About the Nature of Legal Construction of 
Civil Law and its Discipline Particularity

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Abstract: **Aim:** to reveal the nature of legal construction in civil law. **Approaches:** The general methodology is based on general scientific (dialectical) method of legal reality perception, which made it possible to consider the problematic of legal construction in civil law. The private scientific methods of perception such as formal – legal, comparative legal, logic methods were used in the course of the research. **Results:** The nature of legal construction in civil law was educed by means of legal construction’s discipline particularities’ analyze. The unity and the differentiation of legal construction in civil law and the construction of other discipline accessory are revealed on the example of contact’s legal construction. **Academic novelty:** In the article the author’s definition on legal construction in civil law is given, its discipline characteristics are identified. **Practical significance:** Given theoretical conditions can be used in the work of rule-making bodies in the improvement of acting legislation’s norms, for the expertise of regulatory acts with a view to find out the collisions, in educational process in the framework of teaching the course on Civil law.

**Key words:** Civil law • Legal constructions • The constructions of civil law • Civil • Contract

INTRODUCTION

Presently, the term legal construction is widely used in the basic and sectoral legal science. At the same time, this sphere of research belongs to the group of obviously insufficiently developed ones in the native jurisprudence, including the civil law. The serious social, political and economic transformations, which have taken place in our country and which manifested themselves in the current judicial reform, logically assign a principally new status to legal constructions, thus raising their status to the level of problematics, which is directly related to the solution of current problems of statutory regulation.

From the etymology point of view, construction (lat. constructio) is understood as structure, organization, mutual bracing of parts; construction of a complex device as well as its separated components; word phrase, which is considered in terms of their grammar connections [1]; device, mechanism, structure, components (elements) of which interact with each other statically and (or) dynamically [2].

Before considering the common essence of the legal construction and the essence of the legal construction in civil law in particular, we need to explain the subject matter of the term essence. The Philosophical Encyclopedic Dictionary determines essence as the sense of the given thing; what it is itself, what it is in comparison to all other things and what it is in comparison to the states of the thing that can change due to impact of certain circumstances [3]. According to Emerich Coreth, essence is an internally constitutive principle of the finite things in existence, which constitutes their definiteness through limitation and distinguishing of them from other subject matters of the genesis [4].

Essence is the main thing in the considered object and, therefore, understanding of it is especially valuable in the process of cognition. Indeed, during the research of the essence of a certain legal phenomenon, the causes of occurrence of this phenomenon and its subject matter are the focus of attention, rather than its essence. The essence category includes such qualitative
characteristics, without which the thing, the subject matter of which is discussed, does not exist at all. Therefore, the essence of legal construction is the most important internal and relatively stable quality characteristic, which reflects not only the nature, but also the destination of legal construction in the life of the society.

There is no doubt that at determining the general essence of the legal construction and its particular essence in the civil law, it is necessary to consider it in correlation with other related legal phenomena. Legal constructions are required to create the integrity of law, to provide the possibility of its objective regulation. Using such constructions, the relatively independent social phenomena (rules of law) obtain finished appearance and are able to exist as structural elements of the institute of law [5].

Thus, the essence of the legal construction, both in civil and other sectors of law, is unified. It resides in the fact that any sector-related construction acts as a definite method of stating various legal instruments in respective legislation.

Civil law, being the base for the private law in any legislation, regulates various relations of citizens and their organizations taking into account, first of all, their personal interests. Therefore, a legal construction in civil law, as distinguished from legal constructions in public law, is meant for satisfaction of personal interests.

Every sector of law has traditional constructions and models manifested in the rules of law. These are so-called basic legal constructions, which determine the sectoral independence of these legal entities.

The specificity of a legal construction in a certain sector of law may be expressed as a total of special attributes, which creates methodology of scientific cognition in the given sphere of legal reality. The special status of the legal construction in civil law can be demonstrated through the example of such an important construction for the civil commerce, as the *contract*. At that, it is to be emphasized that in civil law, legal personality, legal succession, enterprise, legal entity, civil liability, civil community and many other structures are also understood as legal constructions.

It also needs to be noted that many terms, which are used for describing legal constructions, have another use. For example, a contract acts both as a legal construction, a legal fact, an instrument of regulation of the counterparties’ relations, a means of conducting entrepreneurial activity, etc. The legal entity, being also a legal construction, acts as a method of organization of economic activity [6, 7, 8, 9].

There is little doubt that structure of a civil contract is a legal construction. This was obviously expressed by O.S. Joffe [10] and I.B. Novitsky [11] whose publications were dedicated to transactions. In the mentioned monographs, the researchers did not use such terms as construction and transaction structure. V.P. Shakhmatov [12] did not use the construction concept and called his work *Structures of Illegal Transactions and Consequences Associated with them*. The very name of the scientific work emphasized the complex structure of transaction, including contract.

As we know, parties can enter into a contract either stipulated by law or other legal acts, or not. Article 421 Item 2 of the Civil Code of the Russian Federation (hereinafter referred to as CD RF) states the general principle of right: what is not directly prohibited is permitted (Article 8 Item 1 Sub-Item 1 of CD RF).

Subsequently, business entities can enter into a so-called mixed contract. Such a contract can contain elements of various types of contracts stipulated by civil law. A mixed contract, which contains elements of various contracts, states a unified pool of obligations.

For example, we can treat as a mixed contract such an agreement, according to which one party obliges to transfer the title for some item to the other and the other party obliges to fulfill certain work at its own risk. Such a contractual construction includes obligations, stipulated by law as applied to both a sale and a labor contracts. Based on special contracts, organizations rent operating enterprises with obligation to provide their re-equipment, updating of equipment and sale of the manufactured products without stopping the production process. As soon as the respective reconstruction has been completed, the enterprise is returned to the owner.

Taking into account the general permit with respect to concluding mixed contracts, stated by Article 421 Item 2 of the CD RF, we can state that the legal constructions of civil contracts are both unified and differentiated. For example, within the unified contractual construction of sale, there is internal differentiation by such types as retail, supply of goods for governmental needs, agricultural procurement contracts, energy supplies, sale of real estate and sale of an enterprise. At that, the provisions of Chapter 30 Paragraph 1 of CD RF play the role of the general construction and are applied to all versions of sales contracts unless otherwise is stipulated by special rules concerning them.
Thus, using the mixed contract legal construction stipulated by the law, the parties meet their personal interests. Such a situation seems to be quite natural, as any legal prescriptions, including conventional legal constructions, cannot cover all peculiarities of economic life and relations that exist between economic agents. Where the methods of power and subordination, authoritative orders (compelling) and prohibitions prevail in the public law due to its nature, the private law on the contrary mostly uses permits and rights for division, i.e. submission to the economic agents of the opportunity to commit initiative legal acts – independent utilization of various legal arrangements, including legal constructions for satisfaction of their own needs and interests. Subsequently, persons in civil (private) law as opposed to the persons in public law have more freedom to choose, which legal construction to apply.

While determining the essence of the legal construction through the total of attributes, we can conclude that legal construction in civil law is a method to reinforce legal instruments, which has its own industry specificity. Below, the particular special attributes of a legal construction in civil law are provided:

- Legal constructions in civil law are usually used for the purposes of satisfaction of private interests.
- In order to reinforce legal constructions in civil law, a special nomenclature is used. At that, the terms that describe certain legal constructions (contract, legal entity and others) can be used for describing other phenomena of the legal reality.
- If compared to persons in public law, the persons in civil law have more freedom in application of legal constructions.

REFERENCES