SUBJECT OF A PROCEDURAL SETTLEMENT SUBJECT (ITS TERMS) IN CIVIL PROCEDURE LAW OF THE REPUBLIC OF LATVIA

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Abstract

The present article analyzes a subject of a settlement in civil procedural law, inspecting judicial regulation of a procedural settlement (further in the text − settlement) in the Republic of Latvia in connection with a statutory regulation of other countries, jurisprudence, and judicature. The aim of this article is to analyze a subject (its terms) of settlement, bringing into light basic features of a settlement and its legal character.

Keywords: Civil procedural law, settlement, a subject of a settlement

Introduction

Since courts in the Republic of Latvia are overloaded, reasonable time frame of proceedings frequently do not comply with the European Convention for the Protection of Human Rights and Fundamental Freedom timeliness criteria. Therefore, settlement as one of the major instruments for discontinuance or withdrawal of proceeding plays a vital role in any stage of the proceeding.

Paragraph 1881 of the Civil Law of the Republic of Latvia sets forth that settlement takes the form of an agreement by which its participants due to disputable or otherwise questionable legal relation converse it unquestionable and indubitable by mutual concession[68]. The Civil Law of the Republic of Latvia does not provide exact definition of a settlement; however, the Civil Proceeding Law of the Republic of Latvia provides mandatory elements of the settlement in: subject of a settlement, participants, its form, and validity. Since the aim of this article is to inspect a subject of a settlement[69], thus, when inspecting this act, both preconditions of substantive legal rules and national procedural law will be taken into consideration.

1. A major feature of a settilement subject-discontinuance of proceeding

In classical Civilian Roman law, settlement has been admitted as multiplicity of terms in civil transaction when settlement is unexamined merely as an independent agreement type. Settlement embodied various liabilities, for example, property or any other benefit assignment could serve as liability law termination or alteration basis[70]. Thus, settlement from its very origins has been acknowledged as mixed and multiform transaction, namely, such transaction that entails various liabilities and may serve as a basis for various transactions. For example, settlement may enforce a contract of purchase as well as it may

68 *The Civil Law of the Republic of Latvia. LR likums.* Ziņotājs, 14.01.1993., No. 1.

69 The subject of a settlement – activity or inactivity with a certain aim that characterizes an essence of transaction. Besides, this transaction may have an aim to transfer things or reach another aim, that possesses any financial value.

70 Hvostov V. M. (1996). *Система римского права (The Roman Legla System).* Учебник. М.: Cpark, p. 210.

discontinue one legal relation and establish another or exclusively discharge from any other liabilities. It may also exclude emergency of civil liabilities, rights etc[71].

The subject of a substantive settlement may be targeted at discontinuance of mutually impugned or otherwise doubted legal relationship (establishing new liability[72]), confirmation, correction or alteration,[73] as well as based on mutual agreement that doubted or impugned liability has not been in existence and therefore parties have no subject to termination[74]. In legal literature, it has been stated that settlement may also entail such regulations that do not establish new legal liabilities but merely confirm the rights and responsibilities already into existence[75]. Professor V. Sinaiski has pointed out that substantive settlement may be directed towards discontinuance of a disputable legal relationship as well as establishing undisputable legal relationship, thus, separating the concept of settlement in two types: 1] such a settlement which makes questioned relationships unquestionable (by mutual concession); 2] such a settlement which implements and exercises rights (even undisputable) by mutual concession, though being under doubt[76].

In contradistinction to a substantive settlement, the terms of which proceeding parties may be established at their own discretion, a procedural settlement may be concluded exclusively within a certain civil dispute. Such a provision stems from paragraph 227. part 2. item 3, the Civil Law of the Republic of Latvia, which sets forth that procedural settlement must entail a subject of disputation. Moreover, an aforementioned Law paragraph 226. part 3. provides such civil disputes, of which a settlement is inadmissible[77]. Thus, in contradistinction to a substantive settlement, a procedural settlement may be concluded only concerning such relations, of which a claim has been pursued, because a procedural settlement is to eliminate disputable relationship between the parties and must exist in a definite inter-relationship.

Similarly to the Civil Proceeding Law of the Republic of Latvia, also legislation of other countries acknowledges discontinuance of a specific dispute as a major feature of a procedural settlement subject. For instance, in the German Code of Civil Procedure (Zivilprozessordnung), it is specifically emphasized that procedural settlement is concluded within a specific dispute[78]. Further, the Dutch Code of Civil Procedure provides that reconciliation amounts to the claim[79]. In Finnish procedural rules, it has been expressly stated that parties may reach a settlement (whether all or part of the proceedings[80]). In the French Code of Civil Procedure, the major feature is to be established in accordance with its legal

71 Rozkov M.A., et al. (2008) *Договорное право (Contract Law).* M.: Статут, p.224.
72 Čakste K. (1940) *Civiltiesības (Civil Rights).* (B.v.). (b.i.), p.82.
73 Sinaiski V. I. (1940) *Saistību tiesības (Contract Law).* Rīga: L.U. Studentu padomes grāmatnīca, p.46.
74 Torgāns K. (2006) *Saistību tiesības I.daļa (Contract Law. Part I.). R*iga: Tiesu nama aģentūra, p.274.
75 Rozkov M. A. (2004). *Мировое соглашение в арбитражном суде: проблемы теории и практики (Settlement in Court of Arbitration: problems, theory, and practice).* M.: Статут, p. 158
76 Sinaiski V. I. (1912) *Русское гражданское право (Russian Civil Code).* Киев: Типография А.М. Пономарева, p. 365.
77 In accordance with the Civil Law of the Republic of Latvia it is forbidden to conclude settlement within disputes, related to amendments in civil protocol register, linked with economic rights of dependent persons , disputes as to real estate property, if there are persons among participants which rights to acquire a property in the legitimate possession are limited by statutes; if rules of a settlement affect rights of another people or their interests protected by law, furthermore, in cases as to marriage dissolution or non-existence it has been stated that settlement is admissible merely in such disputes concerning legal relation of a family.
78 *The German Code of Civil Procedure* (Zivilprozessordnung). Available at : http://www.gesetze-im-internet.de/zpo/index.html Last accessed on 11, June, 2013.
79 *The Dutch Code of Civil Procedure* (Code of Civil Procedure). Available at: http://www.wipo.int/wipolex/en/details.jsp?id=7420 Last accessed on 12 July, 2013.
80 *The Code of Judicial Procedure of Finland.* Available at: http://www.finlex.fi/en/laki/kaannokset/./. Last accessed on 2, June, 2013.

regulation setting forth that consequence of litigation is discontinuance of proceeding[81]. The aim of the settlement is to resolve a dispute by acquiescence of both parties[82]. Also the Civil Code of the Russian Federation sets forth similar provisions, namely, both parties may dismiss a case by mutual settlement[83].

The aim of the procedural settlement is to end litigation and questioned legal relation, which has come under adjudication, as indisputable[84]. The procedural settlement is mutual dispute resolution[85], thus, legal uncertainty of dispute brought before a court is limited within a dispute in a specific court, namely, settlement in a proceeding is possible exclusively in the event a claim has been filed to the court and settlement limitations may be set accordingly[86]. Settlement must contain only those provisions which are necessary to resolve a specific dispute and fulfill a contract. Settlement is possible exclusively in relation to a specific dispute or a specific legal uncertainty.

Furthermore, a court settlement cannot entail provisions unrelated to dispute resolution; otherwise court, in contrary to its competency, would deal with confirmation of mutual transaction carried out by various parties. For example, in the event there has been reviewed dispute in a course of proceeding, a basis of which is a claim involving tenant eviction from an apartment and tenant's counterclaim as to a lease agreement prolongation, then parties cannot conclude such a mutual procedural settlement, which may be acknowledged as a new lease agreement on the merits. Thus, parties may resolve a dispute exclusively within its scope by concluding the procedural settlement. For example, parties conclude a settlement in which they mutually come to the terms stipulating a tenant to continue using a leased apartment until a certain date, after which this apartment shall be left. In this regard, the Supreme Court of the Republic of Latvia has pointed out that such procedural settlement is admissible, because no other new agreement is concluded between the parties, but merely a dispute has been resolved by setting a certain date to terminate existing agreement[87].

Also such procedural settlements are inadmissible which provisions exceed limitations of a dispute, for example, admitting other claims being out of scope of a case to be adjudicated or not conforming to a subject of a claim. In the event the procedural settlement regulates relationships that do not apply to a subject of a dispute, such a procedural settlement does not conform to substance of a settlement[88]. Thus, if settlement entails issues that are

81 *The French Code of Civil Procedure.* Available at: http://www.legifrance.gouv.fr/. Last accessed on 2 June, 2013.

82 Alternatīva strīdu izšķiršana – Francija. Available at: http://webcache.googleusercontent.com/search?q=cache:Mm6bfB4aSYEJ:ec.europa.eu/ Last accessed on 14, March, June, 2013.civiljustice/adr/adr_fra_lv.htm+samierin%C4%81%C5%A1an%C4%81s+francijas+civilproces%C4%81&cd=3&hl=lv&ct=clnk&gl=lv&client=firefox

83 *Гражданский процессуальный кодекс* (The Civil Code of the Russian Federation). Available at: http://www.interlaw.ru/law/docs/10005807/. Last accessed on 22 December, 2012.

84 Bukovski V. (1933) *Civīlprocesa mācības grāmata (Civil Proceeding).* Riga: E.Pīpiņš un J.Upmanis Publishing house, p.580.

85 Tore Wiwen-Nilsson (2007). *Commercial dispute settlement:* issues for the future. Modern Law for Global Commerce. Vienna, Available at: http://www.uncitral.org/pdf/english/congress/Wiwen-Nilsson.pdf. Last accessed on 3 June, 2013.

86 Carl Baar, *The Myth of settlement* (paper prepared for delivery at the Annual meeting of the Law and Society Association, Chicago, Illinois), May 28, 1999, p. 3

87 The Judgment of the Civil Department of the Senate of the Supreme Court of Latvia No. SKC-791/2009 (December 2, 2009).

88 The court decision of the FAS Regional Office for Moscow, August 8, 2005, case No. N KG- A41/6997-05. Available at: http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=AMS;n=53081. Last accessed on 10, April, 2013.

beside the point, a court has no jurisdiction to render a judgment that confirms a settlement[89]. Thus, for example, court did not confirm such a settlement, of which these parties have came to agreement and ended all disputes between the parties, including mutual disputes within a case filed to another court. They also undertake not to take an action against each other henceforth. As court has it rightly pointed out in its decision, both parties have a right to admit all claims and objections in relation to a particular claim already filed to a court. However, settlement can not adjudicate other disputes being under review in other courts. Moreover, settlement can not limit one's rights to a court protection in future, if person's rights and interests are impaired relating to any type of disputes that may arise[90]. Prior resolution of a potential dispute in settlement may be regarded as renunciation of one's rights protection, which is inadmissible.

3. Main feature of procedural settlement subject-matter-mutual concessions

In compliance with substantive rights, settlement subject is of the essence in mutual concession[91]. Prof. V. Sinaiski has acknowledged that mutual concession is „part and parcel of a settlement"[92]. In accordance with civil rights regulation, a major feature of a settlement is mutual concession, as also regarded in civil proceeding. Settlement as a type of dispute resolution may be reached upon mutual concession[93], namely, parties independently settle dispute by mutually acceptable terms. Mutual concession in civil proceeding is defined as settlement[94]. The essence of mutual concession in procedural settlement is as following: parties waive a claim fully, partially, or merely alter it. Parties come to an agreement[95], which results in disclaimer of a court judgment on its merits[96].

It should be noted that also contrary opinions exists, namely, mutual concession serves as an obligatory element of a settlement but do not reflect settlement on its merits and the essence, because mutual concession, as a rule, acts within settlement while being an optional element[97]. However, aforementioned opinion is fallacious because mutual concession is acknowledged as an essential feature of a procedural settlement. Further discussion will explain why this is regarded as an essential feature as to renunciation or allowance of a claim.

Both renunciation and allowance of a claim is unilateral deed by a party, where no necessity exists for other party assent (will). Allowance of a claim is claimants unilateral unconditioned abandonment of a court protection (claim has been waived). Whereas

89 Tore Wiwen-Nilsson (2007). *Commercial dispute settlement: issues for the future. Modern Law for Global Commerce*. Vienna, Available at: http://www.uncitral.org/pdf/english/congress/Wiwen-Nilsson.pdf. Last accessed on 12 August, 2013.

90 Riga District Court decision, March 2, 2007, Case No. C33165206. Available at: www.lursoft.lv Last accessed on 27 June, 2013.

91 *The Civil Law of the Republic of Latvia. LR likums*. Ziņotājs, 14.01.1993., No. 1.

92 Sinaiski V. I. (1912) *Русское гражданское прав (Russian Civil Code).* Kiev: A.M. Пономарев Publishing house, p. 365.

93 Lazarev S. V. (2006). *Мировое Соглашение в гражданском судопроизводстве (Settlement in Civil Proceeding).* Ekaterinburg, Available at: http://www.dissercat.com/content/mirovoe-soglashenie-v-grazhdanskom-sudoproizvodstve. Last accessed on 27 February, 2013.

94 Sklansky D. A., Yeazell S.C. (2005). *Comparative Law without leaving home: what civil procedure can teach criminal procedure and Vice versa*. The Georgetown Law Journal (Vol.94:683), p. 696.

95 Torgans et al. (2006). *Civilprocesa likuma komentāri. Trešais papildinātais izdevum (Commentaries on Civil Law. Edition III.).* Prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga: Tiesu nama aģentūra, p.340.

96 Lazarev S. V. (2006). *Мировое Соглашение в гражданском судопроизводстве (Settlement in Civil Proceeding).* Ekaterinburg, Available at: http://www.dissercat.com/content/mirovoe-soglashenie-v-grazhdanskom-sudoproizvodstve. Last accessed on 27 February, 2013.

97 Pylehin E.V. (2001). *Мировое соглашение в практике арбитражного суда и суда общей юрисдикции (Settlement in Practice of Arbitration Court and Common Law Courts).* Saint Petersburg, Available at: http://www.lawlibrary.ru/disser2006224.html. Last accessed on 24 April, 2013.

allowance of a claim is respondent's unilateral unconditioned consent to satisfy a claim (a favorable judgment is rendered). When a claim is waived, proceeding is terminated without rendering a judgment on its merits, but allowance of claim may cause consequences – a judgment is rendered on its merits in behalf of a claimant[98]. By renunciation of a claim a claimant acts at discretion with substantive rights in behalf of respondent, and allowance of a claim is considered as respondent's voluntary renunciation of his or her subjective rights in behalf of a claimant[99]. Thus, renunciation of a claim or allowance of a claim may be characterized as unilateral party act in proceeding that has non-compensatory feature and which does not impact substantive rights and responsibilities of both parties[100].

Since settlement is bilateral (multilateral) agreement, a settlement can not confine itself merely by renunciation or allowance of a claim by one party only. Thus, if settlement causes only unilateral party to act − renunciation of a claim, court shall render its decision as to termination of proceeding due to renunciation of a claim. However, if settlement confines itself merely to respondent's admission of a claim, a document, notwithstanding on its title and form, establishes a fact as to allowance of a claim and court then must review a case on its merits. To be specific, settlement can entail provision of renunciation or allowance of a claim. It is essential to take into account that alike renunciation or allowance (which is unilateral), settlement (in accordance of which is claimed renunciation or allowance of a claim) is bilateral (multilateral) transaction that is mutually rewarding agreement. Settlement as a transaction is characterized by mutual concession and settlement as a transaction is of a specific (compromise) character[101]. If renunciation or allowance of a claim has been admitted by parties' transaction and on its bilateral and rewarding grounds, it is disregarded as unilateral procedural action but rather as a procedural subject of settlement. Thus, renunciation or allowance of a claim may be one of settlement provisions, but can not be the only settlement provision. Thus for example, settlement is such an agreement both parties have agreed upon, besides, agreed not only upon the fact that respondent acknowledges a claim, but also undertakes certain liabilities, for example, liability within mutually agreed terms extinguish debts or transmit any material benefit in a specific date indicated in settlement.

Also in Anglo-Saxon rights settlement is defined as mutual compromise when both parties end their legal dispute that entails renunciation of rights or potential gain or benefit by each party, contrasting it to other types of settlement, for example, unilateral procedural action of a party by renunciation, as well as such a specific Anglo-Saxon contract type as so called release agreement (only one party waives its benefit or rights)[102].

It is important to take into consideration that "remuneration" does not imply that it must of equal amount for each party of a settlement. For example, in relation to money collection, when concluding settlement, a claimant most frequently receives less than initially desired or would have received in case of litigation[103]. Concession amount of each party has been set at parties' discretion. It is essential to reach mutual concession as such; when each of the parties is willing to concede on overall gains to assign or transfer anything to the other

98 Shakarjan M.S. (1998). *Гражданское процессуальное право Росси (Civil Proceeding Rights in Russia).* М.: Былина, p. 167.

99 Ibid. p. 167.

100 Rozkov M.A. (2004). *Мировое соглашение в арбитражном суде: проблемы теории и практики (Settlement in Court of Arbitration: problems, theory, and practice).* М.: Статут, p. 77.

101 Hvostov V.M. (1996). *Система римского права. Учебник.* М.: Спарк, pp. 210, 211.

102 Neil Andrews (1994). *Principles of civil proceduree*. „Sweet & Maxwele", p. 399.

103 Jules Coleman, Charles Silver (1986; published online: 13 January 2009). *Justice in settlements. Social Philosophy & Policy,* Vol.4 Issue 1 ISBN 0265-0525. Available at: http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=3093168. Last accessed on 21 January, 2013

party (otherwise a dispute resolution by mutual concession is impossible). Alike other indemnity contracts, settlement requires that one of the parties fulfills its obligations and receives back the same action from the other party.

Indemnity contract may manifest in various ways, for example, 1) responsibilities arising from settlement may set forth mutually opposite fulfillment of liabilities (for example, it may appear as one party responsibility to transfer concrete property, while a responsibility of the other party is to pay certain amount of money); 2) settlement will be regarded as compensation, if responsibility of one party depends on the other party's action (for example, in accordance with settlement one party does not lay a claim for a certain property, if the other party pays exact amount of money; 3) indemnification contract applies to other cases, when responsibility relies merely on debtor (for example, in cases when a creditor has fulfilled responsibility or liability, of which dispute resulting later is unilateral (most frequently those are liabilities that results from credit or tort)[104]. In the USA, settlements sometimes entail not only authorization of financial benefit, but also such unaccustomed undertaking of liability which impose that parties will not disclose certain information to any third party; coordination and alteration of parties further activities; admission of responsibility etc[105]. it should be pointed out here that settlement may entail also so called no-fault provision, namely, to expressly point out that to state a guilty person or "identify guilt" in a settlement agreement is unnecessary[106].

On the whole, it may be concluded that settlement as a major feature of compensation or a multilateral transaction that distinguish it from similar procedures, such as allowance and renunciation of a claim, is mutual concession within a particular dispute that manifests bilateral (or multilateral) procedures – conclusion of a settlement and a seeking court to affirm it. When mutual concession is absent settlement is impossible, however, in the same time renunciation or allowance of a claim is possible[107]. In the event of unilateral renunciation or allowance of a claim, a specific dispute is discontinued notwithstanding whether the other party gives assent or not.

4. Legal characteristics of settlement

Since subject (terms) results from an essence of each particular transaction, also issue as to legal characteristics about settlement will be regarded further, specifying settlement subject in particular.

In legal doctrine, various viewpoints exist as to legal characteristics of settlement. Proponents of procedural character of a settlement point out that settlement always manifests as a legal fact of civil proceeding rights[108]; settlement is a procedural provision, which is

104 Rozkov M. A. et al. (2008). *Договорное право. Соглашения о подсудности, международной подсудности, примирительной процедуре, арбитражное (третейское) и мировое соглашения (Contract Law. Agreement on jurisdiction, international jurisdiction, dispute resolution procedure, arbitration and settlement).* М.: Статут, p.254.

105 Robert H. Gertner and Geoffrey P. Miller.(1995.). Settlement Escrows. JOHN M. OLIN LAW & ECONOMICS WORKING PAPER NO.25. THE LAW SCHOOL THE UNIVERSITY OF CHICAGO, p. 35.

106 Daniel Beebe (2011). *Settlement Agreements 101 – Practice Tips for Every Lawyer.* Orange County Lawyer Magazine, Vol.53 No.10, p. 30.

107 Lazarev S. V. (2006). *Мировое Соглашение в гражданском судопроизводстве (Settlement in Civil Proceeding).* Ekaterinburg, Available at: http://www.dissercat.com/content/mirovoe-soglashenie-v-grazhdanskom-sudoproizvodstve. Last accessed on 27 April, 2013.

108 In his book. *Мировое соглашение в конкурсном производств*, 2004, Jarkov V.V. quotes such authors as Chechot D. M. (*Участники гражданского процесса.* М:, 1960. p. 10); Schelov V.N (*Гражданское процессуальное правоотношение*. М., 1966. p. 78); Gurvich M.A. (*Гражданские процессуальные правоотношения и процессуальные действия // Вопросы гражданского процессуального, гражданского и трудового права.* Труды ВЮЗИ. Том III. М., 1965. p. 94).

regarded as contract of a procedural type[109]; and merely in certain cases when settlement impacts substantive relationships of civil proceeding, it "acts" as a legal fact of a substantive law[110]. However, proponents of a procedural character (of settlement) point out that settlement is, at first, civil transaction[111]. Settlement has been regarded as a type of civil novation[112] and may be deemed as a procedural and substantive ordinance[113]. Settlement is a contractual phenomenon in which court takes part merely as a potential facilitator of private agreement. Terms of settlement (with some exclusion) depend on will of involved parties; court remains indifferent, when parties decide to conclude a settlement[114]. In civil settlement, only private interests are involved and court in such situations merely assures whether its decision may be enforceable[115].

Taking into consideration such different viewpoints, it may be concluded that procedural settlement possesses miscellaneous legal character. It shows that settlement possesses both substantive and procedural character, because it results from substantive and procedural law. From a substantive aspect, settlement is civil transaction (consequences of establishing rights), however, from aspect of procedural law, settlement terminates proceeding (consequences of rights termination). Settlement as a civil transaction is concluded at discretion of party, while taking into consideration procedural limitations relating to settlement subject and procedure. Thus, both substantive and procedural law may be applied to a settlement.

Conclusion emphasizing that upon conclusion of an agreement parties attempt to merely reach procedural consequences – termination of a court proceeding is not substantiated. It is necessary to regulate issue as to their legal relationships. Once their legal relationships are successfully regulated, parties lose their interest in continuation of a legal proceeding[116]. One of the scholars of jurisprudence, M.Telyukin, rightly points it out that settlement is characterized as a unilateral contract and procedural transaction[117]. Professor V. Jarkov states that settlement possesses not only procedural character but also serves as a procedural instrument[118]. This statement can not be fully agreeable, though. Settlement affirmed by court is not procedural settlement but it is more complicated in legal terms. It

109 In his book *Мировое соглашение в конкурсном производстве*, 2004, Jarkov V.V. quotes Gukasjan R.E. (1970) *Проблема интереса в советском гражданском процессуальном праве.* Saratov, p. 129 - 132.
110 Ibid.
111 Suslov T.M. (2001). *Несостоятельность (банкротство) граждан, не являющихся индивидуальными предпринимателями (Insolveny (bankruptcy) of citizens who appear not to be sole traders)* . Екатеринburg, p. 22. Available at: http://lawtheses.com/nesostoyatelnost-bankrotstvo-grazhdan-ne-yavlyayuschihsya-individualnymi-predprinimatelyami. Last accessed on 22 April, 2013.
112 In his book *Мировое соглашение в конкурсном производстве*, 2004, Jarkov V.V. quotes a book *Советское гражданское процессуальное право.* (1957) М.: ВЮЗИ, p. 276.
113 In his book *Мировое соглашение в конкурсном производстве*, 2004, Jarkov V.V. quotes Kurilev S.V. (1956). *Объяснение сторон как доказательство в советском гражданском процессе*., 1956. p. 157.
114 Sklansky, D A., Yeazell.S.C. (2005). *Comparative Law without leaving home: what civil procedure can teach criminal procedure and Vice versa*. The Georgetown Law Journal (Vol. 94:683), p.697.
115 Ibid. p. 697.
116 Rozkov et al. (2008). *Договорное право. Соглашения о подсудности, международной подсудности, примирительной процедуре, арбитражное (третейское) и мировое соглашения (Contract Law. Agreement on jurisdiction, international jurisdiction, dispute resolution procedure, arbitration and settlement)* М.: Статут, p.256.
117 In his book *Мировое соглашение в конкурсном производств*, 2004, Jarkov V.V. quotes Telyukin M. V. (1998). *Комментарий к ФЗоНБ.* М.: Бек, pp. 213, 214.
118 Jarkov V.V. (2004). *Мировое соглашение в конкурсном производстве (Settlement in Competition Law).* М.:Юрист, Available at: http://www.lawlibrary.ru/article1161710.html. Last accessed on 2 April, 2013.

entails civil agreement and a list of elements of procedural importance[119]. Court settlement – it is "fusion'' of both civil transaction and procedural elements of statutes[120].

5. Settlement in comparision to court judgment

In legal doctrine settlement, namely, its terms are sometimes compared to court judgments. Thus, for example, it has been stated that terms of settlement entails agreement as to dispute resolution within the court, which later upon court confirmation acquires validity of judicial decision; that settlement is a protocol of judicial authority[121]; that confirmation of a settlement authorize its judicial status of protocol[122], additionally granting it coercive measures of law enforcement[123]; it also has been stated that settlement is not only a contractual protocol, but a protocol that results from judicial activities[124].

To ensure accuracy of a particular viewpoint, it is necessary to compare major features of court judgment and settlement:

1] court has the only authority rights to render judgment while settlement is concluded by parties involved in a proceeding;

2] court responsibility is to rule on its merits, namely, it is application of provisions of the law[125], however, settlement is a result of mutual concession, which aim is dispute resolution on mutually satisfactory resolution (i.e. mutual renunciation of procedural rights which would provide ruling on its merits by court judgment in accordance with statutory norms);

3] if court decision on its merits is made in a form of judgment, in result of which it takes form of judicial protocol[126], then procedural settlement is civil transaction (consequences of establishing rights) with procedural consequences (settlement terminates proceeding). Judicial decision serves as a protective element, while upon settlement parties waive from court protection, thus case is not adjudicated on its merits.

In the light of the above, both court decisions and procedural settlements are such legal facts that impact civil rights and responsibilities of proceeding parties, in result, they may be mutually comparable to such legal phenomena which have legal consequences, but taking into consideration subjects and objects of this legal fact, they are miscellaneous legal facts, because settlements and court decisions can not be replaced or identified with each other.

Parties, which have appealed to a court in order to reach mutual dispute resolution, are by no means endued with rights to fulfill court functions – to rule a case on its merits that only court is entitled to implement. Settlement is a result of mutual dispute resolution, but not

119 Rozkov M. A. (2004). *Мировое соглашение в арбитражном суде: проблемы теории и практики практики (Settlement in Court of Arbitration: problems, theory, and practice).* M.: Статут, p. 32

120 Ibid.p. 32.

121 Rozkov M.A. et al. (2008). *Договорное право. Соглашения о подсудности, международной подсудности, примирительной процедуре, арбитражное (третейское) и мировое соглашения (Contract Law. Agreement on jurisdiction, international jurisdiction, dispute resolution procedure, arbitration and settlement)* M.: Статут, p. 234 quotes Serdukov N.V. and Knaziev D.V. Указ. соч. p. 47.

122 Yurchenko S.V. (1999). *К вопросу о юридической природе мирового соглашения (As to Legal Character of Settlement).* Юридический вестник. Ростов н/Д. N 1., p. 81.

123 Yaicev E. (2003). *Общие условия действительности мирового соглашения по делу о банкротстве должника* // Арбитражный и гражданский процесс *(General Regulations in Settlement as to Bankruptcy of Debtor)* No. 10, p. 26.

124 Ruhtin S. A. (2001). *Мировое соглашение: проблемы заключения и исполнения при банкротстве (Settlement: Issues in Conclusion and Execusion of Bankruptcy).* Журнал российского права N 7. p. 109.

124 Torgāns et al. (2000).*Civillikuma komentāri (Commentaries of Civil Law),* (Prof. K.Torgāna vispārīgā zinātniskā redakcijā), Rīga: Mans īpašums, p.264.

125 Ibid. p.264.

126 Ibid. p.264.

dispute resolution on its merits. Settlement is definite „legal fiction", that initially is not directed at seeking justice; it is rather a compromise settlement which parties conclude themselves[127]. Settlement replaces adjudication on its merits and delegates it to the parties involved in a dispute[128]. In the event court responsibility is to render a judgment on its merits that must be lawful and sound[129]. However, upon conclusion of a settlement, the principle of just is not always reached. Moreover, absolute justice is not reached because settlement is transaction without court case analysis on its merits. Settlement must be regarded as a highly problematic document rationalization technique[130]. However, as some authors have pointed out, that settlement always is shadow of law[131], because court is the only authority that confirms regulations of settlement.

Conclusion

1. A major feature of settlement subject – dispute resolution within a specific proceeding. Alike substantive settlement, which terms parties may set rather freely, procedural settlement may be concluded only within certain dispute. It signifies that such procedural settlements cannot be admitted which rules go beyond limitation of proceeding or are not connected to dispute resolution.

2. A major feature of settlement subject is mutual concession of litigants. Since settlement is bilateral (multilateral) contract, settlement subject-matter cannot be limited merely by renunciation or allowance of a claim by one of the parties. Settlement as a transaction has particular character of compromise that entails each party renunciation of rights, gain or benefit.

3. Settlement terms possess both substantive and procedural character. From a substantive aspect, settlement is civil transaction (consequences of establishing rights), but from procedural aspect it is a feature of proceeding termination (consequences of rights termination).

4. Court judgments and settlements have miscellaneous legal facts, because settlement and court decision cannot be replaced or cannot be identified with each other. Settlement is a result of dispute resolution by mutual concession of proceeding parties rather than dispute adjudication on its merits implementing principles of justice.

5. Consequences of settlement are of socially statutory character in result of which both dispute resolution at issue (a legal phenomenon), and dispute (conflict) discontinuation in result of mutual concession (a social phenomenon).

6. In the light of the above, it may be concluded that a subject of settlement is action which aim is to establish undisputable and unquestioned legal relationship (which civil proceeding parties doubt) in place of mutual legal relationship by mutual concession of litigants, thus, discontinuing civil dispute at court.

127 Seryogin N. M. (2001). *Основания к отмене определений об утверждении мирового соглашения (Grounds for Cancellation of Confirmed Settlement).* Российский судья № 1. М.; Юрист, p. 17.
128 Sklansky, D. A., Yeazell S. C. (2005). *Comparative Law without leaving home: what civil procedure can teach criminal procedure and Vice versa*. The Georgetown Law Journal (Vol. 94:683), p. 702.
129 *Civil Proceeding Law of the Republic of Latvia.* Latvijas Vēstnesis, November 3, 1998, Nr.326/330.
130 M. O.Fiss. (1984). *Against Settlement*. The Yale Law Journal, Vol. 93, Number 6, p. 1075.
131 Freeman M. (1995). *Alternative Dispute Resolution*. University College London, 1995, p. 134.

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