

Declaratory action as a type of action

Abstract

An action is one of the most important institutes of civil procedure law. It is generally understood as a procedural act of a plaintiff, but it is also understood as an instrument for the protection of the plaintiff's threatened or infringed right. It is largely governed by the principle of disposition while the action itself is in fact a complex act of disposition of the plaintiff. Every action has three basic mandatory components which are essential to the question of the identity of different actions. Action also must include prescribed general and special requirements. In practice, we distinguish between several types of actions, the most important division being the division according to the content of the claim. This is how we distinguish between actions for specific performance, declaratory actions, constitutive actions and personal status actions.

The object of declaratory action is to declare right or legal relationship. In certain cases, object can also be a legal fact. Right can also be declared in relation to some point in the past. Declaratory action has primary preventive function, but this function is not always dominant. Declaratory action can be positive or negative, the purpose of it is to issue declaratory decision, never constitutive one. The decision is in essence authoritative statement of the court about existence or nonexistence of a right or legal relationship.

The basic conditions for the plaintiff's success in the case are plaintiff's right of action and an urgent legal interest. Plaintiff must fulfil both, defendant must be a subject to the legal obligation. Both conditions are often mixed up, this thesis deals with the reasons of it and with the distinction between them.

There are two types of declaratory actions – on one hand there are general actions with the necessity of claiming and proving legal interest, on the other hand there are legal based actions without the necessity of claiming and proving legal interest. This thesis deals with their relationship and distinctions, it also analyses partial aspects of the specific actions of both groups.

Keywords: declaratory action, types of actions, civil procedure