



**Methodology the Concept of the Unity of the Category of "Claim" in the Material
and Procedural Sense**

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ABSTRACT

The essence of category "claim" concerning its understanding in material and legal and procedural and legal aspect was and remains at the moment one of the problem subjects in the legal doctrine. The above-stated conclusion is states that the modern legal framework has no official concept of "claim"; thereby the legislator provides a scope to scientists-jurists by means of ways, concepts and theories to define the legal nature of "claim". In this scientific article the sense of "claim" as uniform category in material and procedural aspect is revealed. Authors analyze the domestic legal doctrine, as well as the modern legislation in the field of the study subject is investigated. Value for the theory of the state and the law, the analysis of the real subject of a research consists in need of judgment of the approaches to understanding the category "claim" available in the legal doctrine and justification of the theory of unity as only true both for branch and theoretical science, and for law enforcement. Relevance of work is caused by the fact that periodically there is a reforming of the civil and procedural and arbitration and procedural legislation, as well as emergence of new types of judiciary in Russia, for example administrative legal proceedings, as well as also the material and legal beginnings of the studied category remain in view of what need of its analysis for this context is timely and logical.

Keywords: law, claim, civil law, civil process, concept of "claim" category unity.



1. INTRODUCTION.

For today the jurisprudence has a number of the concepts defining the legal nature of "claim" which adherents absolutely differently prove own positions concerning the matter. So, scientists allocate the following approaches (theory) to determination of essence of the concept "claim":

- the material and legal concept, which essence consists that the claim is the material requirement of one person to another of rather challenged and (or) violated the rights and legitimate interests. Supporters of this concept, such as A. A. Dobrovolsky, S. A. Ivanova consider that the claim is "the requirement of one person to another shown in court or other jurisdictional body for permission in a procedural order following from disputable material legal relations and based on the legal facts". Of course, this point of view is rather truthful that is also confirmed by works of other scientists supporting this legal position however "to reject" procedural aspect of category the claim does not seem the correct approach at scientific knowledge of this problem.

- the procedural and legal concept which is expressed that the claim is submitted "appeal to the court of the first instance with the requirement about protection of the disputable civil subjective law or the interest protected by the law, the request for settlement of dispute about civil law". Supporters of this theory are such scientists as K. S. Yudelson, A. H. Golmsten, N. B. Zeyder (early works), G. L. Osokina, M. A. Vikut, K. I. Komissarov, V. N. Shcheglov, Yu. A. Ogibalin, P. V. Loginov, A. P. Vershinin, N. I. Avdeenko, V. P. Volozhanin, E. V. Ryabova, P.F. Eliseykin, V. M. Semenov, N. T. Arapov, M. K. Vorobyov, V. M. Gordon. The "mirror" situation is observed also in the analysis of this concept of determination of category "claim" when scientific knowledge covers only its procedural component that sees incorrect as the nature of the claim comprises also a material component in the form of the requirement oh, for example, recognition of the debatable transaction invalid.

- the concept of independence of legal categories in material and legal and procedural and legal sense which is submitted by scientific community in understanding of the claim in civil law only as a material and legal component, and in civil process as procedural and legal. That is, need of fixing of the term the claim in two various planes, the considered points of view is emphasized. Treat the scientists keeping development



of this concept, N. B. Zeyder (late works), M. A. Gurvich, V. P. Chapursky, L. A. Gros, S. N. Abramov, N. I. Tkachyov, N. A. Chechina.

- the concept of unity of category "claim" in civil and civil and procedural aspect which is a subject of this scientific research which understands uniform, system, integral legal category as "claim". Consideration of category "claim" in the context of this concept is followed by opinions of scientists that "claim" needs to be considered in two aspects: civil and civil and procedural, at the same time.

2. METHODS

In work works as classics of a scientific thought in a studying subject were investigated, and think of scientists of modern times both foreign, and domestic.

When carrying out a research such general methods of scientific knowledge as a method of materialistic dialectics, general scientific methods (the analysis, synthesis, induction and deduction, system and structural approach) were used.

3. RESULTS

The system analysis of category "claim" in this scientific work is carried out through a prism of the concept of unity of his understanding and will happen by means of proof of the basic provisions making scientific novelty of this research:

1. to speak about existence of "claim" as legal category it is possible only if is available:
 - a) material and legal component: violation of the concrete right or legitimate interest;
 - b) procedural and legal component: procedural expression of the concrete violated the right or legitimate interest.
2. continuity of understanding of the claim in material and procedural sense, during consideration and settlement of disputes in essence;
3. a concept of the claim, wider on volume, of civil procedural law concerning such understanding of the claim in civil law.

4. DISCUSSION

The claim in civil sense is accompanied by violation of the concrete right, that is the possibility of appeal to the court at the person appears when its interests established by standards of the legislation or contract are infringed. Whereas, it is only the first step to formation of the claim as complete category of judicial proceedings. The second step in this case is its procedural registration according to rules of Art. 131, 132 of the CCP of the Russian Federation, as well as adoption of the statement of claim by court. In our



opinion, the claim is only if the violated right (a material and legal component) and procedural expression as it does not make sense to tell about existence of the claim already with the violated right when it actually, is available, is only the private-law direction. In justification of this conclusion it is necessary to cite the supporter of the material and legal concept of category of the claim who wrote that "the course of civil process and emergence of civil and procedural legal relationship begins with the moment of acceptance of business to production". Thus, "claim" and its practical orientation consists that it is necessary to have the violated right which is subject to protection in a procedural order, that is to have a subject of the claim as material and legal aspect and its form as aspect - procedural and legal.

Besides it is necessary to stipulate continuous, indissoluble communication of the claim in material and legal and procedural and legal sense as from a subject of the claim, to be exact the correct definition of a subject of proof, the set of procedural factors, such as jurisdiction and jurisdiction, proofs, terms follows. It should be noted that the interrelation of the analyzed meanings of understanding of category "claim" unites in itself "unity of its material contents and a procedural form", that is for achievement of goals in civil process it is necessary to achieve a clear understanding of interrelation of these meanings. Correlation financially - and procedurally - legal aspect is confirmed also by the fact that depending on work at a stage of definition of a subject of the claim, that is at a stage of the material analysis of the private-law delict, success of work at a stage of collecting of proofs and definitions of jurisdiction of a dispute, as well as further behavior depends during judicial proceedings.

More volume understanding of the claim in civil and procedural sense is emphasized that "the procedural party of the claim - the requirement to court (or to other jurisdictional body) about ensuring protection of the violated or challenged right, and a material legal side - the requirement of the claimant to the defendant about performance of a duty or confirmation of legal relationship". Thus, the material and legal component of the claim comprises the concrete requirement whereas the procedural aspect of the claim includes ensuring protection of the rights and legitimate interests: observance of terms, analysis of proofs, hearing of witnesses, purpose of examinations, pronouncement of the lawful decision, etc.

5. SUMMARY



So, having analyzed the concept of unity of category the claim in civil and civil and procedural sense it is worth understanding as the claim - the interindustry, material and legal and procedural and legal institute founded on correctness of presentation of the requirement about the violated or challenged rights and the legitimate interests in court following from civil legal relationship.

CONCLUSIONS. Thus, in this scientific work the concept of unity of category "claim" in civil and civil and procedural aspect is considered and its fundamental provisions in quality of validity of such understanding of category "claim" are given.

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