LEGAL EDUCATION: INTERPRETATION PECULIARITIES OF THE NOTION IN COUNTRIES OF DIFFERENT FAMILIES OF LEGAL SYSTEMS

EDUCAÇÃO JURÍDICA: PECULIARIDADES DA INTERPRETAÇÃO DA NOÇÃO EM PAÍSES DE DIFERENTES FAMÍLIAS DE SISTEMAS JURÍDICOS

EDUCACIÓN JURÍDICA: PECULIARIDADES DE INTERPRETACIÓN DE LA NOCIÓN EN PAÍSES DE DIFERENTES FAMILIAS DE SISTEMAS JURÍDICOS

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ABSTRACT: Legal education is the education of people in the principles, techniques, and approach of law. The article is devoted to the educational analysis of the factual grounds of legal regulation in relation to the countries of the Romano-Germanic (civil law) and Anglo-Saxon (common law) families of legal systems. The main peculiarities of the interpretation of the "legal fact" concept, as well as the related main trends of its study are revealed. Attention is drawn to the process of globalization, which leads to the convergence of various legal systems in terms of basic principles. As a result, it is concluded that it is necessary to search for common approaches to the differentiation of issues of law and fact in the regulation of social relations.

KEYWORDS: Education, Educational analysis, Globalization, Legal regulation, Legal education.

RESUMO: *A educação jurídica é a educação das pessoas nos princípios, técnicas e abordagem do direito. O artigo é dedicado à análise educacional dos fundamentos fáticos da regulação jurídica em relação aos países das famílias de sistemas jurídicos romano-germânico (direito civil) e anglo-saxão (direito consuetudinário). São reveladas as principais peculiaridades da interpretação do conceito de "fato jurídico", bem como as principais tendências relacionadas ao seu estudo. Chama-se a atenção para o processo de globalização, que leva à convergência de vários sistemas jurídicos em termos de princípios básicos. Como resultado, conclui-se que é necessário buscar abordagens comuns para a diferenciação das questões de direito e de fato na regulação das relações sociais.*

PALAVRAS-CHAVE: *Educação, Análise educacional, Globalização, Regulação jurídica, Educação jurídica.*

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RESUMEN: *La educación jurídica es la educación de las personas en los principios, técnicas y enfoque del derecho. El artículo está dedicado al análisis educativo de los fundamentos fácticos de la regulación jurídica en relación con los países de las familias de sistemas jurídicos romano-germánico (derecho civil) y anglosajón (derecho consuetudinario). Se revelan las principales peculiaridades de la interpretación del concepto de "hecho jurídico", así como las principales tendencias conexas de su estudio. Se llama la atención sobre el proceso de globalización, que conduce a la convergencia de varios sistemas jurídicos en términos de principios básicos. Como resultado, se concluye que es necesario buscar enfoques comunes para la diferenciación de cuestiones de derecho y de hecho en la regulación de las relaciones sociales.*

PALABRAS CLAVE: *Educación, Análisis educativo, Globalización, Regulación jurídica, Educación jurídica.*

Introduction

A legal fact as a judicial concept does not have a uniform interpretation in countries belonging to different law families. This is due to the fact that the legal theory of such countries places emphasis in different ways in relation to the two components of the analyzed term. A legal fact as a legal phenomenon exists on the verge of legal and physical reality. Analysis of this concept as a factual or legal phenomenon leads to different legal interpretations, since such studies are based on different methodological grounds.

The issues of the relationship between law and fact in jurisprudence have always been relevant and attractive to legal experts of various legal systems and historical periods (Thayer, 1890; Morris, 1942; Morawski, 1999).

Scholars pay most attention to a rather thin line that separates legal and factual realities. In general, it can be assumed that there is no clear distinction. Facts as circumstances of reality are often shaped by with a certain jurisdiction. In this case, the opposite is also possible: legal phenomena, being refracted through the human subjectivity and perception become facts of physical reality.

Different approaches to the understanding of the "legal fact" notion are most clearly visible when comparing its interpretation in various legal systems, especially in the countries of civil and common law. The term "legal fact" was introduced by the German legal expert, one of the founders of the European historical school of law F.K. von Savinyi (1779-1861), to indicate an abstract concept denoting the basis of the movement of law, that is, the emergence and termination of legal consequences. This approach was the result of generalizations of the incidents of Roman law, interpreted for use by Roman lawyers (Gutbrod, 2018). Their summary was presented in the Justinian's Corpus Juris Civilis 529-534 BC.

The development of the theory of legal facts, which occupied a prominent place in legal science, is associated with the formation of the very concept of "legal fact" in the middle of the 19th century. Subsequently, the ideas of the factual grounds of legal consequences began to spread in the countries of Western Europe, and in the late19th century they were strengthened in Russian jurisprudence. Taking into account the importance that this legal institution has in continental law, the issue of possible prospects for the theory of legal facts in Russian and foreign jurisprudence is taking the central stage. Solving of this matter seams possible by analyzing the development of this theory in various legal systems, in particular, in Russia, countries of continental western Europe, as well as in the Anglo-Saxon legal system.

Material and Methods

Various general techniques and methods of cognitive science are being used in this study, namely, analysis and synthesis, systemic, functional and formal logical approaches. Conclusions were facilitated by the use of formal and comparative legal methods.

Results and discussion

The same legal phenomena in different legal systems may have rather diverse interpretation due to differences in the concepts of legal thinking, which the development of theory of the law in various countries was founded on. The separation of certain types of legal systems is one of the most controversial issues in the theory of law. Despite the diversity of points of view on this matter, the dominant position of scholars is that all national legal systems are based on one of the two most widespread and influential judicial concepts: Roman civil law or Anglo-Saxon common law (Liebesny, 1981; Gennadij et al., 2018).

The process of economic globalization leads to the need for integration and unification of various aspects of social life, including the legal one. Globalization and regionalization bring together almost all national legal systems. This leads to the need for a comparative analysis of the approaches that are used in disclosing the essence of homogeneous legal phenomena, one of which is a legal fact.

A legal fact is a circumstance recognized by law that has legal significance and, therefore, causes a certain legal reaction. The foregoing means that the rules of law apply to this circumstance, for example, a codified legislative provision or a rule established by case law. Thus, most generally, legal facts appear in the form of life circumstances, which the law links

the emergence, change or termination of legal relations with.

Not every circumstance appears as a legal fact, and not every event makes the law respond. Some events have no legal significance at all, are not “dragged into” the judicial arena and have no legal effect. In general, it is difficult to say which facts are legally valid and which are not, since it completely depends on the circumstances under which this fact arises. Generally all facts can be legally binding. But only the legislator or court must determine whether the fact has sufficient legal significance to compel the law to react after assessing all kinds of political, social and legal interests. A fact will always be determined as legal if it concerns public safety or economic interests, for example, because it is of some value or causes some unjustified harm to a person.

This interpretation is typical for the continental system of law. For example, the famous French lawyer L. Julio de la Morandière once wrote: “Each of the circumstances for which our law recognizes the effectiveness of a factor that generates a law, causing its transition or termination, is determined by special regulations, and our law does not derive from any general theory of legal facts”.

In legislation of various post-Soviet countries shows similar trends in the normative consolidation of the legal grounds for the potential civil relations. Thus, the civil codes of the Russian Federation (Civil Code of the Russian Federation. Parallel Russian and English Texts), the Republic of Belarus, the Republic of Kazakhstan, the Republic of Armenia and others contain the same article, which is called "The Grounds for the Arising of the Civil Rights and Duties". All these countries originated after the collapse of the Union of Soviet Socialist Republics and their legal systems had one track.

In addition, the above mentioned countries currently constitute the Union of Independent States, which has its Model Civil Code adopted in 1994 (Model Civil Code for the CIS Member States). This document is of an advisory nature. Article 8 of this document declares that the civil rights and duties shall arise from the grounds, stipulated by the law and by the other legal acts, as well as from the actions of the citizens and of the legal entities, which, though not stipulated by the law or by such acts, still generate, by force of the general principles and of the meaning of the civil legislation, the civil rights and duties. In conformity with this, the civil rights and duties shall arise:

1) from the law-stipulated contracts and other deals, and also from the contracts and other deals, which, though not stipulated by the law, are not in contradiction with it;

2) from the acts of the state bodies and of the local self-government bodies, which are stipulated by the law as the grounds for the arising of the civil rights and duties;

3) from the court ruling, which has established the civil rights and duties;

4) as a result of the acquisition of property on the grounds, admitted by the law;

5) as a result of creating the works of science, literature and art, of making inventions and producing other results of the intellectual activity;

6) as a result of inflicting damage to another person;

7) as a consequence of an unjust enrichment;

8) because of other actions performed by the citizens and the legal entities;

9) as a result of the events, with which the law or the other legal act connects the arising of the civil legislation consequences.

Analysis of legal facts as circumstances acting as basis for the emergence, change and termination of legal effects establishes the need to differentiate them. The most common classification of legal facts in the civil law countries is their division into events and actions, depending on the presence of the subject's will for them to appear.

The importance of this classification criterion is explained as follows. The will is conditioned by the interests of the person. The latter act as a result of this person's awareness of his needs. The rule of law in this process calls for the statutory coordination of behavior by correlating one's interests with the possibility of their implementation. Thus, with the help of legal regulation, one can seek to minimize those actions that are judged by law as undesirable, and, conversely, stimulate the behavior of people in the direction that is socially useful.

The events considered as real life circumstances include the events outside the will of a person and acts of God. However, if such phenomena did not have any effect on people's behavior, then they would generally be indifferent to the law, which makes it possible to allege that events have legal meaning only if they induce a person to a certain behavior.

Actions, unlike the events, are the result of the person’s will and, therefore, are willful legal facts. Will as a conscious pursuit to a foreseeable result is an incentive for a certain behavior. This assigns actions to the certain role in the legal regulation of social relations. This judgment is due to the fact that the impact of legal norms is possible only by influencing people’s will.

The active development of the modern theory of legal facts as a system of scientific ideas took place in Soviet legal science, which was justified by the special attention paid by legal scholars to the issues of the factual validity of law. It should be noted that this development was facilitated by the adherence to the formal and dogmatic jurisprudence at that time. Its objects were legal categories, concepts, definitions, indicators, classification, etc (Tsukanova et al., 2020).

Here we must also note the approach of the common law to the phenomenon in consideration. Sociological theory is based on the postulate that law does not exist in the form of statutory wording and not as legal knowledge and ideas, but as a system of social relations through human actions and behavior. Exceptional practicality in the interpretation of a fact as a legal phenomenon can be found in the American Paralegal's Encyclopedic Dictionary (Crapp Valera, 1979), where a fact is defined as "an action, state or event, the existence of which is confirmed by admissible evidence." The British P.H. Collins Dictionary of law (https://www.academia.edu) defines "fact" as "something which is true and real, especially something which has been proved by evidence in court".

The rejection of the formal and dogmatic approach was precisely what contributed to the fact that in common law countries there was no and still does not exist any coherent theory of legal facts, reflecting the skepticism of English and American lawyers to abstractions and abstract legal concepts (Tsukanova et al., 2020).

The basic principle and the leading source of the Common Law is a judicial precedent as the certain judgment of a court, so called case law. The courts in this system have legislative functions. Accordingly, legal facts in English speaking countries are understood as the information taking as the legal grounds on which lawyers base their claims and objections when considering a dispute in court. The evidence presented during the trial is intended to prove the facts substantiating the claims and objections. Evidence is a key element in convincing the judge or jury that the facts presented are true and that the final decision should be based on them. Each party in the trial must prove the facts necessary to substantiate their case (www.beyondintractability.org).

As we can see, the very concept of legal fact is attributed to certain legal procedural activity. This emphasizes its importance as a subject to legal evaluation by the court. In addition, attention is drawn to the fact that not a real life circumstance can be considered a legal fact, but only what is confirmed by admissible evidence.

At the same time, the absence of a theory of legal facts as a part of legal studies in common law does not yet indicate the insignificance of these aspects in the legal science of English speaking countries. The issues of difference and correlation between factual and legal for the common law system are also fundamental, which is clearly manifested when we look at jury trials. It is assumed that matters of facts are decided by a jury and matters of law by a judge. Moreover, under common law, a court's decision on matters of "fact" usually does not have the authority of a case-law, while its decisions on matters of "law" may consider the case (Smith, 2009). There are a significant number of other examples showing that the correct ratio of factual

and legal is essential in common law countries.

The relationship between matters of law and fact is also important in the procedural law of the Roman legal system. For example, the limits for cassation review under Russian law largely depend on the understanding of whether the disputed issue relates exclusively to the actual circumstances of the court case or is related to their legal consequences. The grounds for reversal of judgement on cassation are violation or improper application of the rule of law. For this reason, the evaluation of facts in this procedure is not carried out. As a result, it is quite possible to agree with the statement that the improvement of procedural law institutions is basically possible if a clear distinction between the issues of fact and law is made. This would undoubtedly contribute to the efficiency of the law enforcement process, as well as to development of more comprehensible and logic legal position (Kuksin & Zelenin, 2021).

Conclusions

It may therefore be concluded that the doctrine of legal fact and its components, despite a very decent amount of research conducted, still is in the process of development. Recent studies, both fundamental and specific, show the ambiguity of scholastic approaches to explain the seemingly settled views, providing us with guidance to further research in this field.

Comparative analysis of the interpretation of the concept of "legal fact" in civil law and common law jurisdictions revealed different approaches, which is due to historically different types of legal thinking and law assumptions.

A legal fact as interpreted by Roman and Germanic legal traditions is considered to be a circumstance that determines the movement of law and predetermines the legal consequences provided for by the relevant legal norms. It is in this context that the analysis of the foundation for legal regulatory framework is given. The body of scientific knowledge about legal facts forms an independent legal theory.

In the common law of English speaking countries the issue of fact is examined in terms of argumentation in litigators claims and objection. Legal scholars are interested in facts as circumstances supported by admissible evidence. In this interpretation, a legal fact appears as a subject to scrutiny by judge or jury. However, the delineation of their competence determines the fundamental significance of the delineation of concepts of fact and law.

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