REGULATION MECHANISM OF PRIVATE LEGAL CONTRACTING RELATIONS IN CIVIL LAW

Andrii Hryniak, National Academy of Legal Sciences
Oleksii Kot, National Academy of Legal Sciences
Mariana Pleniuk, National Academy of Legal Sciences

ABSTRACT

Legal regulation is one of the fundamental categories of legal reality, because the essence and social importance of law become apparent exactly through regulation of certain phenomena. Law action may be observed only through the coordinated legal mechanism, which is composed from relevant elements of the legal system. In case of complications or impossibility of efficient regulation of social relation, only those elements, which caused corresponding consequences, have to be improved. Considering the above mentioned, it is stated in the article that legal regulation of contracting relations is a set of legal means of state authoritative effect with help of which certain factors (customer, contractor, general contractor, subcontractor, under subcontractor) influence liability legal relations on works performance by provision of precise contract terms in order to fix, adjust, secure and protect relations between them. The mechanism of legal regulation of contracting relations is understood as a range of elements ensuring regulating and defending functions of settlement, which is a specific system with its proper internal arrangement aligned according to specific logics.

Keywords: Legal Regulation Mechanism, Obligation, Legal Facts.

INTRODUCTION

The dichotomy of law division on public and private, enlarging the number of the subjects of legal regulation, complication of legal regulation structure are those reasons, which cause a necessity to raise efficiency of legal regulation functioning in Ukraine. Hence, the scientific discussion on scientific improvement of legal regulation mechanism still continues within the framework of modern doctrine of Civil Law of Ukraine, namely in the works of Hryniak, Dikovska, Kalaur, Kostruba, Kuznetsova, Kozlovska, Otradnova, Pohribnyi, Fedorchenko, Yarotskyi.

The mechanism of legal regulation is understood as a range of legal tools, methods and forms with help of which contracting relations in Ukraine are adjusted, their ideal pattern set in the regulatory rules is embodied, and the contract itself fulfills the function of legal fact related with establishing of contracting relations for certain parties, their rights and obligations.

There is an opinion proved stating that the mechanism of legal regulation of civil law contracting obligations is not only formal and artificial phenomenon or exclusively scientific-theoretical framework, but its existence shows real practical processes, such as house making, repair, manufacture of a thing, etc. Thereby, the mechanism of legal regulation of relationships pertaining to contracting obligations may be conceived not only as a combination of legal rules,

but also of other social regulators amongst which are the following: customs of trade, traditions, rules of morality and so on, which adjust contracting relations.

Specificity of Legal Regulation

Interpretation of the law at methodological level shall be perceived not as statics set in accordance with some concepts of rules system, but as a dynamics which presumes usage of legal tools for solving of tasks set before people (Puginsky, 1991). Dynamics in its general understanding influences the elements of legal rules structure and legal facts, because it changes or specifies the grounds for establishing of relationships under the law of obligations. In its turn, the law action may be observed as a coordinated legal mechanism and the elements of legal system which complicate or unable efficient regulation of public relations might be improved accordingly (Kolesnikov et al., 2018).

The present time, by dictating new approaches to public relations, forces to rethinking of the established views on the mechanism of legal regulation of public relations. Still, the dichotomy of law division on public and private, enlarging of the subjects of legal regulation, complication of legal regulation structure are those reasons which cause a necessity to raise efficiency of legal regulation.

Legal regulation is one of the fundamental categories of legal reality, because just by means of regulation of certain phenomena the essence and social importance of the law is revealed. Consequently, the problematic of legal regulation was constantly among the interests of lawyers-scientists. Hence, at doctrinal level there is an evident thesis stating that efficiency of legal regulation of public relations is better reached not by the means of administrative enforcement, but with help of economic indicators applied *via* legal constructions elaborated within private law (Molodyko, 2007).

The research on the category of legal regulation as one of the main categories of legal reality and the basis of the "*mechanism*" in general requires the ascertainment of their conceptual framework. It is known that the basis of legal regulation mechanism is the "*regulation*" itself, which originates from the Latin word "*regulo*"-"*rule*" which means ordering, adjusting, and aligning something in compliance with something (Busel, 2004). Then, while analyzing doctrinal notions on legal regulation as scientific structure it worth to take into consideration a legal definition. For instance, in the part 1 of the Article 1 of the Civil Code of Ukraine (hereinafter-CC of Ukraine) it is determined that civil legislation regulates a range of public relations which are called civil relations, meanwhile the Commercial Code of Ukraine (hereinafter-CmC of Ukraine) provides for normative legal regulation of commercial relations. Considering abovementioned it is worth to admit that a legislator while defining the purpose of the adopted regulations emphasizes that such acts are destined for regulation of certain phenomena however he does not specify the content of this notion.

Appealing to doctrinal definitions of legal regulation it has to be noted that legal regulation is an activity of subjects who guide and influence certain events by legal rules. Following this notion it should be emphasized that legal regulation is the adjusting of relations by law. Hence, for instance, the participants of legal relations, especially consumer and contractor are free to choose possibilities of law application. In case of realization of subjective civil law the subjects of contracting relations on the basis of principles of the freedom of

contract, bona fide, reasonableness and fairness may act at their discretion after the contracting agreement is concluded.

Legal regulation shall be efficient, because efficiency of legal regulation as Otradnova stated, lays in factual implementation of legal rules, conformity of legal relations that consist of the pattern fixed in legal rules (Otradnova, 2014). According to Alekseev, legal and individual-legal acts of competent authorities and official's necessary for regulation of certain group of public relations, for proper implementation of rules disposition or sanction, are directly engaged in legal regulation. It stands to reason to assume that relativity is the content feature of law itself, and no one still object that to the same degree it is appropriate for all other methods of legal influence, including legal consciousness, legal culture, etc. (Alekseev, 1993). Further, Yarotskyi characterizes legal regulation in private legal area as regulatory effect on non-property and property relations of the integral system of legal tools that ensures ordering of factual behavior of its participants (Yarotskyi, 2006).

The abovementioned leads to the following conclusion: legal regulation of the contracting relations is a set of legal means of state authoritative effect with help of which certain actors (customer, contractor, general contractor, subcontractor and under subcontractor) influence legal relations obligations on works performance by provision of precise contract terms in order to fix, adjust, secure and protect relations between them.

Legal regulation as any other type of social activity is also considered through the range of elements, which make a structure of such activity. For instance, according to Pohribnyi, the components of legal regulation must include object of legal regulation, subject of legal regulation and activity on legal regulation itself in unity of objective (factual) expression and internal (subjective) features (Pohribnyi, 2009). In due time Fatkullin (Fatkullin, 1987) thought that legal regulation may be carried out by the means which differ from each other, namely normative and individual legal acts. In his opinion, the legal regulation passes across two areas of legal reality penetrating completely lawmaking and partially law enforcement. At this, individual legal regulation does not expend its enforcement, as it is wider, and may be applied also in lawmaking area. Hence, the author has considered a two stage construction which provides for two types of legal regulation-common and individual. The capacity for realization of individual regulation he has seen in complicated forms of enforcement among which are collisions and gaps in law. In her turn, Kashanina suggested to refer individual legal regulation to the local and decentralized ones, due to the fact that subjects of law elaborate for themselves "*micro-rules*" which might be relevant to the situation in general or to its fragments (Kashanina, 1991). She considers the individual regulation as an element of legal regulation system and determines such its features: primarily, it derives from the own decisions taking by law subject where his/her personal will, interests and needs are expressed; secondly, free (own) decision is embedded in the rule of behavior; thirdly, as the subject of law stays in direct or indirect connections with other subjects, his/her own opinion should not contradict to the law and violate lawful interests of other persons (Kashanina, 1992). Contrary to this, Krasnoyaruzhskiy has defined legal regulation as a type of lawful activity of the law subjects performed at the stage of legal rules implementation, aimed at ordering of public relations by specification of some participants' behavior. According to him, the individual legal regulation is one of the forms of legal regulation which concludes in affecting of public relations by non-normative legal tools. Specific legal relations, which legal content really requires individual regulation at the stage of their establishing and development,

are subject to the mentioned form of legal regulation (Krasnoyaruzhskiy, 1993). The same views were supported by Cherepahin who has considered self-regulation as an expression of freedom of party's behavior in any public relations, but not as an implementation of positive legal rules which refers also to behavior of certain individuals and functioning of different law enforcement authorities (Cherepahin, 1984). Sharing his idea, we would emphasize that in the area of liability relations generally, and in contracting relations especially, individual legal regulation is the most important element of the regulatory system on obligations, because as was precisely admitted by Pohribnyi the self-regulation (individual regulation) of contractual relations is a particular subjective right of the participants of such relations, consequently it shall be covered by the provisions of civil legislation on civil rights performance fixed in chapter 2 of the CC of Ukraine (Pohribnyi, 2009).

Exercising the subjective law of self-regulation of public relations their participants shall correspondingly formulate their declaration of intent, i.e. to formalize by relevant deal their actions aimed at establishing, changing and termination of civil rights and duties (Hetman and Borysova, 2012). Thus, as Kochyn stated, in the liability relations in general and in the contracting relations in particular, the rules of civil law are of dispositive character as parties of the relations are given with possibility to choose the model of their rights and duties, except certain imperative discretions aimed at protection of public interests (Kochyn, 2015). Shaping contracting liability relations the participants create a specific regulator which may completely reproduce legislation rules or within the freedom of contracting agreement to stipulate separate local legal order. Hence, Yavorska's idea is well turned saying that parties are peculiar "*lawmakers"* for themselves (Yavorska, 2008). In our case the contracting agreement becomes a non-normative method of individual regulation of contracting relations between the customer and contractor.

According to mentioned peculiar features the individual regulation (self-regulation) of contracting relations is performed just in this way. Legally equal subjects of civil relations (contractor and customer) based on legislative pattern of legal regulation are in the position to take actions for establishing, change or termination of contracting liability relations. Mentioned relations have to correspond to legal rule totally or be set on the basis of the freedom of contract, be expressed with regard to bona fide, reasonableness and fairness and in general shall not contradict to the requirements of civil legislation.

Considering all above mentioned, we may conclude that dispositive character of civil legislation rules enables regulation of contracting liability relations by the means of individual regulation which should not contradict to normative regulation. Exactly this "*acting approach*" to the analysis of socially important behavior provides for determination of its objective and subjective elements (external expression of such activity and its internal subjective features), as well as its object-physical and social values targeted by the activity and the subject-activity performer (Kudrjavcev, 1986). Studying the application of such "*acting approach*" we are going to clarify the issue on contracting relations legal regulation mechanism.

An idea of law impact mechanism on public life was proposed by Professor Aleksandrov (Aleksandrov, 1961). Important contribution to the elaboration of this problem was made by Alekseev & Javich (Javich, 1961), Sheyndlin (Sheyndlin, 1959), Gorshenev (Gorshenev, 1972) and other scientists. In their opinion, the mechanism of legal regulation is the most general according to the action area. For instance, Aleksandrov while analyzing the regulatory law

impact on public relations has considered the "*mechanism*" as a category which mediates the cooperation of the complex of legal tools ensuring legal relations dynamics Alekseev has determined the mechanism of legal regulation as unified system of legal tools by which the effective legal influence on public relations is ensured (Alekseev, 1966). Rusinov have understood the mechanism of legal regulation as a system of legal tools with help of which the legal regulation is carried out (Rusinov, 1997).

The Mechanism of Legal Regulation

In modern doctrine of private law, the scientists perceiving adopted general notion of "*the mechanism of legal regulation*" consider it through the "*internal*" structure. So, according to Hryniak the mechanism of legal regulation shall be understood as a range of legal tools, methods and forms with help of which contracting relations are adjusted, their ideal pattern fixed in regulating rules is materialized and the contract serves as a legal fact related with establishing of rights and duties for certain participants of contracting relations (Hryniak, 2012). Yarotskyi suggests to understand the mechanism of legal regulation as a category composed from the elements which may have both objective (normative background, relationships, acts of rights and duties realization) and subjective (legal consciousness, legality regime, legal culture) character (Yarotskyi, 2013). Sarnovska admitted that currently another approach to the problematic of legal regulation mechanism may be observed, because now it is considered in dynamics (Sarnovska, 2008).

For reasons given we may conclude that the mechanism of legal regulation of civil contracting relations is an important scientific gnoseological combination of the elements ensuring regulating and defending functions of settlement, which is a specific system with its proper internal arrangement aligned according to specific logics. That is why, the mechanism of legal regulation of contracting relations is usually understood as a consecutive "*chain*" of separate legal phenomena change, particularly of the legal rule, which regulates contracting civil relations, of the legal fact regulating rights and duties of civil relationships which appeared on its background, their realization, as well as protection of violated rights and interests if necessary.

However, there are also other views on this issue. Hence, Korchevna stated that interpretation of "*legal regulation mechanism*" is focused on reasoning-mechanical word image, according to which all phenomena are caused by some reasons and assessed according to the mechanics rules (Korchevna, 2003). Abramova, using the argument that "*regulation*" indicates the features and signs of law, suggests changing of the definition "*mechanism* of legal regulation" for the "*mechanism of regulation by law*" (Abramova, 2005). Instead, by refusing to accept determining of "*mechanism*" *via* "*process*" Korchak states that for comprehensive understanding of the "*mechanism*" it is necessary to apply another notion-the "*legal regulation mechanism*". In her opinion, exactly this interpretation would facilitate strengthening of humanistic approach to normative regulation as a form of state regulation in particular and economic humanism in general, according to which the importance of state and society grows not only as per affirmation and exercising of the subjective rights, but also as regards the rights effective guaranteeing and realization. The author is convinced that in contrast to generally accepted notion the "*mechanism of legal regulation*" from the theoretical point of view the construction of the notion "*legal mechanism of regulation*" abolishes competition between its elements and at the same time leads to their cooperation, because "*legal mechanism*" is a legal

instrument for norms and rules embodiment into public life. Adjusting of public relations by norms and rules composes a content of the notion "*regulation*". At this approach the main emphasis is shifted from the definition "*legal regulation*" to the term "*legal mechanism*" as a system of legal tools and factors (instruments) through which a real embodiment of legal rules instructions occurs (Korchak, 2014; Kostruba, 2017).

The abovementioned demonstrates the absence of unique approach to the interpretation of the "*mechanism of legal regulation*" and its components (elements). Thus, proposed by scientists various definitions of the "*mechanism of legal regulation*" is purely a substitution, game with legal notions which does not change the key essence of legal regulation mechanism. In general it is worth mentioning that regulation of civil relations, including contracting ones, is performed through the influence of civil legal rules on them for their adjusting according to objectively justified and approbated ideal patterns. That is why in the mechanism of legal regulation the purpose is general, which provides for free exercise of subjective rights and protected by law interests in private area, solid defending and unified settlement of separate types of civil legal relations, among which are the contracting.

There is a general idea existing in law doctrine saying that the efficiency of legal regulation of public relations is better reached not by administrative legal constraint, but by economic factors implemented through the legal constructions elaborated within the private law (Molodyko, 2007). Not only the legal regulation covers the process of direct determination of people's behavior by law, but also it includes a preliminary stage of public relations legal regulation (Tsvik and Petryshyn, 2011). In our opinion, taking into account that the method of legal regulation is described by both imperative and dispositive features in contracting liability relations almost in all branches of law, the mechanism of legal regulation should be defined with regard to dispositivity. Still, we do not exclude that contracting relations are regulated at the imperative level as well. The wider is the circle of interests (personal, collective) influenced directly or indirectly by contracting agreement, the greater the degree of normative regulation shall be. Along with this, an excessive regulation, especially at normative level, will not facilitate the development of such relations. At the end, the majority of civil legislation norms are of dispositive character, which at the end results in increasing of individual (contractual) regulation volume (Hryniak, 2013).

Hereby, considering the above mentioned the following main features of contracting relations legal regulation mechanism may be defined:

1. The legal mechanism is always a complex (system) of legal tools, methods, forms and its structure includes the range of normative and implementing legal tools in contracting obligations.
2. The legal mechanism exists for achievement of certain legal goal in contracting relations.
3. Legal mechanism is not simply a combination, but a system of mutually agreed means of contracting obligations.
4. Legal mechanism action is performed depending on target program, "*scheme*" or "*algorithm*" which foresees certain accuracy in liability contracting relations execution.

With regard to all above indicated we may arrive to the conclusion that the mechanism of legal regulation of civil contracting obligations is not only formal, artificial phenomenon or just a scientific theoretical construction, its existence reflects real processes occurred in practice, such as building of a house, repair works, manufacturing of a thing, etc. Consequently, the mechanism of legal regulation is understood not only as a set of legal rules, but also other social regulators,

among which are the customs of trade, traditions, rules of morality, which adjust contracting relations.

However, this model of legal regulation mechanism seems incomplete, because the establishing of contracting obligations will take place due to the legal facts. Exactly the latter will determine the model of contracting obligation which covers also the set of tools (subjective civil rights and legal duties), methods (obligation, permissions, prohibitions) and forms (due, in time performance) which are interacted and interconnected.

The Theory of Legal Facts

The theory of legal facts is not new for jurisprudence, yet in Ancient Rome a few grounds for legal relations appearance have been distinguished. In the Institutes of Gaius, there were four of them: a contract, a quasi-contract, a delict, a quasi-delict. Later, they began to allocate a one-way agreement. However they did not succeed in articulation of common interpretation of the legal fact (Atanelishvili and Silagadze, 2018). German lawyer Manigk stated that exactly Savinii, while rethinking the Roman law and its systematic formulation, for the first time has noticed that the events which cause establishing or termination of legal relations should be called as legal facts (Manigk, 1928).

Further interpretation of the legal fact was developed in comply with formal-dogmatic jurisprudence under strong influence of legal positivism, particularly, on the basis of the works of Dernburg, Zom, Puht, Ton, Tsitelman, Ennektserus and others.

The legal facts, Baron has defined as various circumstances which lead to certain legal result, establishing, conversion, termination, preservation or change of a right (Baron, 1909). Krasavchikov in its research "*Legal facts in the Soviet civil law*" has considered legal facts as the facts of reality, objective facts, and phenomena existing irrespectively to our consciousness. The scientist emphasized that objectively existing legal facts by their nature and content may constitute the products of people's consciousness activity, namely-the legal actions. According to this statement, "*the legal fact is the fact of reality, which is related by current law rules with establishing, change or termination of civil relations*" (Krasavchikov, 1958). Professor Halfina speaking about legal facts stressed that the legal fact shall be considered only as a circumstance with which the law norm relates legal relations dynamics (Halfina, 1974). In her turn, professor Romovska noticed that legal facts are the grounds not only for civil rights and duties. The scientists stated that legal fact is a definition which not only refers to establishing, but also to change and termination of rights and duties (Romovska, 2013).

At analysis of the presented theoretical background, it is worth to notice that legal science has elaborated in its time the theory of legal facts according to the level of legal culture development and needs of the Soviet legal system. Instead, the modern doctrine of civil law considers the legal facts, as components of legal being involved in complicated net of social relations determined by economic, political, social factors, i.e. are not exclusively the legal category, but social too. Therefore, currently it seems justified the interpretation of the legal fact as a specific life circumstance which is related by civil law norms with inception of legal consequences and, primarily, with establishing, change and termination of civil relations (Dzera et al., 2010).

According to Alekseev, the legal facts as original sources of law shall be perceived as information mass of being. Based on this the author has distinguished the facts as normative,

constituting the norms and normatively apathetic facts. The first ones are the original source of positive law. They serve as a reason for creation of unlimited quantity of norms, their interpretation, analogous application at discretion, which in total determine the changes of positive law creating the objective law. There are secondary sources of law within the objective law-conditional circumstances based on normative facts able to establish rights and duties, give rise to subjective law (Alekseev, 1999). There are also other thoughts on this matter. Therefore, Bevzenko stated that it is necessary to exclude from the notion of legal fact the indication on legal relations as compulsory legal consequence caused by legal fact existence. The fact itself does not cause legal consequences, but it is possible only in connection with legal rule (Bevzenko, 2009). Agreeing in general with presented opinion we will add that not only the legal rule may influence the formation of legal fact, which serves as a background for establishing of liability relations in general and of the contracting relations in particular. Its formation may be influenced also by rules of morality, traditions, customs, public moral fundamentals, customs of trade, etc.

If you look at the design of legal regulation mechanism where all its elements follow one after another, it may be noted that the legal facts are indicated in the legal rules in statics (legal model). Since that, the legal rule has a statically general nature, its task lays in basic informational function and to launch the operation of fixed by authority information the certain conditions of active concretizing nature which will serve for achieving of legal regulations goals in a specific social-legal case are required. Consequently, we propose to complement these conditions by social phenomena of objective reality, which have a dynamic nature and are quite often observed in the actions of public relations participants.

Hereby, considering the above mentioned we may arrive to the conclusion that inclusion of the "*legal fact*" notion to the "*body*" of the legal rule (part 2 article 11 of the CC of Ukraine) results in the committed position of a legislator on agreeing with constant theoretic position on legal facts as reasons for establishment of contracting civil rights and duties. Interconnection of subjective rights and duties and legal facts lays in compulsory presence of the latter, because for determination of availability of certain right it is primarily identified whether the legal fact, which caused this right, has occurred.

Taking into consideration that legal facts are the phenomena of reality objectively existing without regard to person's treatment, we have to stress that there are no legal facts of the future, which means that legal facts must exist already at the moment of their analysis or occurred in past. Moreover, as Otradnova emphasized, that each specific legal fact must be precisely described (Otradnova, 2014). Having agreed with such opinion, we observe that nowadays the efficiency of the mechanism of legal regulation in general and of contracting relations especially depend mainly from the existence of social relations, because the common source of the legal facts is social reality. As Kostruba opportunely noticed, the reforms taking place in society also influence the subject of legal regulation and legal facts. Some relations and life circumstances disappear from life, another, contrary, arisen, ripen, got more complete legal determination (Kostruba, 2014). So, considering that the "*fact*" means a "*real action or real, not imagined event, real phenomenon; something which has happened, occurred in reality*" (Yaremenko and Slipushko, 2003), the legal fact shall be studied more by science.

The theory of legal facts is directly related with solution of practical tasks of jurisprudence, as far as law enforcement authority shall identify all important legal facts for

resolution of a case and, especially, to qualify them correctly. Wrong legal evaluation of the facts result in mistreated legal meaning of some circumstances and arrogation of improper features for another circumstances. Consequently, Isakov stated that ability to "*work*" with facts is a legally factual culture which is the necessary element of common legal culture (Isakov, 1984).

Taking into account the abovementioned, we draw attention to the formation of legal fact, which certainly has an important value. Hence, for establishment of contracting relations first of all the parties shall conclude the contracting agreement complying with all legal preconditions determined by civil legislation. So, according to the article 203 of the CC of Ukraine, the content of civil action cannot contradict to the CC of Ukraine and other civil legislation as well as to the interests of state and society, its moral fundamentals; a person of the civil action shall possess the necessary volume of civil legal capacity; the will of a civil action participant shall be free and correspond to his internal wish; a civil action shall be concluded in the form prescribed by law; a civil action shall be aimed at real legal consequences determined by such; a civil action that is conducted by parents (adopters) may not contradict to the rights and interests of their minor, juvenile or incapable for work children.

Therefore, at the conclusion of contracting agreement the parties shall abide the provisions of article 638 of the CC of Ukraine: a) agreement is concluded if parties in the proper form have reached a consensus on all essential provisions of the agreement. The essential provisions of the agreement are the subject of agreement, provisions determined by law as essential or necessary for this type of agreements, as well as all those provisions which shall be agreed by parties upon the demand of at least one party; b) the agreement is concluded by offer of one party to conclude the agreement (offer) and acceptance of the proposition (accept) by another party.

Hereby, the civil contracting obligations appeared due to the agreement or civil action shall correspond to general requirements foreseen in art. 203 of the CC of Ukraine, as well the parties may determine other preconditions that upon parties' consent are compulsory for establishing of contracting obligations.

It is known that for establishing of contracting liability relations at least one legal fact of constitutive importance is needed. Till the occurrence of such legal fact there is only a legal rule available which contains unimplemented model of behavior. Considering this, we presume that, on the one hand, the legal rule creates preconditions for establishing of legal relations and, on the other hand, it fills them with content, particularly by such elements as rights and duties of legal relations participants and lays down the preconditions of such active elements as law enforcement acts. If certain subjects refuse to abide the mode of behavior stipulated by legal rule, than they fall under influence of state enforcement mechanism, which is additional guarantee and way of ensuring the proper functioning of legal regulation mechanism of civil obligations in general and of the contracting obligations in particular.

Based on the presented material we arrive to the conclusion that legal facts in contracting civil obligations shall be considered as action or counteraction, which reflects social-individual, particular and really existing circumstances stipulated not only by law, but also by other social regulators (customs, civil action, business practice, etc.).

As known, the grounds for establishing, termination and change of legal relations (or "*legal facts*") are the circumstances of real life with which legal rules relate establishing, change or termination of legal relations (Kopeichykov, 1998). Following this definition, it is clear that

the notion of legal fact itself combines two indissolubly related factors: material and legal. On the one hand, this is a reality phenomenon-an event or an action. It is meant the material, or precisely "*real*" fact. On the other hand, this is a real fact foreseen by legal rule, other social regulators that generate the corresponding legal consequences, that is why it cannot be simply the "*reality fact*", but it is considered as legal fact. Agreeing with the opinion of Zhornokyi we may state that legal facts are characterized by two factors: presence of external word phenomena (life circumstances) and their recognition by state as legal facts. The same facts may be legal or not, it depends from the state opinion in certain period (Zhornokyi, 2015). So, the contracting relations will appear on the basis of such legal fact as contracting agreement. On the one part, being an action it (contracting agreement) will occupy the phenomenon reality niche, and on the other part, the consent on its conclusion will be treated as a real fact foreseen by civil legislation, other social regulators that cause legal consequences, that is why the contracting agreement will be the legal fact.

In legal literature, it is stated that there are life circumstances referred to legal facts (Kudrjavcev, 1986), which are foreseen by legal rules and "*work*" for law and its mechanisms (Alekseev, 2008). As result, the legal facts are only the fragments of the reality surrounding us, which lay within legal area and consequently embodied in material legal phenomena (Isakov, 1984). Taking into attention that the embodiment of legal rule in life is performed through the mechanism of legal regulation one of which elements is a legal fact, the opinion of Slipchenko seems proper stating that not only the legal facts determine the moment of personal non-property relations start, but also they provide for the types of such dynamic processes (Slipchenko, 2013). Supporting presented idea of the author, in its turn, we cannot agree with the thought that legal facts is a passive element of legal regulation mechanism (Marchenko, 1998), as far as exactly legal facts introduce the mechanism of legal regulation in action. For instance, for "*operation*" of legal regulation mechanism of contracting relations exactly the contracting agreement as legal fact will serve as a basis for their establishment, change or termination.

Hence, considering the abovementioned we may conclude that transformation of law from the area of due into existence area starts exactly from the legal fact. Since contracting agreement is concluded the implementation of subjective rights and duties of customer and contractor at the contracting liability relations is carried out. At this, the legal importance will be appropriate for both constructions of legal facts: those which are directly stipulated by certain law provision and/or other social regulators, and those which are not provided by certain rule, but have an indirect regulation and applied based on analogy of law or statute, as well as customs of trade, moral fundamentals of society, etc.

Taking into consideration that legal fact construction is, usually, indicated in the hypothesis of legal rule under condition "*if*", we presume that life circumstances personalizing civil obligations in general and of the contracting ones in particular, must be articulated exclusively in the hypothesis of the legal rule (Pleniuk, 2016). At that, legal construction of legal facts articulated in hypothesis shall be defined in the following ways:

1. In case of undetermined category identification, for example, "*in case of insufficient sum of the effected payment for execution of financial obligation in full this sum satisfies claims of a creditor in the following sequence if otherwise provided by the agreement*" (p. 1 art. 534 of the CC of Ukraine).
2. In case of blanket rule application, for instance, the parties are free in the conclusion of agreement, choose of contractor and determination of agreement's provisions in comply with this Code, other acts of civil legislation, customs of trade, common sense and fairness requirements (p. 1 art. 627 of the CC of Ukraine).

3. A certain list of conditions (grounds) is used, especially exhaustive and non-exhaustive lists, for instance, when obligations originate from the grounds provided by art. 11 of the CC of Ukraine (p. 2 art. 509 of the CC of Ukraine).

According to p.2 art.11 the grounds for civil rights and duties are the following: contracts and other civil actions; creation of literary, art works, inventions and other results of intellectual and creative activity; causing of property (material) and moral damage to another person; other legal facts. Following this, it may be stated that normative fixation of legal facts is a feature of legal facts in civil relations in general and legal construction of legal facts at civil contracting obligations in particular. The contracting relations are regulated at both individual level and normative level. In case of subjective civil right execution the subjects of contracting relations may act at their discretion based on the principle of freedom of contract, but when the legal obligation or prohibition is executed they are significantly limited in behavior option, because the legal rule contains a sanction which stimulates the implementation of orders. As every impetus, this sanction may and shall be both positive and negative. It may contain the threatening punishment or promising encouragement. The threatening punishment may be considered on the example of p.2 art. 849 of the CC of Ukraine according to which the contractor who was late with works start or who performs it very slow may be threatened by such sanctions as customer refuse from agreement and the right for compensation of related incurred expenditures. The article 845 of the CC of Ukraine may be used for demonstration of contractor's encouragement which carries out the motivation function, specifically, the gaining of bigger financial reward which is foreseen by the agreement in case of thrifty works performance. That is why, the civil law norm set forth the legal construction of a legal fact, but not the concrete legal fact. If the direct indication on legal fact in legal rule is absent, then other legal facts, which do not contradict to general fundamentals of civil legislation or applied on the basis of analogy, are allowed. Thereby, we conclude that such features as normativity and materiality in civil legislation are considered as two tightly related features of the legal facts. In case of their split or mismatching the legal rule will be "*out of order*" or even "*dead*" at all.

The last point ought to be emphasized is that legal facts trigger the overall mechanism of legal regulation of contracting relations. Consequently, in legal literature it is opportunely stressed on reliability of legal facts. The reliability of legal facts reflects, on the one hand, the permanent connection between fact and social situation, and, on the other hand, the stability of social content. Unstable, prone to internal change conditions, as a rule, shall not be used as legal facts. The legal fact should be capable for adaptation to the changes in society and legislation, because the absolutely unchanged factual circumstances do not exist.

CONCLUSIONS

All stated above give the grounds for the following conclusions:

1. The mechanism of legal regulation of contracting relations is a scientific gnoseological combination of elements which are constructed according to a specific chain sequence by which the regulative and protection functions of these relations are ensured.
2. The mechanism of legal regulation of contracting relations is a set of legal tools, methods and forms with the help of which the contracting relations are adjusted, their ideal pattern included in regulating rules is materialized. In its turn, the contracting agreement serve as a legal fact related with establishing of specific rights and duties for the participants of contracting relations.

3. Regulation of civil relations, including contracting relations, is carried out through the impact of civil law rules on them in order to adjust such relations according to objectively justified and approbated ideal patterns of contractual obligations.
4. Describing the mechanism of legal regulation of contracting relations the following features were determined:
    1. The legal mechanism is always a complex (system) of legal tools, methods and forms, and its structure includes the whole range of normative and law enforcement legal means at contracting obligations.
    2. The legal mechanism exists for achievement of certain legal goal of contracting relations;
    3. The legal mechanism is not simply a complex, but a system of mutually consistent tools of contracting obligations.
    4. The legal mechanism functions depending on the given program, original "*scheme*" or "*algorithm*" which provides for certain accuracy at performance of contracting obligations.
5. The mechanism of legal regulation of civil law contracting obligations is not only formal and artificial phenomenon or exclusively scientific-theoretical framework, but its existence shows real practical processes, such as house making, repair, manufacture of a thing, etc. Consequently, the mechanism of legal regulation of relationships pertaining to contracting obligations may be conceived not only as a combination of legal rules, but also of other social regulators amongst which are the following: customs of trade, traditions, rules of morality and so on, which adjust contracting relations.
6. The legal facts are of significant importance in the mechanism of legal regulation of contracting relations, as the transformation of law from the area of due into existence area begins exactly from the legal fact. In contracting liability relations the exercise of customers and contractor's rights and duties will be launched since the contracting agreement is concluded. At this, the legal importance will be appropriate for both constructions of legal facts: those which are directly stipulated by certain law provision and/or other social regulators, and those which are not provided by certain rule, but have an indirect regulation and applied based on analogy of law and statute.

REFERENCES

Abramova, A.A. (2005). *Efficiency of the mechanism of legal regulation.* Barnaul: Publishing House of Altay State University.

Aleksandrov, M.G. (1961). *Law and legality in the period of the full-scale development of communism*. Moscow: Gosyurizdat.

Alekseev, N.N. (1999). *Fundamentals of philosophy of law*. St. Petersburg: Lan.

Alekseev, S.S. (1966). *The mechanism of legal regulation in a socialist state*. Moscow: Yuridicheskaya literatura.

Alekseev, S.S. (1993). *Theory of law*. Moscow: Bek.

Alekseev, S.S. (2008). *General theory of law.* Moscow: Velbi, Prospekt.

Atanelishvili, T., & Silagadze, A. (2018). Formation of economic views in the ancient era. *Bulletin of the Georgian National Academy of Sciences, 2*(1), 191-196.

Baron, J. (1909). *The system of Roman civil law.* St. Petersburg: Knizhnyy magazin N.K. Martynova.

Bevzenko, R.S. (2009). *The theory of legal facts*. *Civil law: Actual problems of theory and practice*. Moscow: Izdatelstvo Yurayt.

Busel, V.T. (2004). *Great explanatory dictionary of modern Ukrainian language*. Irpin: VTF Perun.

Cherepahin, A.M. (1984). Contract form in relations on economic management. *Soviet State and Law, 1*(1), 47-59.

Dzera, O.V., Kuznietsova, N.S., & Maidanyk, R.A. (2010). *Civil law of Ukraine.* Kyiv: Yurinkom Inter.

Fatkullin, F.N. (1987). *Problems of the theory of state and law: A course of lectures*. Kazan: Publishing House of Kazan Federal University.

Gorshenev, V.M. (1972). *Methods and organizational forms of legal regulation in a socialist society*. Moscow: Yuridicheskaya literatura.

Hetman, A.P., & Borysova, V.I. (2012). *Contract as a universal legal structure*. Kharkiv: Pravo.

Hryniak, A.B. (2012). Structure of the mechanism of legal regulation of contractual relations. *Bulletin of the Academy of Advocacy of Ukraine, 2*(1), 89-95.

Hryniak, A.B. (2013). *Theoretical principles of legal regulation of subordinate obligations in civil law of Ukraine*. Kyiv: Research Institute of Private Law and Entrepreneurship of National Academy of Legal Sciences of Ukraine.

Halfina, R.O. (1974). *The general teaching about the legal relationship*. Moscow: Yuridicheskaya literatura.

Isakov, V.B. (1984). *Legal facts in Soviet law*. Moscow: Yuridicheskaya literatura.

Javich, S. (1961). *Problems of the legal regulation of Soviet public relations*. Moscow: Gosyurizdat.

Kashanina, T.V. (1991). Correlation of centralized and decentralized legal regulation. *Jurisprudence,* 4(1), 55-79.

Kashanina, T.V. (1992). Individual regulation in the legal sphere. *Soviet State and Law, 1*(1), 123-130.

Kochyn, V.V. (2015). *Civil-legal relations of participation of business entities in self-regulatory organizations.* Kyiv: Research Institute of Private Law and Entrepreneurship of National Academy of Legal Sciences of Ukraine.

Kolesnikov, Y.A., Pavlyuk, A.V., Radachinsky, Y.N., & Rodionova, N.D. (2018). Problems of implementation of public-private partnership in Russia. *European Research Studies Journal*, *21*(1), 187-197.

Kopeichykov, V.V. (1998). *General theory of state and law: tutorial*. Kyiv: Yurinkom Inter.

Korchak, N.M. (2014). *State regulation of competition relations in Ukraine (economic-legal aspect)*. Kyiv: Natsional Prosecution Akademy of Ukraine.

Korchevna, L.O. (2003). To the critique of the notion of mechanism of legal regulation. *Law of Ukraine, 1*(1), 116-120.

Kostruba, A.V. (2017). Occurrence of resolutive condition of a deed as a juridical fact in civil law of Ukraine. *Journal of Advanced Research in Law and Economics, 8*(3), 857-864.

Kostruba, A.V. (2014). *Legal facts in the law-enforcement mechanism of civil relations*. Kyiv: In Yure.

Krasavchikov, O.A. (1958). *Legal facts in Soviet civil law.* Moscow: Yuridicheskaya literatura.

Krasnoyaruzhskiy, S.G. (1993). Individual legal regulation: The general theoretical aspect. *State and Law, 7*(1), 133-134.

Kudrjavcev, V.N. (1986). *Law, action & responsibility*. Moscow: Nauka.

Manigk, A. (1928). *Facts, law. Dictionary of law*. Berlin, Leipzig: Verlag.

Marchenko, M.N. (1998). *General theory of state and law*. Moscow: Zerkalo.

Molodyko, K.Y. (2007). Features of civil legal guarantees, providing public-legal guarantees. *Private Law and Entrepreneurship, 6*(1), 54-64.

Otradnova, O.O. (2014). *The problem of improving the mechanism of civil-law regulation of tort liability*. Kyiv: Yurinkom Inter.

Pleniuk, M.D. (2016). *Grounds for the emergence of binding legal relations in the mechanism of legal regulation.* Kyiv: Research Institute of Private Law and Entrepreneurship of National Academy of Legal Sciences of Ukraine.

Pohribnyi, S.O. (2009). *Mechanism and principles of regulation of contractual relations in civil law of Ukraine*. Kyiv: Pravova yednist.

Puginsky, B.I. (1991). *Legal economics: Problems of formation*. Moscow: Yuridicheskaya literatura.

Romovska, Z.V. (2013). *Ukrainian civil law. General part.* Kyiv: VD Dakor.

Rusinov, R.K. (1997). Legal awareness and legal culture. *Theory of state and law: A textbook for law universities and faculties.* Moscow: Nauka.

Sarnovska, S.O. (2008). Fundamental principles of the legal regulation mechanism. *Law Bulletin Aerospace and Space Law, 3*(1), 53-57.

Sheyndlin, B.V. (1959). *The essence of Soviet law*. Leningrad: Publishing House of Leningrad University.

Slipchenko, S.O. (2013). Law-creating legal facts in the mechanism of legal regulation of personal non-property relations. *Journal of the National Academy of Legal Sciences of Ukraine, 3*(1), 195-203.

Tsvik, M.V., & Petryshyn, O.V. (2011). *General theory of state and law: A textbook for law students of higher education.* Kharkiv: Pravo.

Yaremenko, V., & Slipushko, O. (2003). *New explanatory dictionary of Ukrainian: In three volumes.* Kyiv: Akonit.

Yarotskyi, V.L. (2006). *Securities in the mechanism of legal regulation of property relations (based on the instrumental concept)*. Kharkiv: Pravo.

Yarotskyi, V.L. (2013). *Private law mechanisms for the implementation and protection of subjective rights of individuals and legal entities*. Kharkiv: Yurait.

Yavorska, O.S. (2008). Contractual law as a regulator of civil relations. *Socio-Economic Problems of the Modern Period of Ukraine, 6*(74), 152-156.
Zhornokyi, Y.M. (2015). *Corporate conflicts in joint-stock companies: civil-law aspect*. Kharkiv: Pravo.

This article was originally published in a Special Issue 1, entitled: **"Legal and Regulatory Implications of Ukrainian Scholars",** Edited by Prof. Anatoliy V. Kostruba & Dr. Qazi Muhammad Adnan Hye.