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THE CONCEPT AND FEATURES OF LEGAL FACTS IN THE DOCTRINE OF LAW OF OBLIGATIONS

The scientific article analyzes different understandings of the concept of «legal fact» both in Soviet times and in modern period. It is concluded that the modern doctrine of civil law examines legal facts as legal components of everyday life, woven into a complex network of social relationships due to economic, political, social factors, that is, as a legal and social category.

Analyzing legal nature of a legal fact in the dual component aspect, it is concluded that this approach is possible for clarifyng certain legal relationship the legal fact as an objective reality with the legal design. It is noted that a proper understanding of the legal structure of a legal fact will give the possibility to conclude that a particular legal fact is not a random phenomenon, but a phenomenon created by a specific legal system, which depends on the level of development of legislation, perfection of the legal structure and so on.

Key words: legal facts, civil obligations, legal construction, rule of law, facts of reality, obligations.

The construction of generatrix theory of liability is the one of the most important tasks of science and one of the most important issues for any legislation that develops[1]. This way of development of the law of obligations at the time was selected by developers of the Civil Code of Ukraine. Now, having gone through the ten years' frontier from the adoption of the Central Committee of Ukraine, it is safe to emphasize that the vector of the law of obligations has chosen correctly.

Today, provisions of obligation law are the most effective part of the Central Committee of Ukraine in volume that are designed to ensure effective regulation of obligating relations that arise from the different kinds of facts. Therefore, it is clear that in recent years, the provisions of the laws of obligation have increased the attention and interest to the general theoretical problems, relating to the main areas of civil law in general and in particular to the law of obligations. Among these research papers should be called the monographs by N. Golubeva «Obligation in civil law Ukraine: Methodological Regulatory Framework» (2013), A. V. Kostruba «Legal facts in the mechanism of law cessation of civil relations» (2014). A. A. Otradnova «The mechanism of regulation of civil law tort liability» (2014), V. S. Kowalska «Foundations modification and termination of family relationships» (2014) and others. It should be noted that the basis for the research of this problem was the work of A. A. Krasavchykov «Legal facts in Soviet civil right» (1958)[2].

The liability law went a long way to its full formation in such a way that there is today. It is known that the starting point for the formation of the Institute liabilities was the ideas of Roman law. Later it was forming the light of the existence of two doctrines: civil-law that existed in Eastern Ukraine (Little Russia) and civil-law that took place in Western Ukraine[3]. The result is – no single doctrine of common law and legal positions of scientists.

Modern legal doctrine as a logical result of historical development, which provides coverage of civil status and characteristics of each historical stage, considers three stages of civil rights (including rights of obligations): 1) revolution (XIX c.–1917); 2) Soviet (1917 – late 80-s. XX century); 3) modern[4].

Conducted periods makes it possible to trace the formation conditions, the results and trends of the law of obligations, as among the main obligations of legal tools that mediate trade turnover at different

1 Голевинский, В.О (1872). *О происхождении и делении обязательств*. Варшава: Тип. О. Бергера 2.
2 Красавчиков, О.А. (1958). *Юридические факты в советском гражданском праве*. Москва: Госюриздат.
3 Кузнєцова, Н.С. (заг. ред.) (2013). Правова доктрина України: у 5 т. *Т. 3: Доктрина приватного права України.* Харків: Право.
4 Кузнєцова, Н.С. (заг. ред.) (2013). Правова доктрина України: у 5 т. *Т. 3: Доктрина приватного права України.* Харків: Право.

stages of human development, thus, identifying the grounds of their origin makes it possible to figure out the dynamics of civilian traffic and directions of improving the legal regulation of the relations.

In the modern sense the liability is a commitment relationship in which one party (the debtor) is obliged to act in favor of the other party (the creditor) a certain action (transfer property, perform work, provide services, pay money, etc.) or to refrain from certain actions, and the creditor may require the debtor to perform his duties (Part. 1, Art. 509 Civil Code of Ukraine). Since the commitment is a form of civil relations, the basis of his occurrence may be legal facts that are set out in Art. 11 Civil Code of Ukraine. According to Part. 1, Art. 11 CC Ukraine civil rights and obligations arising from the actions of individuals provided for acts of civil law, as well as the actions of individuals that are not provided by these acts, but by analogy generate civil rights and obligations. It should be noted that Art. 11 Civil Code of Ukraine contains an exhaustive list of legal facts on which there are civil rights and obligations.

Therefore, the effectiveness of regulation obligating relations which is arising from legal facts, can not be considered without a proper evaluation of the past, because the purpose of this research paper is primarily to clarify the nature of the legal nature of the legal facts and determine the legal characteristics of the latter.

The theory of legal facts of today can not be called in one of the new law, because the Romans have distinguished several grounds of legal relations[1]. Despite the above, the general understanding of the legal fact was not managed by to form by them; such merit in law was credited by V. Savigny. According to the German lawyer A. Manigk, B. Savigny, having worked on a reinterpretation of Roman law and its systematic exposition, for the first time admitted that the events that cause the occurrence or termination of legal relations should be called[2] as legal rights. Further understanding of the legal fact evolved in line with the formal-dogmatic jurisprudence under the considerable influence of legal positivism based on works of scientists G. Dernburh, R. Zom, G. Puhta, A. Ton, E. Tsytelman, L. Ennektserus and others.

It is believed that the category of «legal fact» arised and developed from practical needs (of property rights, inheritance rights, some binding relations, etc.) as the basis for the definition of «legal fact» lay attempts to cover the only concept of variety preconditions of motion of specific legal relationship. Works of pre-school scientists were impregnated of just this idea, including E. Vaskovskyi, D. Grimm, N. M. Korkunov, V. I. Sinai, G. F. Shershenevich and others. However, there were other views, including L. Petrazhitsky, noting unilateralism of formal dogmatic jurisprudence, its tendency to «legal mystery» provided his subjective and psychological treatment to legal facts. The definition of «legal facts», as he understood, is not external events, as well as subjective, purely imaginary events that are critical in the legal life. This scientist stressed that legal fact in terms of law should be understood not as a fact of such a contract, and the very belief in the existence of such a fact[3]. This position was not accepted by the scientific of community of the time since negate the legal significance of the facts in the legal system[4]. This position is not acceptable today, especially in terms of the theory of civil obligations.

Analyzing theoretical legacy of the past, we can say that the jurisprudence of the time has developed a theory of legal facts according to the level of legal culture and needs of the Soviet legal system. Instead, the modern doctrine of civil law considers the legal facts as being legal components that exist in a complex network of social relations, which include economic, political, social relationships and so on. So today It seems that reasonable understanding of the legal fact as specific life circumstances in which the rules of civil law linked the onset of legal effects and, above all, the emergence, change and termination of civil relations[5].

As general concepts, legal facts are investigated both in the general theory of law and in the industry of legal sciences. In particular, the textbooks on the theory of law provides a definition of the legal facts, under which legal facts are understood as predictable by hypothesis of legal rules fact, specific

1 In institutes of Gaius there were four: the contract, quasi-contract, delict, quasi-delict. Later began to distinguish unilateral agreement.

2 Manigk, A. (1928). Tatsachen, juristische – Handwrterbuch der Rechtswissenschaft. *B. 5.* Berlin und Leipzig, 847.

3 Петражицкий, Л.И. (1910). Теория права и государства в связи с теорией нравственности. *Т. 2.* Санкт-Петербург, 458-459.

4 Исаков, В.Б. (1984). *Юридические факты в советском праве*. Москва: Юридическая литература, 6.

5 Дзера, О.В., Кузнєцова, Н.С., Майданик, Р.А. (ред.) (2010). *Цивільне право України. Загальна частина*: підручник. Вид. 3-тє. Київ: Юрінком Інтер, 495.

circumstances with the advent of which legal relations change or terminate[1]. The textbook «Civil Law of Ukraine. Chapeau» legal facts are identified as specific life circumstances in which the rules of civil law linked to the onset of legal effects and, above all, the emergence, change and termination of civil relations[2]. A. A. Otradnova analyzing legal doctrine of the facts of the law, said that the doctrine of civil law of legal facts are recognized as real circumstances in which the law associates arising, modification or termination of relations[3]. Z. V. Romovska, noting that the legal facts are grounds not only of civil rights and obligations, notes that legal fact – a term that applies not only the appearance but also change and termination of rights and obligations bonds[4]. Supporting the general opinion of scientists, it should be noted that in the context of the law of obligations «securities» are only those facts, which causes the occurrence of certain legal consequences. Therefore, determining the legal definition of the facts should first pay attention to the fact that the legal facts – a certain life situations, which are characterized by the following features: 1) enshrined in the law as an abstract model of the behavior of individuals, which are associated with the onset of certain legal consequences; 2) the actual occurrence of certain circumstances.

Legal facts are phenomena of reality that exists objectively, regardless of the attitudes of the person, it is difficult to assume the existence of legal facts in the future. Thus it is clear that the legal facts at the time of analysis already exist or have they existed in the past. Moreover, as remarked by A. A. Otradnova, each legal facts must be provided by specific characteristics[5].

The concept of «fact» means real action or real, nonfictional event, a real phenomenon; what happened, actually happened[6]. Accordingly, the legal analysis of the facts is not only a problem of theoretical science but also practical problem directly. Therefore, the theory of legal facts, of course, connected with the solution of practical problems of law, because the wrong legal assessment of the facts can lead to that fact that some circumstances will not be provided by proper legal significance, others, on the contrary, will be ascribed by not usual for them qualities. The opinion of V. B. Isakov that the ability to «work» with the facts is a legal and factual culture, a necessary element of common legal culture[7], is more than convincing today.

We know that the implementation of the law in the «life» is through the mechanism of legal regulation. The effectiveness of this mechanism depends largely on the ability of legislators to feel, «keep abreast» the existence of social relations as a source of legal facts, is a social reality. Because, as noted A. V. Kostruba, with the reforms which take place in society, a subject of legal regulation and legal facts remain the same, some relationships and life circumstances of life disappear, while others, conversely, are born, mature, get better legal design[8].

In legal literature expressed different views on the meaning of the concept and structure of the mechanism of regulation of social relations. Thus, according to S. Pogribnyi mechanism of regulation of contractual civil relations should be seen as a chain of successive changes of certain legal effects: the rule of law regulating civil relations – legal fact – rights and duties that exist in civil matters, which arose in his basis, the implementation of civil rights and duties, and if necessary – also the protection of rights and interests[9]. This understanding of the mechanism of regulation of contractual relations is generally a reflection of the general theory of law in view of this mechanism as the ongoing process by which the right to influence social relations, describing it at certain level (stage), including: 1) legal norms; 2) legal relations and the subjective rights and legal obligations of their members; 3) acts of the rights and

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1 Рабінович, П.М. (2001). *Основи загальної теорії права та держави:* навч. посіб. Вид. 5-те, зі змінами. Київ: Атік, 68.

2 Дзера, О.В., Кузнєцової, Н.С., Майданика, Р.А. (ред.) (2010). *Цивільне право України. Загальна частина:* підручник. Вид. 3-тє. Київ: Юрінком Інтер, 495.

3 Отраднова, О.О. (2014). Механізм цивільно-правового регулювання деліктних зобов'язань: автореферат доктора юридичних наук. Київ, 14.

4 Ромовська, З.В. (2005). *Українське цивільне право: Загальна частина. Академічний курс*: підручник. Київ, 325.

5 Отраднова, О.О. (2014). *Проблеми вдосконалення механізму цивільно-правового регулювання деліктних зобов'язань:* монографія. Київ: Юрінком Інтер, 96.

6 Яременко, В.В. (2003). Новий тлумачний словник української мови: у 3 т. *Т. 3*. Київ: Аконіт, 780.

7 Исаков, В.Б. (1984). *Юридические факты в советском пр*аве. Москва: Юридическая литература, 9.

8 Коструба, А.В. (2014). *Юридичні факти в механізмі правоприпинення цивільних відносин*: монографія. Київ: Ін Юре.

9 Погрібний, С.О. (2009). *Механізм та принципи регулювання договірних відносин у цивільному праві України*: монографія. Київ: Правова єдність.

obligations. However, as V. Lutz, the selection of individual stages of the regulation is rather arbitrary because the legal reality is not always possible to trace the precise limits of the process of passing on its separate stages. For example, at one time the contract of sale of goods, which is performed at the very conclusion, the stage of emergence and implementation of subjective rights and obligations of the parties hereunder may be the same[1]. Therefore, according to many authors that the mechanism of regulation include a much broader range of legal means, namely morality, customs, acts of law, legal opinions, definitions, presumptions, etc. is more than convincing as a legal model for future contractual relations between people first laid in the law and other social regulators.

Therefore, the vector A. B. Hrynyak thoughts on the mechanism of legal regulation in the sphere of contractual relations have chosen correctly, when scientist proved that the mechanism of regulation of contract relations should be understood as a set of legal tools, methods and forms by which the contractor, ordering relationship, materializes their ideal model that is embedded in the law and the provisions of the contract, which is associated with the occurrence of certain members of subordinate relationship rights and responsibilities[2]. Equally compelling is issued and the position of S.Slipchenko, analyzing mechanism of legal regulation in the sphere of moral relations, notes that the legal facts are not only set the time, which begins with the dynamics of moral relations, but also the kinds of dynamic processes[3]. Thus, as it follows from the above that it, conversion rights from the scope of the «appropriate» in the sphere of «things» starts with the legal facts.

From a legal point of view, the mechanism regulating civil obligations is taken into structural and functional unity, set of legal and individual legal facts by law or contract generate specific relationship.

In the first stage of the mechanism of civil liability regulation is the statutory obligations, respectively, in the second, thanks to the legal fact there is the individualization of civil relations. Therefore, according to V. Luts, legal model for future contractual relations between people is laid in the law and other social regulators (ethics, business practices, religious canons etc), because it is enough only to apply to any contract and named Institute which is dealt by CC Ukraine and other acts of civil law, as in the first article the definition of this type of agreement, the parties, subject matter, form, rights and obligations of the parties, the consequences of breach of contract, etc., that allow to distinguish it from other (related) legal structures[4]. Therefore, in this respect, great interest is the idea of A. V. Kostruby who argues that legal facts are associated with each stage of regulation[5].

According to M. Sibilov, the contract in private law is understood as universal legal mechanism of internal regulation of public relations[6]. Phenomenal is the role of the contract, according to V. Lutz, is that its regulatory effect on other elements of the mechanism of regulation appears, in fact, throughout the process of legal regulation of civil contractual relationship[7].

The agreement serves as a legal fact, which is one of the grounds of subjective civil rights and obligations (legal, including commitments). According to ch. 2, Art. 11 and ch. 2, Art. 509 civil Code of Ukraine obligations, arising from treaties and other transactions are specified by law, as well as contracts and other transactions which, although are not required by law, but not contrary to it.

In legal literature, the legal facts are considered as a kind of model legal circumstances: this abstract (typical) circumstances which are enshrined in law and the rule of law which binds the occurrence of certain effects. In particular, M. A. Rozhkova stresses that the rule of law are the general rules designed to indefinite range of persons and an unlimited number of cases because they are abstracted from individual cases and determine the behavior of the model based on the legal circumstances, which is possible in reality. Noting that the legal facts are understood in the light of current circumstances – the phenomenon or

1 Луць, В.В. (2012). Договір як регулятор цивільних відносин. *Право України, 9,* 19-25.

2 Гриняк, А.Б. (2013). *Теоретичні засади правового регулювання підрядних зобов'язань у цивільному праві України:* монографія. Київ: НДІ приватного права і підприємництва НАПрН України.

3 Сліпченко, С.О. (2013). Правопороджуючі юридичні факти у механізмі правового регулювання особистих немайнових відносин. *Вісник Національної академії правових наук України, 3 (74),* 195-203.

4 Луць, В.В. (2012). Договір як регулятор цивільних відносин. *Право України, 9,* 19-25.

5 Коструба, А.В. (2014). *Юридичні факти в механізмі правоприпинення цивільних відносин*: монографія. Київ: Ін Юре.

6 Сібільов, М.М. (2004). Співвідношення актів цивільного законодавства і договору та базові моделі регулювання договірних відносин за чинним Цивільним кодексом України. *Вісник Хмельницького інституту регіонального управління та права, 4 (12),* 60.

7 Луць, В.В. (2012). Договір як регулятор цивільних відносин. *Право України, 9,* 19-25.

process, the author notes that the process is not an abstract concept, provided by the hypothesis of rights, and certain real circumstances that manifested in space and time and subject to the relevant law[1].

Given that, that the model is called a reduced or enlarged copy of something more it is appropriate to use in the study of legal fact the phrase «legal structure». As rightly noted by V. S. Kovalska, the legal structure of legal fact reflects foundation, frame, structure, under the law, and the legal fact for which there is a structure besides this skeleton (which refers to «indispensable») will also be characterized by other in advance normally predictable properties that will do its particular circumstances[2].

The circumstances that arise in the daily activities of people certainly affect the development of binding relations because in the absence of their designs in the law usually does not entail legal consequences.

The statutory legal structures of the facts in the law of obligations can be carried out in two ways. Firstly, the legal facts can be indicated directly in the law as the basis of, modification and termination of civil obligations, and secondly, the emergence of civil obligations may occur and the actions of persons are not provided for acts of civil legislation, but by analogy generate civil rights and obligations (Part. 1, Art. 11, p. 8 civil Code of Ukraine). Accordingly, the legal significance should be given to how those legal construction of legal facts that directly anticipate some rule of law, and those that do not anticipate a certain rate, but have indirect regulation and are used under similar law or the law.

Summarizing the above, we can make the conclusion that the legal facts in civil liabilities has the following features: 1) a specific life circumstances, legal structure which is enshrined in the law; 2) they create a legally established appropriate legal consequences: the emergence, change, termination, suspension, restoration of civil obligations.

The dynamic development of economic and social transformation processes in modern Ukraine is based on active use time as an objective category and related concepts: «time», «immediately» and so on. Of course, the overall operation of the timing relationship determined primarily by legal regulations. It is not an exception and binding relationship. Thus, making legal classification of facts on various grounds (actions, events), in the legal literature views on the feasibility of separating the legal facts, conditions are expressed and depending on their duration, should be distinguished: 1) the facts of a single action; 2) continuing legal facts-states. On this basis, proposed as a separate group of legal facts on the basis of human activities and their results[3]. However, regarding general classification of legal facts on the basis of their duration, it must be said that the issue of legal facts on the activities of individuals remains controversial. It consists of the activities of individual actions of people and their communities, some of which the law provides legal significance, that recognizes their legal facts, so as to isolate the activities of individual legal fact seems inappropriate.

Another, equally controversial, is an attempt to highlight a particular type of legal facts-states. As an example, under the facts-states often cite the stay in a relationship, marriage relationships and more. However, if you consider staying in marriage, family relations as legal relations arising from certain legal facts, actions or events, then try out the selection of facts-states as certain types of legal facts prove as groundless.

False, as rightly observed O. P. Pechenyu should be considered the provisions of ch. 3. 11 Civil Code of Ukraine concerning the possibility of subjective civil rights and obligations directly (ie without legal facts) with civil law[4].

Controversy are still the issue of the passage of time, so some scientists absolute terms refer to events: 1) the appearance and performance are not due volitional human activity[5]; 2) as occurs (expires) as well, regardless of the will of the people as the passage of time at all[6]. Others, on the contrary – according

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1 Рожкова, М.А. (2009). *Юридические факты гражданского и процессуального права: соглашения о защите прав и процессуальные соглашения*. Москва: Статут, 8.

2 Ковальська, В.С. (2014). *Підстави зміни та припинення сімейних правовідносин*: монографія. Хмельницький: ПП Мельник А. А., 43.

3 Иванова, З.Д. (1980). Юридические факты и возникновение субъективных прав граждан. Советское *государство и право, 2,* 36.

4 Печений, О.П. (2007). Підстави виникнення цивільних прав і обов’язків: аналіз юридичної конструкції ст. 11 ЦК України. *Вісник Академії правових наук України, 1 (48),* 148-152.

5 Красавчиков, О.А. (1958). *Юридические факты в советском гражданском праве*. Москва: Госюриздат.

6 Кириллова, М.М., Крашенинников, В.П. (2006). *Сроки в гражданском праве. Исковая давность*. Москва: Статут.

to their independent position, along with the legal events and legal actions, because by their nature are somewhere in between[1].

Determining the timing relationship according to the will of carriers of subjective rights and obligations, it should be noted that as a temporal form they do not occupy an independent place in the overall legal facts. Indeed, as rightly noted by V. Luts, being a temporal form in which events occur and are committed actions (inaction), the timing generating legal consequences are only in connection with the actions and events[2]. Therefore, the scientific debate on the subject loses their relevance today, as legislators correctly identified term (term) period (point) time from onset or end of which related to a particular event or action (inaction) of legal significance (art. 251, 252 CC of Ukraine).

From analysis of these issues can state that there is only a small percentage of those contentious issues that exist in the doctrine of law in Ukraine. Given that, that Ukraine has become a part of European territory and declared its intention to be part of the EU, remain relevant issues and to harmonize Ukrainian legislation and European countries. So bring civil legislation to the European standards, the removal of contentious issues that have exhausted their relevance, are urgent issues today.

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