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## THE TYPES OF LEGAL FACTS IN FAMILY LAW

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### Summary

The author refers to the provisions of doctrinal law theory to provide general characteristics of the legal facts in family law, as well as establishing the basic criteria for their classification. The article discloses the principal directions in the study of the legal facts in terms of the needs of settlement practices of public relations at the present stage of their development.

**Key words:** legal fact, family relationship, legal action, legal event, legal position.

### Аннотация

Автор обращается к доктринальным положениям теории права с целью представления общей характеристики юридических фактов в семейном праве, а также установления основных критериев для их классификации. В статье раскрыты главные направления в исследовании юридических фактов с точки зрения потребностей практики урегулирования общественных отношений на современном этапе их развития.

**Ключевые слова:** юридический факт, семейные правоотношения, юридическое действие, юридическое событие, правовое положение.

**T**he family legal relationship distinguishes from other types of relationships by originality of legal facts on which they are raised. These are the facts as legal marriage relationship, the fact of birth, the certificate of adoption, guardianship etc. Often these facts combine not only legal, but also biological principles [1, c. 10]. The relevant facts personifies members family by strictly legal nature law and provides most relations purely personal nature.

A deeper study of legal facts in family law of Ukraine will improve the legal doctrine which exists today in family law. It reveals to the specifics of legal regulation. It will establish also the patterns and trends of further development of the sphere of social relations. Effective regulation of family relations can not be achieved without such study. In this sense, the study of legal facts in family law takes merely applied function – promotes proper selection and consolidation of legal facts in regulatory requirements, helps to understand the relationship of different ways of influence to the actual relationships and processes, sets the boundary between those relationships that require specific legal model regulation, and those that should be protected by law, but leave space self participants of such relations.

Solving of these problems is impossible without proper legal

classification of the facts in family law of Ukraine. We can not agree with those scientists who stress that “the legal classification of the facts necessary means to explore relationships, peculiarities of legal regulation. As such it is widely used in science, in practice, in legal education ... Its further development may be useful for solving problems of law, including sociological research in legal science” [2, c. 30]. Determining of the legal fact’s place in the classification scheme, we thus find out its relationship with other homogeneous phenomena which explain its theory. Classification of legal facts in family law raises new questions, suggests the outstanding tasks, allowing speculate about the prospects of certain categories of legal facts, anticipate these changes.

The purpose of the article is to improve the theoretical aspects of legal classification of facts in family law of Ukraine. For achieving this goal the article should address the following main objectives: to determine the classification of the grounds of legal facts in family law of Ukraine and to consider certain types of legal facts. Furthermore, among the objectives of this article are to determine whether cover legal doctrine developed general theoretical approaches to the classification of legal facts all possible life circumstances with which family law binds the emergence, modification



or termination of legal relations, and, if necessary, propose to allocate in family law, along with the known types of additional legal facts and substantiate their species such proposals.

There are different classifications of legal facts – for volitional basis [3, c. 80-81], for the duration of existence, for the legal consequences, for the nature of the factual basis of legal consequences, for the probative value, for the form of expression, for the perfection of phenomena [4, c. 7; 5, c. 14], for the legal orientation, for the nature of rules of conduct (substantive or procedural), for the positive and negative legal facts, for the degree of certainty [6, c. 57; 7, c. 474; 8, c. 86], for the nature of the action [9, c. 31-32] and others. Classification of legal facts which based on many grounds contributes to more thorough research.

Let us consider the most significant legal classification of facts, which is apply in family law.

As mentioned above, in legal doctrine there is the separation of legal facts the criterion volitional characteristics. By this criterion, the legal facts are divided into legal actions and legal events [10, c. 11].

Actions and events certainly exist and can occur without regard to law. However, they acquire the status of legal facts only because of the law. You can select the actions and events that take place in the sphere of family relations, but do not take legal nature, and therefore do not have the status of legal facts. For example, a child baptism is an act which commit parents, but it does not have a legal nature and is not a legal fact, and therefore can not be a ground for the emergence, change or termination of rights and obligations. The agreement between the spouses on division of responsibilities regarding housekeeping is also not subject of law regulation, and therefore in this case there is not a legal fact. Addressing parents question which sports section to give the child and at what age she has to learn a foreign language are not questions that are in the plane of regulation. So the main point that must be clarified before resorting to the distribution of legal facts on the actions and events is the question as to whether there is a legally significant circumstance.

As already mentioned, the legal facts can serve their own actions or entity which depend on it will also act as a form of its expression, or circumstances that do not depend on the will of the subject and perceived it as a relatively independent events. It is about two groups of legal facts – actions and events.

Legal action is a legally significant actions of person. They are divided into lawful and unlawful. However, you must agree with the comments of the scholars which indicate that the legal classification of the facts, based on communication with individual will, instead used the term "action" should use the term "act", which is more accurate because it assumes also cases inaction [11, c. 93].

The lawful act is a person's act or omission that meets the standards and principles of law. Such acts are socially useful or acceptable in terms of law. In family law constitute legitimate acts of legal majority facts – marriage, registration of birth, child support payments, the agreement between the parents with whom the child will live after the divorce, adoption, etc.

The unlawful act is an act or omissions of person which is contrary to the norms and principles of law. It is important to remember that unlawful acts may have a different character and, therefore, different legal consequences. In particular, it can be:

the offenses which are unlawful, culpable, socially harmful acts (examples of family law violations are fictitious marriage, breach of duty of state registration of the birth of a child, failure to pay child support, etc.);

the objectively illegal acts which are illegal, innocent, socially harmful acts (legal facts of this kind is not specific for family law);

the abuse of the right which is an act that could formally comply with law, but is socially harmful, violates the rights and legitimate interests of others. Family law issues as a form of abuse of legal facts are unexplored. Thus, the courts evaluate the behavior as abuse of the right of the parent with whom the child lives on going to court with a claim for permission to visit the child abroad in the absence of an appeal to the other parent requesting permission

to leave the child on holiday abroad, failure to report, the term and purpose of the trip and the country where the child will be taken [12]. On the other hand, if the parent with whom the child lives, turns to the other parent for the provision of a temporary removal of the child abroad, citing the arguments on the usefulness of such travel for the child, but is rejected, the latter may be regarded by the court as an abuse of the right [13].

In turn lawful actions depending on the orientation of the subject will be divided into legal acts and legal actions. Legal acts are the act which achieve a particular legal result.

Legal acts are also not a homogeneous group. Among the legal acts should provide juridical acts committed by members of a family relationship (and therefore, is a form of direct exercise of their rights and responsibilities) – to provide a notarized power of attorney to represent women and (or) husband to apply for marriage registration authority State civil registration; rejection of marriage; concluding marriage contracts among themselves, are not prohibited by law, for property that is their personal private property and on property that is the object of joint matrimonial property; conclusion of the contract for maintenance of a spouse, which defines the conditions, the amount and terms of payment of alimony; and acts originating from a third person – the authorized State entities directly involved in family relations do not act (and therefore, there is a law enforcement) – Registration of marriage; a court decision granting the right to marry a person who has reached sixteen years but has not attained marriageable age, by her statement; a court decision on the right to marriage between a mother child adopter and the adopted child by him, and between children who were adopted it; judgment of nullity and more.

Legal actions are actions that give rise to legal consequences, regardless of the direction will their attack. The subject of the commission may not even be aware of the possible legal consequences or evaluate them properly. For example, the immoral behavior of the bride / groom, concealing her / his circumstances are essential (serious illness, the presence of a child, criminal



record, etc.) may be grounds for denial of marriage. Thus, an action that was not directed at the onset of legal consequences, it may entail, but only on condition that the other party commits relations corresponding legal act. Otherwise, all these circumstances – immoral behavior, hide the circumstances are essential, and so on – do not acquire the status of a legally significant. A similar status, such as a denial of the wife's birth (may be grounds for divorce), the actual termination of marriage (entails a special procedure for settling disputes between spouses), receiving awards during the marriage (the grounds for their recognition of the personal property spouses who received them), incorrect disposal of one of the spouses in marital relationship (can be a reason if the other spouse about it declares void for the maintenance). This action, which may give rise to legal consequences, but it is not motivated by their desire to commit the occurrence of such consequences.

Family law reveals most clearly the incompleteness of the classification of legal facts, remain outside it, including such facts as the inability of his wife for the birth of a child; the reluctance of men to have a child or his inability to conceive a child; disability of one spouse as grounds for detention; pregnant wife as the basis for its maintenance man or residence of a parent of a disabled child who can not do without constant care; Accommodations at the time of divorce at the age when the statutory retirement age there are not more than five years and living together married for at least ten years; disability; renovation performance, and more. Some legal facts can be added to this list:

– The right of a spouse to maintenance, which were awarded by the court, was suspended: 1) the maintenance creditor is not need financial aid; 2) maintenance payer fails to provide material assistance;

– The court may have been denied the right of a spouse to maintenance or limited its available: 1) spouse in marital relations were briefly; 2) disability of the spouse who needs financial aid, was the result of committing an intentional crime; 3) disability or serious illness of the spouse who needs financial aid, was hidden from the other spouse during the

marriage; 4) the maintenance creditor deliberately put himself in such a position that needs financial assistance.

All the above examples of legal facts in family law clearly show the need to agree with those scientists who by volitional sign isolated events and not only legal action but also states.

Note that in the scientific literature has long discussed the question of a fact-states in the system of legal facts. Some authors identify them as a separate category of legal facts, while others consider them either to actions or the events. Consider both positions.

The first category of authors argue that state (inability to birth, disability, stay at a certain age, etc.) is one of legal facts, which are characterized by complexity and relative stability. There are long, continuously or intermittently, generating legal consequences. Another category of authors believe that the state itself can not be considered as a kind of legal fact, because, in their view, the legal fact is the only occurrence or termination of a state, such as marriage.

In our opinion, the state always acts element of actual, itself stays in a particular state does not act as an independent basis for the emergence, change or termination of the relationship. However, subject to the availability of another legal fact (usually legal act) acquires legal significance.

Overall, we believe that criticism attributing states to overcome the presence of legal facts currently necessary to determine the legal nature of the phenomena that critics called this concept of protracted legal relationship, since all attempts to define them otherwise is very unsuccessful. For example, the condition of stay in the marriage can not be reduced only to a continuing relationship because it has legal significance not only for those who were married, but also for other entities and shall not be consolidated in its legal meaning only together rights and obligations of marriage to each other. Some states generally can not obtain continuing legal characterization (inability to have children, disability, etc.). The condition as a form of legal facts should give long position in the traditional legal facts to streamline regulation of legal relations arising primarily in the area of family law,

which needs it most at the moment [14, c. 79].

Legal events are legally meaningful life circumstances, the onset of which does not depend on the will of man. In turn, the legal events can be divided into relative (caused by human activity, such as childbirth) and absolute (those not linked to human activities, such as a meteorite, but examples of such legal facts in family law are rein rare). In any case believe in the legal characterization of events to clarify whose it will, without regard to which there is this legal fact, meant. It is no secret that certain events as legal facts can be completely independent of the will of all subjects or only on the will of one or more specific areas of legal state. As is known, this allows us to legal science and practice of divide all legally significant events in the two groups. First, the events that take place entirely outside the will of all of this legal space. Second, the events that are taking place against the will of one or more of the legal space. The first group usually related events that are absolute, such as earthquakes, tsunamis and other natural disasters. The second group includes events that are relative. Relative carries most of the events. These include first of all a lot of actions committed by certain entities regardless of the will of other subjects in this legal space. For example, the loss of his wife to have a baby because of the possibility of wrongful conduct on her a legal fact. If you judge illegal behavior in terms of the relations that arise involving the same offender (relations about bringing to responsibility, etc.), such conduct will acquire the legal characterization of the facts as a legal effect, namely the unlawful acts. However, such relations are not covered by the subject matter of family law. But within the family law of the unlawful act, which includes result in a loss of opportunities to have a female child acquires characteristic events, but the relative event. Thus, the example of the above legal fact you can see his dual nature: it is both a sign of legally significant behavior for some legal and legally meaningful event for others. So, if a person becomes a party to certain legal or acquires legal status regardless of their actions or outside his desire and the will, the legal fact, which serves as the basis of a relationship, for it is an



event. Conversely, if a person becomes a party to the relationship according to their behavior and in their expression, is a legal fact, which serves as the basis of a relationship is an act.

However, this is not the only possible legal classification of the facts in family law. Thus, depending on the presence or absence of necessary circumstances distinguish positive and negative legal facts instance, the presence of state disability one of the spouses is a positive fact for acquiring legal right to receive alimony; no other marriage for a new marriage – negative legal fact [4, c. 9].

Depending on the legal consequences of legal facts fall into the facts that give rise to legal relationships (eg marriage), facts that alter the relationship (eg a contract on the order of shared objects common property) facts stop relationship (eg, divorce) [15, c. 8].

We also consider it necessary to supplement your current legal doctrine in the legal classification of the facts to the facts which entail occurrence, change or termination of legal relations and legal facts that lead to other legal consequences (primarily refers to the acquisition, change or loss of the relevant legal status).

So, summarizing the above, we note that today the most popular classification of legal classification of facts is volitional basis. There is actual trend indicated for family law Ukraine. According to this classification distinguish between legal facts is there: 1) the legal actions that may have legitimate nature (legal acts and legal actions) and illegal (offenses, objectively wrongful acts, abuse of the right); 2) the legal significance of the event, which can be absolute and relative; 3) facts-states that are important for the development of family relations in the country.

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