

РОЗДІЛ II. КОНСТИТУЦІЙНЕ ТА МУНІЦИПАЛЬНЕ ПРАВО

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LEGAL FACTS IN MUNICIPAL LAW: PROBLEMS OF DEFINITION AND CHARACTERIZATION OF THE ESSENTIAL FEATURES

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In the article investigates the problem of allocation of essential features and determines the facts of the legal definition in municipal law on the analysis of existing legislation and by summarizing existing research and theoretical perspectives of scientists in the general theory of law and other areas of law.

Key words: legal fact, local government, local community, municipal law, municipal law relations, municipal norms.

Бровченко Н.В. ЮРИДИЧЕСКИЕ ФАКТЫ В МУНИЦИПАЛЬНОМ ПРАВЕ: ПРОБЛЕМЫ ОПРЕДЕЛЕНИЯ ДЕФИНИЦИИ И ХАРАКТЕРИСТИКА СУЩНОСТНЫХ ПРИЗНАКОВ / Запорожский национальный университет, Украина

В статье исследуются проблемы выделения существенных признаков и определения дефиниции юридических фактов в муниципальном праве на основе анализа действующего законодательства и путем обобщения существующих научно-теоретических точек зрения ученых в общей теории права и других отраслях права.

Ключевые слова: юридический факт, местное самоуправление, территориальная община, муниципальное право, муниципально-правовые отношения, муниципально-правовая норма.

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У статті досліджуються проблеми виділення сутнісних ознак та визначення дефініції юридичних фактів у муніципальному праві на підставі аналізу чинного законодавства та шляхом узагальнення існуючих науково-теоретичних точок зору науковців у загальній теорії права та інших галузях права.

У процесі дослідження визначено, що певним життєвим обставинам не притаманні іманентні властивості бути чи-то не бути юридичними фактами, вони стають юридичними тільки тоді, коли таке значення їм надається нормами права. Нормативне закріплення юридичних фактів дозволяє законодавцю тонко відчувати процеси і явища, які відбуваються в житті суспільства, і оперативно впливати на них. Чим точніше фактичні моделі життєвих обставин прописані у нормах права, тим ширше можливості правового регулювання цієї дійсності.

Для визначення дефініції юридичних фактів у муніципальному праві були проаналізовані специфічні ознаки, притаманні їм. Зокрема такі, як конкретність, соціальна значущість, нормативність, формалізованість, дуалізм правової природи, обов'язковість, предметність. Також серед сутнісних ознак виокремлені такі: юридичні наслідки може спричиняти як факт наявності, так і факт відсутності певної обставини чи явища; юридичні факти мають як об'єктивне, так і суб'єктивне походження, тобто можуть бути як діями природних явищ, які не залежать від волі людини, так і свідомими вольовими діями суб'єктів муніципально-правових відносин; юридичні факти властиві конституційним правовідносинам на всіх стадіях – виникненні, зміні чи припиненні; спричиняти правові наслідки може як один факт, так і їх сукупність (фактичні склади) тощо.

Отже, юридичні факти виступають активним, дієвим елементом механізму муніципально-правового регулювання. Їх закріплення в законодавстві використовується як один із засобів впливу на поведінку суб'єктів муніципально-правових відносин. Проте не слід забувати про

особливу сутнісну природу юридичного факту в муніципальному праві, адже з одного боку він існує в юридичній нормі як фактична модель (сфера юридично належного), а з іншого боку виступає як реальна обставина суспільного життя (сфера об'єктивно існуючого).

Юридичні факти в муніципальному праві пропонуються визначати як конкретні життєві обставини чи явища дійсності, що мають суспільно-політичне значення для місцевого самоврядування, наявність (чи відсутність) яких закріплюється в муніципально-правовій нормі та обумовлює динаміку муніципальних правовідносин, наділяючи суб'єктів муніципально-правових відносин конкретними суб'єктивними правами та юридичними обов'язками.

Ключові слова: юридичний факт, місцеве самоврядування, територіальна громада, муніципальне право, муніципально-правові відносини, муніципально-правова норма.

Municipal law is one of the newest areas of law that is under research and theoretical formulation and recently acquires with high-quality development and a renewed understanding of the nature and content. Consolidation on normative level the actual circumstances of models and phenomena of social life, which with the advent of reality are legal facts and transform abstract rules to specific municipal relationship is one priority massive of social modernization and optimization of local government.

Over the past decade in Ukraine due to dramatic changes in the socio-political system, because of the change in the centralized management in most areas of public life came to market economy, recognition of diversity ownership, political pluralism, internationalization of social life and other democratic reforms in all spheres of social relations – social, economic, political, spiritual, cultural and so on. The relevance of the study of legal facts in municipal law is been enhanced by the fact that in today's state, as the economic, political and social changes that are specific to countries in the process of reform and the need to provide a scientific basis to design regulation according to actual needs.

During the development of municipal law relationships we can say that they are very dynamic and mobile, reflecting the changes taking place in the politico-legal society, they arise constantly changing or terminated due to various reasons, the facts in the life of the community or individual members. However, for these facts to become legal significance that they have to cause the movement of municipal law relationships, it is necessary on spread these actions legal norms.

The purpose of this article is to highlight the essential features and determine the facts of the legal definition of municipal law with help of research and analysis of existing legislation and by summarizing existing research and theoretical perspectives of scientists in the general theory of law and other areas of law problems.

Legal facts in municipal law are less explored legal category, although the legal regulation of social relations in the number of seats and legal facts are in the process, also attention is paid to both in the Soviet and in the modern scientific literature, namely among researchers including: Batanov, Brovchenko, Ebzyeyev, Ivanov Kazanchyev, Kozlova, Kostjukov, Kutafin, Luchin, Pohorilko, Fedorenko, Stryekozov, Suprunyuk, Todyka, Shumsky and others. The study of the problem about determining the legal nature of the legal facts in the municipal law has special scientific interest, because of its solidity and insufficiently study.

Before proceeding to the characterization of the legal facts in municipal law it should be noted that the industry does not belong to the basic (core) areas of law as it has a complex (secondary) character and a close relationship with many branches of law, rules which ensure systematic functioning of all institutions of local government (local elections and referendums and other forms of municipal democracy, territorial communities of local governments, local councilors, the executive bodies of village, town, city and district councils, service in local government, village, town and city mayors; associations of local governments, local government and local finance, and accountability of local government officials, local government guarantees, community organizations, etc.) and deals with the social, economic, cultural, spiritual and otherwise within the territorial community.

So, the specificity of the subject of municipal law stipulates that the industry is closely linked to the constitutional, administrative, civil, land, finance and others branches of law. Thus, given the foregoing consider it is appropriate legal facts in municipal law to be viewed through the prism of other areas of law summarizing positive achievements in solving this problem.

In the general theory of law, Ivanov believes that legal facts are the direct basis of the citizens subjective rights in a particular relationship and they take place in the mechanism of self-regulation, arguing that the fact that they are a necessary component in the transition from state regulation of social relations to the individual, sub normative regulation [1, p. 32].

Another view is held by Osnovin who understands that the legal facts are only the condition, which is associated with a rule of law, modification or termination of the legal relationship [2, p. 26].

Legal facts, according to Kechek'yana, are "facts or events, the presence of which rules of law associated occurrence of certain legal consequences, ie the origin, modification or termination of legal rights or obligations of any other person" [3, p. 161]. Therefore, in his opinion a prerequisite of, modification or termination of the relationships are rules of law, which expressed the will of the state and that they associate with certain facts to legal consequences in all specific cases where these facts are adequate to the law. In the absence of such law acts, their contents are not legally relevant and have no legal relationship cause. Although he agrees, that the immediate cause of modification and terminations of relationship are still legal facts.

According to Skakun legal facts are specific social circumstance (event, action, state), which is the basis for the occurrence of certain legal consequences. Scientists believe that if there is no law without legal facts there can't be any relationships [4, p. 605].

Nahrebelnyy and Rabinowitz believes that legal facts can be only those facts which entail certain legal consequences, specify the content of reciprocal rights and duties of the law subjects.[5, p. 981].

Another scholar Marchenko indicates that legal facts are the various life circumstances, conditions and factors that are defined in the law, to be exact – in their hypotheses, serve as a prerequisite of modification and termination of relationship, entail subjective rights and legal responsibilities of participants which are provided with legal and state coercion [6, p. 664-665].

The ideal model of legal fact (legally defined) establishes in the hypothesis of a legal norm (or several rules). "In the practice of law – said the Nedbaylo – establishing actual hypothesis (actual composition) merges with the installation of hypothesis standards. But between hypothesis and model the fact should not be equate. Hypothesis it is an element of the legal order, linked to other elements – disposition or sanction. They are not the same in scope: a model of a complex legal fact (the actual composition) can be assigned to several hypotheses of legal norms [7, p. 104-105].

All these thoughts that have been expressed by soviet and modern scholars concerning the general theory of legal facts in future will be accepted and taken into account during the forming the overall concept of legal fact in the municipal law of Ukraine.

The Ukrainian scientists and constitutionalists, who have researched the theory of constitutional legal facts, including Todyku and Suprunyuk [8, p. 36], like other researchers [9, p. 17], consider that a legal fact preceded the emergence of constitutional and legal relationship with it begins the implementation of constitutional and legal norms and by the facts of the legal entity becomes a party to the relevant relationship, he is the owner of certain rights and obligations' bonds.

Other scientists Kolodii and Oleinik, mark an important role in the mechanism of legal facts ensuring the rights and freedoms and duties of man and citizen and determine their specific life circumstances as stipulated by the law, which are determined the emergence, change and termination of relationship [10, p. 239].

In the electoral relationship Todyka [11, p. 131] believes that the basis of their appearance are legal facts which are an appropriate living conditions, that rules associated with a suffrage, modification or termination of election relationships. These findings, scientist believes, that are a result of legal recognition of such state law. In general, the legal facts play an important role in the electoral process because they associate the rules of the electoral law of real social relations.

More fundamentally legal facts in constitutional law are investigated by Pohorilko and Fedorenko, who injects into the constitutional law such legal category as "constitutional legal fact" and define it as "prescribed or authorized by the constitutional and legal norms cause or consequence of activity or behavior of the constitutional and legal relations, or the objective circumstances that contribute to the emergence, change and termination of the constitutional and legal relations" [12, p. 497]. They are also supporters of the dualistic theory of constitutional legal facts, which means that they can be both a cause and a consequence of the constitutional and legal relations. Also Pohorilko and Fedorenko believe that legal facts are important part of legal referendum, which gives them a finished appearance [13, p. 34].

Also in constitutional law legal facts are determining how specific life circumstances or aspects of reality which have social and political importance, the presence (or absence) of which is fixed in the hypothesis of constitutional and legal norms and determines the origin, dynamics or suspension of constitutional relations [14, p. 6].

Legal facts in municipal law are fundamentally studied by russian scientist Kostyukova, which defines them as the real life events that are leading municipal-law in motion, causing its implementation in legal relations, transforming the subjects of municipal law in specific subjects of municipal relations. The author is a supporter of the theory under which the legal facts are the active element of an effective municipal legal regulation of local government. The author understands the legal facts in municipal law like the circumstances of life or real life events that lead municipal-law in motion, determine its implementation in legal relations, transforming the subjects of municipal law in specific subjects of municipal law relationships [15; with. 122].

Certain life circumstances are not appropriate to have inherent properties or to be or not to be some legal facts, they are legal only if they are given a meaning by law. Statutory legal facts allow the legislator to feel subtle processes and phenomena that occur in society, and promptly act on them. The closer the actual model to life circumstances prescribed in the law, the greater the possibility of regulation of this reality.

To understand the nature and content of the legal definition of a fact in municipal law we should identify the specific features inherent to this legal phenomenon:

Specificity. It consists in the fact that the legal facts are always the specific objective phenomena of social life that are the real actual circumstances, events or processes of social or natural disasters occurring in some specified period of time in a particular area. They should have an objective expression, because it cannot be abstract concepts, thoughts, inner mental state entity. Legal facts should always be phenomena of the material world, which are actually transform an abstract model of the actual circumstances, events or municipal legal norms in specific subjective rights and legal responsibilities in municipal relations.

The social significance. It is driven by direct connection between the legal facts of social relations. It means that not all life circumstances, but only those which are, because of the importance to the community, state, etc., enshrined, provided legal norms as common link between general software and specific regulation of social relations or practice real subjects. If certain conditions or events are not related to the social reality they have no legal value, for example: changing seasons, the light of the sun or moon, rain, snow, etc.

Normativity. Actual modules of events or circumstances must be defined in normative legal rules hypothesis because it is due to rule of law among many vital facts determined by the facts of legal significance, by which arise, develop and operate municipal relationship. According to Article 18 of the Law of Ukraine "On Service in Local Government" maximum

age being employed in local government is 65. That is, in this case the person attains the age of 65 has legal value, as predicted in the hypothesis of municipal legal norms and entails legal consequences, such as termination of the relevant relationships.

Formalize. Legal facts in municipal law have legal consequences only their due execution and attestation of the relevant authorities and officials.

The legal nature dualism. Legal facts in municipal law can be both a cause prerequisite of municipal law relationships and their consequences, result. Moreover, even the same legal fact can be law making, law stopping and law stopping at the same time. For example, according to Art. 4 of the Law of Ukraine "On Status of Local Councils" opening of the first session of the newly elected city council is both law making fact for deputy who gets powers for the first time, law stopping to the deputy, whose term ended and law changing for deputy who was elected for another term.

Necessity The legal fact is an integral part of the structure of municipal law relationships because without it municipal legal relationship cannot occur, change or stop. Traditionally, the structure of municipal law relationships consists of such elements as object, subject, content and legal fact.

Objectivity. Legal facts carry information about the state of social relations that are the subject of legal regulation of municipal law, that the state of social relations that arise in the solution of local communities, authorities and officials of public authority in local matters, as well as providing locally rights and freedoms and legitimate interests of local groups and social groups. With this feature depends on the sectoral belongings of legal facts.

So legal facts are the active element of an effective mechanism for municipal legal regulation. They consolidate in the legislation used as one of the tools to influence the behavior of subjects of municipal relations. But, we shouldn't forget about the special nature of the essential legal fact in municipal law, because on one hand it exists as a legal norm, the actual model (juridical proper), on the other hand serves as a real fact of social life (objectively existing realm).

However, the above features of the legal facts in municipal law are not exhaustive, and therefore not fully provide insight on the legal nature of the studied phenomenon. For example, to the features of the legal facts in municipal law may be also include the following features: legal implications may be caused by the fact of the presence (a deputy may be a person who is a citizen of Ukraine and who has attained on election day 18 years), and the absence of specific circumstances or phenomenon (a deputy can't be a citizen of Ukraine who has been convicted for committing an intentional crime, if the conviction is not canceled or withdrawn in accordance with the law); legal facts are both objective and subjective origin, that can be as acts of nature, which are independent of human will (birth, snowfall, floods, death of a person) and conscious volitional actions of municipal entities, legal relations (order village, town mayor, city council decisions, legal facts inherent constitutional legal relationships at all stages – forming, changing or stopping ; may cause legal consequences as a fact and a set of (actual compositions) and others.

Summarizing the above given scientific and theoretical positions of scientists in different areas of law and specific range of selected features, we can determine the legal facts in municipal law as a specific life circumstances or aspects of reality that have social and political significance for the local government, the presence (or absence) of which fixed in municipal legal norms and determines the dynamics of municipal legal entities giving municipal law relationships specific subjective rights and legal responsibilities.

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**ВДОСКОНАЛЕННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО РЕГУЛЮВАННЯ
ВПЛИВУ ГРОМАДСЬКОСТІ НА ПРИЙНЯТТЯ
НОРМАТИВНО-ПРАВОВИХ АКТІВ В УКРАЇНІ**

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У статті розкрита проблематика вдосконалення конституційно-правового регулювання впливу громадськості на прийняття нормативно-правових актів в Україні. Констатовано, що сучасна модель взаємодії органів публічної влади та громадськості має забезпечувати задоволення прав та інтересів різних соціальних груп і реалізацію ефективної державної