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## FEATURES OF THE SYSTEM OF PROCEDURAL LEGAL FACTS IN THE CIVIL PROCEDURAL LAW OF UKRAINE

*The article formulated the definition of the system of procedural legal facts as one of the least studied phenomenon of civil procedural legal relations. The list of grounds for creation of legal relations is also defined. Special attention is paid to analysis of features of the system of procedural legal facts and the necessity for further theoretical and practical research in this field.*

**Keywords:** system; legal facts; procedural legal facts; system of procedural legal facts; civil procedure; civil proceeding.

Legal facts as legal phenomenon are in constant dynamics, causing creation, alteration and termination of various legal relations. Any person in his life faces different legal facts and their aspects such as: fact of human's birth, registration of marriage, entering the education, hire or dismissal, human's death, civil injury, testamentation, concluding a contract etc. Legal facts can be found in numerous areas of legal relations, including civil procedural ones. Belonging of these legal facts to this area of legal relations combined with their peculiarities, tendency and content allows distinguishing separate kind of legal facts that is procedural legal facts.

Procedural legal facts are multifaceted, diverse and meaningful phenomenon in civil procedural law acting as a tool that makes the legal norms functionate. The aforementioned facts cover

all the areas of civil procedural relations causing their research both on the theoretical and practical level.

On the theoretical level, procedural legal facts can be studied through their definition, characteristics, functions, kinds, structure, dynamic, classification, order of fixation and system.

The objective of the article is to define the system of procedural legal facts as well as its features as one of the least examined phenomenon of an area of civil procedural legal relations.

The analysis of special literature states that many scientists of soviet as well as contemporary period such as V. B. Isakov, A. M. Zavalnyi, G. V. Kykot, A. V. Kostruba, Z. F. Rafikova, P. O. Khalfina and others, studied legal facts on the general theoretical level. Such scientists as Z. Y. Miroshnykova, M. O. Rozhkova, N. A. Chudynovska, and V. V. Yarkov studied procedural legal facts as specific procedural phenomenon. Negligible quantity of research in this area indicates a low level of scientific interest to this problem by scientists that respectively opens the way for implementation of new scientific researches in this direction.

Thus, the problems of definition as well as features of the system of procedural legal facts in the civil proceeding of Ukraine were not subject to any scientific research on the level of neither PhD papers nor individual scientific articles.

One has to state a lack of such definitions as «procedural legal fact» and «system of procedural legal facts» in legislation therefore the research of the system of procedural legal facts shall begin with the immediate interpretation of the word «system». In Great explanatory dictionary of contemporary Ukrainian language, the word «system» is defined as an order due to right and systematical arrangement and mutual connection of the parts of something [1]. The aforementioned definition allows concluding that the system of procedural legal facts should compose of regularly arranged and interconnected parts of a certain order. The system should identify and consider all parts of a whole.

In order to achieve the objective outlined in the article the definition «procedural legal facts» should be considered separately. In law, the «legal facts» are specified as certain life circumstances that cause creation, amendment or termination of legal relations.

To our mind, procedural legal facts should be viewed as some life circumstances, actions or omission of the participants of civil process that lead to procedural consequences, the law rules connect creation, amendment or termination of civil procedural relations therewith. Such a definition of this category totally discloses its contest.

Correlation and analysis of the concepts «system», «legal facts» and «procedural legal facts» allow defining the next category. The system of procedural legal facts is interconnected life circumstances, actions or omission of the participants of civil process, the rules of civil procedural legislation connect creation, amendment and termination of relevant legal consequences for the participants of civil process therewith.

Nowadays there is no generally accepted system of procedural legal facts in civil procedural legislation that adversely affects the rulemaking process in this field. Lack of proper analysis of legislative framework since the moment of drafting of a legal norm till its enforcement favors unfair participants of civil process, resulting in unconsidered and unproven amendment to procedural codes including Civil Procedure Code of Ukraine (hereinafter the CPC of Ukraine) [2].

The value of the rules of this Code could not be denied because they play serving function that is important and integral to a number of codified legislative acts. Under subp.1 of p. 1 of Art. 15 of the CPC of Ukraine one can state that the rules of civil procedural legislation primarily aimed at the implementation of the following codes: the Civil Code, the Housing Code, the Land Code and the Labor Code.

The usage of quantitative analysis reveals that this codified act was subject to numerous amendments and interpretation since it came into force. Since 01.09.2005, the CPC of Ukraine has been amended 64 times, officially interpreted by the Constitutional Court of Ukraine 7 times, and the Constitutional Court of Ukraine has declared some provisions of the CPC of Ukraine unconstitutional 3 times.

Regardless of its apolitical content, the CPC of Ukraine experienced a negative impact because of political and revolution events that took place in Ukraine in early 2014, when Verkhovna

Rada adopted «the laws of the 16<sup>th</sup> January 2014» that had a purely dictatorial direction. The depolitization of such meaningless amendments took place 28.01.2014 not having allowed the CPC of Ukraine to turn into the means of politic confrontation and pressure.

To my mind, the CPC of Ukraine based on its intended purpose should be the effective mechanism of protection of violated, unrecognized or disputed rights, freedoms and legitimate interests of individuals, rights and freedoms of legal entities, state and social interests.

In certain circle of scientists, lawyers, attorneys and judges, an established opinion on the necessity of fundamental amendment of the CPC of Ukraine provisions prevails. In my consideration in this case should not we talk about the fundamental amendment but on the possibility of applying of scientifically based and practically balanced approach to further improvement of civil procedural legislation. All above indicates the necessity of elaboration of an effective system of procedural legal facts of civil procedural law and civil proceeding in consideration with which the CPC of Ukraine will be consequentially amended. Existence of defined system of procedural legal facts in civil procedural law will create an opportunity to foresee the society needs for law enforcement problems and be the methodological basis for the studying of civil procedure law as a branch of law.

The current CPC of Ukraine has no special rule, chapter or section dedicated to procedural legal facts. There is also no general rule containing the list of grounds for civil procedural facts. Formation of idea of procedural legal facts existence can only be the result of systematic analysis of the CPC of Ukraine rules. Respective procedural actions committed by the court as well as by the participants of civil process during civil case hearing are an immediate counterpart, display and consolidating thereof.

It must be admitted that current CPC of Ukraine lacks a special rule similar to article 11 of Civil Code of Ukraine [3], which would define the grounds for civil procedural relations. Carrying the provisions of this rule in the field of civil proceeding, one can state that civil procedural relations arise out of committing actions,

regulated with the rules of civil procedural legislation, by the court or participants of civil process.

A systematic analysis of the CPC of Ukraine provisions allows concluding that the grounds for civil procedural relations and therefore legal facts are as follows: 1) actions or omission of the court; 2) actions or omission of the participants of civil process; 3) claims, litigation claims, appeals submitted to the court by the parties or entitled bodies in order to protect rights, freedoms and interests of individuals, rights and freedoms of legal entities, state and social interests; 4) court decisions passed by the court; 5) civil procedural rules violation committed by the court or the participants of civil process; 6) the events the civil procedural consequences are connected therewith; 7) other procedural legal facts.

We should attempt to research the systematic features and connections of procedural legal facts. As V.B. Isakov highlights, the system of legal facts can be regarded in two meanings: material and ideal one. In the first case, it means mutual connection between real circumstances arising in life, in the second case, it means systematic connections of legal rules, or rather their hypothesis, patterns of legal facts are prescribed therein [4, p. 48].

The system of procedural legal facts should be attributed to the class of so-called «large systems». D.O. Pospelov states that the large system has the following features: a complete inability to formalize property management; variability of structure and functioning of controlled object; multichannelity of control and vagueness of the criteria of purposiveness; presence in the system of people who have a system of free action [5, p. 4–5].

Most of these features of such a phenomenon as “large system” is inherent to the system of procedural legal facts. At the same time, one can state that studied system of procedural legal facts has its own specific features, among which the following are:

**1) the large number of the elements of the system.** The actual system consists of significant number of separate procedural legal facts as well as their combination in the form of procedurally regulated structure. During civil case hearing, this feature is shown as follows. For example, an individual submits a litigation claim to the court under article 118 of the CPC of Ukraine. Submitting of

such a claim is a separate legal fact that in the case all necessary procedural conditions exist causes creation and development of certain procedural actions that form factual procedural structure in a form of the first stage of civil proceeding that is opening of the proceeding. Every actual procedural structure is nothing but a composing of separate procedural facts. However, the system of procedural legal facts itself envisages the existence of logically constructed and procedurally regulated procedural actions being in a certain interconnection;

**2) relative variability of the elemental composition of the system.** Because of social relations development, new procedural legal facts are put into the procedural circulation; others are withdrawn from it, causing the system expansion. Mentioned processes accordingly affect the change in connections between procedural legal facts. As noted since 01.09.2005, the CPC of Ukraine has been amended 64 times and the Constitutional Court of Ukraine has declared some provisions of the CPC of Ukraine unconstitutional 3 times. As an example, changing of the system of procedural legal facts includes the exemption from procedural circulation of such a procedural action as submitting a statement on appeal of a court decision or decree that were prescribed by the CPC of Ukraine since 01.09.2005 to 03.08.2010. Another example of changing of the system of procedural legal facts is the abolition of mandatory status of the preliminary hearing. Since 03.08.2010, preliminary hearing during the civil case hearing is not obligatory and the question of the necessity thereof is considered by the judge during the opening of the proceeding;

**3) influence of human's factor on the development of the system elements.** The combination of objective and subjective components is inherent to the system of procedural legal facts as to other legal phenomenon. Peculiarity of civil proceeding is that its efficiency in the majority of cases depends on human's factor *sui generis* that is called an «internal conviction of the court». Under p.1 of Article 212 of the CPC of Ukraine, the court evaluates the evidence for its internal conviction, based on a comprehensive, full, impartial and immediate investigation of existing evidence. The provision of mentioned article is spread to every court decision

accompanying civil case hearing. To my mind, better synonym to collocation «internal conviction of the court» is «judicial discretion».

Judicial discretion is the specific kind of law enforcement activity regulated with the legal rules that is carried out in procedural form and involves conferring the court in relative cases with the authorities to decide disputed legal issues based on the goals prescribed by legislator, law principles and other general provisions of legislation, specific circumstances of the case as well as reasonableness, fairness and justice [6, p. 106]. The judicial discretion is realized within the rights conferred to the court by procedural legislation with the application of substantive and procedural law for the most effective protection of the subjective rights of the parties. For example, the possibility of enforcement of the provisions of p.1 of article 202 of the CPC of Ukraine, optional grounds for the suspending of the proceeding are stipulated therein, depends on the judicial discretion.

The human's factor performs in the way that not only the court but also the participants of civil process form and construct the system of procedural legal facts, because it is human to initiate the creation and development of the vast majority of these legal facts. In particular, it occurs in the form of possibility to conclude a settlement agreement or withdraw an action at any stage of the civil proceeding under the provisions of the CPC of Ukraine;

**4) legal regulation of the elements of the system.** Not every circumstances shall be regarded as procedural legal facts but only those that are regulated by the rules of civil procedural legislation. The area of procedural legal facts at first is defined by legislative frameworks, at second is limited with the subject of legal regulation. In the cases of action proceeding, the former is determined by the contest of claims, stated in action. Analysis of the system elements of procedural legal facts allows observing permanent transformational transfers from general to specific and vice versa.

In any case, real life circumstances that are not regulated by the rules of civil procedural legislation could not be the part of the system of procedural legal facts;

**5) duration of the elements of the system that is relatively defined.** The analysis of the CPC of Ukraine provisions evidences

that the duration of the majority of procedural legal facts is limited within distinct temporal framework such as: terms of solving the issue on opening of the proceeding (article 122 of the CPC of Ukraine), terms of cases consideration (article 157 of the CPC of Ukraine), terms of appeal and cassation appeal (article 294 and 325 of the CPC of Ukraine).

However, the phrase «relatively defined duration» indicates that not all the elements of the system are limited with relevant temporal framework. In separate cases, the court decision is regarded as procedural legal fact that can influence the development of civil procedural relations when considering other civil cases. Decisions on recognition that confirm the existence or absence of certain legal relations between the parties (for example, court decision on the recognition of title) or constitutive decision that intend to amend or terminate legal relations (for example, court decision on allotment of the share under joint share ownership, on dissolution of marriage) can be regarded as the decisions mentioned above. As a result, the circumstances defined by court decision in civil, commercial or administrative case that has come into legal force, shall not be proved when considering other cases involving the same person or persons relevant to whom these circumstances were defined (p. 3 of Article 61 of the CPC of Ukraine);

**6) performance of the elements of the system that are not legally regulated.** The presence of gaps or defaults in civil procedural legislation and impossibility to foresee all the procedural relations indicates the necessity of introduction of procedural analogy in civil procedural legislation. I support the view by M. I. Baliuk and D. D. Luspenyk who consider the lawmaker should prescribe applying of procedural analogy in civil proceeding for complying with the necessary procedural guarantees of the participants of civil process and court activity within legal framework. It allows resolving not a simple problem when part of relations between the court and some participants of the process are based on actual relations that are not mediated with the rules of civil procedural legislation, moreover that the legal doctrine denies the existence of actual relations in proceeding [7, p. 51].

Formulated features of the system of procedural legal facts indicate its dynamic and changeable character. Changeability of the system is caused by such reasons as fleetness of social relations that cause and favor creation of new procedural legal facts that are implemented respectively in a form of systematic amendments to the rules of civil procedural legislation.

In conclusion, it should be noted that further research of the system of procedural legal facts in civil procedural law is essential for the functioning of civil procedural relations sphere. Any legal relations are constructed on a set of legal facts. In my opinion, the system of procedural legal facts should be understandable, dynamic, so that considering timely changes in social life. Advanced study of this system is necessary for further development of existing system of legal regulation of civil procedural relations as well as for formation of single law enforcement practice. Research of the system of procedural legal facts in civil procedural law is caused by objective necessity of forming both of theoretical and practical grounds for law enforcement, that results in ensuring the effective protection of affected, unacknowledged or disputed rights, freedoms and interests of individuals, the rights and interests of legal entities, state and society interests.

### **REFERENCES**

1. Busel, V.T. (Eds.). (2005). *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy (z dod. I dopovn.) [Great explanatory dictionary of contemporary Ukraine language (with amend.)]*. Kyiv: VTF «Perun» [in Ukrainian].
2. Tsyvilnyi protseualnyi kodeks Ukrainy vid 18.03.2004 r. [Civil Procedure Code of Ukraine, 18 mar. 2004]. (n.d.). *zakon5.rada.gov.ua*. Retrieved from <http://zakon5.rada.gov.ua/laws/show/1618-15> [in Ukrainian].
3. Tsyvilnyi kodeks Ukrainy vid 16.01.2003 r. [The Civil Code of Ukraine, 16 jan. 2003]. (n.d.). *zakon5.rada.gov.ua*. Retrieved from <http://zakon5.rada.gov.ua/laws/show/435-15> [in Ukrainian].

4. Isakov, V.B. (1984). *Uridicheskie fakty v sovetskom prave* [Legal facts in soviet law]. Moscow: Uridicheskaia literature [in Russian].
5. Pospelov, D.A. (1975). *Bolshie sistemy (situatsionnoe upravlenie)* [Great systems (situational control)]. Moscow [in Russian].
6. Papkova, O.A. (1997). *Poniatie sudeiskogo usmotreniia* [The definition of judicial discretion]. *Rossiiskoe pravo – Russian law*, 12, 106 [in Russian].
7. Baliuk, M.I. & Luspenyk, D.D. (2008). *Praktyka zastosuvannia tsyvilnoho protseualnoho kodeksu Ukrainy (tsyvilnyi protses u pytanniakh I vidpovidiakh): komentarii, rekomendatsii, propozytsii* [The practice of the civil procedural code of Ukraine applying (civil proceeding in questions and answers): commentary, recommendations, proposition]. Kharkiv: Kharkov iuryd. [in Ukrainian].

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### **Ознаки системи процесуальних юридичних фактів у цивільному процесуальному праві України**

Сформульовано визначення поняття системи процесуальних юридичних фактів як одного з найменш досліджених явищ сфери цивільних процесуальних правовідносин. Визначено перелік підстав виникнення цивільних процесуальних правовідносин. Здійснено аналіз ознак системи процесуальних юридичних фактів та обгрунтовано необхідність подальших теоретичних і практичних досліджень у цій сфері.

**Ключові слова:** система; юридичні факти; процесуальні юридичні факти; система процесуальних юридичних фактів; цивільний процес; цивільне судочинство.

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### **Признаки системы процессуальных юридических фактов в гражданском процессуальном праве Украины**

Сформулировано определение понятия системы процессуальных юридических фактов как одного из наименее исследованных явлений сферы гражданских процессуальных правоотношений. Определен перечень оснований возникновения гражданских процессуальных правоотношений. Проанализированы признаки системы процессуальных юридических фактов и обоснована необходимость в дальнейших теоретических и практических исследованиях в данной сфере.

**Ключевые слова:** система; юридические факты; процессуальные юридические факты; система процессуальных юридических фактов; гражданский процесс; гражданское судопроизводство.