THE THEORY OF LEGAL FACTS IN VARIOUS LEGAL SYSTEMS

Elena Yu. Tsukanova[1]
Vladislav Yu. Turanin[2]
Sergey Yu. Sumenkov[3]
Zaurbek A. Saidov[4]
Vladimir V. Levshin[5]

1. PhD in Law, Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia
2. Doctor of Law, Belgorod State University, 85 Pobeda Street, Belgorod, 308015, Russia. E-mail: turanim@mail.ru
3. Doctor of Law, Penza State University, 40, Krasnaya Street, Penza, 440026, Russia
4. Doctor of Law, Chechen State University, 32, A. Sheripova, Groznyj, 364024, Russia. E-mail: z.saidov@chesu.ru
5. Postgraduate Department of International Law MGIMO University. 76, Prospect Vernadskogo, Moscow, Russia. E-mail: levshin@inbox.ru

Abstract: The article provides an overview of the process of the theory of legal facts formation and development in various legal systems. The perception features of this theory in the continental Western Europe countries, the Anglo-Saxon legal system, as well as in Russia are revealed. The conclusion is made that currently in Russia there is an active development of the theory of legal facts. It is filled with new content and elements. Great importance is attached to the study of large factual systems that identified by Russian jurists.

Keywords: legal fact, legal structures, reality circumstance, legal category, legal relationship.

1. INTRODUCTION

The modern theory of legal facts is a reflection of a sufficiently long period of its formation and development. Separate elements of this theory begin in Roman law. The concept of legal facts in a formalized form appeared in the 19th century in Western Europe countries (primarily in Germany) and further in Russia. Moreover, in modern Germany, the theory of legal facts in legal science occupies far from leading positions. For example, this is evidenced by the speech of the German professor R. Knipper at the international conference on legal facts and held in 2015 (Kazakhstan) [9]. Noteworthy is the title of this report, namely: «Legal facts: the emergence and decline of a legal institution in German law». The decline of this theory, according to the scientist, occurred in the XX century. Recently, this issue in legal science does not receive any significant attention.

The opposite trend is observed in Russia. In Russian jurisprudence, this legal institution has recently received increasing attention. An increasing number of studies appear on this subject, both in the general theory of law and in branch sciences. Such trends raise the question of the possible prospects of the theory of legal facts in Russian and foreign jurisprudence. The solution to this issue is possible on the basis of an analysis of the development of this theory in various legal systems, in particular in Russia, countries of continental Western Europe, as well as in the Anglo-American legal system.

2. METHODS

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

3. DISCUSSION AND RESULTS

The initial formation of the doctrine of legal facts dates back to the Middle Ages. At this time, the process of reception and systematization of Roman law was actively going on in Western Europe. Roman jurisprudence did not contain a theoretical generalization of the statements of Roman lawyers, which were used as the basis for resolving legal conflicts. Their sayings were of a casuistic nature due to the applicability to individual cases of resolving specific disputes. The basis of the theory of legal facts appeared in the German historical school of law in the first half of the XIX century. The basic concepts of this theory were developed within the framework of the then dominant legal trend - pandectics. Pandectists proceeded from the idea that the content of the sources of Roman law is based on general principles. The provisions contained in the Pandects are in a specific system. As a result of generalizations of the material contained in Roman sources, general concepts, theories, and fundamental legal principles were formulated.

In the process of reviewing the main stages of the development of the theory of legal facts, attention should be paid to the fact that historically this theory has developed within the framework of formal dogmatic jurisprudence. The subject of dogmatic jurisprudence research are legal categories, concepts, definitions, features, classification, etc. The formal dogmatic method, obviously, has the greatest productivity in the composition of such a direction of legal thought as legal positivism. It is within the framework of legal positivism that it becomes possible to consider legal phenomena on their own, to compare them, to identify their causes and effects. In this regard, it should be noted that the Anglo-American legal tradition is based on a sociological understanding of legal phenomena. Sociological theory is based on the postulate that the law does not exist in the form of legislative formulations and not as legal knowledge and ideas. It is understood as the order of social relations in the actions and behavior of people.

Exceptional practicality in the interpretation of fact as a legal phenomenon can be traced in the American Paralegal Encyclopedic Dictionary [6]. In this dictionary, a fact is defined as «an action, condition or event, the existence of which is confirmed by admissible evidence». As you can see, the concept of a legal fact is refracted through legal process activities. This underlines its importance as a subject for legal assessment by the court. In addition, it is noteworthy that the fact that a fact may not be considered a real-life circumstance, but only that which is confirmed by evidence. The evidence must comply with the requirements of the law, that is, be admissible.

The lack of a formal-dogmatic approach contributed to the fact that common law countries did not have and still lack any coherent theory of legal facts. This is a consequence of the skepticism of Anglo-American lawyers towards abstract and vague legal phenomena. They consider legal facts solely in relation to the judicial process, that is, as circumstances to be proved in a particular case. This approach is due to the following sociological theory of law in general. It focuses mainly on practically significant results. Anglo-Saxon common law is expressed mainly not in codified legislative systems, but in the case law of judges.

In contrast to the sociological understanding of law, the formal-dogmatic approach is based on logical methods of scientific knowledge. These include analysis and synthesis, induction and deduction, and others. The main method of scientific analysis is the method of

formal logic. Within the framework of this direction, the initial formation of the theory of legal facts has become possible. According to most researchers, the term «legal fact» was first introduced into the scientific circulation by F.K. Savigny, a famous representative of the historical school of law. He laid the foundations of modern private law, which subsequently led to the need for dogmatic systematization of new knowledge. It was done in his fundamental work «The System of Modern Roman Law» (1840).

In the second volume, devoted to the analysis of legal relations, the author discusses the presence of certain features in various legal relations. The analysis revealed many important general provisions that were attributed to the general part of the legal system. F.K. Savigny used the term «legal facts» to refer to the phenomenon with which the movement of law is associated [12]. Y. Baron in his scientific work «The System of Roman Civil Law» [2] devoted to the analysis of issues of the theory of legal facts a separate chapter, which consists of three sections. Along with definitions of a legal fact and its main varieties, legal fictions as actual circumstances of a special kind are also highlighted. A substantial part of this chapter (Section 1) is devoted to the consideration of legal transactions with an analysis of almost all the components of the doctrine of contracts (the concept and types of contracts, the conditions for the validity of contracts, the invalidity of contracts, and representation). The second section is devoted to the analysis of illegal actions as the basis for the emergence of civil obligations. The third section draws attention to such a variety of legal fact as time (in the modern sense - time).

Attentiveness to legal facts and their varieties in the German legal science of the 19th century was a consequence of the growing capitalism at that time, which required careful regulation of property relations. This concerned the grounds for the emergence of property rights, individual obligations, inheritance, etc. Ultimately, the careful development of the private law system in German civil law led to the emergence in 1896 of the German Civil Code (German Bürgerliches Gesetzbuch, BGB) [5], the main provisions of which remained unchanged almost throughout the XX century. At the same time, interest in the theory of legal facts has significantly weakened. It was assumed that by the end of the XIX century it reached its peak and did not imply further development. This theory was touched upon by German jurists in the 20th century only occasionally. This is evidenced by the speech of the German professor R. Knipper at the international conference, which was mentioned above.

A report by R. Knipper on the topic «Legal Facts: the Emergence and Decline of a Legal Institute in German Law» was devoted to the formation and development of the doctrine of legal facts in the 19th century and its criticism in the 20th century [9]. The author calls the legal category of legal fact «the highest systemic concept of private law of the 19th century. » This conclusion was based on the analysis of F.K. Savigny and B. Windscheid. However, according to the scientist, already at the end of this century there has been a critical attitude towards this legal category.

This attitude was expressed in doubts about the possibility of the category «legal fact» to determine the systemic clarity of legal matter. In particular, von Hippel set himself the task of eliminating the entrenched way of thinking about legal facts. This scholar argued that the belief in the existence and possibility of legal facts and the link between these alleged facts and the legal effect resulted in «constant unacceptable confusion between factual circumstances and legal assessment of factual circumstances», which mixed «reality and legal assessment of reality» [16]. In addition, the report voiced criticism of the theory under consideration by German civilists of the 20th century (in particular, K. Larenza, F. Flume). Their general position boils down to the fact that a separate category of legal facts, which is an intermediary between pure facts and legal norms, is not required.

The foregoing can be defined as the «decline» of the legal institute of legal facts in German law. The study of these issues in the German legal system is carried out only within the framework of the history of law. A critical view of the formation of any general theory of

legal facts is also observed in other countries of Western Europe. So, in the French scientific literature, questions of legal facts are considered mainly in civil law courses in connection with the problem of the occurrence of obligations [1]. Assessing the state of affairs in this area, the well-known French lawyer L. Giulio de la Morandière once wrote: «Each of the circumstances for which our law recognizes the force of the factor that generates the law, effecting its transition or termination of it, is determined by special rules, and our law does not come from any general theory of legal facts» [11].

In the scientific literature, a significant decrease in interest in the theory of legal facts in Western Europe is due to the weakening position of legal positivism. At the same time, there was an intensification of sociological trends in the understanding of law [14]. Pre-revolutionary Russian legal theory was based on the achievements of German lawyers. This theory has gone from institutionalizing the very concept of «legal fact» in the middle of the 19th century to a theory of legal fact, quite developed for its time, at the beginning of the 20th century.

The doctrine of legal facts in the scientific works of Yu.S. Gambarova appears as an independent and expanded element of the theory of law. In the course of civil law, the author especially draws attention to the practical component of legal facts. In particular, it is noted that «judicial disputes come down almost entirely to a discussion of legal facts that become the subject of both the parties' explanations in the process and the evidence they submit, the oath they take, and other procedural actions» [4]. N.M. Korkunov, defining legal facts as conditioning the application of legal norms, calls them a factual assumption [10]. At the same time, attention is drawn to the fact that «the presence of not one fact, but several, usually serves as the actual assumption of the application of a legal norm. » The totality of such facts in the study is called the «composition of factual assumptions. » In the development of the doctrine of legal facts, N.M. Korkunova on the nature of the conditions (facts) included in this composition.

The beginning of the Soviet stage is characterized by a skeptical attitude to law in general, and, in particular, to the «bourgeois». This caused the interruption of research in the field we are analyzing. However, in the future, Soviet jurisprudence developed many of the achievements of its predecessors, significantly expanding the potential of the doctrine of legal facts. One of the first works of the Soviet period, where a systematic presentation of the theory of legal facts was given, was the monograph by O.S. Ioffe, «Relations in Soviet Civil Law» published in 1949 [7]. The scientist notes that «the study of legal facts in bourgeois civilistic science had as its main goal the creation of their harmonious classification system, which, fully encompassing all phenomena that acquire legal significance in accordance with the prescription of the law, would reflect external legal features and properties in its various sections and divisions inherent in various types of these phenomena». However, O.S. Ioffe was critical of the achievements of bourgeois jurisprudence in this area. In particular, it was noted that «despite the fact that the problem of systematizing legal facts for a long time attracted the attention of many bourgeois lawyers, they were not able to create anything essentially new in this area, compared with the system developed by in the first half of the XIX century».

Considering the Soviet period of the doctrine of legal facts, it should be noted the significant contribution of V.B. Isakova. The general doctrine of legal facts became the subject of his doctoral dissertation [8]. V.B. Isakov was able to consolidate the main achievements in the framework of the doctrine of legal facts. The scientist proposed an author's systemic vision of this teaching. When conducting these studies, his main task was to reveal the place of legal facts in the system of legal regulation, taking into account the analysis of their functions. A separate place was allotted to the significance of legal facts in the implementation of the administrative activities of the socialist state. V.B. Isakov in the indicated works for the first time clearly indicated the duality of the legal nature of legal facts, namely their material and

ideal nature. Characterizing this duality, it was noted that the legal fact is a phenomenon of objective reality, reflected in a certain ideal system. A significant achievement of research by V.B. Isakova was the introduction into the scientific circulation of the concept of large factual systems.

In modern Russia, the theory of legal facts also tends to improve. In particular, you can pay attention to the thesis of V.V. Yarkova, which is devoted to the features of the manifestation of legal facts in the mechanism of civil procedural regulation [17]. A serious generalized study was conducted by M.A. Rozhkova, which contains a fundamental general theoretical analysis of the problems of the doctrine of legal facts, although it is devoted to legal facts in the field of civil and civil procedural law [13]. Currently, the theory of legal facts in Russian legal science is on the rise.

4. CONCLUSION

The foregoing allows us to say that the doctrine of legal facts and its components is in the process of development, despite a very decent amount of research. Recent works in this field, both fundamental and private, show the ambiguity of the approaches of various scientists to explaining seemingly established positions. This allows us to assert the relevance of additional research in this area. In addition, increased attention to problems of the theory of legal facts is a consequence of the turbulent variability of Russian legislation. The improvement of civil legislation, for example, led to the emergence of new institutions that previously did not exist in domestic civil law. Some of the modern short stories are borrowed from foreign legal orders, which is due to the need to unify the legal regulation of the economic sphere with countries with developed market economies and with an established legal system [3]. As a result of what has been said in developing legal systems, close attention is required to its individual elements in order to determine the effectiveness of their work. This is also relevant for modern Russia in the context of the formation of a market system and the desire for its adequate regulation [15]. The development of the theoretical foundations of legal regulation in Russian society is most directly related to the study of legal facts. The isolation, preservation and modern development of this category in the legal plane is regarded by us as an achievement of Russian legal science.

CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest.

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