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PECULIAR FEATURES OF REGULATING THE STAGES OF INFORMATION ACTIVITY OF COMMERCIAL COURT IN UKRAINE

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SUMMARY

The article presents the results of the analysis of Ukrainian legislative instruments regarding differentiation of information activity stages carried out by the commercial court. To make the research objective and well-arranged, information activity of the commercial court was classified in the middle of every stage according to different criteria, including the following: functions performed by the court, relation of information to court proceedings; confidentiality; time, etc. The analysis showed the difference in staged of information activity with procedural and non-procedural information.

Key words: information, information activity, stages of information activity, service documents, non-service documents, objects of information activity.

ОСОБЕННОСТИ ПРАВОВОГО РЕГУЛИРОВАНИЯ ЭТАПОВ ИНФОРМАЦИОННОЙ ДЕЯТЕЛЬНОСТИ ХОЗЯЙСТВЕННОГО СУДА В УКРАИНЕ

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АННОТАЦИЯ

В данной статье отражаются результаты анализа нормативных актов Украины, а также результаты выделения этапов информационной деятельности хозяйственного суда. Для объективности исследования и его упорядочения осуществлена классификация информационной деятельности хозяйственного суда в зависимости от различных критериев. В частности, применены следующие критерии: выполняемые судом функции; отнесение информации к судебному процессу; конфиденциальность; время и др. В ходе анализа выявлена разница в правовом регулировании на разных этапах информационной деятельности в работе с процессуальной и непроцессуальной информацией.

Ключевые слова: информация, информационная деятельность, этапы информационной деятельности, процессуальные документы, непроцессуальные документы, объекты информационной деятельности.

Statement of the problem. According to the provisions of the laws currently in effect, information activity of court consists of several stages, including collection, creation, use, disposal and storing. Each stage includes certain types of activity that are clearly regulated by legal acts and bylaws. Regulation of this activity includes definition of rights and liabilities of parties that work with a specific information object as well as restrictions and special treatment of special information objects. As of now certain problems have appeared in connection with legal regulation of the information activity of commercial courts in Ukraine and require research and scientific solution.

Status of research. Nowadays individual problems of legal regulation of information activity have been studied in the works of I. V. Aristova, I. L. Bachil, K. I. Bielyakov, L. P. Kova-

lenko, O. V. Synieokyi, A. I. Marushchak, V. S. Tsymbaliuk, M. Ya. Shvets, O. I. Iarenko, etc. The issues of peculiar features and characteristics of information activity at commercial courts have hardly been dealt with in the research of any legal experts.

The object and purpose of the article. The article aims at defining and describing the stages of information activity at commercial courts. To achieve this objective the Ukrainian legislation framework materials were used. The provisions of legal acts, bylaws and local law-creating instruments were analyzed as those that regulate the information activity of commercial courts in Ukraine. The methods of analysis and synthesis, comparison, and concretization were also used while preparing this article.

Presentation of the main material. Legislative acts and bylaws in Ukraine do not establish any obligatory stage of infor-

mation activity for the parties of information relations. Analyzing the legislation instruments that regulate the information activity of courts, it can be found out that certain stages can be seen clearly in legislation acts, bylaws and local law-creating instruments, which regulate the administration of justice, records management, documentation of administration work, and archive-keeping at Ukrainian courts. Based on the provisions of Ukrainian legislation acts, stages of information activity can be defined as a certain sequence of the components in the activity of the parties of information relations. *Stages of information activity* of commercial court include collection, creation, use (disposal) and storing. Information activity can consist of different variations of these stages, namely collection, storing, processing, changing (creation of new information based on the collected one), disposal, etc.



The stages of information activity can be divided depending on the function of the commercial court. For instance, if the commercial court performs the *function of justice*, its information activity usually includes the following stages: collection (record of legal cases and complaints about holdings of the court); use (transfer of documents for legal cases and service documents for consideration, creation and preparation of a legal case, accept and record of material evidence, provision of cases for familiarization, issuance of document copies, sending of cases outside court); creation (proceedings in the case, judicial decisions, decrees and resolutions); storing (appraisal, execution of cases and their transfer to archives, preparation of inventory, keeping of cases in archives, provision of cases and documents from court archives, transfer of cases for state keeping at archive institutions, transfer of cases and documents to electronic archives) [1].

If the commercial court runs information activity with view of performing the *administrative function* of court, the legislation acts regulate the following stages: collection (accept, registration); use (allocation, transfer for execution, assignment); creation (fulfillment of assignments, preparation of organizational and administrative assignments, fulfillment control); provision of information (registration and sending outbound documents, answers to questions concerning information); storing (operative storing of information, appraisal of information, preparation and transfer to court archives, preparation and transfer of hard and digital copies of information to electronic archives, transfer of information for state storing) [2; 6].

Types of information activity of the commercial courts also depend on the kinds of documents that record information activity objects. These kinds include information activity connected with service and non-service documents. The use of *service documents* and information containing therein is regulated by procedural legislation [1]. The stages of information activity of courts regarding work with *non-service documents* are regulated by the legislation acts that regulate the information activity of governmental bodies and local government authorities, other institutions, enterprises and organizations.

When comparing the information activity both for the function of justice and the function of administration, the stages of information activity of the commercial court are similar at the stages of collecting, provision and storing of information. At the same time they are different at the stages of using and creation of information. The difference in the information activity intended to ensure justice and to perform the administrative activity of the court can also be found in the parties of every individual stage and every type of information activity. Each stage in the information activity of the court has its peculiarities, which require a more detailed analysis.

The stage of information collection includes accept and provision of documents. Documents are accepted by a specific division called court registry. Responsible officers carry out the initial processing of the documents by checking the integrity of envelopes (packages), they open them, check the correctness of the address, the integrity of the legal case and presence of appendices, the materials are then distributed to the addressees and registered in the automated system of document circulation.

Court can collect information of free circulation and information of restricted access. Information activity with information of restricted access has its peculiarities as early as at the state of initial processing. Unlike any other type of information coming to court, such envelopes and packages are not open but transferred to the divisions or court officials in charge of the restricted access activity. In other words, even the initial processing of this information. i.e. its registration and sending inside court is carried out only by authorized persons.

The stage of information use begins as soon as the information arrives at court, this fact to be proven by registration. It also includes record, fulfillment control and operative use of the information recorded in the documents. The use of information by court begins with allocation and re-allocation of documents according to legal cases, this process being carried out on an on-going basis and resulting in preparation of legal cases.

The notion of information use includes also the provision of a case for familiarization and issuance of document copies. Familiarization with service infor-

mation is regulated both by procedural codes and bylaws that regulate document management at courts. Familiarization as the use of information consists of two counter authorizations: on the one hand, court has the right and creates opportunities to get familiar with information; on the other hand only the persons specified by legislation are entitled to familiarization and only after their authorization documents have been checked. Moreover, persons have the right to get familiar with the cases only if they have submitted a written application well in advance and an appropriate resolution was made by a judge or authorized persons. Consequently, familiarization as a stage of information activity is regulated according to two parameters: its parties and the order of this act execution. Both parameters are means to ensure the right to information, which includes storage of personal data, confidential information, but on the other hand it is balanced with the procedural principles of visibility and competitiveness.

The initial processing of information, its execution in the form of legal cases, provision for familiarization means the use of information and its carriers inside the court. Sending of information outside the court is another authorization of court concerning the use of information. Such type of use is characterized by the fact that information can be sent outside the court under two conditions simultaneously. The first condition is the availability of a corresponding service document executed according to the provisions of law-creating instruments (presence of a signature of an authorized person, reference number of the legal case, grounds for such a sending). The second condition is its purpose. The general aim of the entire information activity of the court is administration of justice. An exact goal is the fulfillment of certain procedural actions, including the following: case revision by other authorities, subjection to a jurisdiction, an appraisal. Thus, the information recorded in a legal case can be sent only to the following institutions: an appeal or cassation authority, another local commercial court, an expert institution for an appraisal, investigation bodies, etc.

Such a use of information as sending of a legal case outside the court results in the creation of a duplicate case (a token).



This is to record the fact that procedural information does exist, it has been accumulated in a duly manner, is used now in a lawful way at the disposal of a specified court, as of the date of the duplicate (token) creation the whole volume of procedural information is sent to an authorized party (expert, judge of an appeal or cassation court, investigation bodies). If both the duplicate (token) and the documents sent outside the court are present in the legal case at the same time, it means that the information of the legal case has been used by other entitled parties to create new information that is to provide additional possibilities for the efficient fulfillment of the function of justice by the court.

If the case documents are substituted, absent or damaged or if the legal case is not returned (lost) to the court, those in charge should record this fact in a protocol. One copy of this protocol is added to the case, another one is sent to the authority to which the case was sent or was to be sent. To avoid damaging or losing of legal cases, the latter are forbidden to be transferred via unauthorized persons. These actions of the persons in charge are qualified as a violation, for which they are held liable according to the law.

At least two groups of questions appear regarding the transfer of information outside the court. The first group of questions concerns the weight of the information recorded in the lost or substituted documents and the possibility to further administer justice in an effective way based on the duplicate (token). Here the identity of a document as a substantial irreplaceable object of the material world is opposed by the identity of information that by its nature can be multiplied. Copying and reproduction of service documents in electronic form in the automated system of document circulation ensures improved efficiency of information activity of the court. In the same way, the automated system facilitates renewal of information that is necessary to renew certain documents or a legal case in general.

The second group of questions concerns the type and scope of responsibility of the officials that provide the information activity of the court. In our opinion, disciplinary responsibility can be applied to them but whether or not it is possible to bring them to civil responsibility if the lost information in the form of mate-

rial evidence or other service documents cannot be renewed is still a problem beyond the scope of our research.

Creation of information is another stage of information activity of the commercial court. Its peculiar feature is that depending on the purpose of the created information it can be included in service or non-service documents. *Service and non-service documents* are created only by authorized persons.

Creation of information that is reflected in service documents takes place when the court performs procedural actions to fulfill its function of justice. As a rule, the court begins creating procedural information at the initiative of other participants of the proceedings, i.e. those parties that have applied to court for their violated rights to be protected. The court begins to create procedural information using two components: procedural and content-related. The procedural component of information creation is clearly described in procedural codes, in particular the Code of Commercial Procedure of Ukraine. The content-related component is presented in the documents provided by the parties that initiate the trial. Only based on this information the court starts creating procedural information to be represented in service documents.

Information can be created by the court when procedural actions are performed, and it can be represented in the documents intended to record *procedural actions carried out by the court* as well as those *to be carried out by other participants of the proceedings* [5]. In other words, this is the information that is created and represented in the court documents that record the fact and order of the procedural actions in the specific legal case. We can call it *the initial procedural information*. If such information is to be sent outside the court, special accompanying documents are created that have an organizational meaning for the court proceedings [3]. Such information created when service documents are sent to other participants of the proceedings in the form of accompanying documents can be called *secondary procedural information* because it is created only with view of assisting the flow of the initial procedural information.

Procedural information is created by a judiciary board according to the procedure stipulated for by Arti-

cle 35 of the Code of Commercial Procedure of Ukraine [1]. The official and legitimate character of procedural information is confirmed by voting of each and every member of the judiciary board without any exception and by the signature of every party that has created this information. But if several judges are available, they can have different opinions as for the contents of the information. The contents of procedural information is made legitimate and confirmed by every judge, and in case of dissent the information executed as a special opinion of the individual judge is to be confirmed by the signature of the judge that has expressed this opinion. On the contrary, non-procedural information can be created by a collegial body and even in case of dissent or a special opinion different from the collective one the contents of this information are considered to be accepted by all members of the collegial body, which fact is confirmed by the signature of the chairperson.

Creation of information that is represented in non-service documents is regulated by legislation acts and bylaws that regulate administration and organization activity of public authorities, enterprises, institutions and organizations [7; 9]. Creation of non-procedural information is not different from information that is created by non-judicial bodies. But for the purpose of general characterization we should highlight several aspects. Creation of non-procedural information takes place at several stages that coincide with the creation of documents to contain it. The stages of information creation include preparation of document drafts, approval and reconciliation of document drafts, judicial appraisal, familiarization of court officers with the confirmation of the fact that the information has been familiarized with. Information is created by an individual author, when the decision is taken both unilaterally and jointly [2]. *Moreover, such authors can be persons that participate in the proceedings or other parties of the trial*, and this can take place both inside and outside the court.

The final stage of the information activity of the court is *storing of information*. Its peculiar feature consists in its duration. The duration of storing of information recorded in non-service documents is regulated by a series of legislation instruments [4; 8; 10] According to the legislation instruments currently in effect we



can distinguish two types of storing stages depending on the value of the information in the document: *operative storing and long-term storing*. Operative storing is a stage of information processing before it is transferred on specific media to the archive. Consequently, long-term storing begins when the media are transferred to the archive. Operative storing of information reflected in service and non-service documents must be performed at places of work of those in charge. *Long-term storing* of information is ensured by transfer of the documents to the archive.

The storing stage can finish with information being deleted. Deletion of information means it ceases its existence both as a hard copy and in electronic form. A peculiar feature of information is that complete deletion does not take place in the way it happens with documents in their hard copies or any other objectified form. If information was published, then even if its source is deleted, this information can be retrieved from oral sources by those parties that have created it or got familiar with it from the original sources. At this stage information can stop existing by any of two methods that are different according to the presence or absence of goodwill on the part of the party of information activity. Another kind of information cessation can be classified depending on whether these actions come within the purview of legislation instruments and how legislation instruments estimate this deletion: legitimate (lawful) or illegitimate (unlawful).

Conclusions. Based on the foregoing, the following conclusion can be drawn: information activity of the commercial court has a heterogeneous structure and consists of several stages, whose analysis shows that they are characterized by peculiarities of legal regulation and depend on the functions performed by the court.

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