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PROCEDURAL PREREQUISITES TO ENSURE EFFECTIVE CIVIL JUSTICE

Society is interested in quickness and effectiveness in renewal of rights of civil proceedings, because it is the most common form of protection of civil rights and resolution of private disputes between citizens. As far as the proper fulfillment by the courts of objectives of civil procedure are related to its effectiveness. Since the objectives of civil procedure fulfilled in the course of civil procedural activities regulated by civil procedural law, so it is an interesting question the procedural prerequisites to ensure effective civil justice system.

So, as the basic rule it can be considered the provisions of the fourth paragraph of Article 10 of the CPC of Ukraine, in accordance to which the court encourages the full and complete understanding of the circumstances of the case: explaining to the persons involved in the case, their rights and obligations, warns of the consequences of committing or non judicial actions and contributes to the implementation of their rights in cases, established by this Code. The above rule is applicable by courts in complex in conjunction with Article 160 of Civil Procedural Code, under which presiding judge is directing the flow of the court hearing, ensuring compliance and consistency in proceedings, exercise by members of civil process of their procedural rights and performing of their duties, directs trial to provide a complete, comprehensive and objective clarification of the case, eliminating from a trial hearing everything that is not essential to the resolution of the case.

Thus, CPC directly assigning court with function in each case to facilitate

in full and complete understanding of the circumstances of the case, direct the trial to full, comprehensive and objective clarification of the case.

Procedural guarantee of implementation of this function is imposing on court of the obligation to determine: the circumstances relevant to the case and the facts, that needed to be established and the basis for claims and objections; substantive law, which governs the legal disputes; to identify the evidence in accordance to nature of legal disputes and to clarify which party should prove certain circumstances.

In the meaning of CPC, the above procedural actions are binding and must be carried out during the preparation of cases for trial (regardless of the preliminary court hearing). These procedural actions, which are crucial when considering each civil case and are determining the direction of its proper and timely resolution, must be made independently of the procedural activity or legal literacy of parties and must be directly aimed at fulfillment of objectives of civil litigation, which are addressed primarily to the court, and not to the parties.

Furthermore, given that for the resolution of the dispute (which is the main duty of the courts) the court must apply the relevant substantive law, and it needs to establish substantive facts (that are the subject of proof), which must be established on the basis of the evidence so we can conclude that despite the existing model of competitiveness, it is the courts' duty to clarify the circumstances of the case and to verify this circumstances by evidences.

