

THE DETERMINATION AND THE SOURCES OF THE OBJECT OF PROBATION

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The totality of juridical material facts and procedural juridical facts which have to be proven for the benefit of the correct solution of the civil case file represents the object of probation. In the theory of civil procedure the object of probation is the most contested subject, especially when the discussion comes about the source and the criteria which represent the main goal of the theory and practice of the civil procedure.

Key words: juridical material facts, civil case, object of probation, civil procedure, criteria.

Legal defense of the rights and interests of citizens and organizations is accomplished via resolution by the court, the civil litigation. As a first condition of justice is the need to court the finding of factual circumstances that occurred up to bring the process and their knowledge can take place through the establishment of proof material and components of the object of probation.

The purpose of probation is: all legal and procedural material facts that need to be established for fair settlement of civil reason. The necessity of determination of the probation object permeates the judge according to art. CPC 118 RM [1], circumstances which are important for a just solution are determined by the court beginning with the claims and objections from the both parties and other participants in the process and the rules and procedural law which are to be applied.

Examining the legal provisions can determine that the object of probation in litigation has two sources of training:

- Claims and legal objections to the parties, that the plaintiff bases its material and judicial requirements to defendant and the circumstances presented by the defendant who indicates to the unimportant civil action brought against him, directed against the process, the defendant's participation in it or to dismiss the action.
- Hypothesis and the rule or set of rules of the material and procedural law which are to be applied. Legal norm being a general rule and binding of conduct which purpose is ensure social order, the rule which can be made by the application of the constraint force.

Of the mentioned results that the court is not limited to statements of the parties to determine the object of probation. Often parties in their claims and objections mention facts which have no legal importance, such as being some moral determinations of facts committed by participants in the trial, the judge in this case does not include the object of probation, contrary the facts that are not specified by the parties but have legal importance for a real solution of the case are included in the object of probation by the court initiative.

Mention that the phase of the process bring together with the application of the proceedings the applicant shall indicate both factual circumstances and legal how its action but subject to determine the stage of preparing for the judicial debate, is made by judges by making

procedural provisions stipulated art.185 RM CPC such as hearing regarding plaintiff's claims, the hearing regarding the circumstances of defendant's reasons, clarifies that it has objections against the action and evidence that such objections can be substantiated, defendant proposes to present in writing, the date fixed, a reference on the applicant's action; solving the problem citing in the judgment meeting of the witnesses; solving the problem by the intervention in the process of the plaintiffs, defendants and interveners, etc.. During the settlement solving the circle and the number of probation objective facts may change in the dependence of the reason of the action, or the increase or decrease of the amount of claims of the submitted action. Achieving these functional principles of the procedural Law, particularly the principle of availability (CPC Article 27 of RM) that provides the right of the participants in the process to dispose of procedural rights and to choose how and procedural means of defense.

An important role in finding the objective of probation it has the explanatory decisions of the Supreme Court of Justice of Moldova where are exposed out the facts which need to be established for certain categories of cases, for example: The decision of the Supreme Court of Justice of the Republic of Moldova on practical application of legislation by the courts to consider cases on inheritance no.13 of 03/10/2005. [2] The decision of the Supreme Court of Justice of the Republic of Moldova regarding the practical application by courts of laws about permission adoptieinr.21 from 12.12.2005 [3] The decision of the Supreme Court of Justice of the Republic of Moldova on the law of the examination of disputes that arise in the conclusion, modification and termination of individual employment contract No. 12 of 03.10.2005 [4], etc..

In the mentioned decisions are indicated to common facts of certain categories of cases that need to be determined by the court, it is clear from the contents of general legal rule, but for every reason civil concrete and specific facts to determine their number depends on the circumstances of each specific issue, which are deducted from the claims and objections of the parties.

An essential difficulty presents an object of probation to the settlement of disputes arising from relations governed by the material law, for example: moral damage compensation disputes, disputes relating to deprivation of parental rights, etc. When the judge alone should take into account the concrete circumstances and to assess some or other circumstances from the point of view of its legal significance.

Circumstances of this type have several legal rules, such "other grounds" (paragraph 4 of Article 20 FF RM) [5] will dissolve the marriage if the court found that living together as spouses and family preservation are impossible (paragraph 3, art.37 FF of RM). "

The criteria for determining good reasons or criteria for determining that life together is impossible are not expressly stated in any law, and taking in consideration the free access to justice, any person can not refused legal protection of reason of non-existence of legislation, the imperfection, collision or obscurity of the legislation in force. (Article 5 paragraph 2 to RM CPC), the judge alone must determine the criteria according to his belief.

Thus, for example, proceeding from the tasks of strengthening families, protecting rights and interests protected by the law of the spouses and children, courts should not allow reference cases of sales hasty decisions marriage. For these purposes it clarifies all aspects of relations between spouses, the grounds for dissolution of marriage, the true causes of misunderstanding between spouses and these issues are rated according to the judge's intimate belief.

Given the fact that complete avoidance of creating rules to provide a relatively-specified is impossible, we must ensure proper application of these rules, where it appears and the role

of judge. By applying the rule to provide a relatively fixed legal meaning can be given only to those circumstances of the case corresponding to the common feature of the facts described in the case.

Applying the rules with a relatively specific case, unlike the case be determined in three stages:

- 1 proof of facts that may have legal significance;
- 2 assessment of the circumstances set;
- 3 legal conclusions.

In case of enforcement of a specific case, the second step is missing.

In order to achieve justice, the judge must thoroughly examine and assess the claims, the existence of legal significance or other circumstances to determine the link between them and the rules of law that provide for relatively-specific facts. Thorough analysis of those facts of probation object, allow correct assessment of the evidence.

In conclusion I would like to mention that finding the correct object Complex probation is a process that:

- Determine the legality and the merits of procedural documents,
- Legality and phases of the process,
- Make the process more organized, make the process to be completed within a reasonable term.

And in the case of finding the wrong object of probation, to include the circle of facts that need to be proved to some circumstances that have no importance for resolving the dispute will delay the process as a consequence of emoticon that will lead to unnecessary expenditure of time and procedural means. And if that were not found and proven facts that needed to be substantiated court decision would be subject to cassation, RM befit art.386 CPC under unthoroughly these decisions.

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