

Admission finds its regulation in the Civil Procedure Code (CPC) of Bulgaria as a judicial admission of fact and as an admission of the claim. By its nature, the judicial admission of a fact is the means of proof that constitutes the explanations of a party to the proceedings. An admission is a statement by the party that facts unfavorable to them have occurred, or that facts favorable to them have not occurred. Unlike an assertion, an admission is always unfavorable to the acknowledging party, and its evidentiary significance is based on this specific characteristic. (Bulgarian Civil Procedure Law (Sofia: Siela, 2012), 270–71). The admission of a fact unfavorable to the party is evaluated by the court in view of all the circumstances of the case (Article 175 of the CPC) and does not relieve the opposing party of the burden of proof, unless there is a complete congruence between the assertions of both parties regarding that fact and it is declared undisputed and not requiring proof (Article 146, Paragraph 1, item 4 of the CPC).

The admission of a fact, made through an oral statement before the court, as it constitutes the explanation of a party to the case, is not bound by the requirement to accurately reflect the facts that occurred in reality and are relevant to the disputed right (unlike witness testimony). Notwithstanding this, the admission is accorded a different evidentiary value compared to that of the party's explanations. An admission of fact is always assessed by the court in view of all the collected evidence, while the evidentiary significance of the explanations manifests only when the court imposes a sanction for bad-faith procedural conduct. When the party has been obliged by the court to appear and give explanations, but has failed to appear, refused to answer without a valid reason, or the answers given are unclear and evasive, the court may accept as proven the circumstances for the clarification of which the explanations were allowed (Article 176, Paragraph 3 of the CPC). The rule is analogous to that provided in Article 161 of the CPC, by virtue of which the court may accept as proven the facts for the proof of which the party has created obstacles.

The evidentiary value of an admission of a fact stems from the unfavorable significance of the fact to which it relates, but it does not bind the court and is compatible with the defendant contesting the claim. An admission of fact must always be made unequivocally and be objectified in the case file. It is inadmissible to infer the existence of an admission by arguing *e contrario* from the party's conduct and from their inaction in failing to invoke favorable legal consequences. Not every statement unfavorable to the party can be perceived as an admission, but only that which is clear, unambiguous, and is directed at the

opposing party's assertion of a fact, and not the legal consequences thereof (Decision on Civil Case No. 1683/2011, III Civil Chamber, Supreme Court of Cassation.).

The defendant's assertion of a fact unfavorable to them, made in the answer to the statement of claim, also constitutes an admission, and if no evidence to the contrary has been collected during the proceedings, the court may accept that this fact has occurred (Decision on Commercial Case No. 955/2014, II Commercial Chamber, Supreme Court of Cassation).

An admission of fact may also be contained in the statement of claim. For example, in the case of a claim for a judgment of possession or ownership, in the section concerning the de facto possession exercised by the defendant over the property. If the defendant raises an objection for the acquisition of the property by acquisitive prescription, the court shall then discuss the admission of the fact of possession in view of the other evidence in the case. In a dispute over ownership and the invocation of long-term possession as an acquisitive title by one of the parties, the admission of the other party may cover both the fact of possession and the right of ownership. Likewise, in this case, the admission that the opposing party has acquired the right of ownership by acquisitive prescription must also be assessed by the court in view of all the evidence in the case, provided that there is no admission of the claim. Admission is permissible even for facts for which witness testimony is inadmissible under Article 164 of the CPC. For example, on a claim for the rescission of a contract for the sale of immovable property due to non-payment of the price, when despite the indication in the notarized deed that the sale price has been paid, the buyer confirms in the case that they have not paid the price and do not intend to fulfill their obligation under the contract. The notarized deed, in the part containing the buyer's statement that they have paid the price, or respectively that the price has been received by the seller, is a private document testifying to knowledge, materializing the certifying statement of its issuer for a given fact, and the same can be true or untrue. Witness testimony for refuting the buyer's statement regarding the payment of the price is permissible only in the hypothesis of Article 164, Paragraph 2 of the CPC (with the explicit consent of the parties). However, when the buyer states in the case that they have not paid the sale price and have no intention of paying it, then there is an admission which the court is obliged to value in view of all the evidence collected in the case (Decision on Civil Case No. 3361/2017, III Civil Chamber, Supreme Court of Cassation).

Given the lack of an introduced explicit rule for irrevocability by the legislator, the judicial

admission of fact is revocable, unlike the admission of the claim under Article 237, Paragraph 4 of the CPC. The exercise of the right to withdraw the admission should be limited in time, as the withdrawal of the admission is essentially a new and different factual assertion from the one already stated. The final moment until which the admission can be withdrawn should be the closing of the first hearing in the case, in which the case management report, containing the factual assertions of the parties and the separation of the disputed from the undisputed, becomes final. After this moment, the parties can assert new facts and circumstances only under the conditions of Article 147 of the CPC. This is not the case when the admission is due to a mistake made or when the party's statement is not accurately reflected in the minutes of the court hearing, and the party makes an explicit statement to that effect. In this case, without the need to follow the procedure for correcting the court minutes (Decision on Commercial Case No. 73/2012, I Commercial Chamber, Supreme Court of Cassation), the court is obliged to assess the admission and the statement of withdrawal in view of all the other evidence in the case. In every case, the party should be aware that the court accepts their specific statement in the case as a judicial admission of fact and should be given the opportunity to take a position on the court's order, which specifies the facts and circumstances that are being admitted.

The law does not set time frames for the admission, which raises the question of whether the admission can be made at any time and before all instances until the close of the case, as well as the question of the applicability of the preclusive deadlines under the CPC.

In the absence of a legal restriction, the conclusion is imposed that the admission can be made at any stage of the proceedings and before all instances. The admission is a statement of the party, and although it is a means of proof, it is not bound by the preclusive deadlines in the CPC. The admission must relate to a legally relevant or evidentiary fact that is related to the disputed right in order to be accorded evidentiary significance. When an admission is made after the deadline for the answer to the statement of claim, when facts subject to proof are admitted, the court is obliged to supplement the case management report with the made admission, to separate the disputed from the undisputed, and to give instructions to the parties regarding the burden of proof. In this way, the court will fulfill the obligation for the case management report with the content under Article 146 of the CPC.

An admission of a fact, made during the oral arguments in the first instance, obliges the court to return the case to the stage of judicial investigation, to supplement the draft case

management report with the admission or to indicate that the admitted fact does not require proof, and to provide the parties with the opportunity to take positions on the supplemented report and to make corresponding evidentiary requests.

An admission of a fact may also be made before the appellate instance – in the appeal, the answer to the appeal, or in a court hearing. In this case, the appellate court, in its capacity as an instance on the merits of the legal dispute, must clarify the assertions of the parties regarding the admission, but the collection of evidence must comply with the conditions of Article 266, Paragraph 2 of the CPC, since the admission itself, even as a statement of fact by the party, is a means of proof and is not subject to proof by the party who made it. There is no basis for allowing an exception to the rule of Article 266 of the CPC with respect to the other party either, insofar as, if the admission concerns a legally relevant fact, the first instance has determined the subject matter of the dispute and distributed the burden of proof with the case management report, and the party should have exhausted its evidentiary requests in the first hearing in the case. On the other hand, the admission does not shift the burden of proof, but is valued in view of all the evidence in the case, and therefore, even if made before the appellate court, it would not lead to the collection of new evidence, except under the conditions of Article 266, Paragraph 2 of the CPC. In the case of alleged violations in the preparation of the case management report by the first instance, not so much due to the admission, but due to the admitted substantial violation of the rules of procedure, the appellate court will have to give instructions to the parties on the possibility of indicating and requesting the collection of relevant evidence that they could not indicate due to the omissions in the case management report admitted by the first instance (Interpretative Decision No. 1 of 09.12.2013 on Interpretative Case No. 1/2013, General Assembly of Civil and Commercial Chambers of the Supreme Court of Cassation, Paragraph 2.). Subject to Article 266, Paragraph 2 of the CPC, the requested collection of evidence for a newly learned extrajudicial admission by the other party will also have to be allowed by the appellate court. An admission of a fact made with the cassation appeal or with the answer should not be discussed by the cassation court either in the phase of the admissibility of the cassation appeal or in the review of the appeal on the merits. The only case in which the cassation court will be able to take into account an admission made before it is in the proceedings under Article 295, Paragraph 2 of the CPC, upon repeated review of the case, when the collection of evidence has been allowed in the cassation instance and the admission is made

in connection with this evidence.

In addition to the judicial admission of fact, an extrajudicial admission also has legal significance in the proceedings when made by a party to the case. Extrajudicial admissions by third parties, even if they are related to the subject matter of the case, cannot be valued as admissions and do not carry the evidentiary significance provided in Article 175 of the CPC.

One of the most common hypotheses of extrajudicial admission is the accounting of an invoice and the use of tax credit on it. In this case, consistent judicial practice accepts that the admission relates to the obligation for which the invoice was issued. In the absence of a dispute between the parties that the delivery was carried out before or at the time of the invoice's preparation, the accounting is equivalent to an admission of the fact of the completed delivery as well. If the invoice was prepared before the actual performance of the delivery, the inclusion of the invoice in the sales ledger and the use of tax credit is not equivalent to an extrajudicial admission of the fact of delivery (Decision on Civil Case No. 60140/2016, I Civil Chamber, Supreme Court of Cassation.).

A partial payment made also constitutes an extrajudicial admission of the basis of the claim (but not its size) and as such should be assessed in view of the other evidence in the case – in the case of an issued invoice, the fact of accounting and its inclusion in the sales ledger, and in the absence of a primary accounting document – the evidence of the contractual or non-contractual relations between the parties.

An extrajudicial admission may also be contained in statements of the party made before a pre-trial investigation body, concerning facts relevant to the civil dispute (Decision on Civil Case No. 861/2016, IV Civil Chamber, Supreme Court of Cassation.). The court should value these statements in view of all the evidence in the case. The same approach should be taken when the admission is made before another court, another body, a third party, or the opposing party. In this case, the proof of the extrajudicial admission is permissible not only with the document that materializes it (minutes from a court hearing, handover protocol, a record of the findings from an administrative body, etc.) but also with witness testimony (Decision on Civil Case No. 584/2010, III Civil Chamber, Supreme Court of Cassation.).

The statement of set-off can also be considered an extrajudicial admission of fact. When the extrajudicial set-off is clear, explicit, and concrete, and an unambiguous conclusion can be drawn from the party's statement that they admit the existence of the counter-claim with

which they are setting off, this statement can be accepted by the court as an extrajudicial admission of fact and valued in view of the provision of Article 175 of the CPC.

The judicial defense of set-off, made by the defendant conditionally upon the success of the claim filed against them, does not constitute an admission of fact, but a procedural means of defense. The defendant's statement contained in the judicial defense of set-off does not relate to facts of legal significance for the disputed right introduced in the subject matter of the case by the plaintiff, and therefore cannot be valued by the court as an admission of fact within the meaning of Article 175 of the CPC. The judicial defense of set-off aims solely at dismissing the original claim by extinguishing the plaintiff's claim due to the onset of the effect of compensation with the defendant's counter-claim.

Analogous to the withdrawal of the judicial admission of fact, the court before which the case is pending must guarantee the opportunity for the party who made an extrajudicial admission to raise objections regarding the nullity, voidability, and falsity of the admission and to prove these objections. When such objections are absent or not proven, the court will take the party's admission into account (Decision on Civil Case No. 2292/2018, I Civil Chamber, Supreme Court of Cassation.).

Unlike the admission of a fact unfavorable to the party, which does not bind the court to accept that the admitted fact has occurred, the admission of the claim under Article 237 of the CPC can, at the request of the plaintiff, lead to the termination of the judicial investigation and the pronouncement of a judgment based on the admission of the claim.

In the admission of the claim, the defendant's statement covers all legally relevant facts in the dispute unfavorable to them, the right based on them, and the request addressed to the court. By admitting the claim, the defendant waives their defense against the claim, and this waiver is irrevocable, unlike the withdrawal of the claim, which can be withdrawn by the plaintiff until the court renders its act. Again, unlike the withdrawal of the claim, the admission of the claim is not sufficient for the pronouncement of a judgment based on the admission of the claim if the plaintiff has not requested it. In the latter case, despite the admission of the claim by the defendant, the court will continue the review of the case and rule with a judgment on the merits of the legal dispute, and will discuss the admission by the defendant in connection with the other evidence in the case. Similar to the withdrawal, the admission of the claim can also be made by an authorized representative only with an explicit power of attorney, and by a special representative, after approval by the court

(Article 29, Paragraph 5 in conjunction with Article 34, Paragraph 4 of the CPC).

The court cannot honor either the admission of the claim or the plaintiff's request to terminate the judicial investigation and render a judgment according to the admission when the admitted right contradicts the law or good morals or is an admitted right with which the party cannot dispose (Article 237, Paragraph 3 of the CPC).

The first hypothesis of the prohibition on rendering a judgment will include cases where a claim for performance under a void contract has been filed or when the court is obliged to apply an imperative legal norm (e.g. Article 52, Article 94, Article 152, Article 170 of the Obligations and Contracts Act).

The second covers cases where, by virtue of a statutory prohibition, the party cannot dispose of the admitted right. This includes matrimonial claims (Article 324 of the CPC), claims for civil status (Article 334 of the CPC), and claims for placing under judicial interdiction (Article 339 of the CPC).

The provision of Article 237 of the CPC would not always be applicable in the proceedings for the conclusion of a final contract under Article 19, Paragraph 3 of the Obligations and Contracts Act. The court is obliged *ex officio* to check whether the prerequisites for the transfer of ownership by notary procedure are present, including whether the transferor is the owner of the property (Article 363 of the CPC), and if the transferor is not the owner of the property, despite the defendant's admission of the claim, the claim will be dismissed.

For ownership claims, a judgment based on the admission of the claim is not pronounced, although they are not listed in Article 237, Paragraph 3 of the CPC. For them (a positive declaratory claim and a possessory claim under Article 108 of the Ownership Act), the plaintiff must first establish their right of ownership by proving the elements of the factual composition of the acquisitive title maintained by them. The court always rules with a separate declaratory operative part regarding the belonging of the right of ownership to the plaintiff's patrimony. When the plaintiff does not prove their right of ownership, the claim will be dismissed, even if the defendant declares that the property belongs to the plaintiff (Decision on Civil Case No. 5289/2013, I Civil Chamber, Supreme Court of Cassation.).

The admission of the claim can be made in the proceedings before the first and before the appellate instance. Before the cassation court, the admission of the claim can be made in the phase of reviewing the cassation appeal on the merits.

Whenever the admission of the claim is permissible, i.e., none of the exceptions provided by

law are present, and the plaintiff has requested it, the court may render a judgment based on the admission of the claim. The judgment can be appealed under the general procedure with objections for nullity or inadmissibility, but not for incorrectness, since the reasoning of the judgment is according to the admission and reflects the circumstances set out by the plaintiff in the statement of claim and the defendant's assertions in the answer, as well as all assertions and objections of the parties up to the moment the admission was made and the collection of evidence was interrupted. The court is deprived of the possibility to collect all evidence relevant to the legal dispute and to form its factual and legal conclusions after an analysis of the evidence individually and collectively, as well as after discussing all the assertions and objections of the parties. Therefore, the judgment based on the admission of the claim cannot be appealed as incorrect, but only as null and as inadmissible.

Upon becoming final, the judgment is accorded with the *res judicata* effect, just like a judgment pronounced under the general claim procedure. A difference manifests in its subjective limits with respect to the assisting parties, for whom, in the general case, the *res judicata* effect of the judgment displays its effect towards the opposing party in the dispute. The *res judicata* effect of a judgment based on the admission of the claim binds only the principal parties and their legal successors, but not the assisting parties, who have not had the opportunity to influence the content of the judgment (Bulgarian Civil Procedure Law (Sofia: Siela, 2012), 457.).

The analysis of the legal regulation and the established mandatory case law on the application of the institution of admission in civil litigation, in its two forms – as an admission of a fact and as an admission of the claim by the defendant, justifies the conclusion that when the party makes assertions unfavorable to them that are relevant to the resolution of the legal dispute, the procedural law creates sufficient guarantees, established through the powers of the court, for the principles of legality, equality of the parties, and the establishment of the truth to be respected.