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DEFECTIVE LEGAL FACT AS A PHENOMENON IN THE THEORY OF LAW

***Abstract:** the correct selection of elements in the legal composition is the most important part of the problem of choosing the most optimal option for regulating public relations. One of the negative aspects of the implementation of legal regulations is often defective legal facts or compositions that prevent the further implementation of the legal relationship or entail other negative consequences in the legal system. This article examines the significance of defective facts in the mechanism of legal regulation, determines their negative role in destabilizing the operation of legal norms, in failures of the law enforcement process, in violation of the rights and legitimate interests of participants in public relations. The author explores the causes of defective legal facts, analyzes ways to overcome regulatory defectiveness.*

***Keywords:** theory of law, legal regulation, legal fact, defect, legal errors, legal consequences, grounds and causes of defects, ways of elimination.*

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ДЕФЕКТНЫЙ ЮРИДИЧЕСКИЙ ФАКТ КАК ЯВЛЕНИЕ В ТЕОРИИ ПРАВА

***Аннотация:** оптимальный набор элементов в юридический состав – важнейшая часть проблемы выбора наиболее оптимального варианта регулирования общественных отношений. Одним из негативных моментов реализации*

правовых предписаний часто выступают дефектные юридические факты или составы, препятствующие дальнейшему осуществлению правоотношения либо влекущий иные отрицательные последствия в правовой системе. В настоящей статье рассматривается значение дефектных фактов в механизме правового регулирования, определяется их негативная роль в дестабилизации действия норм права, в сбоех правоприменительного процесса, в нарушении прав и законных интересов участников общественных отношений. Автор исследует причины возникновения дефектных юридических фактов, анализирует пути преодоления нормативной дефектности.

Ключевые слова: *теория права, правовое регулирование, юридический факт, дефект, юридические ошибки, правовые последствия, основания дефектности, причины дефектности, пути устранения.*

In the process of establishing legal facts, it is often found that they have various kinds of shortcomings, defects. In some cases, these defects are related to the content of a legal fact (lack of the necessary length of service, etc.), in others – with the external form of its expression and consolidation (for example, a defect in a document certifying the length of service). That is why the question arose in the theory of legal facts whether to take such facts into account or not. Already in Roman law, one can find a lot of judgments about defects of will and expressions of will when concluding transactions. At the same time, Roman law required the strictest observance of the established order when performing legal actions [1].

Two signs are distinguished as defect criteria: legal, when the signs of legal facts do not correspond to the model fixed in the hypothesis of a legal norm (cannot be considered co-authorship of an invention by a person who did not participate in the development or detection of signs distinguishing this invention from others); and social, when legal facts have signs indicating significant changes in their content [2, p. 176]. The basis of the defectiveness of legal facts is the defectiveness of the socio-legal situation. A defective situation is a situation in which some necessary signs are missing or there are signs that are not provided for by law. An example of a defective situation

may be the fact of transferring a worker to another job without his consent. The study of such situations contributes to greater stability of law and order and more reliable protection of public relations.

There are absolute and relative defects of a legal fact. Absolute means that a social circumstance generally loses its legal significance, cannot be used as a legal fact. Relative is the defect of only this legal relationship. It does not exclude the legal role of the fact in other legal relations. Thus, the non-recognition of the length of service that entitles to the appointment of a pension on preferential terms does not exclude the use of this legal fact for the appointment of a pension in a general manner.

It is necessary to distinguish between the defectiveness of the legal fact itself and the defectiveness of the evidence about it. A court or other law enforcement body has the right to reject evidence if it is burdened with certain defects and raises doubts about the truth. The expert's conclusion, for example, cannot be accepted as evidence if it is incomplete and contradictory, does not contain a deep analysis of objective data. However, the defectiveness of one of the proofs does not exclude, as a rule, the presentation of other proofs, does not indicate the defectiveness of the very social circumstance (legal fact) proved in the law enforcement process.

The defectiveness of a legal fact should not be confused with its incorrect legal assessment (qualification). If the first is a lack of the legal fact itself, then the second is a defect in the law enforcement process [3, p. 357]. The defectiveness of a legal fact is based on the defectiveness of the socio-legal situation. A defective situation should be considered one in which some necessary signs are missing or there are others that are not provided for by law.

How does the legislation react to the defectiveness of legal facts and compositions?

One of the types of legal reaction can be conditionally called stabilization of legal consequences. Its essence lies in the fact that in certain situations the legislation preserves (stabilizes) the legal consequences arising from defective legal facts or compositions.

Another type of reaction to a violation in the actual premise is a delay in the onset of legal consequences. It is widely used when a legally significant violation is detected at the stage of formation of a legal relationship, before the onset of legal consequences. Thus, the establishment of a promissory note relationship does not terminate the monetary obligation under the main transaction. By issuing a promissory note to the creditor, the debtor assumes a new obligation that exists along with the obligation under the main transaction and is interdependent with it.

The main legal consequence of legal relations resulting from the issuance of a promissory note within the framework of the main transaction is the right granted to the creditor at its discretion to demand that the debtor fulfill a monetary obligation either under the promissory note or under the main transaction. Moreover, since the debtor, by issuing the bill, pursued the goal of delaying the fulfillment of its obligation, the creditor does not have the right to make a claim on the main transaction until the moment of payment on the bill [4, p. 45].

A kind of legal reaction to the defect of the actual premise is the sanction of invalidity. The essence of this type of reaction is the annulment of the legal meaning of the actual premise, the non-occurrence of legal consequences. There are simple and complex variants of the invalidity sanction. If the first one is limited to the simple non-occurrence of legal consequences, then in the second case the defective legal fact is subject to cancellation.

The theory identifies two main reasons for the appearance of defective legal facts: hidden rebirth and falsification. Latent rebirth is a change in legal facts over time. For example, citizens with a diploma of higher education in the absence of practice may lose their skills over time, but the legal fact (the presence of higher education) will not change, because there is its external expression (diploma).

It is precisely because of such cases that it is necessary to create an effective and efficient system of control over legal facts, on which the granting of rights and obligations is directly based (in the form of inspections, certifications, tests) [5, p. 66].

Falsification of facts can be of two types: artificial fabrication (for example, imitation or simulation of a disease in order to obtain additional rights or get rid of some

responsibilities) and the creation of fictitious evidence (forged documents). Falsification of legal facts is a gross violation of legal norms, for which criminal liability is sometimes provided, and in most cases such facts are simply invalidated.

Thus, it can be concluded that the defectiveness of legal facts is diverse and can arise, both as a result of direct actions of the legislator, and as a result of the fact that the legislator did not take into account some circumstances. The occurrence of defectiveness of legal facts can occur regardless of the actions or omissions of the legislator, and as a result of certain social situations when the legal facts enshrined in the norms of law change their meaning and acquire a defective effect on legal relations [6, с. 282].

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