also monitor *ex officio* whether litigation is pending on a claim for which a court-approved settlement has already been concluded. If such a settlement exists, the court shall dismiss the claim.¹²

6) Lack of Legal Interest of the Claimant to File the Claim

The legislator has provided that the court may dismiss a claim if the claimant lacks legal interest to initiate proceedings, pursuant to Article 194 of the Civil Procedure Act. It is stipulated that a claimant may seek a declaratory judgment establishing the existence or non-existence of a right or legal relationship, infringement of personal rights, or the truthfulness or falsity of a document.

10 Civil Procedure Act, Article 203

11 Civil Procedure Act, Article 359

12 Civil Procedure Act, Article 338

A declaratory claim may be filed if the claimant has a legal interest in establishing the existence or non-existence of a disputed right or legal relationship prior to the maturity of a claim for performance arising from the same relationship, or the truthfulness or falsity of a document, or if the claimant has some other legal interest.

A declaratory claim may also be filed to establish the existence or non-existence of a fact if so provided by law or other regulation. A claim for the protection of personal rights may be filed regardless of whether a claim for damages or other relief has been made, in accordance with a special law.¹³

7) The Statement of Claim is Unintelligible or Incomplete

The requirements for a statement of claim to be complete and intelligible are prescribed in Articles 293 and 98 of the Civil Procedure Act. Article 98 stipulates that pleadings must be comprehensible and contain all necessary information to allow the court to proceed with the case, particularly: the designation of the court, the full names or business names of the parties or other entities, their domicile or residence, or registered office, as well as the details of their legal representatives and attorneys if any; the subject matter of the dispute; the content of the statement; and the signature of the submitter.

If the statement contains a claim, the party must specify the facts on which the claim is based, as well as evidence, if necessary.¹⁴ The statement of claim must include a specific request concerning the main matter and any ancillary claims, the facts supporting the plaintiff's claim, evidence substantiating those facts, the value of the disputed matter, and other data required for every pleading.¹⁵

If the statement of claim is defective, the court shall return it to the claimant for correction and resubmission within a prescribed deadline.¹⁶

In practice, according to the ruling of the Higher Court in Novi Sad, case no. GŽ-332/19 dated 12 March 2019, which annulled the decision of the Basic Court in Novi Sad, case no. P-10161/2017 dated 1 November 2018, it was held that a claim may only be dismissed for procedural deficiencies during the preliminary examination stage, and not after the claim has been served on the defendant, after hearings of the main trial, or after the main trial has been concluded.

The decision annulled the first-instance court's ruling that dismissed the claim as defective after the claim was served on the defendant and after three hearings and the conclusion of the trial. The court emphasized that a claim may be dismissed due to procedural deficiencies only in the preliminary examination stage, not after the procedural steps were already conducted.

Instead of deciding on the merits of the claim at that point, the first-instance court dismissed the claim, relying on procedural defects which had already been remedied during the proceedings.

13 Civil Procedure Act, Article 194

14 Civil Procedure Act, Article 98

15 Civil Procedure Act, Article 192

16 Jakšić, A. (2019). *Civil Procedure Law*. Faculty of Law, University of Belgrade, Belgrade, p. 383.

To properly adjudicate on these procedural prerequisites, whose absence or invalidity leads to dismissal of the claim, the court is required to hold a hearing—a special hearing to examine procedural prerequisites.¹⁷

At the hearing to obtain the claimant's position on the dismissal of the claim, the defendant is not summoned, since the litigation has not yet formally commenced—the litigation process begins upon service of the claim on the defendant.¹⁸

OTHER CONTENTIOUS ISSUES REGARDING THE INTERPRETATION OF SIMILAR INSTITUTES IN PRACTICE

In practice, it is often heard that certain legal institutes are mistakenly used as synonyms. The most common error is found in the distinction between *dismissal* and *rejection*. Additionally, the institutes of *withdrawal of the claim* and *renunciation of the claim* are often misunderstood.

Dismissal of the Claim vs. Rejection of the Claim

These seemingly similar institutes have significant differences. A *claim is dismissed* for reasons expressly prescribed by law, typically relating to procedural defects or non-compliance with statutory prerequisites. Conversely, a *claim is rejected* on the merits, meaning the court has substantively ruled on the claim during the proceedings. Once a claim has been rejected by a final judgment, it cannot be litigated again.

Dismissal of the Claim vs. Withdrawal of the Claim

Dismissal of the claim is a procedural act by the court whereby a submitted claim is dismissed due to failure to meet legal conditions (procedural prerequisites). *Withdrawal of the claim* is a procedural act initiated by the claimant who decides to retract the submitted claim. Withdrawal is a dispositive procedural act by which the claimant abandons their initial claim.¹⁹

It is important to distinguish the point in the proceedings until which the claimant can unilaterally withdraw the claim, and when the defendant's consent is required. The claimant may withdraw the claim without the defendant's consent before the defendant has engaged in the merits of the case. The claim may also be withdrawn later, up until the final resolution of the case, provided the defendant consents. If the defendant fails to respond within eight days from notification of the withdrawal, consent shall be presumed.²⁰

17 Poznić, B., & Rakić-Vodinelić, V. (2015). *Civil Procedure Law* (17th revised and supplemented ed.). Faculty of Law, Union University and Official Gazette, Belgrade, p. 352.

18 Stanković, G. (2024). *Commentary on the Civil Procedure Act*. Official Gazette, Belgrade, p. 1038.

19 Stanković, G., & Boranijašević, V. (2023). *Civil Procedure Law*. Official Gazette, Belgrade, p. 356.

20 **Civil Procedure Act**, Article 202

Withdrawal of the Claim vs. Renunciation of the Claim

Renunciation of the claim is an act by the claimant which, unlike withdrawal, does not require the defendant's consent. Renunciation results in the issuance of a judgment based on the renunciation, which substantively decides on the claim. This means the claimant cannot initiate proceedings on the same claim again, whereas in the case of withdrawal, the claimant may file the same claim anew, as if it had never been filed.

A judgment based on renunciation is issued upon the claimant's declaration that they renounce the claim — a statement informing the court that the claimant considers the claim unfounded.²¹

Specific Examples from Case Law Regarding Dismissal of Lawsuits

Case law represents one of the most reliable mechanisms for monitoring the practical application of legal norms and clarifying potential ambiguities in interpretation. Several noteworthy examples illustrate this in the context of dismissal of lawsuits.

In a decision of the Higher Court in Novi Sad, case no. Gž 4190/2013 dated 12 December 2013, which annulled the ruling of the Basic Court in Novi Sad, case no. P. 8079/2013 dated 1 November 2013, it was established that the death of the defendant does not constitute an irremediable defect warranting dismissal of the lawsuit. The first-instance court's view that the defendant's death represented such a defect was incorrect. Pursuant to Article 222(1) of the Civil Procedure Act (CPA), the court must suspend proceedings upon a party's death, while Article 225(1) CPA prescribes that proceedings shall continue once the heir or estate administrator takes over or is summoned by the court to do so. The death of the defendant is therefore a remediable procedural defect under Article 80(1) CPA, which requires the court to invite the plaintiff to remedy this defect. In the case at hand, the first-instance court failed to notify the plaintiff of the defendant's death and thus unjustly dismissed the lawsuit, effectively depriving the plaintiff of their procedural right to substitute the defendant with their heirs.

Another illustrative case, confirmed by the Higher Court in Novi Sad in case no. Gž-3975/2014 dated 8 October 2014, upheld the Basic Court's ruling no. P-8773/2013 dated 7 October 2013, whereby a lawsuit seeking damages against a judge for unlawful or improper judicial conduct was dismissed as inadmissible. The plaintiff had filed a suit against Judge M.T.Č. of the Appellate Court in Novi Sad, alleging that the court's decision signed by the judge contained inaccurate information and was rendered unlawfully. The court returned the lawsuit for correction and supplementation in accordance with Article 192(1) CPA, which the plaintiff failed to properly fulfill. Importantly, under the Judges Act, judges enjoy immunity for opinions expressed or votes cast in judicial duties (Article 5). Liability for damage caused by unlawful or improper judicial acts lies with the Republic of Serbia, as prescribed by Articles 35 and 151 of the Constitution. Consequently, claims for damages against judges themselves are inadmissible, and such claims must be directed against the state, which in turn holds a right of recourse against the judge. The court may only render a meritorious decision on claims that are admissible; lacking this, dismissal of the lawsuit is mandatory.

21 Bodiroga, N. (2022). *Civil Litigation Procedure*. Faculty of Law, University of Belgrade, Belgrade, p. 404.

CONCLUDING REMARKS

From the above, it is evident that the Civil Procedure Act prescribes the cases in which a claim may be dismissed, as well as the procedure the court must follow before issuing a decision on dismissal. This legal mechanism plays an important procedural role, as it safeguards the proper application of statutory rules concerning the conduct of proceedings and the adjudication of the claimant's request.

The law provides assistance to a party who has made errors in drafting the claim by allowing the court to order that such deficiencies be rectified within a specified time limit. However, if the claim is incomplete and unintelligible, and these deficiencies were made by the claimant who is a member of the legal profession—such as an attorney, public prosecutor, or authorised representative—the court will dismiss the claim by a ruling. In such instances, dismissal functions as a form of sanction for professionals who are expected not to make such substantial errors.

In practice, there are divergent views regarding the interpretation of Article 294(2) of the Civil Procedure Act, which concerns the mandatory holding of a hearing—attended only by the claimant—prior to the dismissal of the claim for legally enumerated reasons following a preliminary examination. Nevertheless, failure to comply with this provision inevitably results in a fundamental violation of civil procedure rules under Article 374(2) (7) of the Civil Procedure Act, as the omission to hold a hearing at which the claimant is given the opportunity to comment on the potential dismissal of the claim deprives the claimant of the right to be heard before the court.



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ODBACIVANJE TUŽBE U PARNIČNOM POSTUPKU U TEORIJI I PRAKSI

Apstrakt:

Da bi došlo do pokretanja parničnog postupka mora postojati volja stranke da traži od suda zaštitu povređenih ili ugroženih subjektivnih prava. Ta volja se manifestuje podizanjem tužbe pred nadležnim sudom. Tužba je parnična radnja stranke kojom se pokreće parnični postupak. Bez tužbe nema ni postupka. Sadržina tužbe je propisana Zakonom o parničnom postupku u nekoliko članova. Podnošenje tužbe sudu povlači određene posledice po stranke, pa je, shodno tome, sud u obavezi da u stadijumu prethodnog ispitivanja tužbe proveri da

li postoje smetnje za vođenje postupka u vidu procesnih pretpostavki. Ako iste postoje, on će naložiti da u određenom roku stranke to isprave, a ako ne postupe po nalogu tu tužbu će odbaciti. U radu će pored normativnog uređenja u pogledu razloga za odbacivanje tužbe, biti prikazane i situacije koje se u praksi pogrešno poistovećuju i mešaju sa institutom odbacivanja tužbe kao i primeri iz sudske prakse.

Ključne reči: odbacivanje tužbe, sadržina tužbe, neuredna tužba, razlozi za odbacivanje tužbe

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