

The concept of procedure and conditions of this phenomenon in the legislation of Iran

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Abstract

Procedure code is established by law which has components, and assembling these components and their analysis are generally considered as the concept of procedure. If an individual appointed in certain positions doesn't meet the components, his sentence will be audited in higher levels such as States courts of appeals or country Supreme Court, and it will be said that observing the regulations and principles of justice considered as a main part of public order has been failed. So, the issued sentence will have problems. To understand the concept of procedure code that its civil type has been considered in this article, the concept of terms such as, claim, condition of litigation, qualification, request and cases so that this type should be analyzed and then, they are going to be briefly reviewed.

Key words: procedure code, claim, terms of litigation, qualification, request

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Introduction

People in a modern community have some rights and they have some duties before each other. These rights and duties should be observed in the framework of law, custom and morality. In such conditions that these rights and duties don't cross out each other, there is no need to bring a claim but if the rights cross out, how the claims should be presented, and by which methods they should be proposed? If the right is denied by others, what should we do? or if we want to prove the right, which plan should we have? These questions and similar examples have made lawyers and jurists invent methods to propose claims, litigations, and judge them for different centuries so that justice has not been privately accomplished. Thereby, this trend has caused chaos and lawlessness in community. As stated, these methods have completed themselves during years and eventually they were totally called the procedure code. This code as applied about civil called the civil procedure, and about criminal, it is called the criminal procedure that we are going to study the concept of civil procedure in this article.

First clause- concept of claim

Claim, in word, is acclaim, request, assertion, averment and plea.¹ In Iran's law different definitions of claim have been presented, for instance, "claim is the act performed to establish a right which is denied or assaulted."² Claim "is the right by which individuals can refer to court and request officials support their rights against others through performing the law'. Referring to court and performing this type of right have always done by a special law process which is called "pleading."³ And in another place: "claim is the ceremonial act presented to fix the right which is denied or assaulted." Presenting the accurate definition of claim and recognizing its concept, undoubtedly have an essential fundamental importance to analyze legal regulations.

Second clause: what are the terms of litigation and who can litigate?

Claim means the right for referring to competent judicial authorities in order to achieve substantive right that is violated for each person, mature or immature, sane or insane, natural or legal. Meanwhile, bringing a claim means performing aforementioned right that needs some conditions although "bringing a claim" even without any condition is possible. However, lack of conditions or pointed circumstances cause the court begin its investigation but forbid the investigation for presence or lack of individual appointed right or denying or destroying this right and implementation of legal works in law framework; result of this process, according to the law, is to issue the rejection of a plaint or disregard the case. Bringing a claim, under pointed circumstances requires the court to substantively investigate but in the same time, even with stating circumstances, court may convict complainant to the extreme right. Iranian jurists have made four circumstances for bringing a claim:

1. The right which is performed and expressed should be definite, not suspended and probation.
2. Executor should be beneficiary
3. His assignment in that being original or legal representation should be clear
4. It should have legal capacity⁴. A definite right is not the condition of bringing a claim but it is considered as one of the conditions for winning the bringing a claim in the court, so, conditions of the bringing a claim could summarize to benefit, assignment and legal capacity. At the same time, other conditions for bringing a claim could make that considerable.

Benefits and its properties, assignment, representation and deputy in the case, legal capacity and other bringing a claim conditions are respectively studied.

Present petition is not a condition for bringing a claim but it is one of the essential condition for starting the investigation of court and considers the presence or lack of bringing a claim conditions. In fact, the new law Article 44 of civil procedure and the old law article 70 strictly say "beginning of investigation requires present petition". So if the

¹ . Moin, Mohamad, Persian lexicon, edition 4, Amir kabir publication, volume2, 1981, p 1539

² . Matin Daftari, Ahmad, civil procedure and commerce, Mjd Publication, volume 1, 2009, p 333

³ . Katuzian, Naser, credit of the judged case in the civil claim, volume 5, Justice(Dadgostar) Publication, 2008, p 118

⁴ . Sadrzadeh Afshar, Said Hosain, civil procedure and commerce, volume 10, University Jahad Publication, 2007, p 18.

petition isn't presented, court is forbidden to investigate and in conclusion, not only substantive investigations become impossible but even investigating statement of conditions for bringing a claim is impossible too, and issuing the writ of rejection of a plaint or disregarding a case is not performed⁵.

A) Benefits and its features

One condition of the bringing a claim is the beneficiary of complainant which means if the sentence is against complainant, there should be a benefit for complainant. Additionally, benefit should have features which lack of any of them; it would be a problem for the benefit. These features would study after considering the concept of benefit.

1-Benefit concept

Benefit means profit, advantage and is opposite of loss and harm⁶.

The person who brings a claim should justify if the bringing a claim causes issuing a convict against defendant; it has an ability to benefit him.

Old French idiom says: "benefit is a scale of claim and when there is no benefit, there is no fight." New law article 2 shows this condition strictly: "any court can investigate to a claim unless beneficiary individual or individuals ... has requested the... investigating to claim...."

Presence of benefit is so clear that its long justification become unnecessary. Benefit in any scale is sufficient and can be material or spiritual. Of course, it should be considered that individuals cannot play "Attorney"; so if the person has violated certain individuals-natural or legal-rights, others don't have right to bring a claim against the person and only the person whose right has been violated have permission for bringing a claim. If the whole community right has been violated which means the act of person is crime, only the representative of the entire community, the prosecutor or his deputy, have the right to perform against the person and if the right of certain individual of individuals has been violated, they can take action to get their rights⁷.

Anyway, benefits should have some features even if they are not specifically predicted in law but it can be said if any of them is not present, "presence of benefit" or "beneficiary complainant" are strongly questioned in the way, and it would not be possible to authenticate the benefit.

2- Benefit features

The person is considered as beneficiary if the claim benefit has some feature. In fact, benefit should be legally and legitimately created, and it must be personal and direct.

In addition, benefit should be created, thereby, if there is a condition or a suspended state for a complainant to have benefit, the complainant cannot justify his beneficiary. So, if somebody's estate has been violated, a child of estate owner cannot bring a claim, and justify his beneficiary by appealing his father death because his benefit is dependent on his father death. Additionally, benefit should be sustained. So if the person bought the usufruct of the state from owner and another person claim its ownership, although the usufruct owner can reclaim for the third case relying on article 130 of civil procedure because benefit in the right of usufruct is the seller, but it is possible for the situation that person does not give usufruct to others until the date of bringing the claim, unless that created benefit is not remained and so because of lacking benefit, person cannot bring the claim(as the third case).

It is worth to mention that if the person has personal and direct benefit, he can bring the claim if the right of bringing the claim is authenticated, it will be given to him. In all the cases, when the complainant is the natural person, considering and authenticating these conditions do not make serious problems. But in the cases that the complainant is legal person, authenticating two aforementioned condition can make some problems. However, if the legal person has personal and direct benefit, for example, if the company, organization or office, bring a claim about demand for an action or avoiding an action that a reader committed against him, personal and direct benefit require same attention as a natural person does. But in cases where a legal person defenses benefits that has general aspect or vice versa is for one of his membership, considering and authenticating these two conditions face some complications⁸.

B) Assignment

Having been assigned in some cases, the person can bring a claim as a representative of another person, and this is another condition of bringing the claim.

Assignment includes the rights that permit the person to request the court for investigating his affair or every action and legal action that are not about him. So, in cases which has been brought the claim by complainants and natural person, the assignment concept changes in the way that can be authenticated as beneficiary, considering assignment does not turn, and the image of beneficiary person who is not assigned becomes impossible.

The concept defined as assignment and the cases which should be considered in addition of benefit, has been mentioned in new law civil procedure. In fact, by referring to aforementioned article law 84, the defendant can additionally response to the claim if "an agent who has brought it and his power of attorney or guardianship or trusteeship is not clear", and can be quoted.

The one who has brought the claim and he claim to have assignment, not only should have the conditions like a type of agency from the complainant but this type of agency should predicted in law⁹.

C) Legal capacity

Legal capacity is another condition for bringing the claim "legal capacity means competence and jurisdiction"¹⁰.

⁵. Shams, Abdolla, *Advanced civil procedure*, Dorak Publication, volume 1, 2004, p 303.

⁶. Moin, Mohamad, *Ibid*. volume 4, p 4777.

⁷. Madani, Said Jalaladin, *Civil procedure*, Paidar Publication, volume 1, p 407.

⁸. Shams, *Advanced civil procedure*, p 308.

⁹. Matin Daftari, *Ibid*, p 342.

¹⁰. Jafar Langrodi, Mohamad Jafar, *Law terminology*, Ganje Danesh Publication, volume 6, 1999, p 97.

By virtue of article 956, the civil law "capacity for having rights begins with the man birth and ends with his death". While "every person has civil rights but no one can perform his rights unless he has law capacity for that" (article 958 civil law). In other words, article 956 of the civil law is talking about the capacity of legal and article 958 of this law for capacity of advocated means person should be puberty and grown up. According to the article 1210 of the civil law, Iran's puberty in girls begins at the end of age 9 solar years and in boys begins at the end of age 15 solar years. Meanwhile, according to the law, growing the dealer's age is 18 solar years which means that precedent in number 30 at the date of 64/10/3 Solar Hijri can change this and it becomes in such a way that every person in puberty age can spiritually claim but his financial claim should be performed by legal men, and his property will give him after he begins 18 years old or his growing has been proved in this judge. About legal individuals they have all the natural individuals except something that the nature of human demand such as Benoit or Abbott and marriage and divorce and relation... can have and his advocated capacity is according to statute which is written for him since the establishment. About this subject, civil procedure which issued in 1290, 1318 and 1379 Solar Hijri are approximately the same in definition for claim but in other cases such as assignment and types of claims can be more accurate in civil procedure law which exported in 1318 and 1379 Solar Hijri and is more complete and it has been tried to resolve the principle of legality violation issued in 1290 Solar Hijri, for this reason civil procedure issued in 1379 Solar Hijri is more evolved than two previous course and evolution in this period is so clear and obvious.

Third clause: which court can be referred to?

Qualification of legal authority

Individuals who want to refer to Jurisdictions for their violated right or for identification of their denied right should comply with law for requesting investigation and prosecution. The most important classification of laws that complainant should comply are the laws about qualification of judicial authorities. If the investigation is requested according to reference, if the reference is righteous for that subject, or in other word, he is responsible for investigating that, he should investigate the issue and begin to give judgment. Court qualification in investigating special issue, in the same time, included meaning that legislation recognize that the court is qualified for investigating that issue and determining who has right or not, announcement in according to vote and order to perform. So qualification, according to its concept is the right and duty that judicial authorities (Judicial or administrative) according to law has in investigating claims, complaints and special issues. judicial authorities prediction and their qualification domain in law are based on two principles of equality that are in principles of 19, 20 constitutional law of Iran and also based on Legal necessity of formation and qualification of legal reference which is in 34, 36, 159¹¹ constitutional law. So every legal reference if according to law he has qualified for issue, he can and should investigate issue. Diversity of judicial authorities and qualifications have been criticized. In fact, this diversity can make complainant duty double and make problems. Also, this diversity makes the judge mission hard by forcing him to settle conflicts about qualifications instead of dealing with the nature of the right and it can be manipulated by parties with purpose. At the same time, diversity of judicial authorities is the factor for more merit in judgment but with the condition that it could rule out excess refer to non-lawyers judgment¹².

1- Inherent qualification¹³ (caste, class, degree)

Inherent qualification of judicial authorities is according to caste, class and degree of them for investigating the claim and give judgment in the name of the law. Rules for Inherent qualification are considered and after describing its performing method, its features would be considered.

Firs- the rules of Inherent qualification of judicial authorities

For detection that if the claim or special issue in which claim should be proposed, the caste, class and degree of references should be mentioned and taken into account.

A) Caste of reference

For detection of caste of competency reference we should mention that today Judgment units(references) which create the judge of Iran in one total classification separated in two caste groups, the groups are references judgment(Legal, to the concept of both the civil and criminal) and administrative references. So, determining the reference which is competency according to caste, is to mention that claim or issue should propose in administrative references or legal qualification reference.

By clearing the caste of reference, the first step for determine the references inherent qualification is removed because qualification of judicial authorities, rather than administrative authorities and vice versa are inherent qualification.

B) Reference class¹⁴

Legal references in special concept (civil) are classified into Public authorities and special references from the point of class. In fact, in every caste the nature of the judgment reference, which means its features from the point that if it is a Public or special reference should be mentioned.

Public reference is the reference which has qualification for investigating every issues except for those one which expressly is in qualification of special reference.

Special reference in every caste is the reference which has not any qualification for investigating issues except those expressly is in that qualification. So, for detection of qualification type (Public or specific) of issue or claim with

¹¹ . Iranian Islamic Republic Constitution, approved in 1978, with subsequent corrections, Doran Publication, 2004, p 38.

¹² . Shams, Ibid.

¹³ . Mardani, Nader, Beheshti, Mohamadjavad, Civil procedure, Mizan Publication, volume 1, edition 4, 2010, p 248,

¹⁴ . Mohajeri, Ali, details in civil procedure, Fekrsazan Publication, volume 1, 2008, p 141.

mentioning that special references need affirmation law and with mentioning that the base is on the qualification of Public reference (Public court), issues which according to law stay on qualification of each special references should be correctly considered and researched and if the issue does not base on any special references, should be placed on qualification of Public reference.

For example, the qualified reference in case partition the property that it terminated the registration process in "partition of common estate..." has been determined that the registration authority is the location of the property¹⁵.

C. degree of reference

According to law in every type of references (Public or specific), from every caste (Judicial or administrative), there is some degree in the hierarchy that judgment reference is in that and so legal reference primitive (first degree) is considered as lower degree of legal references appeal (second degree), is different.

As mentioned in former Public authorities and research or courts of peace, section and city has been divided which has been changed basically in exported law in 1379 Solar Hijri.

Determining reference degree to primitive or appeal normally doesn't meet problem. In fact, in principle, determining Inherent qualified reference for investigating the claim would perform in first level and so with the determining of caste and reference class its degree would clear.

In fact "at a higher level the nature of any claim cannot be investigated until in its first level no sentence have been exported unless according to law" (article 7 of old civil law procedure)

2- Relative and local qualification

Rules about inherent qualification would apply by determining caste, class and degree of competency reference who investigate the issue. After that it should investigate between all the references from the same caste and same degree who must investigate the claim.

Therefore, if according to rules about inherent qualification it is determined that claim in the reference qualification from "caste" is legal and from "class" is public and from "degree" is primitive which now is public court, between all the public courts that have been created in all over Iran, it should determine the relative qualification which is righteous. For example if the property owner wants to prepare eviction against his tenants, with regards to rules about inherent qualification would determine that this claim is under the qualification of legal authorities, and not criminal and administrative authorities and according to this, the claim is not under qualification of any Special reference of legal, thus is under the qualification of public primitive legal reference. But because the public courts in all the big cities and besides some branches of public courts dedicated to "family issues", should choose the competence public court between them and here the rules about relative qualification for determining this subject should be applied. Fourth clause: what is the litigation and Contradiction principal? This principal is the right of parties, especially defendant should understand why he has called. Litigation and Contradiction term originated from Interaction and is the reciprocity action, litigation means going to judge together¹⁶. Its legal definition is not far from its lexical definition and if two person have disagreement in an issue and couldn't resolve the problem they would force go to judge or if one of them has referred to judge, according to article 60 of civil procedure law, at least he has to complete his petition in two versions, therefor the hierarchy announce to audience so he could defend what he has called for and is the right for preliminary principle of claim, legally or criminally. But a legal defense is such that the second version petition regard to article 67 civil procedure law which exported in 1379 Solar Hijri would deliver to defendant so he can prepare the conditions for answering at the hearing in the legal deadline and legal person respect this matter in a way so if the hearing time is not enough for defending prepare another hearing for him (last section is in article 96 civil procedure law of public court and evolution in civil affaire exported in 1379/1/21 Solar Hijri). Fifth clause: how the investigate begins? Relevant to article 48 of civil procedure law, start of investigating in court required present the petition and petition present to the office of the qualified court and where the court has multiple branches to first Branch Office (nowadays petition should deliver to the central office or judge and after the registration statement and determine branch to branch he subject of the locate of referral)¹⁷.

Relevant to article 51 civil procedure law, petition should contain conditions that if not respected cause it be banned and will not turn unless the following conditions have been met. At top of above article it has mentioned that petition should be in Farsi which means if it doesn't have this condition it wouldn't accept and after that:

1- name and last name-father's name-age-residence and if possible the job and the address of complainant: the age and residence is for determining the qualification of individual, for example petition of 8 years old kid is not acceptable and the legal age for bring the claim is in the subject of capacity and it is not necessary to repeat here and the residence is for contact data communications and the designation of a competent court.

2- Name and last name -residence and job and full address of defendant

3- Determine the request

4- Obligations and ways which according to that plaintiff deserve demanding himself ...

5- What request complainant from the court

6- Notice the evidences and tools which complainant needs to prove his claim...

7- Signature of complainant or his finger print

Sanction of non-compliance with these rules are in article 53 aforementioned law that ban the petition and its performing.

Sixth clause: how is the parties' rights in hearings?

¹⁵ . Rafie, Ali, procedure modifications and changes in Iran's law, Fekrsazan Publication, 2014, p123.

¹⁶ . Anvari, Hasan, intense lexicon of words, Sokhan Publication, edition 2, volume 1, 2006, p 466.

¹⁷ . Rafie, Ibid, p 125.

Iranian lawmakers had assumed that the first session is the last session and judge can cloture this session as the end and originate the judgment unless renewal session is essential, so renewal the session is exceptional and of course this exceptional is so prevented that minor courts can originate the judgment in first session (content of article 93 to 104 of civil procedure law exported in 1379 Solar Hijri). Therefore, for each of the parties is considered some rights such as the right of withdrawal of the case by complainant with the conditioned that is in that according to article 107 aforementioned law and the rights for defendant such as the right of objections that is given to him in article 84 of this law to manage the investigation and doesn't let the complainant reach what he claimed or at least delay him to reach his complain. Violating the rights of the parties in hearing or hearings because of public opinion, face the court risk of violating so the court is required to respect it¹⁸. Seventh clause: what is the request? Something that complainant wants from the court to force the defendant for that and should record in request column which call request. Request can be financial or spiritual, relevant to clause 3 of article 51 of civil procedure law in Iran's legal the base is on financial claims and not financial claim is exceptional and of course, there is opposite opinion. Relevant to this clause from above law which pointing to complainant duty to present and assessment of request has removed the not financial issue from his duty¹⁹. According to article 61 to 63 civil procedure law, request price is the thing that has been listed and from the view of investigating cost and the possibility of revisionism is the base for calculation and if the request is legal tender, request the same fund and if it is foreign currency, it should calculate relevant to indicate of central bank and it should request in base rate form. One of complainant feature is that his benefit should be rational whether it's financial or non-financial. For example if the sentence of defendant is assembling 100 grams mosquito wings, although it doesn't conflict with provisions but as it has not rational benefit, it wouldn't investigate in court. This feature is one of inherent traits of request. Eighth clause: what is the preliminary investigation and who are the protest reference? As mentioned before complainant should set his request is based on the listed provisions and present to court which by all accounts has jurisdiction. Court after determining its jurisdiction according to Justice in Iran begins to investigate that is in two degree, first this claim should present in primitive court. This can be a public court whether legal or criminal -revolution and the clergy begins to investigate and in fact, with presenting petition, court engagement begins and with the beginning of sentence its job is finished. If parties protest in voted that are possible to protest, in revision court it would start investigating again, in other words relevant to article 349 civil procedure law, revision reference investigate the sentence which has been commented in primary level. In other words, primary request cannot represent revision reference which isn't detect as a righteous from this view , or cannot request primary reference to investigate revision except in the cases that Dispute Resolution Council considered the revision of the vote.

Conclusion

All the subjects that have been mentioned in this section are the main components of procedure and considered as mandatory rules and public order. Failure to observe these matters is guarantee of performances as aforementioned it could prevent the complainant to reach his goal or from the other side it would face the vote with violation and unreliability. So in definition of civil procedure as it comes in article one of this law:

A set of principles and rules that is as non-litigious and all civil and commercial proceedings in the Public and Revolutionary Courts, Appeals, the Supreme Court and other authorities are obliged by the law to follow it.

Footnote

1. Moin, Mohamad, Persian lexicon, edition 4, Amir kabir publication, volume2, 1981, p 1539
2. Matin Daftari, Ahmad, civil procedure and commerce, Mjd Publication, volume 1, 2009, p 333
3. Katuzian, Naser, credit of the judged case in the civil claim, volume 5, Justice(Dadgostar) Publication, 2008, p 118
4. Sadrzadeh Afshar, Said Hosain, civil procedure and commerce, volume 10, University Jahad Publication, 2007, p 18.
5. Moin, Mohamad, Ibid. volume 4, p 4777.
6. Madani, Said Jalaladin, Civil procedure, Paidar Publication, volume 1, p 407.
7. Shams, Advanced civil procedure, p 308.
8. Matin Daftari, Ibid, p 342.
9. Jafar Langrodi, Mohamad Jafar, Law terminology, Ganje Danesh Publication, volume 6, 1999, p 97.
10. Iranian Islamic Republic Constitution, approved in 1978, with subsequent corrections, Doran Publication, 2004, p 38.
11. Shams, Ibid.
12. Mardani, Nader, Beheshti, Mohamadjavadi, Civil procedure, Mizan Publication, volume 1, edition 4, 2010, p 248,
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14. Rafie, Ali, procedure modifications and changes in Iran's law, Fekrsazan Publication, 2014, p123.
15. Anvari, Hasan, intense lexicon of words, Sokhan Publication, edition 2, volume 1, 2006, p 466.
16. Rafie, Ibid, p 125.
17. Shams, Abdolla, basic course of civil procedure, volume 3, Dorak Publication, edition 6, 2009, p 21.
18. Mohajeri, Ali, financial and non-financial claims, Fekrsazan Publication, edition 2, Tehran, 2010, p 154.

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¹⁸ . Shams, Abdolla, basic course of civil procedure, volume 3, Dorak Publication, edition 6, 2009, p 21.

¹⁹ . Mohajeri, Ali, financial and non-financial claims, Fekrsazan Publication, edition 2, Tehran, 2010, p 154.