

THE PROSECUTOR'S APPLICATION TO THE COURT FOR THE PROTECTION OF THE RIGHTS, FREEDOMS AND LEGITIMATE INTERESTS OF OTHERS PERSONS

The article is devoted to the prosecutor's application to the court for protection of the rights, freedoms and legitimate interests of others. The author focuses on the powers of the prosecutor to apply to court for protection of the rights, freedoms and legitimate interests of an indefinite class of persons, as well as on the specifics of the civil-procedural structure in civil cases on protection of an indefinite class of persons. The relevance of the article is due to the reform of civil procedure legislation and need for new theoretical researches on the issues of the prosecutor's application to the court.

In accordance with article 2 of the Constitution of the Republic of Belarus [1], a person, his rights, freedoms and guarantees of their realization are the highest value and goal of society and the state. Article 60 of the Constitution guarantees everyone the protection of their rights and freedoms by a competent, independent and impartial court in accordance with the procedure and time limits established by law.

The Concept of Legal Policy of the Republic of Belarus, approved by the Decree of the President of the Republic of Belarus dated June 28, 2023 No. 196 [2] in p. 35 of the Concept stipulates that the prosecutor's office should implement legal policy through, inter alia, ensuring law and order based on the principle of justice; protection of the state, society and citizens from unlawful envisions; restoration of violated rights and legitimate interests.

The prosecutor's application to the court with statements (claims) for protection of the rights and legitimate interests of other persons is a measure of the prosecutor's legal response. This follows from the contents of the part 4 of the article 27 of the Law of the Republic of Belarus "On the Prosecutor's office of the Republic of Belarus" [3] (further – the Law on the Prosecutor's office). This legal norm provides that when supervising the implementation of legislation and detecting violations of legislation, the prosecutor, within his competence, depending on the nature of violations, has the right to take such the measure of the prosecutor's legal response as to file to court applications (claims) in cases provided for by legislative acts to protect the rights and legitimate interests of citizens, including individual entrepreneurs, and organizations, as well as public and state interests.

The new Code of Civil Procedure of the Republic of Belarus [4] (further – CCP), which comes into force on January 1, 2026, establishes procedure for the hearing and determination by the court of general jurisdiction of all civil cases, including the cases of an economic nature. In the article 71 of the CCP is stipulated, that the prosecutor has the right to apply to the court to initiate a civil case under the jurisdiction of the court if it is necessary to protect state and public interests (including rights, freedoms and legitimate interests **of an indefinite class of persons**), as well as the rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of state-owned legal entities or legal entities that have a share of state ownership in the authorized capital of a legal entity.

An application for the protection of the rights, freedoms and legitimate interests of a citizen may be filed by a prosecutor in court if a citizen is unable to go to court on his own due to his (her) health, age, disability or other valid reasons. Upon a written application from citizens, the prosecutor also has the right to apply to the court to protect their violated or disputed rights and freedoms or to protect legitimate interests in the field of maternity, paternity and childhood, social and pension provision.

Rules on the protection of rights, freedoms and legitimate interests **of an indefinite class of persons, which are** established in CCP, are new to the Belarusian civil procedural legislation. It should be noted the practical significance of the above-mentioned innovation in procedural legislation. The **hearing and determination by a court of civil** cases on the protection of the rights, freedoms and legitimate interests of **an indefinite class of persons** expands the possibilities of judicial protection not only to the rights, freedoms and legitimate interests of certain persons, but also to a large group of persons, the number and personally of whom are not established at the time of the initiation of proceeding in court, **hearing and determination of a civil case by court.**

According to V.M. Zhuikov, civil cases on protection rights, freedoms and legitimate interests **of an indefinite class of persons** may include cases on challenging the regulatory legal acts, since they are addressed to an indefinite group of persons, their rights and obligations, and the decision on such a case entails legal consequences for them; cases on the prohibition of activities harmful to the environment (such activities violate the rights of the population living in a certain region to a favorable natural environment and health protection); cases on consumer' rights protection and the prohibition of the release of substandard products (it is impossible to identify all possible consumers, but the release of substandard products and the court's decision on such a case affects consumer's rights), etc. [5, pp. 2-6].

The legal regulation of the prosecutor's application to the court for the protection of the rights, freedoms and legitimate interests of an **indefinite class of persons** has some special features.

One of these features is related to the hypothetical character of the understanding of an indefinite class of persons, the lack of definition of the **indefinite class of persons** in civil procedural legislation.

In theory, in defining of the indefinite class of persons, the authors use such characteristics as the impossibility of establishing the number of persons and their individualization; the presence of common rights and interests among the all the persons of an indefinite class.

The specific of appeals to the court on protection rights, freedoms and legitimate interests **of an indefinite class of persons, as well as hearing and determination of such civil cases by a court** indicate on the use of a new civil-procedural structure.

In such civil case the indefinite class of persons acts as a plaintiff. This points to such feature of new civil-procedural structure, in which it is allowed the hearing and determination the case with indefinite composition and the number of persons participating in case as plaintiff, on the one hand. On the other hand, necessary data on the defendant(s) is known to the court, as well as the defendant's position on the claims made against him. As for the prosecutor who has applied to the court to initiate a civil

case to protect the rights, freedoms and legitimate interests of **an indefinite class of persons**, the procedural status of the prosecutor is defined in CCP as a person participating in the case who has a state, public or other interest in the outcome of the case (not plaintiff).

Another feature of the civil-procedural structure is the specifics of the substantive legal relations between the indefinite class of persons and the defendant(s) in the case. The substantive legal claims of the plaintiff to the defendant and court are determined in the subject of claim. The requirements for the defendant relate to the violations arising from the realization of certain substantive legal relations. All subjects of an indefinite class of persons are participants in disputed homogeneous substantive legal relations with the same defendant(s). Claims for the protection rights, freedoms and legitimate interests **of an indefinite class of persons** may include only non-property claims to the defendant(s).

The next feature of the civil-procedural structure is that if the court has already resolved a claim against the same defendant(s), with the same subject and the same grounds of claim, then the claim on protection rights, freedoms and legitimate interests of an indefinite class of persons cannot be considered in trial. This follows from the p. 8 of part 1 of article 241 CCP, according to which a judge refuses to initiate proceedings in a case if the application is filed on protection of the rights, freedoms and legitimate interests of an indefinite class of persons and there is a court judgment entered into force, that has been rendered in a dispute on the same subject and on the same grounds of claim against the same defendant.

Considering the features of the civil-procedural structure in cases on protection of an indefinite class of persons it is also necessary to point out that when the facts of violation of the rights, freedoms and legitimate interests of an indefinite class of persons are established in court, such facts acquire prejudicial significance for subsequent claims of subjects who are assumed to be covered by the indefinite class of persons. The prosecutor is responsible for proving in trial such facts of the violation in accordance with the procedural legislation. The judgment entered into legal force in a civil case on the protection of the rights, freedoms and legitimate interests of an indefinite class of persons contains facts of prejudicial importance for new civil cases involving the same defendant(s). If the court satisfies a claim on protection of the rights, freedoms and legitimate interests of an indefinite class of persons, the person may, using the prejudicial significance of the judgment, file an individual claim against the same defendant(s) in court.

In conclusion, it may be pointed out that the prosecutor's application to the court for the protection of the rights, freedoms and legitimate interests of others persons is the realization of prosecutor's authority to apply to the court to initiate a civil case if it is necessary to protect state and public interests (including the rights, freedoms and legitimate interests of an indefinite class of persons), as well as for the protection of rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of legal entities. Such activity of the prosecutor, as a representative of the state, is directed on protection of the interests of the state and society, as well as, in cases stipulated by the legislation, is additional guarantee of the realization of everyone's constitutional right to judicial protection.

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ПРОБЛЕМЫ РЕАЛИЗАЦИИ ОТДЕЛЬНЫХ ПОЛНОМОЧИЙ РАБОТНИКОВ КОМИТЕТА ГОСУДАРСТВЕННОГО КОНТРОЛЯ РЕСПУБЛИКИ БЕЛАРУСЬ И ПУТИ ИХ РЕШЕНИЯ

Статья посвящена анализу правоприменительных проблем, связанных с реализацией полномочий работников Комитета государственного контроля Республики Беларусь и его территориальных органов. На основе системного анализа Закона Республики Беларусь «О Комитете государственного контроля Республики Беларусь и его территориальных органах» выявляется пробел в механизме обеспечения явки лиц, уклоняющихся от вызова. Проводится сравнительно-правовой анализ с аналогичными полномочиями органов прокуратуры и судебных исполнителей. Автором обосновывается необходимость внесения изменений в законодательство, конкретизирующих право работников КГК на вынесение постановления о принудительном приводе, что будет способствовать повышению эффективности контрольной деятельности.

Эффективность деятельности любого государственного контролирующего органа напрямую зависит от четкости правовой регламентации его полномочий