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TO CLARIFY SUBJECT MATTERS OF CLAIMS AS THE LAWSUIT BEGINS?

Reconsidering Procedural Requirements of Chinese Case-Filing Proceedings

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Abstract

Under the reform of the case-filing registration system, we should focus and reflect on whether the subject matter of a civil claim (Streitgegenstand) ought to be identified and clarified. Art. 119 item 3 of the CPL, which regulates the procedural entitlement, factual and legal grounds of a lawsuit, stands as the major source of research. In accordance with the continental legal tradition and the Chinese legal practice, the fundamental meaning of the requirement for a concrete procedural entitlement refers to the specific relief sought by the claimant (Antrag). Although this required condition of "procedural entitlement" could point at the subject matter of a civil process itself, during the case-filing phase this approach to interpretation is not desirable. Ideally, the legal reason part of the complaint and the suggested cause of action of the claimant should not be regarded as any precondition for bringing a lawsuit and therefore have no connection with the subject matter issue. The exception is that the specific grounds for substantive rights (Anspruch) in the traditional substantive law theory, which could also be classified as some legal reason, relate to the subject matter of a civil claim. Nevertheless, considering the new case-filing

registration system, the subject matter of the lawsuit should not be considered as an element of bringing a lawsuit. The court should rather bring the subject matter of the lawsuit into the scope of requirements of the proceedings after accepting the case. Instead, as a procedural condition to be determined after the case-filing system, this issue is supposed to be resolved later. In practice, based on the modification of the traditional substantive law theory of the subject matter, there should at least be multiple possibilities of consolidating claims, among which the elective accumulation of claims (alternative Klagenhäufung) is one reasonable illustration.

Keywords: Civil Case-filing System; Subject Matter of Claims; Procedural Entitlement; Claim for Relief; Factual and Legal Grounds

I. INTRODUCTION

As the core concept in the theory of civil procedure, the subject matter of claims (Streitgegenstand) and its identification run through the whole civil procedure. Even because of the existence of the problem of relitigation (ne bis in idem), the understanding of the subject matter of claims is closely related to whether a second lawsuit can obtain a substantive judgment. In the discussion of the subject matter of claims in the stage of the hearing on the merits, the abundant viewpoints of researchers[1] and practitioners[2] do not only enrich the relevant research resources, but also make the readers have the impulse to participate in such difficult academic discussion. Moreover, under the nourishment of the Western knowledge that had been passed down for two thousand years, some scholar had directly taken the old-time theory of the right of action (Klagerecht) and incorporated the subject matter of claims theory into the content of a substantial procedural law theory (materielles Prozessrecht)[3]. As for the issue of the subject matter of claims before or at the time of filing civil cases, there may be a broader space for theoretical exploration. In this regard, the Supreme People's Court (hereinafter as SPC) provides its leading opinion in the judicial interpretation of the Civil Procedure Law statute (hereinafter CPL)(民事诉讼法). Namely, Art. 247 paragraph 1 of the Interpretation of the SPC on the Application of the Civil Procedure Law of the People's Republic of China (hereinafter ICPL)(最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释) limits the scope of its application to "the re-filing of a lawsuit in respect of a matter for which a lawsuit has been filed or after the judgment

1 For example, see BU Yuanshi, "Ne bis in idem and its Application to Civil Intellectual Property Rights Disputes" [重复诉讼禁止及其在知识产权民事纠纷中的应用], in Chinese Journal of Law [法学研究], No. 3, 2017, pp. 91-106; YAN Renqun, "New Development on the Objective Scope of Res Judicata" [既判力客观范围之新进展], in Peking University Law Journal [中外法学], No. 2, 2017, pp. 536-559; CHEN Hangping, "A New Paradigm of the Theory of Subject Matter of Claims" [诉讼标的理论的新范式], in Chinese Journal of Law [法学研究], No. 4, 2016, pp. 170-189.

2 See only EOS Engineering Corp. v. Xinjiang Power Generation Co., et al. [美国EOS工程公司诉新绛发电公司等侵权纠纷案], Gazette of the SPC [最高人民法院公报], No. 10, 2004, pp. 21-22.

3 See CHEN Gang, "On the Substantial Procedural Law" [民事实质诉讼法论], in Chinese Journal of Law [法学研究], No. 6, 2018, pp. 128-144.

takes effect", and keeps silent on the handling of such issue in the case-filing stage. The urgent need is how to extend the contribution of the existing discussion to the stage of bringing and accepting a lawsuit, which refers to the initial stage of a civil process, considering that the study on civil procedure mainly focuses on the dogmatical application of laws and the empirical research on the characteristics of judicial practice in China.

In general, the core of the judicial review in the case-filing stage is the elements of case filing/bringing a lawsuit. Under the so-called heightened conditions[4] which are established by the Chinese CPL as a set of default rules, all the reviews within the case--filing division of courts take place before the court's formal acceptance of a case, and that normally means some substantial reviews before the commencement of the civil litigation. The relevant proceedings constitute a "gray procedure" in which the outsiders can seldom participate. Even though the reform of the case-filing registration system has been started for several years, it is still an indispensable task for the judiciary to complete the heightened review because the aforementioned statutory conditions have never changed. After the Chinese judicial system declares that the difficulty of filing cases has been basically solved, the key issue lies in the division and cooperation between the case-filing and trial stages.[5] Especially considering the context of "Too Many Cases Handled by too Few Judges" (案多人少) and the "GDP"-like increase of caseload which is not negotiable,[6] the direct consequence of the failure to shift the function originally undertaken by the case-filing proceedings to the forthcoming trial stage will be that in practice, courts at all levels will adopt all kinds of adaptations to circumvent the written requirements of the case-filing registration and decline to accept civil cases on the spot. The courts will achieve such goals in the name of pre-action Diversified Dispute Resolution Mechanisms, regardless of the willingness of the parties concerned.[7] It is more reasonable to divide the current elements of bringing a lawsuit into two parts. On one hand, a part of the elements of bringing a lawsuit are still formally examined by the case-filing division of the court to determine whether there is a lawsuit (Klage) at all. On the other hand, the other part of such elements should be examined by the trial division of the court. These latter elements are supposed to be regarded as requirements of the proceedings (Prozessvoraussetzung) which could also be named as the preconditions of

4 For a representative view, see ZHANG Weiping, "Conditions of Bringing a Lawsuit and Elements of a Substantive Judgment" [起诉条件与实体判决要件], in Chinese Journal of Law [法学研究], No. 6, 2004, p. 59.

5 For the judicial policy emphasizing such cooperation, see the Opinions of the SPC on the Coordinated Operation of Case Docketing, Trial, and Enforcement by People's Courts (最高人民法院关于人民法院立案、审判与执行工作协调运行的意见) (Fafa (法发) No. 9 [2018] of the SPC).

6 For an earlier discussion, see SU Li, "Trial Management and Social Management" [审判管理与社会管理], in China Legal Science [中国法学], No. 6, 2010, pp. 176-189.

7 Of course, the necessity of diversified dispute resolution mechanisms itself is not controversial. See ZUO Weimin, "Response to 'Litigation Explosion' in China: Based on Empirical Analysis of the Trial Practice of the Court in W District in the Past Thirty Years" ["诉讼爆炸"的中国应对：基于W区法院近三十年审判实践的实证分析], in China Legal Science [中国法学], No. 4, 2018, pp. 257-258.

making a substantive judgment.[8] Correspondingly, for a case that has gone forward to the trial stage, the trial division shall also keep eye on the elements of bringing a lawsuit and fulfill a formal review of them. The reason is that, no matter what the relevant court's ruling is called literally, i.e. named as the refusal of accepting a case (不予受理) (meaning that there is no civil case before a court at all) or the dismissal of the action (驳回起诉)(meaning that an existing case is dismissed without adjudicating the merits of the case), the same review standards are to be applied through the whole civil process (paragraph 3 of Art. 208 and Art. 247 paragraph 2 of the ICPL). In addition, the streamlined proceedings after case-filing can also contribute to the good governance of the case-filing proceedings. It has long been considered as an important approach to solving judicial difficulty to further expand the fundamental idea of separating complicated and simple cases and classifying various procedures[9]. The design and experiment of specialized or expedited procedures are among the different options.

The examination and identification of the subject matter of claims is also closely related to the aforementioned division of labor and collaboration in the stages of case filing and trial. A prerequisite question that must be answered is whether it is necessary to complete such examination and identification as early as at the case-filing stage. At the commencement of a civil process, the abstract subject matter of claims is still hidden in chaos in most cases. More attention should rather be paid to the specific content of the complaint, because the clarification and identification of the subject matter of claims must be based on the information provided by the complaint, while the examination of the subject matter of claims itself should be fulfilled later. In my opinion, the concreteness of the claim for relief, the concreteness of factual grounds and the provision of reasoning before the commencement of a lawsuit (which this contribution believes should not be required during case-filing) should belong to the elements of bringing a lawsuit that need to be examined at the case-filing stage. However, the identification of the abstract subject matter of claims should belong to the requirements of the proceedings, which is not necessary to be examined at the case-filing stage. It means that when the judge decides whether to accept the case in the court system at the very beginning, the complaint merely needs to meet the (now reduced) elements

8 See TANG Li and GAO Xiang, "The Structure of Civil Procedure Matters in Two Stages: also on Filing Civil Registration Reform in China" [我国民事诉讼程序事项二阶化审理构造论——兼论民事立案登记制的中国化改革], in Science of Law [法律科学], No. 5, 2016, pp. 80-89; ZHANG Jiajun, "The Position and Future Trend of the Case-filing Tribunal under the Background of the Case-filing Registration" [立案登记背景下立案庭的定位及其未来走向], in China Legal Science [中国法学], No. 2, 2016, pp. 217-237; FU Yulin, "The Function and Structure of the Case-filing Procedure of Civil Proceedings: a Reconsideration" [再论民事诉讼立案程序的功能与结构], in Journal of Shanghai University (Social Sciences Edition) [上海大学学报（社会科学版）], No. 1, 2014, pp. 39-52. The opposing claim may also be to retain an independent Case-Filing Court which will hear the requirements of the proceedings. See DUAN Wenbo, "Theory on the Adjudication of Case-filing Requirements in Advance" [起诉条件前置审理论], in Chinese Journal of Law [法学研究], No. 6, 2016, pp. 70-87.

9 See WANG Yaxin, "Procedure Division in the Amendments to the Civil Procedure Law" [民事诉讼法修改中的程序分化], in China Legal Science [中国法学], No. 4, 2011, pp. 181-190; FU Yulin, "Small Claims and Classification of Proceedings" [小额诉讼与程序分类], in Tsinghua Law Journal [清华法学], No. 3, 2011, pp. 46-55.

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of bringing a lawsuit, rather than the requirements of the ongoing proceedings such as the clarification of the subject matter of claims. Nevertheless, partly because of the influence of the heightened requirements of bringing a lawsuit, partly because of the scholars' understanding of the traditional substantive law theory (alte materiell-rechtliche Theorie), and especially partly because of the emphasis on convenience and efficiency of judicial operation, there are voices in both theory and practice that the plaintiff should clarify the subject matter of claims in the case-filing stage. Particularly, the grounds of substantive rights (Anspruchsgrundlagen) supporting the plaintiff's claims should be expressed clearly.[10] Given this, this contribution tries to respond to the relevant controversial points that have puzzled the theoretical and practical circles.

Besides the introduction and the conclusion, this contribution is divided into four parts. In the context of the separation of the requirements of the proceedings from the elements of bringing a lawsuit, our discussion shall first examine the basic components of the elements of bringing a lawsuit in terms of legal dogmatics/hermeneutics (Part II), and in particular, focus on the interpretation of Art. 119 item 3 of the CPL, namely that a lawsuit must be "based on specific procedural entitlement (诉讼请求), factual grounds and reasoning". In particular, this contribution intentionally chooses the less-used term "procedural entitlement" for the translation of the legal norm because in theory, such wording in the statute may be understood as the claim for relief or the subject matter of claims. This contribution is to clarify positively that "procedural entitlement" originally refers to the claim for relief, and negatively to examine whether this term could be interpreted to cover the subject matter of claims (Part III). At the same time, the statutory rule that seems to require reasoning for bringing a lawsuit sufficiently should not be regarded as an element of bringing a lawsuit (Part IV). Finally, besides the existing statutory rules, it is necessary to reflect on the necessity of examining the subject matter of claims at the case-filing stage in essence, and how to reduce the practical requirements for clarifying the subject matter of claims even if the substantial examination system (rather than to-be-reformed formal registration) in the case-filing stage and the traditional substantive law theory are still adhered to (Part V).

II. FUNDAMENTAL ELEMENTS OF CIVIL CASE-FILING EXAMINATION

A. Procedural Entitlement, Factual Grounds and Reasoning as Elements of Bringing a Lawsuit

The core content of the complaint must first meet the requirements of Art. 119 item 3 of the CPL. From a literal perspective, it seems that this rule can be divided into

10 See ZOU Bihua, "Nine-step Method on Elements of the Civil Trial" [要件审判九步法], Law Press [法律出版社] 2010, pp. 67-69.

the elements of "specific procedural entitlement", "factual grounds" and "reasoning", in which the theoretical explanation and practical opinions on the relevant concepts are to be further developed. Although this provision does not require "factual grounds" and "reasoning" to be "specific", it should not be too difficult to supplement a requirement of "specificity" during the legal interpretation, or to limit the interpretation of these two elements with the "specificity". After all, these relatively abstract legal concepts as "factual grounds" and "reasoning" naturally reserve room for interpretation, and the process of limiting the meaning of the words is the only approach for them to becoming legal elements with clear meanings. In other words, in addition to the procedural entitlement which is literally required to be specific, the production of factual grounds or reasoning put forward by the plaintiff may also be considered by the court as not specific enough to meet the requirements of the formal case-filing examination. On such occasions, the plaintiff's complaint faces the risk of being rejected as a legal case or dismissed after being accepted in the first place.

Since the "procedural entitlement" and reasoning will be discussed in detail later, only the requirement of factual grounds will be briefly discussed here. As this contribution has argued previously, whether in the civil law system or the common law system, the core rules of civil procedure make clear the standard which is used to determine the degree of specification of factual allegations. The difference is that the civil law system adopts an identification theory that demands the factual particulars to be able to distinguish the current case from other legal relationships of the same kind, while the common law system has long insisted that the factual grounds stated in the complaint should meet the conditions of substantive relief, even meet the higher American standard of plausibility. Based on different civil proceedings and the overall institutional design, China should adopt a lower standard of identification. And Chinese solution does not need to ask for legal facts regulated in the constitutive elements (Tatbestand) of legal norms, but only needs to describe the natural facts (Lebenssachverhalt) corresponding to the real world.[11] Similarly, since the plaintiff only needs to make the corresponding factual allegations, in principle the plaintiff does not need to submit evidence in support of these factual allegations. Yet, it should be noticed that for cases involving multiple parties, different standards may apply. Besides natural facts at large, e.g. further description of the specific torts committed by each defendant, and whether the defendants committed the torts jointly or separately could be required.[12] This contribution is limited by its topic and will not discuss.

In comparison, the elements in Art. 119 item 3 of the CPL are basically the same as those in German law. In Germany, after the plaintiff files a complaint constituting the

11 See Cao Zhixun, "The Requirement of Factual Particulars during the Formal Review in the Civil Registration Proceedings" [立案形式审查中的事实主张具体化], in Contemporary Law Review [当代法学], No. 1, 2016, pp. 130-139.

12 See Civil Judgment of the SPC (2013) Min Er Zhong Zi No. 58 [最高人民法院（2013）民二终字第58号民事判决书].

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so-called (formal) pendency (Anhängigkeit), the court registry forwards the complaint to the presiding judge, who conducts a formal review of whether to serve the complaint to the defendant. The complaint must accurately state the court and the parties (Art. 253 paragraph 2 item 1 of German Code of Civil Procedure), as well as satisfy the requirements of the object of the claim (Gegenstand), the grounds of procedural claims/factual grounds (Grund) and the claim for relief (Antrag) (Art. 253 paragraph 2 item 2 of German Code of Civil Procedure). Besides, the plaintiff ought to pay litigation costs. These elements of bringing a lawsuit have been well developed in the legal interpretation and application. Similarly, the Japanese law explicitly requires the complaint to record the parties, the purpose of the claim and the grounds of the claim. Concretely speaking, the purpose of the claim refers to the claim for relief, and the grounds of the claim correspond to the aforementioned factual grounds, which mean the "necessary facts for specific claims for relief"[13]. Both of them are very similar to German law in substance and further interpretation. With respect to such similarity in written rules, the following discussion will mainly take the experience of civil law systems of Germany and Japan into account to inspire our study of Chinese relevant rules.

B. Elements of Bringing a Lawsuit and Matters to be Recorded in the Complaint

In addition to Art. 119 item 3 of the CPL, Art. 121 item 3 of the CPL may also affect the constitution of elements of bringing a lawsuit. According to Art. 121 item 3 of the CPL, the matters that shall be recorded in the complaint include "the procedural entitlement and factual grounds as well as reasoning on which the claim is based", which seems to be different from Art. 119 item 3 of the CPL literally. Compared to Art. 119 item 3 of the CPL, Art. 121 item 3 of the CPL emphasizes the relevance between the claims, factual grounds and reasoning in its content, and reduces the requirement to the degree of specificity.

However, such formal "one point more, one point less" is not substantially significant. On one hand, the observed relevance in Art. 121 item 3 of the CPL seems to be obvious. It is hard to imagine that if the procedural entitlement is not related to factual grounds and reasoning and cannot be supported by the latter two elements, the complaint should still be accepted by the court and the case should enter into the trial stage. In this respect, the provision added here is nothing more than a "reminding rule" to Art. 119 item 3 of the CPL. On the other hand, similar to the analysis of Art. 119 item 3, even the use of "procedural entitlement" alone necessarily contains a requirement for specificity. Literally speaking, the legal text may intentionally distinguish the standards for the submission of a complaint, a legal document, by the parties concerned and the

13 Shindo Koji, "New Civil Procedure Law" [新民事诉讼法], trans. LIN Jianfeng, Law Press [法律出版社], 2008, p. 158 (Within the scope of this citation, the new Japanese edition of this book does not provide any revision. Therefore, this contribution only cites the reliable Chinese translation. See Shindo Koji, "New Civil Procedure Law" [新民事訴訟法], KOUBUNDOU Publishers [弘文堂], 2019, p. 216.

standards for the general case-filing review by the court. Nevertheless, the legal requirements for the complaint could also be constructed as norms for the conduct of the parties concerned and norms for the court's judgment. It means that such statutory requirements intend to guide both the litigation activities of the parties concerned and of the judges. Once the complaint does not meet the requirements of specificity, the judge will reject to accept the case, which actually means that the complaint does not meet the legal requirements. It indicates that the requirements of specificity in the elements of bringing a lawsuit will also be reflected in the requirements of the complaint.

It should also be noted that the preceding two paragraphs use different legal terms, namely, "must" and "should". In view of the different wording in the existing rules for case-filing formal review, it is necessary to clarify the intent of the legislator and the effect represented by different legal provisions. In other words, whether from the (implicit) intent of the legislator or the necessity of legislative techniques, it is necessary to distinguish between the "must" clause and the "shall" clause in the text of the CPL, so as to understand the strength of the coercive effect contained therein.[14] In this way, at least when searching for and listing the elements of bringing a lawsuit, besides the specific content pointed to by the articles (the concrete pattern of conduct), attention must also be paid to what legal words are used in specific articles. Furthermore, from the perspective of legal dogmatics/hermeneutics, it seems to be essential to take the degree of coercion of the legal consequences of norms on adjudicators seriously. However, since Art. 119 item 3 of the CPL includes the provisions of Art. 121 item 3 in terms of scope, the requirements of Art. 121 on the matters to be recorded in the complaint will not affect the elements of bringing a lawsuit.

III. THE PROCEDURAL ENTITLEMENT AS AN ELEMENT OF BRINGING A LAWSUIT IS IRRELEVANT TO THE REQUIREMENTS OF THE SUBJECT MATTER OF CLAIMS

A. The Proper Meaning of "Procedural Entitlement" during Bringing a Lawsuit

1. Understanding of "Procedural Entitlement" in the Chinese Legal Practice

The term "procedural entitlement" used in Art. 119 item 3 of the CPL has multiple meanings in the field of civil procedure. Accordingly, the understanding of this term will directly affect the understanding of elements of bringing a lawsuit in China. The

14 For detailed discussion, see Cao Zhixun, "Relationship between the Degree of Judge's Power to Collect Evidence Sua Sponte and the Third Thesis of Verhandlungsmaxime" [法院依职权调查证据的强制程度及其与辩论主义第三命题间的关系], in JIANG Shiming ed., Recent Controversy between the Modified Verhandlungsmaxime and the Kooperationsmaxime [修正辩论主义与协同主义之时代论争], New Sharing Publishing [台湾新学林出版股份有限公司], 2017, pp. 289-294.

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first possible and more common meaning of "procedural entitlement" is the claim for relief, which is the object to be assessed in the formal case-filing review and means the specific content of the request of the party concerned. In general, this will directly determine the scope of the operative part of the to-be-given judgment, as well as the scope of procedural protection obtained by the defendant through notice and the scope of the court's adjudication. Meanwhile, the role of the claim for relief is more to guide the direction of the civil litigation. Considering the adjudication technique, the function of clarifying the adjudication object in the case should still be borne by the concept of "subject matter of claims".

If we follow this understanding, then in the most typical case, i.e., an action for monetary performance,[15] the specific amount that the defendant shall pay to the plaintiff shall satisfy this requirement.[16] When necessary, the court may also comprehensively consider the requirements of the claim for relief, and require the plaintiff to provide the basis for estimating such an amount and the specific composition thereof.[17] Otherwise, the court may hold that the plaintiff does not claim a specific kind of loss, and the court's failure to hear such loss does not constitute an omission of a claim.[18] As for whether the specific amount claimed by the plaintiff is too high, as long as there is no evidence to prove that the plaintiff circumvents the hierarchical jurisdiction rules by maliciously raising the amount of the subject matter of claims, it falls within the scope of substantive hearing and judgment.[19] If the plaintiff claims for the interest on the construction proceeds and specifies the starting date and interest rate, this requirement for the claim for relief is also satisfied, and the court may determine the specific amount of payment during the trial.[20] When it comes to a claim for the continuous per-

15 For declaratory claims (Feststellungsklage) and constructive claims for the alteration of legal rights or relationships (Gestaltungsklage), the key point is the specific legal relationship that can become the subject matter of claims, which is different from the general circumstances of an action for performance (Leistungsklage). In this case, it is additionally necessary to determine whether it is necessary to further explain a seemingly specific claim for relief considering declaratory interests (Feststellungsinteresse), and to further clarify whether a certain claim for relief is a declaratory one or a constructive one. Otherwise, it is for the judge impossible to correspondingly determine the content of court hearing and the operative part of the judgment that shall be rendered. For relevant discussion, see Cao Zhixun, "Identifying Affirmative Civil Claim in Chinese Law" [论我国法上确认之诉的认定], in Law Science [法学], No. 11, 2018.

16 See Civil Judgment of the SPC (2013) Min Si Zhong Zi No. 32 [最高人民法院（2013）民四终字第32号民事判决书].

17 See Civil Judgment of the SPC (2015) Min Yi Zhong Zi No. 359 [最高人民法院（2015）民一终字第359号民事判决书]. With similar understanding, see WANG Xuemian, "'Concret' Request for Relief" ["具体"的诉讼请求], in Journal of National Prosecutors College [国家检察官学院学报], No. 2, 2016, pp. 146-147.

18 See Civil Ruling of the SPC (2016) Zui Gao Fa Min Shen No. 1233 [最高人民法院（2016）最高法民申1233号民事裁定书] (the plaintiff alleged that the tort action corresponding to the aforementioned losses had been stated in the factual grounds of the complaint).

19 See Civil Judgment of the SPC (2011) Min Si Zhong Zi No. 13 [最高人民法院（2011）民四终字第13号民事判决书].

20 See Civil Ruling of the SPC (2016) Zui Gao Fa Min Shen No. 140 [最高人民法院（2016）最高法民申140号民事裁定书].

formance of a contract, the plaintiff's claim may be interpreted as a claim for payment of the total contract price.[21] And at least at the time of the case filing, it is not required to specify the specific content of the continuous performance (Art. 463 paragraph 2 of the ICPL) and the method of performance and so on (Art. 11 paragraph 1 item 5 of the Opinions on the Coordinated Operation of the Case-filing, Trial, and Enforcement by People's Courts (关于人民法院立案、审判与执行工作协调运行的意见)). Such information is only the necessary content of the operative part of the final judgment which could act as the enforcement title.[22] On the whole, due to the different litigation stages and procedural purposes, the claim for relief at the case-filing stage should be less specific than the judicial request in the operative part of the judgment.

Generally, in practice, as long as the plaintiff can list its different requests against the same or different legal entities, it can be deemed that the plaintiff has raised a corresponding number of "specific" claims for relief[23] or appeals for relief. And the same requirements shall be applied to counterclaims in civil litigation.[24] However, if the parties briefly claim in the factual grounds and reasoning of the appeal that the appellee shall bear the liability for breach of contract arising from the delay of completion of some construction project, there is obviously no clear appeal claim for relief.[25] In addition, the change of the plaintiff's claims for relief does not affect the determination of specificity.[26] When multiple defendants are involved, the plaintiff shall also specify the form and share of the liability requested by the plaintiff for each defendant;[27] whether such claims raised against different defendants can be supported by the court is within the scope of the merits of the case.[28] If the plaintiff only claims against a third party in the lawsuit against the defendant (e.g. requesting that the plaintiff ought to hold the stock equity of the third party in the worth of USD 2 million and requesting the court to confirm that such equity holds 50% of the total Chinese stock equity of the third party),

21 See Civil Judgment of the SPC (2014) Min Er Zhong Zi No. 176 [最高人民法院（2014）民二终字第176号民事判决书].

22 For different opinions, see WANG Xuemian, "'Concrete' Request for Relief" ["具体"的诉讼请求], in Journal of National Prosecutors College [国家检察官学院学报], No. 2, 2016, p. 147.

23 See Civil Judgment of the SPC (2017) Zui Gao Fa Min Zhong No. 320 [最高人民法院（2017）最高法民终320号民事判决书] (however, the claim for undertaking of litigation costs in this case should not be deemed as the claim for relief of the plaintiff).

24 See Civil Judgment of the SPC (2017) Zui Gao Fa Min Zhong No. 722 [最高人民法院（2017）最高法民终722号民事判决书].

25 See Civil Judgment of the SPC (2001) Min Yi Zhong Zi No. 62 [最高人民法院（2001）民一终字第62号民事判决书]. Similar circumstances can also be found in Civil Judgment (2000) Min Zhong Zi No. 115 of the SPC [最高人民法院（2000）民终字第115号民事判决书].

26 See Civil Judgment of the SPC (2013) Min Yi Zhong Zi No. 41 [最高人民法院（2013）民一终字第41号民事判决书].

27 For the same viewpoint, see WANG Xuemian, "'Concrete' Request for Relief" ["具体"的诉讼请求], in Journal of National Prosecutors College [国家检察官学院学报], No. 2, 2016, p. 149.

28 See Civil Ruling of the SPC (2018) Zui Gao Fa Min Li Zhong No. 94 [最高人民法院（2018）最高法民辖终94号民事裁定书].

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and does not make any claims against the sole defendant of the case, the requirements of Art. 119 item 3 of the CPL will be deemed not satisfied.[29] When the plaintiff only mentions the addition of a third party incidentally, but the claim for relief is still limited to the defendant, the court does not need to add a third party as a co-defendant.[30] In other words, if the plaintiff complains formally against more than one defendant, the bottom-line requirement is that the plaintiff has at least made some claims for relief against all of these defendants. Otherwise, the requirement of specificity for the claim for relief here cannot be satisfied.

For exceptional cases, Art. 198 of the ICPL also provides that for specific objects or intellectual property rights the value of which is difficult to be estimated at the time of the case filing, the court shall ascertain the amount of the subject matter of claims based on the value claimed by the plaintiff after clarifying the litigation risks. For other claims of performance to which the aforementioned rule does not apply but the amount of which is nevertheless difficult to be estimated at the time of the case filing, the court may refer to the forthcoming German rules.[31] For example, the SPC points out that the claim of profit distribution may be "temporarily set at RMB 100,000,000" as long as "the specific amount is subject to the result of the to-be-taken judicial audit" is stated in the plaintiff's complaint.[32] Beijing Higher People's Court makes it clear in a normative document at the end of 2019 that Art. 198 of the ICPL is also applicable in cases of inheritance disputes where the value of estates cannot be estimated (Art. 26 of the Answers of Beijing Higher People's Court to Several Issues on Application of Law in Filing and Adjudication of Cases (II) (北京市高级人民法院关于立案审判适用法律若干问题的解答（二）).

Certainly, if the corresponding claim for relief is not fully covered in the operative part of the judgment afterwards, it will raise the issue of omission of claim and corresponding correction.[33] And if the final judgment goes beyond the claim for relief sought by the plaintiff, it comes to the issue of exceeding the claim (Art. 200 paragraph 1 item

29 See Civil Judgment of the SPC (2006) Min Er Zhong Zi No. 115 [最高人民法院（2006）民二终字第115号民事判决书]. (The court of second instance found out that in another case, the plaintiff alleged that he has received a part of the defendant's capital contribution based on an investment agreement which was actually invalid due to the issue of ratification).

30 See Civil Ruling of the SPC (2018) Zui Gao Fa Min Shen No. 1182 [最高人民法院（2018）最高法民申1182号民事裁定书].

31 Similar opinions, for example, see LIU Min, "Function, Elements and Content: Reflections of the Complaint" [功能、要素与内容：民事起诉状省思], in Science of Law [法律科学], No. 3, 2014, p. 164; REN Zhong, "Criteria for the Judges' Right of Clarification on Changing Civil Claims" [释明变更诉讼请求的标准], in Chinese Journal of Law [法学研究], No. 4, 2019, p. 153.

32 Civil Judgment of the SPC (2011) Min Si Zhong Zi No. 13 [最高人民法院（2011）民四终字第13号民事判决书].

33 For relevant discussion, see Cao Zhixun, "On the Rectification of the Omission of a Civil Claim in the First Instance" [论民事一审漏判的更正], in Law Science [法学], No. 7, 2017, pp. 22-38.

11 of the CPL).[34] As for the claim of a specific amount which is ascertained by the court but not clearly listed in the claim for relief, no matter whether both parties take a stand in the litigation, it does not fall within the scope of the trial of this case. Rather, the claim can only be resolved by a separate new lawsuit.[35] Similarly, in a dispute over a joint venture contract between the plaintiff and the defendant, even if a third party fails to make a full capital contribution as well, the court does not have to hear this issue because the plaintiff and the defendant withdraw the lawsuit or never made a claim against the third party from the beginning.[36] The provision that "the procedural entitlement in the latter lawsuit is the same as those in the former lawsuit, or the procedural entitlement in the latter lawsuit substantially negate the judgment result of the former lawsuit" in Art. 247 paragraph 1 item 3 of the ICPL also refers to the "procedural entitlement" under such meaning. The increase in the amount of the claim for relief in the latter lawsuit does not affect the identity of the procedural entitlement compared to the one in the former lawsuit.[37] Finally, when the plaintiff loses the lawsuit, the "procedural entitlement" in the so-called "judgment dismissing the procedural entitlement", as read literally, could only mean the specific request made by the plaintiff, i.e. "claim for relief", rather than the substantive right or substantive legal relationship under the traditional substantive law theory regarding the subject matter of claims. The reason is simple: a legal relationship can only exist or not, and there is no need to support or dismiss it.

In addition to being specific, the claim may also not meet the requirements of the case-filing procedure for other reasons. If the parties cannot confirm the existence of a factual issue, for example, the plaintiff sues the defendant to confirm that the defendant's capital contribution to another company as the third party is false, the examination of this claim for relief should not be included in the review of the specificity of the procedural entitlement.[38] Rather, it should belong to the review of the declaratory interests in a broad sense.[39] Similarly, it may happen that one of the plaintiffs makes

34 See the Civil Ruling of the SPC (2015) Min Shen Zi No. 1386 [最高人民法院（2015）民申字第1386号民事裁定书] (the SPC also seems to hold that in order to settle the dispute once and for all, if the parties have no objection, the maintenance fee not claimed by the party can also be settled by the judgment rather than only by mediation).

35 See the Civil Ruling of the SPC (2011) Min Shen Zi No. 256 [最高人民法院（2011）民申字第256号民事裁定书] (the defendant disagrees with the additional claim in the second instance) and the Civil Judgment of the SPC (2016) Zui Gao Fa Min Zai No. 246 [最高人民法院（2016）最高法民再246号民事判决书] (the grounds of the second instance).

36 See the Civil Judgment of the SPC (1998) Jing Zhong Zi No. 198 [最高人民法院（1998）经终字第198号民事判决书].

37 See the Civil Judgment of the SPC (2018) Zui Gao Fa Min Shen No. 2412 [最高人民法院（2018）最高法民申2412号民事裁定书] and the Civil Judgment of the SPC (2016) Zui Gao Fa Min Shen No. 330 [最高人民法院（2016）最高法民申330号民事裁定书].

38 For the contrary practice, see the Civil Ruling of the SPC (2015) Min Shen Zi No. 1092 [最高人民法院（2015）民申字第1092号民事裁定书].

39 For relevant discussion, see Cao Zhixun, "Identifying Affirmative Civil Claim in Chinese Law" [论我国法上确认之诉的认定], in Law Science [法学], No.11, 2018, No. 11, 2018, pp. 53-54.

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a claim for relief that merely "agrees with another plaintiff's legal declaration (Willenserklärung)" and therefore requires the defendant to repay such other plaintiff, but does not "raise any specific and relevant claim for relief relating to itself" against the defendant. In such a case, the court could deem that the plaintiff's "claim does not constitute a claim in the sense of civil procedure".[40] The court may dismiss the action directly on the basis of the requirements of the proceedings. The concrete grounds to be named are that the plaintiff fails to state a lawful standing to the case or in other words does not qualify for operating the proceedings (Prozessführungsbefugnis), and that the plaintiff has no direct interests in the claim. Furthermore, when the plaintiff insisted on performing the loan contract provided that the contract was valid, it is really hard for such a plaintiff to raise specific claims for losses caused by the invalidity of the contract instead, even after the court had explained that the contract was invalid in accordance with Art. 35 of the Some Provisions of the SPC on Evidence in Civil Procedures of 2001 (hereinafter "Evidence Provisions") (最高人民法院关于民事诉讼证据的若干规定). In this case, the court should, as stated in the reasoning part of the relevant judgment, allow the plaintiff to claim for losses suffered due to the invalidity of the loan agreement in a separate later lawsuit.[41]

Moreover, partly because of different understandings of the subject matter of claims, the SPC in practice has understood "procedural entitlement" even beyond the sense of claim for relief,[42] and dismissed the plaintiff's action when the amount of the subject matter of claims is quite clear. The SPC has stated once that

> "Regardless of whether the plaintiff Jiaqiong Company filed the lawsuit at the court of first instance on 5 December 2000 alleging that Yingcai Company's unilateral suspension of the construction work without reason caused huge economic losses to it and requesting Yingcai Company to return the house purchase price of over RMB 24.59 million, to pay default penalty and damages, or the plaintiff filed the lawsuit at the court of second instance alleging that the real estate sales contract signed by both parties was invalid and requesting Yingcai Company to return the house purchase price of over RMB 24.59 million and interest thereon, the plaintiff did not deduct the amount of its claims against which could be set off in this case.

40 Civil Ruling of the SPC (2016) Zui Gao Fa Min Shen No. 330 [最高人民法院（2016）最高法民申330号民事裁定书]. In this case, the court incidentally held that the reasoning of the judgment that the procedural entitlement is not specific enough had no procedural significance.

41 See Civil Judgment of the SPC (2017) Zui Gao Fa Min Zhong No. 732 [最高人民法院（2017）最高法民终732号民事判决书]. At the end of 2019, the SPC issued a revised "Evidence Provisions", where the aforementioned rule of clarification was adjusted to Article 53. The whole revision of the judicial interpretation comes into force on May 1, 2020.

42 For the same view as this contribution which takes the term of procedural entitlement as a claim for relief, see LIANG Kaibin, "The Boundary of Civil Adjudication" [民事裁判的边界], Social Sciences Academic Press [社会科学文献出版社], 2018, p. 126; LI Zhigang, "The Types of Claims and the Adjudication Methods of Disputes over Rent Payment under Financial Leasing Contracts" [融资租赁合同欠租纠纷的诉请类型与裁判方式], People's Court Daily [人民法院报], July 9, 2014, 7th edition; YAN Renqun, "The Local Approach to the Subject Matter of Claims" [诉讼标的之本土路径], in Chinese Journal of Law [法学研究], No. 3, 2013.

> It is noticed that the plaintiff obtained the right of exchanging 50% of the disputed idle land and was accordingly entitled to acquire the amount of value converted after estimation and confirmation of the said right. And the total amount of the creditor's rights and debts between Jiaqiong Company and Yingcai Company was uncertain and unclear. Jiaqiong Company's request for confirmation of rights for the disputed idle land and its claim for a full refund of the payment in advance of over RMB 24.59 million paid to Yingcai Company exceeded either the scope of the rights to which Jiaqiong Company was entitled according to the stipulation of the contract or the total amount of assets to be returned due to invalidity of the contract. Therefore, the amount of payment requested by Jiaqiong Company in the lawsuit for repayment by Yingcai Company was unclear and unspecific, and did not satisfy the criteria stipulated in the CPL for filing a lawsuit, and the action shall be dismissed according to the law."[43]

The reasoning for the judgment of this case refers in fact to the merits of the case. So it is inappropriate to insist on such an approach in forthcoming case-filing cases.

2. Requirements for the "Procedural Entitlement" in Continental Legal System

From the perspective of comparative law, the ordinary practice of China is very similar to the German counterpart which places great emphasis on the specificity of the claim and the relevant operative part of the judgment. German law directly stipulates an "express claim for relief" within the meaning of Antrag, and as such, this rule will not be understood as a "subject matter of claims" within the meaning of Streitgegenstand. Meanwhile, if we set aside exceptional rules and the precedents developed in judicial practice, the "purpose of the claim"[44] stipulated by Art. 133 paragraph 2 item 2 of the Civil Procedure Law of Japan and the "claim for relief on the matters subject to judgment"[45] stipulated by Art. 244 paragraph 1 item 3 of the Civil Procedure Law in China Taiwan follow the same pattern.

Specifically speaking, under German law, the plaintiff should specify the type of its claim and the scope of the claim for relief in the complaint. In the claim for performance on which this contribution focuses, the amount of payment, interest or the targeted act of the defendant should be specified. When it comes to the consolidation of claims in one lawsuit, the amount involved in a single claim should also be specified. The claim for relief here can be derived from the interpretation of other contents of the complaint, and can also be clarified by the judge's exercise of its power of substantial

43 Civil Judgment of the SPC (2001) Min Yi Zhong Zi No. 91 [最高人民法院（2001）民一终字第91号民事判决书].

44 Ito Makoto, "Civil Procedure Law" [民事訴訟法], Yuhikaku Publishing [有斐閣], 2016, pp. 202-203; Matsumoto Hiroyuki and Ueno Yasuo, "Civil Procedure Law" [民事訴訟法], KOUBUNDOU Publishers [弘文堂], 2015, p. 225.

45 See CHIOU Lian-gong narrated/XU Shihuan edited, "Oral Lectures on Civil Procedure Law" (II) [口述民事诉讼法讲义（二）], published by the author, 2017, p. 35; JIANG Shiming, "Civil Procedure Law" (Volume I) [民事诉讼法（上册）], New Sharing Publishing [台湾新学林出版股份有限公司], 2016, pp. 417-421.

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litigation direction. The claim for relief should comply with the principle of specificity (Bestimmtheitsgebot) set forth in Art. 253 paragraph 2 item 2 of the German Code of Civil Procedure. Accordingly, according to Art. 313 paragraph 1 item 4 of the German Code of Civil Procedure, the operative part of the judgment should also meet this requirement. From the perspective of judgment techniques, this relates to an element of a bringing a lawsuit, and for this reason, this requirement is at the same time one of the requirements of the proceedings which under German law could also be named as the requirement regarding the admissibility of the claim (Zulässigkeit der Klage). The failure to meet this element will lead to the dismissal of the action instantly.[46] When determining this requirement of the proceedings, it is necessary to further construct the content of the claim for relief and the operative part of the judgment, and the court should consider the reasoning of the complaint[47] and the reasoning of the judgment respectively. According to the Federal Court of Justice, the construction of the claim for relief and the operative part of the judgment should not be limited to their pure literal meaning, but should consider the true intention of the parties, especially based on the standards provided by legal rules and the interests of the parties.[48] When dealing with exceptional cases such as the claim for compensation for non-pecuniary damage (Art. 253 paragraph 2 of the German Civil Code), the claim for relief does not need to specify the amount. Rather, it merely needs to provide the factual grounds for determining the damage and the amount of the claim in the forms of the minimum amount, approximate amount, the amount of the subject matter of claims and so forth,[49] in order to satisfy the fundamental requirements of specificity.[50] Similar special types of cases include the determination of child support fees, constructive claims in which the judge exercises his/her discretion to determine the amount, the determination of damages and actions in which the plaintiff could not or should not be expected to ascertain the amount.

It is noteworthy that the determination of the standard of identifying the subject matter of claims may also rely on the claim for relief, which is very common in the scientific discussion of civil law jurisdictions.[51] However, when there are several transactions

46 St. Rspr.; BGHZ 156, 1 = GRUR 2003, 958, 960; BGH GRUR 2013, 1235, Tz. 12; GRUR 2008, 84, 85, Tz. 13; GRUR 2007, 607, 608f., Tz. 16.

47 BGHZ 183, 353 = NJW 2010, 757, Tz. 8 (general personality rights); BGH GRUR 2015, 485, 487, Tz. 23.

48 BGH GRUR 2016, 395, 399, Tz. 40.

49 BGHZ 140, 335 = NJW 1999, 1339, 1340 (if the trial judge fully upholds the plaintiff's proposed minimum amount, the plaintiff cannot sue on the sole ground that the amount decided is too low if the amount that the plaintiff is dissatisfied with is nil); BGHZ 132, 341 = NJW 1996, 2425, 2427 f. (the judge's determination of damages may exceed the approximate amount originally claimed by the plaintiff); BGH NJW 2002, 3769, 3769 f. (an increase in the approximate amount during the complaint does not constitute a change in the subject matter of claims); NJW 1982, 340, 340 f.

50 Rosenberg/Schwab/Gottwald, Zivilprozessrecht, 18. Aufl., 2018, § 96 Rn. 27 ff., 39 ff.; Thomas/Putzo/Seiler, 40. Aufl., 2019, § 253 Rn. 11 ff.; MüKoZPO/Becker-Eberhard, 5. Aulf., 2016, § 253 Rn. 88 ff.

51 Except the fact that the leading theory in Germany, namely the procedure law theory of two branches, takes the claim for relief as one of its standard, related discussion see Matsumoto Hiroyuki and Ueno Yasuo,

involving the same amount of money between the same parties, simply determining the monetary amount concerned in the claim for performance is not enough to identify the subject matter of claims. Instead, we have to take other factors into account. Therefore, when determining the subject matter of claims, whether in Germany, which follows the theory of procedural law on the subject matter of claims in general, or in Japan and China Taiwan, the whose leading doctrine still sticks to the traditional theory of substantive law, besides the claim for relief, the information of disputes provided or limitedly stated by the factual grounds of the pleadings must be considered.[52] In this respect, whether the claim for relief is formally regarded as an independent standard of identifying the subject matter of claims makes no difference.

B. "Procedural Entitlement" Does Not Refer to the Subject Matter of Claims

1. A Secondary Meaning of "Procedural Entitlement"?

The second possible meaning of "procedural entitlement" is the subject matter of claims. This viewpoint is based on the fact that many legal norms at different levels, such as "the plaintiff adds the procedural entitlement" under Art. 140 of the CPL, directly treat "procedural entitlement" and "subject matter of claims" as the same.[53] If interpreted in this way, it means that the current law requires the parties to specify the subject matter of claims for which they are seeking relief as early as in the stage of formal case-filing examination. Therefore, the issue of the specification of the proce-

"Civil Procedure Law" [民事訴訟法], KOUBUNDOU Publishers [弘文堂], 2015, p. 225; JIANG Shiming, "Civil Procedure Law" (Volume I) [民事诉讼法（上册）], New Sharing Publishing [台湾新学林出版股份有限公司], 2016, p. 416.

52 See Ito Makoto, "Civil Procedure Law" [民事訴訟法], Yuhikaku Publishing [有斐閣], 2016, p. 202; Shindo Koji, "New Civil Procedure Law" [新民事诉讼法], trans. LIN Jianfeng, Law Press [法律出版社], 2008, p. 157. Even more, some Japanese scholars argue that the different requirements of the degree of the particulars of factual grounds do not only refer to the rules of limiting the content of the complaint, but also imply the theoretical choice of whether to identify the subject matter of claims by the identity of substantive rights or of the natural facts. See Shindo Koji, "New Civil Procedure Law" [新民事诉讼法], trans. LIN Jianfeng, Law Press [法律出版社], 2008, pp. 158-159. However, in my opinion, the different understandings of the so-called doctrine same identification and the doctrine of record of reasons should not be attached too much to the identification of the subject matter of claims. Rather, both doctrines should be interpreted as the mere discussion of the content of the complaint. The question of whether the factual grounds part of the complaint should be able to provide the grounds of substantive rights for the claim may arise under different doctrines of the subject matter of claims. Moreover, some Japanese scholar points out that the only difference between these two doctrines is whether the grounds for the acquisition of ownership of an object must be stated in a declaratory claim, in which the factual particulars can certainly play the function of distinguishing different subject matter of claims. See Ito Makoto, "Civil Procedure Law" [民事訴訟法], Yuhikaku Publishing [有斐閣], 2016, p. 203, footnote 74.

53 Relevant discussions, for example, see REN Zhong, "Theoretical Consensus on Civil Procedure in China" [论中国民事诉讼的理论共识], in Contemporary Law Review [当代法学], No. 3, 2016, p. 44; DUAN Housheng, "Study on the Subject Matter of Claims in Civil Proceedings" [民事诉讼标的论], People's Public Security University of China Press [中国人民公安大学出版社], 2004, pp. 14-15.

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dural entitlement has changed from "whether the content of the request is specific" (claim for relief) to "whether the scope of adjudication by the court is specific" (subject matter of claims). Regarding Art. 247 of the ICPL, which provides three elements for examining relitigation, namely the parties concerned, the subject matter of claims and the procedural entitlement, the SPC understands the "subject matter of claims" as the substantive right or legal relationship under the traditional substantive law theory,[54] which is generally accepted by the academic community to represent the basic position of the leading doctrine of China.[55] Or, at least, the clear distinction between the subject matter of claims and the procedural entitlement speaks for itself and seems to be sufficient to determine that the drafters from the judiciary deny the procedural law theory, which takes the claim for relief as one element for deciding the subject matter of claims. Also, by parallelly mentioning both the subject matter of claims and the procedural entitlement, the drafters explicitly reject the idea of interpreting "procedural entitlement" as the subject matter of claims. Whether such leading doctrine is good enough to be supported scientifically, how to understand natural facts, legal facts, legal relationships and other possible standards, and how to properly deal with different types of cases in the process of refining such leading theory, are still "high-grade ore zone" that need to be further explored in the theoretical and practical circles. Due to the topic of this contribution, it is not intended to fully develop this issue. However, since the grounds of substantive rights may be interpreted as the reasoning of the complaint and they may also act as a major standard for identifying the subject matter of claims, this contribution will nevertheless discuss these two perspectives.

In Chinese practice, not only the parties to the lawsuit may hold that Art. 119 item 3 of the CPL refers to the identification of the subject matter of claims (and the quantity of subject matters).[56] But when determining whether the plaintiff changed its procedural entitlement in accordance with the requirements of Art. 35 of the Evidence Provisions, the court also takes a similar position. The court requires the parties first to change the explicit content of the written claim for relief and then to further change

54 In new cases, there is still the practice of interpreting the "subject matter of claims" as the "specific targeted objects of the subject matter of claims". For example, with respect to a criminal and civil overlapping case, the SPC denied the reasoning of relitigation for the case with petition for retrial on the basis that "the litigation is of different nature, different legal relationships, different subject matter of claims and different parties". See the Civil Ruling of the SPC (2013) Min Shen Zi No. 1749 [最高人民法院（2013）民申字第1749号民事裁定书].

55 For example, see ZHAO Xiuju, "On the Conflict and Coordination between the Theory of Concurrence of Claims and the Theory of Subject Matter of Claims" [论请求权竞合理论与诉讼标的理论的冲突与协调], in SJTU Law Review [交大法学], No.1, 2018, p. 30; BU Yuanshi, "Ne bis in idem and its Application to Civil Intellectual Property Rights Disputes" [重复诉讼禁止及其在知识产权民事纠纷中的应用], in Chinese Journal of Law [法学研究], No. 3, 2017, pp. 94-95; YAN Renqun, "New Development on the Objective Scope of Res Judicata" [既判力客观范围之新进展], in Peking University Law Journal [中外法学], No. 2, 2017, pp. 546-548. See also ZHANG Weiping, "Study on the Regulation of Relitigation with a Discussion on non bis in idem" [重复诉讼规制研究], in China Legal Science [中国法学], No. 2, 2015, pp. 55-56.

56 See the Civil Ruling of the SPC (2016) Zui Gao Fa Min Li Zhong No. 98 [最高人民法院（2016）最高法民辖终98号民事裁定书].

the implicit substantive legal relationship. In this regard, the SPC deemed that "Zhongcai Company's second claim for relief, which is changed during the court's hearing from the refund of the purchase price to refund of the contract price, is still based on the legal relationship under the sales contract, rather than the legal relationship of financing and lending between enterprises found by the court of lower instance".[57] In fact, the SPC aims at the subject matter of claims during its examination of the procedural entitlement.

2. Opposing Opinions from the Perspective of Comparative Law

Except as mentioned above, it is generally held in Chinese practice that "procedural entitlement equals the claim for relief", comparative law experience also opposes equalizing procedural entitlement and the subject matter of claims in the case-filing procedure. If commentators hold the same view as this contribution, that the most important source of comparative law for Chinese civil procedure rules is the civil law system,[58] then it can be concluded that the "specific procedural entitlement" does not refer to the subject matter of claims, but as mentioned to the claim for relief. In terms of both the structure and the substantial content, the aforementioned Art. 253 paragraph 2 of the German Code of Civil Procedure and Art. 133 paragraph 2 of the Civil Procedure Law of Japan may be regarded as the comparative law basis of Art. 119 item 3 of the CPL. Parallel with "(specific) factual grounds" and "the (specific) reasoning" shall be the specific content of the plaintiff's request for the court, i.e. the claim for relief. At the same time, as detailed later, it is not necessary to examine the subject matter of claims in the case-filing stage of civil proceedings. It shows that from a functional perspective, the "procedural entitlement" here should also not refer to the subject matter of claims.

We may take notice of the fact that the Civil Procedure Law of China Taiwan, which is also often referred to by legislators of Mainland China, does make a provision that somehow deviates from the German and Japanese traditions. After the legislative revision, Art. 244 paragraph 1 of the Civil Procedure Law of China Taiwan explicitly requires the plaintiff, besides to provide the parties and the claim for relief, to state "the subject matter of claims and the factual grounds for which it is based" in item 2. Regardless of the specific choice of the standards for identifying the subject matter of claims, at least according to the literal meaning, this rule has required the complaint to state the "pro-

57 Civil Ruling of the SPC (2016) Zui Gao Fa Min Shen No. 1426 [最高人民法院（2016）最高法民申1426号民事裁定书]. See YANG Ting, "Identification and Handling of Changed Claims" [诉讼请求变更的认定与处理], in People's Judicature (Case) [人民司法·案例], No. 35, 2016, pp. 36-41.

58 As for the understanding of China's legal tradition and legal family, for example, see FU Yulin, "Studies on Civil Procedure Law in China in the Reform Era: Perspectives from the Interplay between Research Themes and Methodologies" [改革开放四十年中国民事诉讼法学的发展——从研究对象与研究方法相互塑造的角度观察], in Peking University Law Journal [中外法学], No. 6, 2018, p. 1443; CHEN Gang, "The Importance of Legal Family Awareness in the Study of Civil Procedure Law" [法系意识在民事诉讼法学研究中的重要意义], in Chinese Journal of Law [法学研究], No. 5, 2012, pp. 40-43.

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cedural entitlement" that has two meanings mentioned in this contribution.[59] However, the enactment and implementation of the CPL in Mainland China were long before the amendment of the law of China Taiwan; the text of the CPL of Mainland China has been amended several times, and the substantial rule of this legal norm has never been touched. Therefore, from the literal and historical interpretation, it is impossible to deem that the CPL of Mainland China, in the process of its initial enactment or the following revisions, had converted from the German and Japanese traditions, and inherited or at least referred to the changes of the Civil Procedure Law of China Taiwan.

IV. REASONING AS AN ELEMENT OF BRINGING A LAWSUIT IS NOT A REQUIREMENT OF THE SUBJECT MATTER OF CLAIMS EITHER

A. Reasoning within the Complaint does not refer to an Element of Bringing a Lawsuit

Since the "procedural entitlement" in the elements of bringing a lawsuit does not relate to the requirement for the subject matter of claims, can such a requirement be found in other norms? In this regard, Art. 119 paragraph 1 item 3 of the CPL also mentions a requirement for "reasoning", which in itself (at least formally) constitutes an element of the case-filing review. Given the possible extensible meaning of "reasoning", this may also be relevant to the review of subject matters of claims in the case-filing stage. The requirement for reasoning may point to the legal opinions of the parties,[60] i.e. the plaintiff could be deemed to be required to indicate their choice of legal opinions in the complaint. As for the scope of legal opinions, there is no clear boundary. All the legal grounds, prior judgments, customs and even simple feelings of law that can support the plaintiff's claim can be included in the "reasoning" in a broader sense, as long as they can be of or even are just considered by the plaintiff to be of some effective persuasion.[61] In practice, it is unimaginable to bring a lawsuit without producing reasoning. Even where the client is represented by a licensed lawyer, the

59 For a representative viewpoint, see CHIOU Lian-gong narrated/XU Shihuan edited, "Oral Lectures on Civil Procedure Law" (II) [口述民事诉讼法讲义（二）], published by the author, 2017, pp. 27-34. For a dissenting view, see JIANG Shiming, "Civil Procedure Law" (Volume I) [民事诉讼法（上册）], New Sharing Publishing [台湾新学林出版股份有限公司], 2016, p. 416. For a critical comment, see SHAO Ming, ZHOU Wen, "On the Legal Requirements for Civil Lawsuit" [论民事之诉的合法要件], in Journal of Renmin University of China [中国人民大学学报], No. 4, 2014, p. 97.

60 For different understandings of Chinese laws, see YAN Qingxia, "Research on the Parties' Civil Claims" [当事人民事诉讼主张研究], Law Press [法律出版社], 2013, pp. 154-155; DUAN Wenbo, "On the Procedure for Civil Case-Filing of First Instance" [论民事一审之立案程序], in Law Review [法学评论], No. 5, 2012, pp. 143, 145.

61 To explain the distinction among the ordinary persuasion force, the de facto binding force due to the judicial hierarchy and the institutional effect given by the written laws while taking prior judgments or other decisions as the tool of analysis, see Cao Zhixun, "On the Effect of Guiding Cases in China and their Application in the Legal Process" [论指导性案例的"参照"效力及其裁判技术], in Journal of Comparative Law [比较法研究], No. 6, 2016, pp. 112-116.

principle of jura novit curia will not relieve the lawyer of its duty to give legal opinions favorable to the client and to persuade the judge as far as possible in accordance with the service contract. A failure to do so may give rise to the liability for damages (Art. 49 paragraph 1 of Lawyers Law (律师法), Art. 406 paragraph 1 item 1 of Contract Law (合同法)).[62]

However, as far as the reasoning during the case filing is concerned, whether the plaintiff's reasoning is sufficient should not be an element of examination even under the previous substantial case-filing examination system. This sufficiency should be evaluated together with the merits of the case.[63] In this regard, the (correct) legal opinions should not be a requirement for the admissibility of the claim. The requirement of Art. 119 item 3 of the CPL is obviously not about whether the claim is of reason according to substantive legal rules.[64] Based on the widely accepted principle of jura novit curia, the judge should monopolize the power to apply the law, and the reasoning put forward by the parties should not constrain the judge's determination.[65] Conversely, even if the plaintiff insists on a different understanding of the substantive legal relationship from the court, it will not lead to the procedural dismissal of the action.[66] Especially, if the plaintiff only states in the complaint that "she is injured and should be compensated" or "in accordance with the provisions of the Constitution (宪法) and the laws", the requirement of reasoning is already satisfied. Since the legal opinions them-

62 In Germany, there are also clear legislations (Art. 137 paragraph 2 clause 2 of German Code of Civil Procedure, Art. 675 of the German Civil Code) and precedents supporting this conclusion: BVerfG NJW 2009, 2945, 2946; BGH NJW 2009, 987, 988; MüKoBGB/Heermann, 8. Aulf., 2020, § 675 Rn. 26 ff.; Medicus, Das Bundesverfassungsgericht und die Anwaltshaftung, AnwBl (2004), 257, 260.

63 See ZHANG Weiping, Civil Procedure Law [民事诉讼法学], Law Press [法律出版社], 2019, p. 302; LI Hao, Civil Procedure Law [民事诉讼法学], Law Press [法律出版社], 2016, p. 202; JIANG Wei, FU Yulin eds., Civil Procedure Law [民事诉讼法学], Peking University Press [北京大学出版社], 2015, pp. 255-256 (written by FU Yulin); LIU Min, "Function, Elements and Content: Reflections of the Complaint" [功能、要素与内容：民事起诉状省思], in Science of Law [法律科学], No. 3, 2014, p. 165.

64 See ZHAN Shangang, ZHAO Gang, "Revisiting Conditions of Bringing a Lawsuit and Their Application" [再论民事诉讼的起诉条件及其适用], in CHEN Guangzhong and JIANG Wei, eds., Procedural Law Review (Vol. 9) [诉讼法论丛（第9卷）], Law Press, 2004, pp. 391-392. For the dissenting opinion, see DUAN Housheng, "Study on the Subject Matter of Claims in Civil Proceedings" [民事诉讼标的论], People's Public Security University of China Press [中国人民公安大学出版社], 2004, p. 68.

65 BGHZ 135, 140 = NJW 1997, 1857, 1859; BGH NJW 2003, 1390; MüKoZPO/Becker-Eberhard, a.a.O., Vor §§ 253 ff. Rn. 39, § 253 Rn. 72; Albrecht, Die Streitsache im deutschen und englischen Zivilverfahren, 2013, S.13 f., 49 (since the time of common law). This understanding is also in line with the international trend (ALI/UNIDROIT Principles of Transnational Civil Procedure 22.2.3). For a historical study on the principle of jura novit curia under German law, see DUAN Wenbo, "The Countermeasures and Implications of Unexpected Application of Laws in Germany" [德国法律适用突袭问题之对策与启示], Science of Law [法律科学], No. 6, 2011, pp. 190-192.

66 See the Civil Ruling of the SPC (2015) Min Shen Zi No. 1825 [最高人民法院（2015）民申字第1825号] (an obita dictum because the parties did not claim it in their grounds of retrial). For previous improper practice, see Beijing New Zhong Shi Economic Development Co., Ltd., Hainan Zhong Shi (Group) Co., Ltd., v. China Resources Land (Beijing) Co., Ltd. (dispute over real estate project rights) [北京新中实经济发展有限责任公司、海南中实（集团）有限公司与华润置地（北京）股份有限公司房地产项目权益纠纷案], in Gazette of the SPC [最高人民法院公报], No. 8, 2006, pp. 20-21.

selves do not need to be clearly explained, it is naturally less necessary for the plaintiff to illustrate the legal rules to be applied in the complaint.

Thus, it seems that there is no substantial effect on civil proceedings whether relevant provisions formally require that the complaint must state the reasoning for bringing a lawsuit or this requirement ought to be given up fundamentally. In my opinion, rather than being a "must" clause, this requirement should be changed to the aforementioned "shall" clause, then violation of which is not enough to lead to the serious consequence that the court rejects to accept the case at all. The reasoning for bringing a lawsuit in the general sense should not and has not been the elements of bringing a lawsuit under Chinese law.[67] In other words, even if the plaintiff's complaint does not state some clear legal reasoning, and the court does not collect any oral legal reasoning when filing the case, it should not affect the court's acceptance of the case. From the procedural bottom line of protecting the right of action of the parties, it is sufficient for the plaintiff to show that it is seeking a legal remedy for something, i.e. "justice is obtained because of the law" (因法律得正义). In the forthcoming proceedings, with the participation of the parties' lawyers and the exercise of the judge's power of clarification when necessary, the specific grounds of substantive rights can be gradually clarified and focused on. As for whether the claim filed by the plaintiff is ultimately justified according to the laws, the court will give a ruling to dismiss the action successfully filed due to procedural grounds, make a final judgment to substantively dismiss the claim or (partially) uphold the claim, depending on whether the requirements of the proceedings are satisfied and the elements of substantive merits are to what extent fulfilled.

Of course, in practice, the judge may face the situation that the requirements of the proceedings and the elements of substantive merits overlap. Among others, it happens when the party's complaint is obviously groundless. For instance, the plaintiff may claim that an iron lamp was thrown at her from the upstairs of a restaurant, and that then the driver of a vehicle with a provincial police license which the plaintiff saw on another nearby street is the alleged assailant. The plaintiff sues the restaurant and the provincial police department for 50 billion yuan each.[68] Assuming that the alleged facts of the case are purely the imagination of the plaintiff, it is still worthy of further discussion whether the court shall make a ruling to dismiss the action on the grounds of denied "direct interests" (standing of the plaintiff), lack of specific factual grounds and reasoning or failure to provide case-filing evidence, all of which belong to requirements of the proceedings, or shall deny the substantive rights claimed in the lawsuit

67 For a similar conclusion, see JI Gefei, "On the Functional Transit and Content Reformation of China's Civil Complaint" [论我国民事起诉状的功能转型与内容再造], in Modern Science [现代法学], No. 6, 2013, pp. 139, 143.

68 See the Civil Ruling of Beijing No. 2 Intermediate People's Court (2015) Er Zhong Min Zhong Zi No. 06274 [北京市第二中级人民法院（2015）二中民终字第06274号民事裁定书].

from the perspective of substantive merits of the case. This contribution preliminarily believes that the production of reasoning and evidence are not elements of bringing a lawsuit, and as mentioned, the elements of factual grounds should be limited to the specific natural facts. The court shall also adhere to the procedural law approach in determining the standing of the plaintiff, that is, whether the plaintiff may have substantive rights shall be determined based on the factual grounds alleged by the party concerned. It is neither necessary to examine whether the alleged facts conform to common sense, nor the provided evidence or other subjective and objective materials shall be considered. Therefore, a more appropriate solution may be to dismiss the claim on merits. It means that the dispute will be at least resolved within the legal procedure. On the contrary, why there is such kind of cases and which kind of social controversies it comes to also deserves our attention while is nevertheless beyond the coverage of this contribution.

B. Cause of Action in the Complaint is not an Element of Bringing a Lawsuit either

In addition to the aforementioned reasoning of the complaint provided by the plaintiff to support its claim in common sense, the cause of action (案由) provided by the plaintiff when filing the lawsuit is supposed also to be a part of the plaintiff's legal opinions. Compared with other reasoning during the case-filing stage, many viewpoints in China, especially strong propositions from the practical departments, argue that the case-filing cause of action should act as the concept of the subject matter of claims in China.[69] On such occasions, the cause of action is worthy of a special explanation.

In Chinese practice, the case-filing judge may require the plaintiff to determine the cause of action by itself, but the cause of action does not have the effect of an element of bringing a lawsuit.[70] Although in practice, the cause of action is helpful for the court to determine the subject matter of claims (especially when it involves concurrence of substantive rights and change of claims during the proceedings) and whether the spe-

69 For example, see LEI Xin and HUANG Wende, "Problems in the Current Judgments and Reasons Analysis" [当前法院裁判文书存在的问题及原因分析], Journal of Law Application [法律适用], No. 12, 2009, p. 95; LI Long, "Research on the Theory of Subject Matter of claims in Civil Litigation" [民事诉讼标的理论研究], Law Press [法律出版社], 2003, p. 88.

70 Paragraph 3(2) of the Notice by the SPC of Issuance of the Amended Provisions on the Causes of Action for Civil Cases (最高人民法院关于印发修改后的《民事案件案由规定》的通知) (No. 42 [2011] of the SPC); see SUN Youhai, WU Zhaoxiang and HUANG Jianzhong, "Understanding and Application of the Revised Regulations on Causes of Action in Civil Cases in 2011" [2011年修改后的〈民事案件案由规定〉的理解与适用], People's Judicature [人民司法], No. 9, 2011, p. 32. Similar conclusions, see CAO Yunji, "The Procedural Structures of 'Parties' under the Registration System for the Docketing of Cases" [立案登记制下"当事人"的程序构造], in Law and Social Development [法制与社会发展], No. 5, 2017, p. 144; JI Gefei, "On the Functional Transit and Content Reformation of China's Civil Complaint" [论我国民事起诉状的功能转型与内容再造], in Modern Science [现代法学], No. 6, 2013, p. 140.

cial territorial jurisdiction rules are applicable, it is not appropriate to trace its roots in the common law concept of writs[71] or treat it the same as the subject matter of claims. As for the subsequent determination of the cause of action by the case-filing judge and the possible rectification by the trial judge, they only have the effect of judicial administration[72] rather than procedural law effect, and should not affect the determination of the subject matter of claims at all.[73] Meanwhile, when the plaintiff's claim for relief includes both confirmation and performance, and therefore multiple subject matters of claims are involved in the same lawsuit, in practice, the cause of action may also be considered as "declaring the invalidity of the contract", which stands as one of the claims for relief and the preliminary issue of the subsequent payment requests.[74] Such a way of determining the cause of action differs obviously from the identification of the subject matter of claims. Moreover, when the SPC found that the judgment of first instance was wrong in determining the nature of the case and then stated an incorrect cause of action, the SPC directly corrects its cause of action and its reasoning in its own judgment.[75] Therefore, although it is suggested in judicial practice to accurately determine the causes of action for case-filing and to keep the consistency between the causes of action for case-filing and those for closing a case,[76] when it is necessary to

71 See Dong Yiliang, Liu Hongyan & Knut B. Pißler, The 2011 Regulation on the Causes of Civil Action of the Supreme People's Court of the People's Republic of China, at 5 (de Gruyter, 2012). The current English system of cause of action can no longer limit the judge's power of adjudication. At the same time, even if there is no available cause of action in current law, the judge can still review whether it is necessary to create a new cause of action based on the legal reasoning of the parties ("unfair competition claims"). See L'Oreal SA v Bellure NV [2007] EWCA Civ 968, at [138] - [161] (per Jacob L.J.); Christopher Wadlow, The Law of Passing-off, at para. 1-006 - 1-009 (Sweet & Maxwell, 2011).

72 See CAO Jianjun, "On the Functions of the Civil Cause of Action: from the Perspective of Evolution, Division and Orientation" [民事案由的功能：演变、划分与定位], in Science of Law [法律科学], No. 5, 2018, pp. 120-128; ZHANG Weiping, "Reflection and Reconstruction of Civil Case Acceptance System" [民事案件受理制度的反思与重构], in Studies in Law and Business [法商研究], No. 3, 2015, p. 11.

73 For an analysis of whether the cause of action system can fulfill its predetermined function and whether it is reasonable, see MA Dengke and LIAO Hao, "On the Examination and Re-construction of the System of Cause of Action" [民事案由制度的检讨与重构], in Journal of Xiamen University(Arts & Social Sciences) [厦门大学学报（哲学社会科学版）], No. 2, 2012, pp. 94-101.

74 See the Civil Ruling of the SPC (2013) Min Shen Zi No. 2039 [最高人民法院（2013）民申字第2039号民事裁定书].

75 See Case of the Dispute over the Determination of Ownership between Concordia Agricultural Products Trading (Shanghai) Co., Ltd. and Guangdong Fuhong Oil Co., Ltd. and the Third Party Zhanjiang Branch of China Construction Bank Corporation [肯考帝亚农产品贸易（上海）有限公司与广东富虹油品有限公司、第三人中国建设银行股份有限公司湛江市分行所有权确认纠纷案], in the Gazette of the SPC [最高人民法院公报], No. 1, 2012, p. 29; the Civil Judgment of the SPC (2018) Zui Gao Fa Min Zhong No. 1163 [最高人民法院（2018）最高法民终1163号民事判决书].

76 See ZHANG Haiyan, "Research on the Fact-Finding Mechanism of Civil Proceedings" [民事诉讼案件事实认定机制研究], China University of Political Science and Law Press [中国政法大学出版社], 2012, pp. 69-71; SONG Wangxing, "Discussion on the Perfection of the System for Determination of Causes of Action in Civil Cases" [论民事案由确定制度的完善], Journal of Law Application [法律适用], No. 2, 2012, p. 67.

change the causes of action, it is only required to truthfully indicate the change in the part of facts within the final judgment.[77]

C. Grounds of Substantive Rights as Reasoning within the Complaint

Furthermore, if the multiple grounds of substantive rights can be directly interpreted as different legal reasons supporting the same claim for relief, then the concept of the case-filing reasoning itself is able to include the subject matter of claims. Different standards of identifying the subject matter of claims will lead to different ways of constructing the grounds of substantive rights from the perspective of adjudication techniques. Among others, the two most important theories are the procedural law theory and the traditional substantive law theory which are already familiar to Chinese academic circles. This involves not only the most common grounds of substantive rights of monetary claims (e.g. breach of contract, torts, the right to claim for performance of a contract, the right to claim for damages for breach of contract and the right to claim for unjust enrichment), but also the substantive law basis of the claim for restitution (based on contract, ownership, possessory protection, etc.). It may also relate to the substantive law nature of the same legal relationship (sales relationship or creditor-debtor relationship) and the consolidation of substantive claims corresponding to different independent payments (multiple loan contracts for the same amount). By contrast, if from the perspective of substantive law, it comes to overlapping legal provisions (Gesetzkonkurrenz) such as the three types of torts (narrow sense of torts, torts of breach of law and torts of breach of customs) or the two types of unjust enrichment (performance type and non-performance type) under the German legal framework, or the different constitutive elements of a specific substantive right, for example, with or without authorization of designation, no different subject matter of claims will be recognized under the aforementioned two theories of identifying the subject matter of claims.

Under the procedural law theory on subject matters of claims, the judge only regards the existence of ownership relationship and the cancellation of creditor-debtor relationship due to termination of a contract as the different reasons for requiring restitution of specific property.[78] Then, what needs to be examined is only the specificity of the content of the claim for restitution. The change of the grounds of substantive rights will not affect the identity of the subject matter of claims. The aforementioned different reasons for requiring restitution can only be understood as different legal opi-

77 In practice, some courts even consider the dispute on cause of action as an important issue in the reasoning part of the final judgment. See the Civil Judgment of the Zhejiang Higher People's Court (2013) Zhe Min Ti Zi No. 120 [浙江省高级人民法院（2013）浙民提字第120号民事判决书] (Confirming the property right and the contractual management right on land).

78 See ZHANG Weiping, "On the Subject Matter of Claims and the Standard of Identification" [论诉讼标的及识别标准], in Chinese Journal of Law [法学研究], No. 4, 1997, p. 66.

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nions,[79] so that the principle of jura novit curia should be applied. In German law, where this interpretation is adopted, the requirement for case-filing reasoning is explained under the heading "subject matter of the claim raised" (Gegenstand des erhobenen Anspruchs) alongside the claim for relief and factual grounds. However, the complaint is not considered necessary to record the legal opinions of the plaintiff. The reason for this is that it is neither practical nor beneficial to require the plaintiff to make a precautionary response to possible defenses at the commencement of civil proceedings, and is more likely to turn other remedies provided at different stages of the proceedings into a mere figurehead (Art.139, Art. 264 item 1, Art. 277 paragraph 4, Art. 282 and Art. 296a of German Code of Civil Procedure). In particular, the understanding of the principle of jura novit curia has changed significantly in the evolution of civil procedure theory in the continental legal system. Since the middle of the twentieth century, the leading doctrine that the judge is solely responsible for legal issues has become dominant. Before that, Germany, on the contrary, admitted that the plaintiff had the right to exclude or limit legal opinions in the case, which was primarily related to the evolution of the theories of the subject matter of claims. Of course, even under the theory of procedural law, legal opinions still play a very crucial role in judicial practice. Indeed, how the parties concerned claim their substantive rights will not affect the court's determination of the subject matter of claims. However, the fact that the issue of which substantive rights are claimed does not bind the court does not mean that the parties are not entitled to present their own legal opinions. After all, generally speaking, well-prepared pleadings can play the role of persuading the judge as early as possible, besides that they could assist the judge to determine the subject matter of claims when there is doubt.[80]

Meanwhile, according to the ordinary understanding of the old substantive theory of the subject matter of claims, substantive rights are not only the ordinary legal opinions corresponding to the means of attack and defense (Angriffs- und Verteidigungsmittel), but also the subject matter of claims directly corresponding to the attack and defense themselves. Therefore, due to the special importance of the grounds of substantive rights in adjudicating techniques hereby, grounds of substantive rights understood as different legal opinions under the aforementioned theory of procedural law refer now to independent subject matters of claims respectively; a lawsuit which is originally (under the theory of procedural law) identified to have a single subject matter of claims may instead embody the consolidation of subject matters of claims; the principle of jura novit curia, which covers various grounds of substantive rights under the theory of procedural law, is thus limited to the lower-level substantive norms which

79 For similar viewpoints within the Chinese practice, see CHENG Chunhua, "Adjudication Thinking and Methods of Proof" [裁判思维与证明方法], Law Press [法律出版社], 2016, p. 65.

80 See Adrian A. S. Zuckerman, Zuckerman on Civil Procedure: Principles of Practice, at para. 7.17 (Sweet & Maxwell, 2013).

aim to determine the nature, composition, validity and even existence of one and the same substantive right. However, based on this understanding, instead of arguing that the grounds of substantive rights should be made clear, that is, the case-filing reasoning should be an exceptional element of bringing a lawsuit, it is more appropriate to argue that under the traditional theory of substantive law, the subject matter of claims and the grounds of substantive rights are too important and standing at the core of the judgment technique, and thus their specificity/clearness should be the independent elements of bringing a lawsuit. After grounds of substantive rights become the identification standard of the subject matter of claims, the rising of their procedural status makes it lose the commonality that it may share with other instances of legal reasoning previously. Therefore, grounds of substantive rights should no longer be classified as the requirement of the case-filing reasoning. Only under the theory of procedural law of the subject matter of claims, where various possibilities of legal reasoning are within the scope of jura novit curia, can grounds of substantive rights be regarded as a part of the reasoning in general. In this contribution, as mentioned above, the requirement of grounds of substantive rights are not considered as one element of bringing a lawsuit. As for whether the traditional theory of substantive law must require that subject matters of claims/grounds of substantive rights are to be specified, it should be considered comprehensively in later parts of this contribution while setting aside the mere interpretation of existing legal norms.

V. WHETHER THE SPECIFICITY OF SUBJECT MATTER OF CLAIMS SHOULD BE RECOGNIZED AS AN INDEPENDENT ELEMENT OF BRINGING A LAWSUIT?

A. Ideal Situation: The Subject Matter of Claims Does Not Need to Be Examined in the Case-filing Procedure

As mentioned above, the Chinese rule of "specific procedural entitlement" in elements of bringing a lawsuit is not a requirement for the subject matter of claims, and case-filing reasoning should not be an element of the case-filing examination. Thus, the current statutory elements of bringing a lawsuit do not include a requirement that the subject matter of claims must be clearly specified at the time of case filing. Besides, due to the existence of possible legislative loopholes or at least the necessity of the systematic construction of current legal norms, it should be further estimated whether there is an independent element of bringing a lawsuit that requires the specificity of the subject matter of claims. This requires a comprehensive consideration of the relationship between case-filing examination and the subject matter of claims based on grounds of substantive rights.

First of all, the above-mentioned rules of the comparative law, which are fundamentally equivalent to Art. 119 item 3 of the CPL, have both positive and negative refe-

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rence significance. On the positive side, the relevant elements of bringing a lawsuit in China are supported by the experience of the continental law system, and we can refer to the existing discussions in comparative law while constructing Chinese legal rules. We can not only obtain more sufficient theoretical resources, but also have the opportunity to foresee those problems that we have not yet encountered but have already emerged and been seriously discussed in foreign jurisdictions. On the negative side, elements of the case-filing examination under the tradition of the German-Japanese civil law system will not go beyond Art. 119 item 3 of the CPL, except for the payment of litigation costs in advance (Art. 118 paragraph 1 of the CPL, Art. 20 paragraph 1 sentence 1 and Art. 22 paragraph 1 of the Measures on the Payment of Litigation Costs (诉讼费用交纳办法); corresponding to Art. 12 paragraph 1 and Art. 22 paragraph 1 of the German Court Costs Act[81]). In other words, the case-filing examination in Germany and Japan is an absolute formal examination, and will not grasp the subject matter of claims and its identification. In the meantime, the Anglo-American legal system, which also insists on mere registration during case-filing traditionally, does not even have an independent concept of the subject matter of claims. It is even less likely to require determination of the subject matter of claims at the time of filing, given that the Anglo--American law system encourages dispute resolution at one time as much as possible and embraces the widest scope of res judicata among various jurisdictions.

Secondly, under the overall requirements of the case-filing registration system, China is more strongly demanded to abandon the heightened substantial examination of the case-filing. Although the Provisions of the SPC on Several Issues Concerning the Registration and Case-Filing of Cases by People's Courts (hereinafter Provisions on Registration and Case-Filing) (最高人民法院关于人民法院登记立案若干问题的规定) does not restate the elements of substantial examination of the case filing under Art. 119 of the CPL, it can be confirmed that this Provisions on Registration and Case-Filing does not deny the elements of substantial examination of the case filing, both based on its emphasis that "the case shall be accepted following the law" (Art. 1 of the Provisions on Registration and Case-Filing) and the same requirement in the opinions of the Central Leading Group of Chinese Communist Party for Comprehensively Deepening Reforms which is published by the SPC on the same day (Part II of the Opinions on Promoting the Reform of the Case-filing Registration System by the People's Courts (关于人民法院推行立案登记制改革的意见)). However, such a normative status quo does not prevent us from re-interpreting the proper stage of examining the aforementioned case-filing elements relying on the purposive interpretation of legal norms. Furthermore, since we could consider the possibility of modifying the statute itself, we may directly advocate that the system of examination rules based on Art. 119 of the CPL and its following articles should be renewed to clearly sort out the registration elements

81 Rosenberg/Schwab/Gottwald, a.a.O., §§ 83 Rn. 10, 96 Rn. 4, 129 Rn. 3.

required for case filing.[82] Professor ZHANG Weiping has already convincingly pointed out that "the intention of the reform of the case-filing registration system is to restore the original meaning and the case-filing function, so as to change the existing case-filing acceptance system from control and regulation to opening up … … If the elements of the judgment on the merits were embedded in the conditions for bringing a lawsuit as in the current case-filing and acceptance system, the case-filing registration system would not be truly realized. Obviously, the new case-filing registration system does not focus on adopting the method of 'registration', but to reduce the threshold for accepting cases and return to the original meaning of case filing. The essence of the reform of the case-filing examination system is not whether to examine the bringing a lawsuit, but what should be examined".[83] In particular, if the threshold for filing a case cannot be substantially lowered by reducing the case-filing examination requirements, various means of circumventing or even bypassing the case-filing registration system that are common currently will still prevail in practice.[84] Both the central government's established policy and the protection of the parties' legal right of action are in realistic danger of being reduced to mere words and slogans.[85] In this context of pursuing simplification of elements of bringing a lawsuit, we shall not follow the proposition of a relative theory of the subject matter of claims which is put forward by scholars of China Taiwan. Such a proposition intends to realize procedural classification based on the parties' right to procedural options. Concretely speaking, it is suggested that at the case-filing stage, the scope and identification standards of the subject matter of claims are to be determined according to the dichotomy of "right unit type" or "dispute unit type", which is for the parties to make a choice. Accordingly, the subsequent sorting of disputed issues and court hearings are to be arranged according to the parties' choice.[86]

82 For example, CAO Yunji, "The Procedural Structures of 'Parties' under the Registration System for the Docketing of Cases" [立案登记制下"当事人"的程序构造], in Law and Social Development [法制与社会发展], No. 5, 2017, p. 141; CAI Hong and LI Tangjie, "Jurisprudential Reflection on Civil Case-filing Registration System" [民事立案登记制度的法理省思], in Legal Forum [法学论坛], No. 4, 2016, p. 123; LU Yongdi, "From a Case-filing Review System to a Case-filing Registration System" [从立案审查到立案登记], in China Legal Science [中国法学], No. 2, 2016, p. 219.

83 ZHANG Weiping, "Reflection and Reconstruction of Civil Case Acceptance System" [民事案件受理制度的反思与重构], in Studies in Law and Business [法商研究], No. 3, 2015, p. 8.

84 These "numerous 'local policies' or excuses to 'make things difficult' for the parties in terms of technology or the smallest details" are "difficult to be justified, or may pose a great risk to court personnel who still intend to do so". WANG Yaxin, "Reform of the Case-filing Registration System: Effects, Problems and Countermeasures" [立案登记制改革：成效、问题及对策], in Research on the Rule of Law [法治研究], No. 5, 2017, p. 60 (also referring to the challenges to some courts under the current situation of "Too Many Cases Handled by too Few Judges").

85 As for the issue of justiciability, which is generally understood as an element of the court's jurisdiction, whether it shall be reviewed in the case-filing process (see WANG Erhuan, "Construction and Improvement of the Case-filing Registration System" [登记立案制度之构建与完善], in Tribune of Political Science and Law [政法论坛], No. 2, 2019, pp. 115-116; LU Yongdi, "From a Case-filing Review System to a Case-filing Registration System" [从立案审查到立案登记], in China Legal Science [中国法学], No. 2, 2016, pp. 218-219) or reviewed as an requirement of the proceedings after case-filing is highly policy-oriented, which is not discussed herein.

86 See CHIOU Lian-gong narrated/XU Shihuan edited, "Oral Lectures on Civil Procedure Law" (II) [口述民事诉讼法讲义（二）], published by the author, 2017, pp. 160-167; SHYUU Shu-Huan, New Civil Procedure Law [新民事

Thirdly, on the basis of the above understanding, the elements of bringing a lawsuit and the requirements of the proceedings should be distinguished in terms of adjudication techniques. Germany and Japan do not consider the issue of subject matters of claims in their formal case-filing examination, while they instead include this issue in the requirements of the proceedings. Accordingly, the plaintiff's exercise of its right of action with emphasis on the request for judicial protection does not necessarily meet the requirements of the proceedings. There are two consequences respectively. On one hand, when dealing with the relationship between the present case and another case, the court must identify whether the subject matter of claims of the present case constitutes dual legal pendency (Rechtshängigkeit) of the same case or is subject to the res judicata of the final judgment in another case. Different from Art. 247 of the ICPL, which also deals with relitigation in China, even if German and Japanese courts confirm the existence of repeated lawsuits, they will not reject the plaintiff's request for judicial protection (ruling not to file the case) at the commencement of the lawsuit. Rather, after such action has been legally pending before the court, German and Japanese courts will refuse to make a judgment on the merits (ruling to dismiss the action procedurally) due to the inadmissibility of the claim. Of course, if the court discovers the defects in the complaint itself after the case-filing stage, the court will also declare the inadmissibility of the claim. On the other hand, when proceeding with the hearing of the present case on the merits, the court will not only determine the scope of legal pendency to avoid over-ruling or omission of the judgment and to describe the scope of the limitation of action,[87] but also decide whether there is a consolidation of claims or changes of claims afterwards. However, in any case, these judicial tasks are to be resolved after the case-filing; there must be a successfully brought lawsuit before anyone could locate the subject matter of claims in such a lawsuit. Meanwhile, the distinction between elements of bringing a lawsuit and requirements of the proceedings means that we should accordingly change the conditions for ruling to refuse to accept a case or ruling to dismiss the action. Concretely speaking, Art. 208 paragraph 3 of the ICPL is supposed to only apply to the circumstance where a lawsuit fails to meet the requirements for a formal case-filing examination. For the requirements of the proceedings, such as issues of jurisdiction, standing of the parties concerned and relitigation, the court can only rule to dismiss the action. In addition, especially considering that there is still great room for development in the protection of parties' rights in China, it seems unnecessary for us to follow the old-time theory regarding the right of action and the procedural structure at that time to cater to the routine and convenience of the judiciary. It means that we should not support the argument that the requirements of

诉讼法], Peking University Press [北京大学出版社], 2013, pp. 66-125. For discussion of this theory, see DONG Haolin, "Relativity of the Subject Matter of Claims" [诉讼标的相对论], Contemporary Law Review [当代法学], No.2, 2019, pp. 129-130; LIANG Kaibin, "Boundary of Civil Adjudication" [民事裁判的边界], Social Sciences Academic Press [社会科学文献出版社], 2018, pp. 80-94.

87 See Cao Zhixun, "On the Interpretation of the Interruption of the Prescription of Action with Bringing A Claim" [起诉中断诉讼时效规则的理论展开], Contemporary Law Review [当代法学], No. 6, 2014, pp. 115-124.

the proceedings should be heard and decided in a pretrial procedure which is clearly separated from other stages of civil proceedings.[88] On the contrary, emphasizing the protection of the right of action and normalizing the adjudication power of the court are more likely the right direction of the ongoing judicial reform.[89]

Finally, even Art. 186 of the Civil Code (previously Art. 122 of the Contract Law (合同法)) that prohibits the consolidation of claims and refers to the concurrence of substantive rights/liabilities (this article has also been widely criticized[90] and should not be upheld currently) does not require the selection of a specific ground of substantive rights at the case-filing stage. Art. 30 of the Interpretation (I) of the SPC of Several Issues Concerning the Application of the Contract Law of the P.R.C. (hereinafter Contract Law Interpretation (I)) (最高人民法院关于适用〈中华人民共和国合同法〉若干问题的解释（一）), provides for a rule as to when a ground of substantive rights may be changed via its explicit sentence "after the creditor … makes a choice when bringing a claim in the people's court", after such legal norm has referred to the rule regarding the concurrence of liabilities. Yet, Art. 30 of the Contract Law Interpretation (I) does not deny the effectiveness of a complaint in the absence of an explicit choice among multiple grounds of substantive rights. This contribution is of the opinion that a creditor may file a lawsuit relying on all grounds of substantive rights instead of a specific ground. And by analogical application of Art. 30 of the Contract Law Interpretation (I), latest before the court hearing of the first instance, the creditor could still clarify whether its claim for damages is based on the substantive ground of breach of contract or torts. After all, from a functional perspective, the purpose of the aforementioned judicial interpretation should be to determine the substantive legal relationship to be tried during the court hearing, rather than to limit the plaintiff to only raise one ground of substantive rights. As long as it can be determined at the hearing that the hearing will be about the claim for monetary performance based on breach of contract between the parties, there will be no difference in the hearing whether torts and breach of contract have been relied on by the plaintiff simultaneously, or alternatively torts have been mentioned as the sole ground of substantive rights, or rather the claim for breach of contract has been filed from the beginning to the end of the relevant civil proceedings.[91] In

88 See DUAN Wenbo, "Theory on the Adjudication of Case-filing Requirements in Advance" [起诉条件前置审理论], in Chinese Journal of Law [法学研究], No. 6, 2016, pp. 70-87.

89 See CAI Hong and LI Tangjie, "Jurisprudential Reflection on Civil Case-filing Registration System" [民事立案登记制度的法理省思], in Legal Forum [法学论坛], No.4, 2016, pp. 117-119, 122-123.

90 See YE Mingyi, "Commentary on Article 122 (Concurrence of Liability) of the Contract Law" [《合同法》第122条（责任竞合）评注], in The Jurist [法学家], No. 2, 2019, pp. 183-185, 188-189; YUAN Lin, "The Aggregation of Claims in the Context of the Same Occurrence" [基于"同一事实"的诉的客观合并], in The Jurist [法学家], No. 2, 2018, pp. 150-155; DUAN Wenbo, "Concurrence of Claims: Taking the Alternative Consolidation of Claims as the Solution" [请求权竞合论——以诉之选择性合并为归宿], in Modern Law Science [现代法学], No. 5, 2010, pp. 162-163; DUAN Housheng, "Study on the Subject Matter of Claims in Civil Proceedings" [民事诉讼标的论], People's Public Security University of China Press [中国人民公安大学出版社], 2004, pp. 238-241.

91 This contribution is only based on the erroneous handling of concurrence of claims in the current judicial practice, that is, even if it fails to change this practice, it will not prevent the conclusion that the issue of the

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this regard, the SPC has not only allowed the parties concerned who have not chosen the grounds of substantive rights of claim at the time of filing the lawsuit to make a choice during the court hearing.[92] But by republishing the relevant final judgment in the official Gazette of the SPC,[93] the SPC has also accepted the trial approach of a local court which decides to comprehensively hear the case during the court hearing on the merits and to choose among different grounds of substantive rights sua sponte. If the former practice of the SPC recognizes the effectiveness of a claim without a choice of grounds of substantive rights, the latter can also be logically interpreted as the SPC's lenient attitude of not choosing a ground of substantive rights at the case-filing stage. In contrast, when there is only one correct ground of substantive rights, namely when the case merely relates to the ground of substantive rights under a contract, but whether the relevant contract is a purchase contract or a loan contract remains to be determined, the principle of jura novit curia should nevertheless be applied. It means that the judge has the power to identify the ground of substantive rights in the case sua sponte, regardless of whether and how the grounds of substantive rights are constructed by the parties. The reason is that the subject matter of claims of a case can be uniquely identified in case of the qualification of legal relationship. It makes no difference whether the ground of substantive rights was changed during the whole process or not.

B. Practical Solution: Modifying the Theory of Subject Matter of Claims under Substantial Case-filing Examination

1. The Substantial Case-Filing Examination System Tends to Require Specific Subject Matters

As previously mentioned, this contribution contends that with the real implementation of the case-filing registration system, it is not necessary to examine the element

subject matter of claims shall not be considered at the case-filing stage. If this practice can be abandoned in the future, since the existence of objective joinder of claims is allowed both in the court hearing and in the final judgment, it will not be a problem to adopt the form of consolidation of claims during case-filing. Meanwhile, the adjudication techniques for dealing with the issue of concurrence of claims do not only refer to the issue of the subject matter of claims, but also are closely related to the improvement of the proceedings of first instance in China. For example, the substantialization of the pre-trial preparation proceedings, the realization of the function of sorting out the disputed issues before the court hearing and the binding effect of the sorted-out conclusions, and the protection of the procedural interests of the defendant when the plaintiff chooses the claimed substantive rights belong obviously to a systematic project.

92 See Retrial of the Infringement Dispute between Zhangjiagang Taifu Oil Storage Co., Ltd. and Jiangsu Sumeida International Technology Trade Co., Ltd. [张家港泰富石油仓储有限公司与江苏苏美达国际技术贸易有限公司侵权纠纷再审案], in the Guiding Cases of the SPC on Commercial Trials compiled by the Second Civil Division of the SPC [最高人民法院商事审判指导案例], China Legal Publishing House [中国法制出版社], 2013, p. 225.

93 See Lu Hong v. United Airlines over Compensation for International Air Passenger Transportation Damages [陆红诉美国联合航空公司国际航空旅客运输损害赔偿纠纷案], in Gazette of the SPC [最高人民法院公报], No. 4, 2002, p. 142.

of the subject matter of claims in the case-filing stage. Yet, it deserves our attention to ask how we understand if the substantial case-filing examination system has to be applied under the current law?[94]

If we combine the substantial examination system with the theory of procedural law regarding the subject matter of claims, it is unnecessary to require the plaintiff to select the grounds of substantive rights at the time of filing the lawsuit, because the grounds of substantive rights are moved away from the identifying standard of the subject matter of claims. At this time, the same as under the case-filing registration system, the elements erased from the case-filing examination will be a part of the examination of the requirements of the proceedings after the lawsuit has been successfully accepted. On the contrary, when we insist on the traditional substantive law theory of the subject matter of claims as the leading theory in China, we can indeed believe that the grounds of substantive rights, i.e. the subject matters of claims, must be clearly specified during the case-filing examination. The reason is that only by clearly identifying the subject matter of claims or the substantive claim, can the judge define the scope of his/her trial and efficiently organize and promote the court hearing on the merits; if the time point can be moved forward, it will objectively help the court and the judge to manage civil proceedings properly. Although as mentioned previously, this contribution holds the opposite proposition that the plaintiff does not need to specify the grounds of substantive rights in the case-filing stage. This contribution also deems that under the doctrine of parties' dispositional rights, specific claims for relief as well as subject matters of claims during the trial on the merits after case-filing will have direct impacts on the direction of the court hearing and the adjudication results of the case. For example, although two real estate development companies disputed the actual investment in five individual projects in the course of performing their "Joint Development Agreement", it comes merely to the liquidation after the termination of such joint development. Because both parties requested to continue to perform the contract, the SPC held that there was no need to consider the issue of an actual investment.[95] This case factually shows the direct function of specifying the subject matter of claims. For the defendant, if the specific grounds of substantive rights can, in principle, be discovered from the complaint, it will be easier to organize the defenses and even think about raising counterclaims. It can be seen from the above that this

94 For thoughts before the construction of the case-filing registration system, see LIU Min, "Function, Elements and Content: Reflections of the Complaint" [功能、要素与内容：民事起诉状省思], in Science of Law [法律科学], No. 3, 2014, pp. 161-162.

95 See XU Ruibo, "Both Parties Require Performance of the Cooperative Development Agreement, but One Party's Claim for Advance Payment by the Other Party Should Not be Upheld: Appeal of the Contract Dispute over the Cooperative Development of Real Estate between Liaoning Beixin Real Estate Development Co., Ltd. and Tieling Huiyuan Group Co., Ltd." [双方均要求履行合作开发协议，一方诉请另一方给付代垫款项应不予支持——辽宁北信房地产开发有限公司与铁岭惠源集团有限公司合作开发房地产合同纠纷上诉案], in Reference and Guide to Civil Trials (Vol. 33) [民事审判指导与参考（总第33集）], People's Court Press [人民法院出版社], 2008, pp. 166-168.

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understanding is in line with the needs of the court and the public interests, especially considering the accompanying reduction in the difficulty of the case, the improvement in the efficiency of the court hearing and the reduction in the probability of having errors. And it is a strong proposition that is easier to be accepted by the judiciary. If we could utilize this opportunity, it is of great probability that we can promote the integration of the civil substantive law and the civil procedure, and connect the theory of grounds of substantive rights with the theory of fundamental facts (要件事实). Finally, the scientific and systematic reform of the Chinese judiciary could be expected as well.

Of course, the above "seemingly great" situation is not necessarily beneficial for the plaintiff. If the plaintiff can change the subject matter of claim more liberally, or take the next best thing, the unmentioned grounds of substantive rights will not be bound by the res judicata of the effective judgment, and the subsequent trial will not be adversely affected by the pre-determination effect of the effective judgment, it seems the requirement of choosing the subject matter of claims in case-filing will not affect the exercise of the parties' right of action. In particular, the plaintiff should have a good knowledge of law, or at least have access to sufficient legal assistance, and be able to choose the substantive basis that best suits its interests. However, the provisional conclusion here has several preconditions, which may not be satisfied under Chinese current rules and practice. This contribution has no intention to revisit the aforementioned reflections on the review of the subject matter of claims in the case-filing stage. Instead, this contribution will try to put out a proposal based on the traditional substantive law theory to release the requirements of specificity regarding the subject matter of claims. That is, the parties are not required to select a specific ground of substantive rights, but to flexibly make use of the possibility of consolidating claims such as the elective consolidation and the consolidation of the claim in chief and the subordinate claim.

2. Possible Relaxation under the Traditional Substantive Law Theory of Subject Matters

Even under the traditional substantive law theory of the subject matter of claims, the plaintiff does not have to specify the legal relationship or the substantive right on which the complaint is based. Through theoretical explanation, the plaintiff can completely achieve the purpose of specifying the claim for relief.[96] For example, Professor Friedrich Lent, who speaks for an advanced version of the traditional substantive law theory in Germany,[97] believes that it may involve the qualification of the substantive right or legal relationship (such as relationships of sale or loan contract) and concurren-

96 Hesselberger, Die Lehre vom Streitgegenstand, 1970, S. 150 f.; Nikisch, Der Streitgegenstand im Zivilprozess, 1935, S. 99 ff.; Hellwig, System des deutschen Zivilprozeßrechts (Bd. 1), 1912, S. 325.

97 For his theory of subject matter of claims, see Cao Zhixun, "Development of the German Substantive Law Theory on Subject Matter of claims" [德国诉讼标的实体法说的发展], in SJTU Law Review [交大法学], No.1, 2018, pp. 35-38.

ce of substantive rights. In the former case, besides the fact that the legal concept used by the parties does not impose restrictions on the court,[98] Lent also believes that the parties only need to produce factual allegations sufficient to individualize the subject matter of claims, whereas the qualification of a specific ground of substantive rights is within the scope of jura novit curia.[99] In other words, the traditional substantive law theory uses the so-called alleged substantive rights as the identification standard, which is applicable to the situation where there are multiple substantive rights, rather than to the situation where there is only one substantive right whose legal label needs to be discovered. Meanwhile, when it comes to the concurrence of substantive rights, there are three possible situations. First of all, in principle, the plaintiff merely submits a single claim for relief, and such plaintiff's litigation activity implies that the plaintiff does not concern itself with which substantive right the court is about to recognize. Second, if the plaintiff relies on one specific ground of substantive rights that could not be supported by the court from the perspective of substantive law, the judge has to dismiss the claim on the merits rather than choose to uphold another ground of substantive rights which is not mentioned by any party to the proceedings.[100] Moreover, Lent is of the idea that the plaintiff has the right to explicitly combine two grounds of substantive rights in its claims for relief, such as an action for performance together with a declaratory action for other applicable substantive rights.[101]

If we choose to take this theory into account, it may be reconsidered whether the plaintiff has to specify the grounds of substantive rights as early as in the part of a claim for relief of the complaint,[102] such as whether the claim for damages is based on breach of contract or torts, and which ground of substantive rights is supporting the claim for returning original objects. Except that the aforementioned rule of concurrence of liability in current law does not require such duty of specifying, and though such duty is preferred by courts and practicing lawyers in practice, it is just a choice of the parties, and should not be a mandatory element of bringing a lawsuit.[103] In this regard, when the content of substantive rights concerns the same interests of performance (Leistungsinteresse) under substantive law, the parties may simply file a claim for relief (i.e. the claim "on the basis of no matter which substantive right") instead of selecting one (sim-

98 Lent, Zur Abgrenzung der Anspruchmehrheit von der Mehrheit der Klaggründe, ZZP 57 (1933), 1, 15 ff.; Lent, Die Gesetzeskonkurrenz im bürgerlichen Recht und Zivilprozeß (Bd. 2), 1916, S. 27 ff.

99 Lent, Zur Lehre vom Entscheidungsgegenstand, ZZP 72 (1959), 63, 73 ff.; Lent, Zur Lehre von Streitgegenstand, ZZP 65 (1952), 315, 322 f.

100 Lent, a.a.O. (1952), 336.

101 Lent, a.a.O. (1959), 74 f.; Lent, a.a.O. (1952), 337.

102 Of course, the nature of the legal relationship may also be determined by combining the factual grounds and reasoning in the complaint. See WANG Yaxin, "Substantive Formation in Legal Proceedings" [诉讼程序中的实体形成], in Contemporary Law Review [当代法学], No. 6, 2014, pp. 142-143.

103 Similar conclusions, see ZHANG Weiping, "Reflection and Reconstruction of Civil Case Acceptance System" [民事案件受理制度的反思与重构], in Studies in Law and Business [法商研究], No. 3, 2015, p. 11; CHIOU Lian-gong, "Theory of Procedural Interest Protection" [程序利益保护论], Sanmin Book Store [三民书局], 2005, p. 189.

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ple claim) or multiple ones (cumulative consolidation of claims) among the concurrent grounds of substantive rights. As long as the specific content and the corresponding expression of the plaintiff's claim for relief in the complaint comply with the aforementioned precedent rules on the claim for relief under Chinese law, the lawsuit should have no problem to pass the case-filing examination. Meanwhile, the parties may just request the court to confirm the validity of the contract, and the judge may determine the nature of the contract according to the principle of jura novit curia (e.g., Art. 1 paragraph 2 of the Interpretation of the SPC on Issues Concerning the Application of Law in the Trial of Cases Involving Disputes over Financial Leasing Contracts (最高人民法院关于审理融资租赁合同纠纷案件适用法律问题的解释).[104]

When the plaintiff is indifferent to the specific grounds of substantive rights, there is essentially an elective consolidation of claims. Since the claim for relief is specific and definite, no matter which ground of substantive rights is chosen by the judge, the court may make a final judgment in support of the plaintiff's claim, whose operative part will be also specific and definite from the very beginning. The purpose of this practice is to keep the "formal identity" of substantive law theory and to achieve the "substantial content" similar to the procedural results in case of procedural law theory. It means that the court may bring all possible grounds of substantive rights into the scope of the trial and settle the dispute once and for all. As an illustration, we may assume that compared to the current lawsuit for monetary performance, there is a preceding claim for the same performance interests based on a specific ground of substantive rights. In such a case, if the plaintiff chooses the aforementioned claim "on the basis of no matter which substantive right" in the current lawsuit, the plaintiff has to face the consequence that a part of its legal action is to be dismissed, because the part relating to the ground of substantive rights decided already by the preceding lawsuit falls into the scope of res judicata effect of the preceding final judgment. However, it does not prevent the court from making a new judgment on the merits that orders the defendant to pay the disputed performance interests based on grounds of substantive rights which were not mentioned in the preceding lawsuit. Of course, we have also to attach attention to the risks of omitting any grounds of substantive rights that could have supported the plaintiff's claim. It could be caused by the parties' limited ability to organize legal arguments and the lack of the judge's comprehensive search of all feasible grounds of substantive rights. To avoid such risks, the objective scope of res judicata effect in such cases is to be determined according to the number of substantive rights that participate in the legal debate and serve as the reasoning for making the final judgment. The practical effect of this theoretical understanding is acceptable if we do not ponder over the internal non-uniform "imperfection" of the theory of subject matter of claims hereby.[105]

104 For the same understanding in practice, see Civil Judgment of the SPC (2014) Min Er Zhong Zi No. 48 [最高人民法院（2014）民二终字第48号民事判决书].

105 For relevant discussion, see Cao Zhixun, "Development of the German Substantive Law Theory on Subject Matter of claims" [德国诉讼标的实体法说的发展], in SJTU Law Review [交大法学], No.1, 2018, pp. 37-38.

In addition, when the case involves multiple parties, even if the disputed issues to be determined have appeared in the former lawsuit, there are nevertheless different subject matters of claims. Therefore, in principle, it is unnecessary to specify the grounds of substantive rights in the latter lawsuit. For instance, if in the former lawsuit, Company A requested Company B to pay for the purchase of goods, the court determined that there was no direct sales contract relationship between both companies, but there were two sales contracts respectively between Company A and Company C, and between Company B and Company C. Therefore, the claims in this case were dismissed on the merits. In the latter lawsuit, Company A sued Company C and required the payment of the aforesaid price, and listed Company B as the third party to the case. In such a case, although the reasoning part of the judgment in the first lawsuit has confirmed that there is a contract between Company A and Company C, the SPC holds that this incidental determination of the legal relationship, which does not refer to the core legal relationship in the first lawsuit, cannot have the effect of res judicata. Such determination is not able to exclude the claim of Company A in the latter lawsuit. Because the plaintiff and the defendant are different in both lawsuits, the existence of a final judgment of the first lawsuit will not make the latter lawsuit become a repeated lawsuit which is to be rejected due to procedural grounds.[106]

Finally, the elective consolidation of claims, which leaves the choice in the hands of the court, can be accused of lack of specificity. This has even led to the major revision of the theory of the subject matter of claims in recent years in Germany.[107] By contrast, the consolidation of the claim in chief and the subordinate claim, in which the plaintiff directly specifies the order of these claims, may be more desirable in theory. The popular argument of Chinese civil procedure scholars is that the forms of consolidation of claims should be as flexible and diversified as possible, and thus they are in favor of the consolidation of the claim in chief and the subordinate claim.[108] Moreover, Chinese judicial practice has also partly agreed with this understanding. For example, when the

106 See LIANG Shuming and XIAO Lei, "Judicial Application of the Principle of 'ne bis in idem' — Case of the Dispute over the Payment for the Contract between Lekai photosensitive Materials Supply Station of Nangong City, Hebei Province and Yangqing Cashmere Factory of Qinghe County" ["一事不再理"原则的司法适用——河北南宫市乐凯感光材料供应站与清河县杨清绒毛厂合同货款纠纷案], in JIANG Bixin ed., Guidance of the SPC on Filing Civil Cases [最高人民法院民事立案业务指导], China Legal Publishing House [中国法制出版社], 2015, pp. 12-14. For the new final substantive judgment made after the trial supervision of the SPC in this case, see Civil Judgment of the Hebei Provincial Higher People's Court (2012) Ji Min Zai Zhong Zi No. 136 [河北省高级人民法院（2012）冀民再终字第136号民事判决书].

107 BGHZ 189, 56 = GRUR 2011, 521, 522f., Tz. 6 ff. (TÜV I); BGH NJW 2013, 2429, 2430, Tz. 12; MüKoZPO/Becker-Eberhard, a.a.o., § 260 Rn. 25f.

108 See, for example, LI Zujun, "The Construction of China's Subsidiary Counterclaim System" [我国预备反诉制度之建构], in Tribune of Political Science and Law [政法论坛], No. 4, 2018, pp. 45-56; YUAN Lin, "The Aggregation of Claims in the Context of the Same Occurrence" [基于"同一事实"的诉的客观合并], in The Jurist [法学家], No. 2, 2018, pp. 150-160; JI Gefei, "On the Functional Transit and Content Reformation of China's Civil Complaint" [论我国民事起诉状的功能转型与内容再造], in Modern Science [现代法学], No. 6, 2013, pp. 140, 144.

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plaintiff requested the court to "order the defendant to immediately return the cloth goods with a value of CNY 3,906,988, or to order the defendant to compensate for the economic losses of equal value (and corresponding interests) if the cloth goods cannot be returned", it comes actually to a typical consolidation of the claim in chief and the subordinate claim. The court of first instance held that "because the court verified that the cloth in dispute was still in the defendant's possession, there is no problem that it could not be returned. As a result, HU Lingli's relevant claim will not be heard in this case. If the cloth cannot be returned due to the reason of CHEN Jiazhang in the future, HU Lingli may sue separately for damages."[109]

VI. CONCLUSION

The establishment of the case-filing registration system has brought about huge and long-lasting changes in the structure and operation of civil proceedings in China. While cheering for it, we have also to streamline and clarify the elements of bringing a lawsuit under the new case-filing mechanism. Among them, the most crucial one is to re-recognize the three elements for bringing a lawsuit successfully, that is "specific procedural entitlement, factual grounds and reasoning" stipulated in Art. 119 item 3 of the CPL, behind which the subject matter of claims is also relevant. Based on the existing case-filing and trial practice in China, as well as the experience of counterparts from continental legal systems such as Germany, Japan and China Taiwan, this contribution draws the following three conclusions.

First, the "specific procedural entitlement" should refer to the claim for relief rather than the subject matter of claims, which is consistent with the common understanding in the civil law system, and has formed a relatively stable judgment routine in China's practice. The requirements for the specificity of the claims in the case-filing stage should be lower than the requirements for the specificity of the operative part of the judgment.

Second, the reasoning and causes of action provided by the plaintiff in its complaint belong to the plaintiff's legal opinions, which should not be stipulated as the conditions for case-filing, and the plaintiff's failure to provide them does not affect the acceptance of the case by the court. If China adopts the procedural law theory of the subject matter of claims in the future, different grounds of substantive rights would merely constitute legal opinions. If instead, China still adheres to the traditional substantive law theory that currently prevails, the grounds of substantive rights directly correspond to the subject matters of claims. When it comes to the qualification of a single ground of substantive rights, the ground of substantive rights chosen by the plaintiff is not binding for the identification of the judge. If the plaintiff does not produ-

109 Zhejiang Shaoxing Intermediate People's Court (2018) Zhe 06 Min Zhong No. 688 [浙江省绍兴市中级人民法院（2018）浙06民终688号民事判决书].

ce a specific ground of substantive rights when it comes to the concurrence of grounds, it can be understood that the plaintiff is indifferent to the choice of substantive rights, which does not affect the case-filing substantial examination of the court. In addition, it is equally feasible for the plaintiff to expressly file the lawsuit in the form of objective consolidation of claims consisting of the claim in chief and the subordinate claim.

Finally, from the correct understanding of the case-filing registration system, the case-filing procedure should not even examine the elements of the subject matter of claims. Whether the ground of substantive rights is specified or the ways in which such ground is produced does not belong to the element of bringing a lawsuit. Accordingly, elements of bringing a lawsuit and requirements of the proceedings should be distinguished in terms of adjudication techniques, and the conditions for not accepting the case at all and for dismissing the action on procedural grounds should be changed. When the case involves concurrence of (grounds of) substantive rights, additional requirements should not be put forward for formal review of the case-filing registration. Even the extreme practical mode of citing Art. 186 of the Civil Code (previously Art. 122 of the Contract Law) to restrict the plaintiff's right to choose does not restrict the plaintiff's dispositional right among various applicable grounds of substantive rights in the case-filing stage. After the acceptance and filing of the case, the improved traditional substantive law theory may be considered in the review of the element of the subject matter of claims, which allows the plaintiff to express that it only cares about the outcome of the lawsuit and is indifferent to the specific grounds of substantive rights (elective consolidation of claims).

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