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SPECIFICITIES OF JUDICIAL CONSIDERATION OF CASES ON ESTABLISHING FACTS RELEVANT TO THE PROTECTION OF FAMILY RIGHTS AND INTERESTS

Abstract. Purpose. The purpose of the article is to clarify the specificities of judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests. **Results.** The consideration of the case on establishing facts relevant to the protection of family rights and interests on the merits is completed by additional explanations of the persons involved in the case, after hearing which the court decides to complete the clarification of the circumstances of the case and verification of their evidence and proceeds to the court debate. Based on the court decision to make changes, additions or corrections to the civil registry, the relevant changes are made, which are specified in the court decision. In particular, following court decisions on establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, appropriate changes shall be made to the civil registry of birth, marriage and divorce. In case of submission to the Department of the State Civil Registry Office of a foreign court decision on amendments, renewal, cancellation of the Civil Registry, the issue of its implementation is resolved in accordance with the current legislation of Ukraine and allowing for the requirements of international treaties of Ukraine on the provision of legal assistance, consented by the Verkhovna Rada of Ukraine as binding. **Conclusions.** It is concluded that the court decision on establishing a fact relevant to the protection of family rights and interests has prejudicial value not only within the specific purpose established by court, but also in all other cases where it is required to confirm the relevant fact, regardless of the specific circumstances that caused the need to establish it in court, as well as the parties involved in the case. The legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

Key words: court decision, family, husband, wife, marriage, state registration.

1. Introduction

A court proceeding in a civil case is the main, central stage of the civil procedure. At this stage of civil procedure development, the court performs the tasks of civil proceedings, which were set before it and consist in fair, impartial and timely consideration and resolution of civil cases in order to protect violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, interests of the state.

We advocate the legal literature's perspective that a court proceeding achieves its goal only if it is conducted in strict accordance

with the requirements of civil procedure legislation, in compliance with the procedural form, which is a guarantee of justice in civil cases and ensures the protection of the rights and interests of individuals, legal entities, state and public interests (Komarov, Bihun, Barankova, 2011).

2. Court hearing as a procedural form of the judicial consideration of cases

Based on the specifics of a separate proceeding in cases on establishing facts relevant to the protection of family rights and interests, the provisions of civil procedure legislation of Ukraine, according to the rules of which

the court proceeding in such cases is conducted, can be classified into:

1) provisions of civil procedure legislation that regulate the general procedure for judicial consideration of the cases in all categories of cases;

2) provisions of civil procedure legislation that regulate the procedure for judicial consideration of the cases in cases of individual proceedings;

3) provisions of civil procedure legislation regulating the procedure for proceedings in cases of establishing legally relevant facts (Civil Procedure Code of Ukraine, 2004).

Such a three-level regulatory model of proceedings on establishing facts relevant to the protection of family rights and interests determines the procedural features of the court proceeding of relevant cases.

The procedural form of the court proceeding is a court hearing, which should be held only in a specially equipped courtroom – a courtroom. The court hearing as a procedural form of court proceeding consists of several parts: 1) preparatory; 2) consideration of the case on the merits; 3) court debates; 4) making and pronouncement of the court decision.

These components of the court session are aimed at achieving the intermediate goals of the court proceeding and combine the procedural actions of the court and participants in the civil procedure. At each stage of the court proceeding, the court resolves a certain range of issues and performs the tasks set (Bychkova, Briukov, Bobryk, 2009).

The preparatory part of the court proceeding is intended to check the possibility of considering the case in court at the present time, with the existing composition of the court, the participants of the civil procedure who appeared in court, and the evidence available in the case, as well as to ensure further consideration of the case on the merits (Bilousov, Bohdan, Hetmantsev, 2014).

According to paragraph 20 of the Resolution of the Plenum of the Supreme Court of Ukraine 'On the application of civil procedure legislation in the consideration of cases in the court of first instance' No. 2 of June 12, 2009 (Resolution of the Plenum of the Supreme Court of Ukraine on the application of provisions of civil procedure legislation in the consideration of cases in the court of first instance, 2009), checking the attendance of the persons participating in the case, the court establishes whether those who were not present were notified of the time and place of the court hearing in compliance with the requirements of the law, whether the persons participating in the case were served with summonses within the period

specified in Part 4 of Article 74 of the Civil Procedure Code of Ukraine. Moreover, in case of failure to appear at the court hearing of a person participating in the case, duly and in the prescribed manner notified of the date of the court hearing, the issue of the possibility of court proceeding is decided allowing for the requirements of Articles 169, 224 of the Civil Procedure Code of Ukraine.

The peculiarity of the preparatory part of judicial consideration of the cases in cases on establishing facts relevant to the protection of family rights and interests is that, taking into account the personal non-property nature of family legal relations, which, in its turn, determines the inalienability of the relevant rights and interests, allowing for the possibility of considering the case with such appearance of persons, the court at the preparatory part of the court hearing, as a rule, recognises the appearance of persons participating in cases on establishing facts relevant to the protection of family rights and interests, mandatory.

Establishing the identity of the participants in the proceeding, who appeared in court, the court on the basis of the passport, service certificate or other identification document, shall find out their surname, name and patronymic, date of birth, occupation and place of residence. Other information or the scope of powers of certain participants in the proceeding (for example, a representative of a legal entity, witness, expert, specialist) is clarified on the basis of certain rules of procedure legislation in order to ensure the establishment of the presence (absence) of circumstances that exclude the possibility of participation in the proceeding, or family and other relations with the parties, which affect the assessment of evidence (Resolution of the Plenum of the Supreme Court of Ukraine on the application of provisions of civil procedure legislation in the consideration of cases in the court of first instance, 2009).

In addition, as noted in Part 1 of Art. 235 of the Civil Procedure Code of Ukraine, during the consideration of cases of separate proceedings, the court shall explain to the participants in the case, their rights and obligations, to assist in the implementation and protection of the rights, freedoms or interests of natural persons or legal entities guaranteed by the Constitution and laws of Ukraine, to take measures for comprehensive, complete and objective clarification of the circumstances of the case.

Along with the above procedural actions, the court during the preparatory part of the judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests, in accordance with the general

rules of civil proceedings, performs other actions regulated by Articles 163-172 of the Civil Procedure Code of Ukraine. The preparatory part of the court proceeding of such cases is completed by explaining the rights and obligations to other participants in the civil procedure.

Consideration of the case on the merits is the second stage of judicial consideration of the cases to establish facts relevant to the protection of family rights and interests, during which the actual circumstances of the case are clarified.

Relying on the analysis of the provisions of the civil procedure legislation of Ukraine, which regulates the general and special procedures for judicial consideration of cases of special proceedings, including cases on establishing facts relevant to the protection of family rights and interests, it can be argued that the consideration of such cases is essentially characterised by the following features of the procedural form:

1. Conducted both with the participation of the applicant and other persons concerned who provide their explanations regarding the presence or absence of the fact established by the court, guided by the principle of competition, which operates in a somewhat 'truncated' form (Civil Procedure Code of Ukraine, 2004).

In this regard, we should agree with S.N. Abramov that the specificity of consideration on the merits of cases on establishing legally relevant facts is that the principle of adversarial proceedings in such cases is not applied or is applied in a limited form. If no one, except the applicant, is involved in the case, the applicant does not compete with anyone before the court, the consideration of the case on the merits takes place only with the participation of the applicant. When other parties concerned are involved in the case, in these events, although there are elements of competition, but there is no 'competition', which we observe in the cases of lawsuit proceedings. This is due to the fact that in special proceedings other parties concerned do not protect their subjective rights, and the circumstances of the case are not as familiar to them as in civil law disputes. In this state of affairs, the court shall show special initiative and activity in clarifying the actual circumstances of the case (Abramov, 1948).

Therefore, other parties concerned practically make explanations if they know the circumstances of the case. However, this does not mean that in other cases these participants in the proceeding may be deprived of the right to give explanations – they should be given the opportunity to provide their explanations on the case with reference to the evidence, as well as to express their opinion on the explanations and motions of the applicant (Eliseikin,

1973). Furthermore, the content of the explanations of other parties concerned may be different: in their explanations, they can both support the position of the applicant and express objections to the existence of the fact established by the court. However, this does not mean the emergence of a dispute of right. According to S.Ya. Fursa, this can only be a question of determination by the judge of the possibility of a dispute of right' (Fursa, 1997);

2. Aimed at clarifying a two-level group of circumstances that form the subject matter of proof in such cases, and which are determined by the provisions of both procedure and substantive legislation.

Namely: during the consideration of cases on establishing the facts relevant to the protection of family rights and interests on merits, the court shall establish:

1.1) general circumstances that form the subject matter of proof in such cases, such as: a) according to the law, such facts give rise to legal consequences, that is, the emergence, change or termination of personal or property rights of citizens depend on them; b) the legislation in force does not provide for another procedure for their establishment; c) the applicant has no other opportunity to obtain or restore a lost or destroyed document certifying a fact of legal significance; d) the establishment of the fact is not connected with the subsequent resolution of the dispute of right;

2.1) special circumstances that form the subject matter of proof in each particular case, namely:

a) in cases of establishing the fact of kinship between individuals: the existence of the fact of kinship between individuals; the absence of state registration of this fact by the State Civil Registry Office; the reasons for which this fact has not been registered; the purpose for which the applicant needs to establish this fact;

b) in cases of establishing the facts of registration of marriage, divorce, adoption: the fact of registration of marriage, divorce, adoption; the absence of the relevant record in the State Civil Registry Office; refusal to restore it or the possibility of its restoration only on the basis of a court decision; the purpose for which the applicant needs to establish this fact;

c) in cases of establishing the fact of paternity (maternity): the fact of paternity (maternity); the fact of death of a man who was not married to the child's mother (the fact of death of a woman who considered herself the child's mother); making an entry about the father of the child in the Book of Birth Registration by the surname of the mother, and the name and patronymic of the father of the child - at the behest of the mother; making an entry

about the mother of the child whose parents are unknown, by the decision of the guardianship and custody authority; the purpose for which the applicant needs to establish this fact;

d) in cases of establishing the fact of a single household of a man and a woman without marriage: the fact of a single household of a man and a woman without marriage; reasons for the impossibility of obtaining documents certifying the fact of a single household of a man and a woman without marriage; the purpose for which the applicant needs to establish this fact;

e) in cases of establishing the fact of birth of a person at a certain time: the fact of birth of a person at a certain time; impossibility of registration of the fact of birth by the State Civil Registry Office; the purpose for which the applicant needs to establish this fact.

3) Characterised by the 'key' role of written means of evidence, which confirm most of the circumstances of the case, such as:

a) the impossibility of restoring the lost document certifying the 'sought' fact, in most cases of establishing facts relevant to the protection of family rights and interests, shall be confirmed by a relevant certificate;

b) the existence of a civil registry determined by law (of the fact of death of the child's mother (father), the fact of making an entry about the child's father in the Book of Birth Registration under the mother's surname, while the name and patronymic of the child's father – at the instruction of the mother, as well as making an entry of the mother of a child whose parents are unknown, by the decision of the guardianship and custody authority) in cases of establishing the fact of paternity (maternity) shall be confirmed by the relevant certificates of their state registration;

c) the absence in the relevant civil registry of records of marriage, divorce, adoption, birth of a person at a certain time is confirmed by the relevant certificates issued by the State Civil Registry Office.

The consideration of the case on establishing facts relevant to the protection of family rights and interests on the merits is completed by additional explanations of the persons involved in the case, after hearing which the court decides to complete the clarification of the circumstances of the case and verification of their evidence and proceeds to the court debate.

Therefore, *court debates* are the third stage of the judicial consideration of the cases on the establishing facts, relevant to the protection of family rights and interests, during which persons involved in the case make speeches (oral appeals to the court and participants in the process, which contain their assessments

and thoughts regarding the course of consideration and resolution of a civil case in court).

According to a widespread opinion, during the court proceeding of cases on establishing legally relevant facts judicial debates are absent (Bilousov, Bohdan, Hetmantsev, 2014), due to the absence of a dispute of right.

We do not advocate this approach. Court debates are a mandatory part of the court hearing, aimed at identifying the final claims of the applicant and parties concerned and summarise the results of the judicial consideration of the case.

The last part of the judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests is the *making and declaration of the court decision*, carried out on the basis of the general rules of civil proceedings, except for the provisions on the content and legal force of such a decision.

According to paragraph 8 of the Resolution No. 14 of the Plenum of the Supreme Court of Ukraine of December 18, 2009 'On the court decision in a civil case' (Resolution of the Plenum of the Supreme Court of Ukraine On a court decision in a civil case, 2009), the decision taken in the case shall be exceptionally complete, clear, precise, set out in the sequence established by Article 215 of the Civil Procedure Code of Ukraine, and shall contain an introductory, descriptive, reasoning and operative parts.

Therefore, the general structure of a court decision in cases on establishing facts relevant to the protection of family rights and interests is classical. In addition, the introductory and descriptive parts do not differ in the specificities of the procedural form. At the same time, the reasoning and operative parts do have such specificities.

For example, the reasoning part should contain an analysis of the evidence collected in the case, a statement of the circumstances of the case, established by the court on the basis of this evidence, as well as references to the provisions of law guiding the court during the consideration of the case. Moreover, the reasoning part of the decision in such cases should not contain a conclusion on the rights and obligations of the persons involved in the case. The court shall limit itself to indicating whether the applicant's request to establish a certain fact is subject to be satisfied and whether such fact is legally relevant (Eliseikin, 1973).

In the operative part, the court states the presence (or absence) of the fact requested by the applicant. An indication of the purpose of establishing the fact may be contained in both the reasoning and operative parts of the decision.

Regarding the prejudicial significance of the purpose of the fact established by

the court, it is commonly believed in the legal literature that a court decision in such cases is characterised as prejudicial within the established specific purpose. However, some facts established by a court decision, which are subject to registration by the State Civil Registry Office, are indirectly prejudicial (Fursa, 1997).

We have a different perspective on this issue. The court decision establishes a specific legal fact. The indication of the purpose of its establishment in the relevant statement is only a confirmation that this fact is of legally relevant. And if this fact gives rise to several legal consequences, the court decision on establishing the fact can be used in all cases where it is required to confirm this fact, regardless of the specific circumstances that caused the need for its judicial establishment, as well as the parties involved in the case. Therefore, for example, a court decision establishing the fact of a single household of a man and a woman without marriage can be used both for inheritance and for other purposes (confirmation of the right of joint ownership of property acquired during cohabitation, confirmation of the emergence of rights and duties for mutual maintenance, etc).

3. Specificities of the court decision on establishing a fact relevant to the protection of family rights and interests

Another issue that should be underlined regarding the making of a court decision on establishing a fact relevant to the protection of family rights and interests is the limits of the legal force of such a decision.

According to Ya.S. Stutin, the statement about the exclusiveness of the court decision, which established a legal fact, is not refuted by the fact that the court is not bound by this decision when considering a civil case on a dispute of right arising from this fact. This is explained by the fact that during the consideration of a case on establishing a legal fact, the court does not touch upon the legal relations associated with it. In addition, the legal force of the court decision on establishing a legal fact applies to the applicant, but cannot be extended to the other party in the civil dispute between it and the applicant because it did not and could not participate in a separate proceeding when the case on establishing a legal fact was considered. If he/she had participated, then there would be no decision itself, since the court would be obliged to terminate the consideration of the case on establishing a legal fact in the manner of a separate proceeding due to a dispute of right related to this fact (Shtutin, 1956).

In this regard, S.V. Byrdina argues that considering the decision of the court on establishing

the fact as a court decision, the legal force thereof may be changed by the decision of the same or any other court in the consideration of another case in the course of a claim, we come to the conclusion that one of the basic principles of justice, that is, the principle of objective truth, is not fulfilled when considering cases on establishing facts (Byrdina, 1954).

R.F. Kallistratova adds the following to the above arguments: the supporters of the first perspective argue about the possibility of verification of the fact established in the court decision in the course of a claim, but they say nothing about how the results of such verification should find external expression. Therefore, the court decision on establishing a legally relevant fact shall be irrefutable, exclusive and binding in full (Kallistratova, 1958).

In this discussion we advocate the latter perspective and, along with P.F. Eliseikin's opinion (Eliseikin, 1973), argue: the legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

It should be noted that the court's decision in cases on establishing facts relevant to the protection of family rights and interests comes into force according to the general rules specified in Article 223 of the Civil Procedure Code of Ukraine, namely: after the expiration of the deadline for filing an appeal, if the appeal has not been filed. If an appeal is filed, the decision, if not overruled, comes into force after the case is considered by the court of appeal.

After the court decision on establishing facts relevant to the protection of family rights and interests enters into force, it is subject to execution.

According to H.L. Osokina, court decisions in cases of separate proceedings due to their stating nature do not require the issuance of a writ of execution, but are implemented by sending a copy of such a decision, which has entered into force, to the body in which the fact established by the court is subject to state registration, and (or) is the ground for issuing the relevant document (Osokina, 2004).

In connection with the above specificities of implementation of court decisions in cases on establishing legally relevant facts, some scholars emphasise that these court decisions do not have a feature of enforceability.

For example, H.K. Kriuchkov argues that the court issues to the applicant not a writ

of execution, but a copy of the decision, which the applicant submits to the relevant authority competent to resolve issues regarding the applicant's rights arising from the legal fact established by the court (Kriuchkov, 1956). A similar position is advocated by P.F. Eliseikin (Eliseikin, 1973).

Regarding the specifics of the implementation of court decisions on establishing legally relevant facts, S.Ya. Fursa writes: 'Such decisions are characterised by binding nature and are implemented outside the stage of compulsory judicial enforcement. The implementation of decisions in cases of this category by the relevant authorities implies indirect coercion, which differs from the direct coercion for decisions on prescribing the state bodies and notaries to be liable in case of their unlawful refusal to take the necessary actions' (Fursa, 1997).

On the contrary, S. Rakhmonov emphasises that the enforceability of court decisions should be understood not only as the possibility of direct coercive influence on the obliged person, but also the possibility of any implementation of the decision to exercise the rights of parties concerned (Rakhmonov, 1982). One cannot but agree with this.

It should be noted that most of the decisions made in such cases establish the facts subject to state registration in the Civil Registry Offices. For example, these are decisions to establish: the facts of registration of marriage, divorce, adoption; the fact of paternity (maternity); the fact of kinship between individuals; the fact of birth of a person at a certain time.

According to parts 1-3 of Article 9 of the Law of Ukraine 'On the State Civil Registry Office' (Law of Ukraine On The State Civil Registry Office, 2010), the state civil registry is performed in order to ensure the exercise of the rights of an individual and official recognition and confirmation by the state of the facts of birth of an individual and his/her origin, marriage, divorce, change of name, death. The state civil registry is performed by drawing up the civil registry, that is, documents of the State Civil Registry Office, which contain personal information about the person and confirm the fact of state registration of the civil registry.

The procedure for making amendments to the civil registry is regulated by the Rules for making amendments to civil registry, their renewal and cancellation, approved by the Order of the Ministry of Justice of Ukraine No. 96/5 of January 12, 2011 (Order of the Ministry of Justice of Ukraine On the approval of the Rules for making changes to the civil registry, its renewal and annulment, 2011).

On the basis of the court decision to make

changes, additions or corrections to the civil registry, the relevant changes are made, which are specified in the court decision. In particular, on the basis of court decisions on establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, appropriate changes shall be made to the civil registry of birth, marriage and divorce.

In case of submission to the Department of the State Civil Registry Office of a foreign court decision on amendments, renewal, cancellation of the civil registry, the issue of its implementation is resolved in accordance with the current legislation of Ukraine and allowing for the requirements of international treaties of Ukraine on the provision of legal assistance, consented by the Verkhovna Rada of Ukraine as binding.

In the event that the civil registry subject to be amended in connection with establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, as well as supplementing and correcting the information contained therein was drawn up by the competent authority of a foreign state with which Ukraine has not concluded an agreement on legal assistance and legal relations in civil and family matters, or if the legislation of a foreign state establishes a different procedure for making changes from that provided by the legislation of Ukraine, or if it is impossible to send it by the authorities of a foreign state (natural disaster, military actions, etc.), which is confirmed by the relevant documents, the civil registry is preliminary renewed by the State Civil Registry Office at the applicant's place of residence. The competent authority of the foreign state shall be notified of the renewal of the civil registry and the relevant changes to it (Order of the Ministry of Justice of Ukraine On the approval of the Rules for to the civil registry, its renewal and annulment, 2011).

In accordance with paragraph 2.22 of the Rules for making changes to the civil registry, its renewal and cancellation, after making amendments to the civil registry, the applicant is reissued or sent for delivery to the Civil Registry Office at his/her place of residence a certificate of state civil registry. The certificate is stamped 'Repeatedly'. The State Registration Certificate submitted by the applicant for amendments shall be cancelled and destroyed in accordance with the established procedure.

A different enforcement procedure is provided for court decisions on establishing the fact of a single household of a man and a woman without marriage. This fact is not subject to

state registration, and therefore a copy of such decision shall be submitted by the applicant and other parties concerned to the relevant authority in order to obtain the desired legal result (for example, to a notary to confirm the right to inheritance in the fourth line of heirs by law).

4. Conclusions

The court decision on establishing a fact relevant to the protection of family rights and interests has prejudicial value not only within the specific purpose established by court, but also in all other cases where it is required to confirm the relevant fact, regard-

less of the specific circumstances that caused the need to establish it in court, as well as the parties involved in the case.

The legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

References:

- Abramov, S.N.** (1948). *Sudebnoe ustanovlenie juridicheskikh faktov* [Judicial establishment of legal facts]. – Moskva: Jurid. izd., tip. MID SSSR (in Russian).
- Bilousov, Yu.V., Bohdan, Y.H., Hetmantsev, O.V.** (2014). *Tsyvilnyi protses Ukrainy* [Civil procedure for Ukraine]. Kyiv : Alerta (in Ukrainian).
- Bychkova, S.S., Biriukov, I.A., Bobryk, V.I.** (2009). *Tsyvilne protsesualne pravo Ukrainy* [Civil procedural law of Ukraine]. Kyiv : Atika (in Ukrainian).
- Byrdina, S.V.** (1954). *Osoboe proizvodstvo v sovetskom grazhdanskom processe po sudebnomu ustanovleniju faktov, imejushhikh juridicheskoe znachenie* [Special proceedings in the Soviet civil procedure for the judicial establishment of legally relevant facts]. *Extended abstract of candidate's thesis*. Saratov (in Russian).
- Eliseikin, P.F.** (1973). *Sudebnoe ustanovlenie faktorov, imejushhikh juridicheskoe znachenie* [Judicial determination of factors of legal significance]. Moskva : Jurid. lit. (in Russian).
- Fursa, S.** (1997). *Uchast zainteresovanykh osib u spravakh pro vstanovlennia faktiv, shcho maiut yurydychne znachennia (z tochky zoru mozhyvosti porushennia nymy sporu pro pravo)* [Participation of interested persons in cases of establishing legally relevant facts (from the point of view of the possibility of them starting a dispute about the law)]. *Pravo Ukrainy - Law of Ukraine*, 2, 37–39 (in Ukrainian).
- Kallistratova, R.F.** (1958). *Ustanovlenie juridicheskikh faktov sudom v porjadke osobogo proizvodstva* [Establishment of legal facts by the court in the order of special proceedings]. Moskva : Gosjurizdat (in Russian).
- Komarov, V.V., Bihun, V.A., Barankova, V.V.** (2011). *Kurs tsyvilnoho protsesu* [Civil procedure course]. Kharkiv : Pravo (in Ukrainian).
- Kriuchkov, G.K.** (1956). *Sudebnoe ustanovlenie faktov, ot kotorykh zavisit vozniknovenie, izmenenie ili prekrashhenie lichnykh ili imushhestvennykh prav grazhdan* [Judicial establishment of facts on which the emergence, change or termination of personal or property rights of citizens depends]. Moskva : Gosjurizdat (in Russian).
- Nakaz Ministerstva yustytzii Ukrainy Pro zatverdzhennia Pravyl vnesennia zmin do aktovykh zapysiv tsyvilnoho stanu, yikh ponovlennia ta anuliuвання, zatverdzeni vid 12 sich. 2011 roku № 96/5** [Order of the Ministry of Justice of Ukraine On the approval of the Rules for making changes to the civil registry, its renewal and annulment, approved on January 12, 2011 No. 96/5]. (2011). *rada.gov.ua*. URL: <https://zakon.rada.gov.ua/laws/show/z0055-11#Text> (in Ukrainian).
- Osokina, G.L.** (2004). *Grazhdanskij process* [Civil process]. Moskva : Jurist (in Russian).
- Postanova Plenumu Verkhovnoho Sudu Ukrainy Pro sudove rishennia u tsyvilnii spravi: vid 18 hrudnia 2009 roku № 14** [Resolution of the Plenum of the Supreme Court of Ukraine On a court decision in a civil case: dated December 18, 2009 No. 14]. (2009). *rada.gov.ua*. URL: <https://zakon.rada.gov.ua/laws/show/v0014700-09#Text> (in Ukrainian).
- Postanova Plenumu Verkhovnoho Sudu Ukrainy Pro zastosuvannia norm tsyvilnoho protsesualnoho zakonodavstva pry rozghliadi sprav u sudi pershoi instantsii vid 12 cherv. 2009 r. № 2** [Resolution of the Plenum of the Supreme Court of Ukraine on the application of provisions of civil procedure legislation in the consideration of cases in the court of first instance dated June 12, 2009 No. 2]. (2009). *rada.gov.ua*. URL: <https://zakon.rada.gov.ua/laws/show/v0002700-09#Text> (in Ukrainian).
- Rahmonov, S.** (1982). *Sudebnoe ustanovlenie faktov, imejushhikh juridicheskoe znachenie: po materialam Tadzhijskoj SSR* [Judicial establishment of legally relevant facts : based on the materials of the Tajik SSR]. *Extended abstract of candidate's thesis*. – Moskva (in Russian).
- Shtutin, Ja.S.** (1956). *Predresheniya (prejudicii) v sovetskom grazhdanskom processe* [Prejudice (prejudice) in the Soviet civil procedure]. *Sovetskoe gosudarstvo i pravo - Soviet state and law*, 5, 66–67 (in Russian).

Tsyvilnyi protsesualnyi kodeks Ukrainy vid 18 bereznia 2004 r. № 1618-IV [Civil Procedure Code of Ukraine dated March 18, 2004 No. 1618-IV]. (2004). *rada.gov.ua*. URL: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1618-15> (in Ukrainian).

Zakon Ukrainy Pro derzhavnu reiestratsiiu aktiv tsyvilnoho stanu: vid 1 lyp. 2010 r. № 2398-VI [Law of Ukraine On The State Civil Registry Office: dated July 1, 2010 No. 2398-VI]. (2010). *rada.gov.ua*. URL: <https://zakon.rada.gov.ua/laws/show/2398-17#Text> (in Ukrainian).

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ОСОБЛИВОСТІ СУДОВОГО РОЗГЛЯДУ СПРАВ ПРО ВСТАНОВЛЕННЯ ФАКТІВ, ЩО МАЮТЬ ЗНАЧЕННЯ ДЛЯ ОХОРОНИ СІМЕЙНИХ ПРАВ ТА ІНТЕРЕСІВ

Анотація. Мета. Метою статті є з'ясування особливостей судового розгляду справ про встановлення фактів, що мають значення для охорони сімейних прав та інтересів. **Результати.** Розгляд справи про встановлення фактів, що мають значення для охорони сімейних прав та інтересів, по суті завершується додатковими поясненнями осіб, які беруть участь у справі, вислухавши які, суд постановляє ухвалу про закінчення з'ясування обставин справи та перевірки їх доказами і переходить до судових дебатів. На підставі рішення суду про внесення змін, доповнень або виправлень в актові записи цивільного стану вносяться відповідні зміни, які зазначені в рішенні суду. Зокрема, на підставі рішень суду про встановлення фактів реєстрації шлюбу, розірвання шлюбу, усиновлення, батьківства (материнства), родинних відносин між фізичними особами, народження особи в певний час в актові записи про народження, про реєстрацію та розірвання шлюбу вносяться відповідні зміни. У разі подання до відділу державної реєстрації актів цивільного стану рішення іноземного суду про внесення змін, поновлення, анулювання актових записів цивільного стану питання про його виконання вирішується згідно з чинним законодавством України та з урахуванням вимог міжнародних договорів України про надання правової допомоги, згода на обов'язковість яких надана Верховною Радою України. **Висновки.** Зроблено висновок, що рішення суду про встановлення факту, що має значення для охорони сімейних прав та інтересів, має преюдиціальне значення не тільки у межах встановленої судом конкретної мети, але й в усіх інших випадках, коли вимагається підтвердити відповідний факт, незалежно від того, якими конкретними обставинами була викликана необхідність його встановлення в судовому порядку, а також суб'єктного складу осіб, які беруть участь у справі. Законна сила рішення суду, ухваленого у справах про встановлення фактів, що мають значення для охорони сімейних прав та інтересів, за своїми об'єктивними межами розповсюджується на факт, наявність чи відсутність якого суд встановив під час розгляду даної справи. Звідси слідує, що висновки суду щодо даного факту, закріплені у судовому рішенні, мають преюдиціальне значення для інших справ, у тому числі і справ позовного провадження.

Ключові слова: рішення суду, сім'я, чоловіка, жінка, шлюб, державна реєстрація.

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