

## Establishing the facts in the process of legal qualification

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### Abstract

*Establishing the facts is a preliminary stage of the legal norm qualification. In determining of facts, evidence plays an important role. The proves are not only a logical mechanism that allows to verify the reality of a fact or an argument. Background and scope of the judicial probation is to identify the correct legal standard which has to be applied in the legal process. One fact can not produce legal effects by it qualities, but legal rule has to assign a certain quality, a certain special significance and legal effect. An established fact should receive a legal qualification, taking into account all circumstances. Legal classification is an assessment which involves both facts and elements of law.*

**Keywords:** *the facts, the prove, legally qualified legal, elements of law, probation, legal effects, logical mechanism;*

The establishing of facts is a preliminary phase on matching or choosing the applicable law. In order to be reported to a norm of law, the actual situation must be exactly determined. From here appears the first difficulties for the law enforcement process, because, while the primary recipient of the legal norm, lived directly in a certain situation, being aware of the situation elements that can be perceived globally by one who applies the law, the competent authority knowing the facts cannot see them directly, but only through primary and direct recipients of the norm they apply.

If we identify the place and the role of the legal norm in determining the state of law in relation to the facts, we can mention that, the legal norm does not take into consideration an accidental event „*but it is considering a generality of relationships and a behavior average*” [1].

However, only the legal norm cannot cover all cases which might arise in social relations. It includes the most common ones.

In a trial, the parties are situated on the opposite sides, relating the facts according to their contradictory interests. The first obligation of a judge is to determine which of these two versions are true. Otherwise, the conflict between the parties could not be solved [2].

The legal qualification is the meeting point of the facts and the law. The qualification is the first tool to identify the norm of law. [3]

In the legal qualification process is important to determine *the case facts*, in this way they are perceived by the judge, only through a strict probation regulation. For example, the proof of the end of a marriage is made by presenting the marriage certificate, registered in the civil status register. The judge must follow the probation regulations established by law. Thus, the judge can accept only the evidence provided by law to prove the contracting of the marriage. There are domains in which the judge has a big freedom of action, meaning that he is allowed to use any evidence that is necessary for the formation of his conviction, with the condition, that they are not contrary to law.

If the trial documents submitted by the parties contain conflicting information, the judge must decide, but to decide, he must assess the situation, by his reasoning, in global terms.

The establishing of fact situation and choosing the legal norm represent the phases of law enforcement, which are the essential and necessary steps in conducting the process of applying legal norm. [4]

In determining the fact situation, the probation plays an important role. The proof is not only a logical mechanism that allows the verification of the reality of a fact or an argument. This representation of the form is incomplete, because it is neglecting the context and the purpose of the judicial probation. The judicial probation differs from the scientific probation. In the legal field, the proof has as a scope more than the judge convincing, rather than establishing the objective reality. It is related to the climate specific to the process and not to a laboratory one.

In judicial matters, the proof is taken in a reasonable term, necessary for the intervention of a decision and must be considered as sufficient, or insufficient, because the judge cannot under penalty of denial of justice, to abstain from judging.

In judicial matters, the proof results from the joint action of the judge and the parties in the process" [5]. The probation problem is crucial in case of a dispute. It is not enough to be right, to be the holder of a right or to be in a particular legal situation. You have to prove all of these.

As the legal regulation of the evidence is supple, the more it allows being near the truth. The task of proof presenting lies on parties. The object of proof is only the fact elements. The parties do not have to prove the legal norm existence. The judge is the one who knows the law. However, raises the question of right's proof, when we talk about common law, autonomous law and foreign law.

If we refer to the fact elements, consisting of facts and legal acts, when, the elements of law are those legal norms serving as a basis for the parties and on which depends the solution to be given by the court. Presumption is a way of reasoning whereby from the establishment of a fact is induced another fact that is not proved. The presumptions are conclusions which the judge takes from a known fact, to an unknown fact. The presumptions are related to the particular acts and facts and consist of moving the proof object. By moving the proof object it's introduced a greater uncertainty than the uncertainty of the direct proof. That's why, it should in this case always be upheld the contrary proof, but only when necessary. These presumptions allow to deduce the truth about the existence of another fact, actually easier to prove.

The presumptions concerns the positive element of the human behavior in which a legislator or a judge is interested in.

They are related to standards, because the overthrow of a presumption cannot occur unless if there are enough clues against its recognition, the disproportion characterizes the instability and is considered the dynamics of this standard [6]

The standard is not a norm, but a measure instrument, a formulation technique of the regulation of law - norm, so it does not matter if it was used in a provision of law issued by the legislature, other responsible regulatory body or the judge (being of a common or a constitutional jurisdictions). [7] Thus, the presumption of good faith imposes the person who claims it, to prove the bad faith. The presumption of innocence in criminal law protects the individuals against arbitrariness.

The legal presumptions are based on the most probable situation or on the idea that if it is not presumed, certain facts would be impossible or very difficult to establish. The legal presumptions must be prescribed by law. They make the difference between the proof tasks and/or move the proof object. For example, when the law presumes that a child born in a marriage period has as father his mother's husband, it dispenses to

establish that he is the son of his mother's husband, at the same time, the proof object moves on, meaning that instead of determining parentage of the child, the law requires only to establish that he was born in the mother's marriage period and it's deducted her husband parentage. The legal presumption on which we referred favors the legitimate family. It prohibits parties to the trial to refer again the court, to subdue a claim that it has resolved by a decision, which became definitive.

However, it attracts the attention that in fact we are in the presence of practical regulations preventing the rebirth of the disputes and making the court decision unquestionable. Preferable, it was considered to state that the authority judges in the measure in which the unquestionable court decision has the same effect as an unassailable truth, although it has no nature.

An act has legal value if the legal norm typically provides that the existence has legal consequences. The act received from the legal norm is a *qualified act*. The legal norms include in their core legal values, justify other values, guarantees, defend, and protect values [8].

The transition from facts to the law is carried out through a mechanism, apparently very simple: the law takes into account a fact, a complex of circumstances in which it is placed the person: from this, based on the causality relation, are connected the legal effects, which as applicable, have been followed, deliberately, or, conversely, were not desired. Producing legal effects suppose often the fulfillment of a lot of complex conditions.

Contrary to what happens with natural phenomena, the legal effects related to the condition fulfillment, does not happen automatically. In the judicial life, the effect does not follow inevitably the case. Once established, the facts must be faced with the legal concepts, to see with which of them it is identifying and to choose the legal norm to be applied. The qualification is the operation in which the established fact situation is framed in the judicial norm hypothesis.

The qualification operation is the one, which allows the judge to move from the fact, to law, from the hypothesis in which is framed the established fact situation, being related a certain solution. If we were to refer to one of the principles of the civil trial the judge obligation is to know the law and apply it correctly to the facts of the dispute. It

comes from the assumption that the court knows at an advanced level the regulation of law, knows the practice, national and international jurisprudence, being aware of any new regulation. A rigid interpretation of this principle appears to lie on one side the right and on the other side the fact. The principle suggests also the distinction between judge functions and parties function in the process.

The judge is the one who requires from the parties to relate the facts, and allows them to present them to him, to give a legal solution.

A fact cannot itself produce legal effects, so it is important to appreciate the fact situation in relation to the legal norm regulations, related to the judicial standards in the field.

The set fact should receive a judicial qualification, taking into account all the circumstances that have led to that fact situation. In order to get to the norm of law application, it is necessary to establish the facts, then to choose the norm. The judicial qualification is an assessment in which are involved both, fact and law elements. The lawyer stops only on those effects that allow, or prevent the application of the legal norm.

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