BASES FOR EXEMPTION FROM PROOF IN CIVIL PROCEDURE

Sergey Meghryan[1]

Some facts which have certain significance for the examination of the case and for its solution with the direct indication of law are not included in the subject of proof, are not examined during the trial and cannot be denied. Those facts are considered as truth which has no need to be proved.

The grounds for exemption from proving are envisaged in the Article 52 of the Civil Procedure Code titled as "Grounds for being exempt from proving". There are two types of circumstances envisaged by law, which do not need to be proved:

1) notorious circumstances (from Latin term "factum notorium" which means a well-known fact if translated),

2) prejudicial facts (from Latin term "praejudicium" which means pre-determined, preceding judgment).

Notorious circumstances: Though the law does not directly mention about it (while it must have mentioned), taking into account the circumstance that the subject of proving is determined by the court, it can be concluded that the right to recognize this or that circumstance as notorious, belongs to the court. The person who participates in the case is entitled to object both the existence and the notoriety of the fact presenting his or her position regarding it; however, in any case, the matter[2] of the fact's notoriety determines the court.

The Civil Procedure Code does not define the criteria of the notoriety which, in our opinion, creates legal uncertainty and can be

[1] Candidate of Legal Sciences, Head of the Chair of Civil Procedure of the Yerevan State University. E-mail: meghryan@ysu.am.

[2] Fursov D.A., Kharlamova I.V. Theory of Justice. Part 2: Civil Litigation as a Form of Justic. Moscow, 2009, p. 343. [Теория правосудия. В 3-х томах. **Фурсов Д.А., Харламова И.В.,** Т. 2: Гражданское судопроизводство как форма отправления правосудия. – М.: «Статут», 2009, page 343].

a reason for controversy in practice. We believe that it would be appropriate to determine by law that the facts can be recognized by court as notorious and not be included in the subject of proving only in case of the existence of the following three criteria:

a) it is well-known to the court which examines the case,

b) by the inner conviction of the court, it is well-known or should be well-known for a wide scope of people (for the majority of the population of Armenia or the judicial territory), including the persons who participate in the case, and

c) credible information about those facts can be received from public sources (from encyclopedias, official publications, periodicals, etc.).

If the mentioned criteria exist at the same time, any circumstance which can have significance for the solution of the case, can be recognized as notorious. While recognizing the fact as notorious, in essence, the court relies on[3] the experience of justice.

According to L. E. Vladimirov's opinion, this or that circumstance can be recognized as notorious if it has been recognized so by[4] all the persons participating in the case. Such position does not seem justified. As the person participating in the case can object the notoriety of the fact so as not to lose the case, with the intent of delaying the procedure or for other motives. Hence, in our opinion, the application of the above mentioned criteria should be considered enough. Furthermore, in certain cases, admitting the fact is also a basis for not including it in what needs to be proved, but it does not make the fact notorious.

A suggestion concerning the recognition of this or that fact as notorious which has significance for resolving the case can be done also by the persons who participate in the case; however, the right to make the definitive conclusion about the issue belongs to the court.

---

[3] Baulin O.V. The Burden of Proof in Civil Litigation. Ph.D. Dissertation – Moscow, 2005, P. 115. [**Баулин О.В.,** Бремя доказывания при разбирательстве гражданских дел. Дисс. докт. юрид. наук. - М., 2005, page 115].

[4] Vladimirov L.E. Theory of Evidence. Tula, 2000, P. 178. [**Владимиров Л.Е.,** Учение о доказательствах. – Тула, 2000, page 178].

Whereas, during the trial preparation of the case or the trial, the court is obliged to let the parties know about the recognition of this or that fact as notorious at the moment of sharing the obligation of proving, respectively making notes in the registry[5] which is conducted during the preliminary court session or case proceedings.

If the court recognizes as notorious this or that fact which has significance for the solution of the case, its position about it should be reflected also in the judgment. Moreover, the conclusion of the court about the fact being notorious in the jurisdiction can be made without adverting any proof, if the circumstance of its notoriety is known to the court.

Prejudicial facts: In procedural science, these facts are also called "prejudicals", "prejudicial facts", "pre-determined facts" or facts which are confirmed by court judgments which entered into force.

Articles 52(2) and 52(3) of the Civil Procedure Code release the case participants from the obligation of repeatedly proving the previously determined facts.

In particular, Article 52(2) of the Civil Procedure Code defines that circumstances that have been previously examined and confirmed upon an enforced civil judgment under a civil case shall not be proved again, and according to Article 52(3) a criminal judgment entered into force shall be mandatory for the court only in respect of facts which confirm certain actions and persons having committed them.

Thus the legislator stipulates that the judicial acts of the court of first instance of general jurisdiction which solve the case on merits have such feature which is called prejudice (prejudicial nature). The latter is, in essence, conditioned by the definitive nature[6] of the

---

[5] Baulin O.V. The Burden of Proof in Civil Litigation. Ph.D. Dissertation – Moscow, 2005, P. 116. [Баулин О.В., Бремя доказывания при разбирательстве гражданских дел. Дисс. докт. юрид. наук. - М., 2005, С.116].

[6] Meghryan S. G. The Legal Acts of the First Instance Court in Civil Case, Yerevan, 2010, P. 158. [Մեղրյան Ս. Գ., Առաջին ատյանի դատարանի քաղաքացիական գործերով դատական ակտերը, Երևան, ԵՊՀ հրատ., 2010, էջ 158].

respective judicial acts.

For the persons who participate in the case, the prejudiciality means a release of the obligation of proving in certain limits, as well as a prohibition of denying the repeated or such other circumstances in further procedures, and for the court it supposes an obligation of introducing such circumstance in the judicial act which is being made.

So, the law actually prohibits the persons participating in the case and their legal successors to object the facts confirmed by the judgments which entered into force within the framework of other proceedings. The court which examines the case, in its turn, by the force of prejudice, deprives of the possibility to doubt some facts which were pre-determined, as well as to study the proofs which confirm or deny them. In other words, the prejudice of a judgement which entered into force is that the facts, which were formed in the judgment and confirmed by the court after the judicial act solving the case on merits entered into force, cannot be doubted or be repeatedly studied with the participation of the same persons at the examination of other cases.

The reciprocal obligatoriness is explained by the following: examining a civil case with the participation of the same persons, thoroughly studies all the evidence and makes a judgment corresponding to the reality identified in the court. And when the judgment comes into force, the facts, acts and legal relationships confirmed by it do not bring doubt[7] any more.

The reciprocal obligatoriness of judgments is the result of the thing that the same legal fact can evoke different material and legal consequences, different legal relationships at the same time, which can become subjects of a trial in different times, by different factors, in different judicial instances and in order to not confirm the same fact every time, the fact confirmed by the judgment of the first case

[7] Petrosyan R. G. Civil Procedure of Armneia, 3-rd edition, Yerevan, 2007, P. 355. [Պետրոսյան Ռ.Գ., Հայաստանի քաղաքացիական դատավարություն, 3-րդ հրատ., Երևան, Երևանի համալս. հրատ., 2007, էջ 355].

is considered as obligatory also for the other cases[8].

D. A. Fursov has a justified opinion according to which the reinforcement of the prejudicial links of judicial acts by law is implemented for the purpose of simplifying the proccess of proving, taking into account the circumstance that the legal facts and composition of facts had already been the subject of the case examination of the same persons who had the possibility to express their doubts, arguments and their position.[9]

The prejudice is of great significance from the perspective of preventing the problem of procedural frugality, the insurmountable contradictions among the legal acts and the problem of legal acts' competition. Due to that feature of the judgment which entered into force, in practice the different, contradictory assessment of the same facts is excluded, which can create legal uncertainty, become the reason for the fall of judiciary power's rating and be considered as a violation of the principle of supremacy of law[10]. The prejudice of the judicial act of first instance court of general jurisdiction has objective and subjective limits.

The objective limits are all the circumstances mentioned in the descriptive part of the judgment which entered into force, the ones which the court considered as confirmed and proved in the result of the case examination on merits and the evidence assessment as well as the circumstances of some actions and their realization by a certain person (persons) confirmed by a judgment which entered into force. Moreover, prejudicial significance can have both positive (confirming) and negative (denying) circumstances[11].

---

[8] Ibid.

[9] Theory of State. Part 2, P. 328. [Теория правосудия. Т. 2, С. 328].

[10] Zagaynova S.K. Judicial Acts in Civil and Arbitral Process: Theoretical and Practical Problems. Ph.D. Dissertation, Yekaterinburg, 2008, P. 386. [Загайнова С.К., Судебные акты в гражданском и арбитражном процессе: теоретические и прикладные проблемы. Дисс… д.ю.н., Екатеринбург, 2008, С. 386].

[11] Fursov D.A., Kharlamova I.V. Theory of Justice. Part 2: Civil Litigation as a Form of Justic. Moscow, 2009, P. 326. [Теория правосудия. В 3-х томах. **Фурсов Д.А., Харламова И.В.,** Т. 2: Гражданское судопроизводство как форма отправления правосудия. – М.: «Статут», 2009, page 326]. An example of a negative circumstance: the absence of the guilt or the fact of commission of crime, as confirmed by a judgment.

It is noteworthy that Article 52 of the Civil Procedure Code mentions only the prejudice of circumstances, the ones which are confirmed by enforced judicial acts made exclusively in civil and criminal cases. Previously examined circumstances in administrative cases with the participation of the same persons within the framework of a civil case have not been evaluated by the legislator in any way. This circumstance may perhaps be considered as a considerable omission.

As a comparison, let us mention that Article 27(2) of the old Administrative Procedure Code defines that the facts, which have been established by a court judgment having entered into force on a previously examined civil or administrative case do not need to be proved again when examining another case with the participation of the same parties. It is obvious that the circumstances established by the judgment of the administrative court also must have a prejudicial significance for the civil case where the participating persons are the same.

While referring to the matter of objective limits of the legal acts' prejudice (prejudicial link), the RA Cassation Court in one of its decisions attached importance to two circumstances, referring to which is extremely appropriate.

First: the circumstances established by the judgment while examining another case with the participation of the same persons cannot have judicial significance for the court, if those circumstances in the previously examined civil case were established without respecting the procedural rules, through a gross violation of the rules of collecting, studying and assessing the evidence.

Second: the circumstances established by the judgment of the examination of a civil case which came into a legal force while examining another case with the participation of the same persons cannot have judicial significance for the court also in cases when they were not relevant to the subject of the previously examined civil case's claim, they should not have been included in the range of the circumstances subject to be confirmed and must have been included in the subject of proving. While deciding upon the prejudice of the

circumstances the Cassation Court, with its judgement, in fact, gave importance also to the question of the correct identification of the circumstances which are significant for the litigation and are subject of proving. According to the Cassation Court, the objective limits of the prejudice are determined by the framework of circumstances which are to be confirmed by a judicial act having entered into force, hence the arbitrary extension of the limits of the subject of proving leads to the exclusion of the prejudice of some circumstances confirmed by a legal act made within the case[12].

While talking about the objective limits of prejudice, it has to be taken into account that a prejudicial significance can have the factual circumstances confirmed by a legal act and not the evidence which confirm them.

Prejudicial significance cannot belong also to the legal position of the court which examined the case about the interpretation of the law. In this regard, the RA Cassation Court, in one of its decisions, mentioned that the legal position cannot be considered as prejudicial, though the court is authorized to make some conclusions on the basis of its own apprehension of law. According to the Cassation Court, in this case prejudicial can be considered the confirmed circumstance, but not the legal position[13] of the court. The prejudicial facts which are confirmed by a judicial act should be distinguished also from the facts confirmed by an act of administrative and other bodies (prosecution, preliminary investigation body, police, arbitration, etc.). The procedural law does not release the case participants from the burden of proving the facts confirmed by the acts of the mentioned bodies. Those facts are included in the subject of proving. Meanwhile, being written evidence, such acts can and sometimes have to be attached to the civil case.

The prejudice is the reciprocal obligatoriness of judicial acts which is displayed in their prejudicial link. The prejudice, by the

[12] Decision No 3-93 (VD) of May 29, 2008 of the RA Court of Cassation with respect to a civil case.

[13] Decision No 3-132 (VD) of March 27, 2008 of the RA Court of Cassation with respect to a civil case.

force of law, plays a predetermining role for the new judicial act. The prejudice of the initial judicial act which entered into force conditions the contents of the judicial act in so far as it concerns the already confirmed circumstances of another previously examined case.

The subjective limits are the persons for which the circumstances confirmed by judicial act have a prejudicial significance. From the contents of Article 52 of the Civil Procedure Code directly arises that facts can have a prejudicial significance only for the persons who participated in the examination of the case. The application of the institute of prejudice is inadmissible in cases when within the framework of initial and succeeding procedures the persons participating in the case coincide partially[14]. The change among the participating persons cannot lead to the requalification of the previously determined circumstances. But the case participants who did not participate in the trial of the previous case may object the credibility and existence of such facts. This is proved by the expression "between the same persons" used in Article 52 of the Civil Procedure Code. At the same time, there are two noteworthy circumstances which uniquely influence the undeniability and stability of the circumstances confirmed by a judicial act.

1) If the composition of the participants of the previous case examination narrows, the succeeding composition of the participants of the proceeding formally changes. However, there are no other subjects who have different points of view concerning the collected evidence and the circumstances confirmed by the previous case or new subjects who do not have possibility to protect their interests and participate in the proceeding. Consequently, in our opinion, in such cases the application of prejudice must be admissible.

2) If the composition of the participants in the previous case examination expands, the application of prejudice can be considered

[14] Fursov D.A., Kharlamova I.V. Theory of Justice. Part 2: Civil Litigation as a Form of Justic. Moscow, 2009, P. 329. [Теория правосудия. В 3-х томах. **Фурсов Д.А., Харламова И.В.,** Т. 2: Гражданское судопроизводство как форма отправления правосудия. – М.: «Статут», 2009, page 329.

as admissible solely in case the persons, who did not participate in the previous examination of the case, have no objection regarding the existence and credibility of the circumstances confirmed by the given case.

While talking about the subjective limits of the prejudice (prejudicial link) of judicial acts, it is necessary to take into account also another important circumstance which was specially underlined by the Cassation Court of the Republic of Armenia.

To decide upon the prejudice of any circumstance, the procedural rule is extremely important, according to which the prejudice of any circumstance confirmed by the case must be conditioned by the fact that the given circumstance is confirmed by the competitive procedure. When the circumstance is confirmed in conditions of the limitation of one of the party's procedural possibilities (for example, when one party did not participate in the trial for the reason of not being properly notified), the court which examines another case must not recognise the circumstance confirmed by the judgement as prejudicial for the case which is being examined by it[15].

According to the legal position of the Cassation Court, each case of prejudice's exclusion is subject to be thoroughly checked by the court for a certain case and only with the results of such check the examining court can come to a conclusion[16] about the prejudice of the circumstances which are confirmed by a judicial act having entered into force.

I. Zaytsev and S. Afanasev in a general way call the notorious and prejudicial facts "indisputable facts", which according to the characterization of O. V. Bowlin does not arise from the particularities of the given phenomena. According to the author, both the notoriety and the prejudice of the fact can be objected in court,

[15] Decision No 3-93 (VD) of February 29, 2008 of the RA Court of Cassation with respect to a civil case.
[16] Decision No 3-93 (VD) of February 29, 2008 of the RA Court of Cassation with respect to a civil case.

which fundamentally excludes the application[17] of the term "indisputable" over such facts.

It is required to present only the copy of the judicial act (criminal judgment, civil judgment) which was made and entered into force to the court which examines the case in order to confirm the prejudicial circumstances. While recognizing the fact as prejudicial, the court has to indicate the evidence (criminal judgment, civil) by which the prejudicial nature of the given fact is being justified. No other justifications and argumentations are required.

Indisputable facts: In procedural science and procedural legislation the basis for releasing from the obligation of proving is considered also the admission or the non-objection of the fact in result of which the factual circumstance is considered as admitted or non-objected and in some cases can be excluded from the subject of proving.

So, in fact they appear in case when one of the parties admits the facts which underlie the demands or objections of the other party. On the whole, such circumstances are often called "indisputable facts". The procedural legislation does not use the terms "indisputable circumstances" and "non-objected circumstances".

In Article 52 of the Civil Procedure Code titled as "Grounds for being exempt from proving", the indisputable facts are not mentioned for a simple reason according to which "the admission of the fact by one of the persons participating in the case is a private and non-absolute case of releasing from the obligation of proving[18]".

According to Article 64(2) of the Civil Procedure Code, the court shall not make it mandatory for a participant of the case to admit the facts through which the other person substantiates his or her demands or objections.

The court can consider an admitted fact established, if there are

---

[17] Baulin O.V. The Burden of Proof in Civil Litigation. Ph.D. Dissertation – Moscow, 2005, P. 114. [**Баулин О.В.,** Бремя доказывания при разбирательстве гражданских дел. Дисс. докт. юрид. наук. - М., 2005, page 114].

[18] Treushnikov M.K. Evidence in Court. Moscow, 1999, P. 32. [Треушников М.К., Судебные доказательства. - М., 1999, С. 32].

no doubts that this corresponds to the facts of the case, and the party did not admit this because of deceit, under threat of violence, intimidation, because of confusion, as a result of malicious collusion with the representative of the other party, or with the purpose of concealing the truth.

If these doubts exist, the court includes the given fact into the subject of proving and in court session studies the proofs which confirm or deny it.

Furthermore, the court can include this or that admitted fact in the range of facts which are to be proved based on the interests of jurisdiction or the rules of the admissibility of proving means.

For example, if a fact is admitted, the credibility of which is obvious or which is considered as a prerequisite for examining the claim (for instance, the circumstance of being joint-owners for examining a claim for sharing the property which belongs to the parties by joint ownership right) or which can be proved by the evidence envisaged solely by law (for instance, the facts of being a owner of real estate, originating of a given person, being recognized as incapable by court judgment), the court must include that fact into the subject of proving and while distributing the obligation of proving it must put the burden of proving on an appropriate person.

The analysis of Article 64 of the Civil Procedure Code allows concluding that the court's authorization of considering the admitted fact as confirmed is discretionary. While implementing it, the court must determine in the descriptive part, must mention one by one which facts were recognized as indisputable and by what motives, indicating which one of the participating persons put forward the given fact, who admitted it and how[19].

If the court considers this or that fact indisputable, then it is put out of the subject of proving, it is considered as confirmed and is accepted as a ground for solving the litigation on the basis of absence of dispute regarding it.

[19] Meghryan S. G. The Legal Acts of the First Instance Court in Civil Case, Yerevan, 2010, P. 126. [Մեղրյան Ս.Գ., Առաջին ատյանի դատարանի քաղաքացիական գործերով դատական ակտերը, Եր., ԵՊՀ հրատ., 2010, էջ 126].

A question about when it is allowed to talk about admitting the given fact has practical significance for considering the fact as indisputable.

The analysis of the current procedural legislation allows us to conclude that first of all we can talk about admitting the fact in all the cases when the circumstance posed by one party is admitted by the persons who participate in the case and are on the opposite side, by a procedural document (in written form) presented by them or by an announcement made during the court session (orally). In procedural science, the way of admitting the fact is often called "confession" [20]. It should be taken into account that the confession which is made out of the court (extrajudicial) is not a proof, but an evidentiary fact which is to be proved in its turn, if the party does not confirm it in the court, as well.

The facts accepted by a procedural document or an announcement made during the court session, as a type of indisputable facts, are called "admitted" facts which should be distinguished from the "non-moot" facts.

According to Article 95(5) of the Civil Procedure Code, the court may consider failure to respond as admitting by the defendant of the facts brought up by the plaintiff. Besides, according to Article 48(3) of the Civil Procedure Code, if a party refuses (avoids) answering the questions of the court or of participants of the proceedings or giving testimonies to the court, the court may, upon the motion of the other party or by its own initiative, consider the refusal (avoidance) from testimonies or answers as unjustified, whereas the factual circumstances in respect of which the party refuses (avoids) to give testimonies or answers may be considered as proven thereby.

---

[20] For more details see, e.g. Petrosyan R. G. Civil Procedure of Armneia, 3-rd edition, Yerevan, 2007, P. 373-374; Civil Procedural Law. Shakaryan M.S. (Ed.), Moscow, 2004, P. 183; Civil Procedure. Treushnikov M.K. (Ed.), Moscow, 2003, pp. 266-267, etc. [Պետրոսյան Ռ.Գ., Հայաստանի քաղաքացիական դատավարություն, 3-րդ հրատ., - Եր., Երևանի համալս. հրատ., 2007, էջ 373-374; Гражданское процессуальное право. Под ред. М.С. Шакарян. - М.: «Проспект», 2004, С. 183, Гражданский процесс. Под ред. М.К. Треушникова. М.: «Городец», 2003, С. 266-267, etc].

The presence of such norms in a procedural law allows concluding that the court may consider this or that fact as indisputable and confirmed also in cases when the party does not directly accept it, but does not also object it by inactivity displayed in the above mentioned way. In this case it is appropriate to talk about "non-moot" facts which are types of indisputable facts.

In procedural science, there is an opinion according to which any fact should be considered as indisputable against which the parties did not object or admitted it by silence[21]. In the conditions of RA civil procedure such position can be considered as justified only from the perspective of applying the provisions fixed by Article 95(5) and Article 48(3) of the RA Civil Procedure Code. Except for the above mentioned, no other ways of passive behavior (including the silence) can have practical significance.

At the same time, the court has to react to the silence of parties regarding this or that circumstance which has significance for the case solution, finding out if they admit the existence of the given fact. And if the party who bears the obligation of proving admits the existence of the given fact, the court may consider the necessity of its further proving eliminated[22]. If the person participating in the case or his representative does not come to the court session[23], in this case, too, it cannot be considered as admission of the fact. Yet in Roman law such behavior, as well as silence was considered as "absence of response but not consent [24]".

---

[21] Zaitsev I., Afanasev S. Indisputable Circumstances in Civil Cases // Russian Justice.- M., 1998, #3, pp. 27-28, [Зайцев И., Афанасьев С., Бесспорные обстоятельства в гражданских делах // Российская юстиция. – М., 1998, № 3, С. 27-28].

[22] Baulin O.V. The Burden of Proof in Civil Litigation. Ph.D. Dissertation – Moscow, 2005, P. 122. [**Баулин О.В.,** Бремя доказывания при разбирательстве гражданских дел. Дисс. докт. юрид. наук. - М., 2005, page 122].

[23] Fursov D.A., Kharlamova I.V. Theory of Justice. Part 2: Civil Litigation as a Form of Justic. Moscow, 2009, P. 323. [Теория правосудия. В 3-х томах. **Фурсов Д.А., Харламова И.В.,** Т. 2: Гражданское судопроизводство как форма отправления правосудия. – М.: «Статут», 2009, С. 323].

[24] Court and Judge in the Selected Excerpts from Digest of Justinian. Moscow, 2006, P. 547. [Суд и судьи в избранных фрагментах из Дигест Юстиниана. - М., 2006, С. 547].

In our opinion, envisaging the provisions concerning the acceptance of the fact by the person participating in the case in the frames of Article 64 of Civil Procedure Code titled as "Testimonies of the participants of the case" is not that right. As a result, in law enforcement practice there are cases when the court considers confirmed the fact which is accepted by an announcement made in the court session, if the party which accepts it, confirms its acceptance also when giving testimonies by his/her or the opposite party's initiative.

Whereas, it is obvious that the person may accept this or that fact willingly and forcing him to give testimony regarding it does not arise from the principle of procedural frugality and it can be the reason of the pointless delay of the process.

The acceptance of any fact (facts) which underlies the demands and objections of the persons participating in the case, narrows the subject of proving, give a possibility to the court to decide upon the frames of disputable facts and focus only on their proving.

Admitting a fact is a means of procedural frugality which is based on the party's right (principle of optionality) to dispose his material and procedural rights. In this regard, the admission of a fact (facts) should be distinguished from the full or partial admission of the claim. In the latter case there is not just an admission of a fact (or facts) underlying the claim, but an unconditional admission of the subject of the claim (plaintiff's claim) and of all the facts underlying it. If in case of full or partial acceptance, the defendant does not have any obligation to explain, then the admission of a certain fact, without accepting the plaintiff's claim and the other claims underlying it, in the civil procedure of Armenia it is not considered as an unreasoned act of behavior. This is the reason why the legislator gave the court a discretionary authorization of considering the accepted fact as confirmed. In any case, the court is authorized to find out the party's motives of admitting the fact.

As justifiably mentions D. A. Fursov, it must be forbidden that a subject of private interest behaves disrespectfully towards the public-

legal order[25].

Taking into account the above mentioned, we find that it would be more appropriate to insert the norms about "confession" and "non-moot facts" which are considered indisputable in Article 52 of the Civil Procedure Code, excluding the possibility of linking the legal provisions related to the admission of a fact solely with the party's testimony. Regarding this, the existence of Article 27(4) of the Administrative Procedure Code can be welcomed, according to which the facts which are not objected by the opposite party do not have to be proved, except the case when the court finds that these facts need to be proved. In our opinion, recognizing Article 64(2) of the Code as lapsed, Article 52 can be supplemented with paragraph 4 with the following context:

"The facts which do not have to be proved are those that are admitted by a procedural document presented by him or her, or an announcement made during the court session by the party who bears the obligation of proving or by not presenting objection in accordance with the procedure and terms set in Article 95 of this Code, or by refusing to give testimony or response concerning the factual circumstances during the trial, except for the case when the court finds that their proving is necessary taking into account the interests of jurisdiction or the rules of evidence admissibility.

The admission of the fact by a person participating in the case, through which the other person justifies his or her demands and objections, shall not be mandatory for the court.

The court may consider the admitted fact as established where there are no doubts that those facts corresponds to the circumstances of the case, and that the party has not admitted them under deception, violence, threat, delusion or as a result of a malicious accord of one party with the other, or for the purpose of concealing the truth".

[25] Fursov D.A., Kharlamova I.V. Theory of Justice. Part 2: Civil Litigation as a Form of Justic. Moscow, 2009, P. 325. [Теория правосудия. В 3-х томах. **Фурсов Д.А., Харламова И.В.,** Т. 2: Гражданское судопроизводство как форма отправления правосудия. – М.: «Статут», 2009, page 325.