

## THEORETICAL AND METHODOLOGICAL, ORGANIZATIONAL AND TECHNICAL FACTORS OF LEGAL FACTS IN CONSTITUTIONAL LAW OF UKRAINE

### ТЕОРЕТИКО-МЕТОДОЛОГІЧНІ ТА ОРГАНІЗАЦІЙНО-ТЕХНІЧНІ ФАКТОРИ РОЗВИТКУ ЮРИДИЧНИХ ФАКТІВ У КОНСТИТУЦІЙНОМУ ПРАВІ УКРАЇНИ

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The article analyzes the problem of determining the factors that affect the development and understanding of the qualitative upgrade of the legal facts in the constitutional law of Ukraine. Also separately investigated the theoretical and methodological, organizational and technical groups of factors which in any way affect the development of the legal facts in the constitutional law of Ukraine.

**Key words:** factors, theoretical and methodological, organizational and technical, legal facts.

У статті аналізуються проблеми визначення факторів, що впливають на розвиток і якісно оновлене розуміння юридичних фактів у конституційному праві України. Також окремо досліджуються теоретико-методологічні та організаційно-технічні фактори, які тим чи іншим чином впливають на розвиток юридичних фактів у конституційному праві України.

**Ключові слова:** фактори, теоретико-методологічні, організаційно-технічні, юридичні факти.

В статье анализируются проблемы определения факторов, которые влияют на развитие и качественно обновленное понимание юридических фактов в конституционном праве Украины. Также отдельно исследуются теоретико-методологические и организационно-технические группы факторов, которые тем или иным образом влияют на развитие юридических фактов в конституционном праве Украины.

**Ключевые слова:** факторы, теоретико-методологические, организационно-технические, юридические факты.

Recently, the Ukrainian legal process actually observed local changes in sectoral legislation, and above all – constitutional. This is due, above all, the transformation of the economic, political, social and ideological spheres of Ukrainian society, which is characterized by significant both positive and negative trends. The study of real processes taking place in the constitutional and legal regulation allows to select among, first, qualitative amendment of domestic constitutional law, and second, the intensification of legislative activity and, thirdly, weakening the impact of scientific and theoretical positions on law-making and enforcement activities. All of the above influences the development and qualitative renewed understanding of legal facts in constitutional law and requires a thorough, comprehensive analysis of the factors that facilitate or hinder this process.

Among the scientists who are in any way engaged in the study of legal facts in the theory of law and other sciences industry, include such as: S. Alekseev, E. Ayuyeva, O. Barynov, Y. Danyluk, I. Ilyushyhin, A. Ioffe, V. Isakov, D. Katkov, S. Kechek'yan, A. Kolody, V. Korelskiy, E. Korchiho, A. Krasavchikov, V. Lazarev, V. Luchin, O. Malko, M. Marchenko, M. Matuzov, A. Oleinik, V. Osnovin, V. Perevalov, I. Pogrebna, J. Tolstoy, V. Fedorenko, A. Frytsky, R. Halfina, A. Cherdantsev, L. Yavych and others. But scientists touch definite problems only overview, without going into a detailed analysis of the factors influencing the development of legal facts, but to date there is an urgent need for a comprehensive study of their evolution in the context of the dynamic development of constitutional law.

The purpose of this paper is to study the theoretical and methodological, organizational and technical groups of factors that influence the development and qualitative renewed understanding of legal facts in constitutional law in Ukraine.

Factor analysis of any legal phenomenon is a scientific technique that occurs within the general systems research and apply today very active in the study of different systems. Factor analysis is based on the fact that any phenomenon, which is considered as a system represents an ordered set of elements that are in the relationship and are interdependent. It is no exception in this regard and factor analysis of legal facts in constitutional law. In this case, the factors influencing the development of legal facts as constitutional relations within the system and beyond. The factors can be viewed as a cause

and as a result of legal facts. For example, the factors of legal facts can be seen, on the one hand, as the cause influencing the dynamics of the constitutional relationship, the other – their appearance is the result of certain constitutional legal entities.

Thus, under the factor analysis to understand the legal facts offer a comprehensive and systematic study of the effects of certain events on the emergence of new, high quality development and a renewed understanding of the existing legal facts in constitutional law in Ukraine.

One of the areas of legal facts in constitutional law is to improve regulation in general and the quality of legislation, as it is in the law fixed the actual model circumstances. Development and application of the methodology of factor analysis to take account of qualitative changes in social, economic, political, environmental, psychological, and so on public relations, depending on the circumstances and build factor models of the theory of legal facts is an essential element of the process of forecasting and optimization mechanism for constitutional and legal regulation.

In order to comprehensively address the issue of development and renewed understanding of legal facts in constitutional law, primarily to analyze the factors that contribute to this. But we must first make etymological and semantic analysis of the term «factors».

In most scientific sources under factor (Latin factor – one that makes, creates) means the driving force to cause any process or phenomenon or a significant factor in any process or phenomenon [1, p. 1314, 2, p. 736, 3, p. 566]. In other words, the factors of the formation and development of legal facts – these are the conditions, reasons and factors under which arise, develop, and acquire qualitatively renewed understanding of the legal facts in constitutional law in Ukraine.

It is well known that there is a specific legal fact of life, socially significant circumstances, as provided for in the constitutional and legal norms, cause of, modification or suspension of constitutional relationships. Therefore, factor analysis of legal facts in constitutional law is closely related to the factors of the system of constitutional law.

Factors of legal facts in constitutional law can be divided into: positive and negative, lens and subjective, historical, genetic, integration, anthropological, prognostic, socio-economic, political, environmental, demographic, ethnic, organi-

zational, social and psychological, technical, legal, globalization, information, scientific and methodological, theoretical research and so on.

Objective factors is to identify and study processes, phenomena and factors influencing the development of legal facts in constitutional law of Ukraine outside of conscious human activity. These include the development or occurrence of various natural (geographical), economic, social and demographic conditions of the population, followed by re-evaluation and specification of the conditions in the individual and collective interests of legally significant. In this regard the proposal of objective factors of legal classification of the facts: historical, economic, environmental, geographic, demographic, anthropological, temporal, and others.

In contrast to the objective factors of legal facts that have an effect on the constitutional relationship, subjective factors influence mainly on the occurrence or the dynamics of constitutional legal action depending on the various subjects of constitutional law. Subjective factors in the development of legal facts can be attributed theoretical and methodological, social, psychological, organizational, technical, political, legal and others.

For a general understanding of the nature and content of the factors influencing the formation of qualitatively new and updated understanding of the existing legal facts in constitutional law Ukraine, it is advisable to consider the theoretical and methodological, organizational and technical group factors.

Theoretical and methodological factors, primarily reflecting the scientific validity of legal decisions, the quality of the intensity and efficiency of interaction between law-making bodies and research institutions on the problems of determining the tactics and strategies of legal development, direction and content of the measures in the field of legal policy and legislative system that act as constituent features of legal facts. By theoretical and methodological factors in the development of legal facts in constitutional law include, first, the establishment of constitutional doctrine, concept, plans and programs of the respective spheres of constitutional relationships.

In modern constitutional doctrine and practice of constitutional doctrine is dualistic theoretical and normative value. The task of constitutional doctrine is justification and supports the consolidation of constitutional and legal norms of acceptable, appropriate, effective and workable mechanisms to achieve the final result of legal regulation – of, modification or termination of the constitutional and legal relations.

Constitutional and legal doctrine in the broadest sense can be viewed in several ways. First, as an essential part of the legal system of the society, presented in the form of systematic and generally accepted ideas, views, concepts and ideas about law, constitutional and legal phenomena, the process of constitutional and legal impact on social relations, etc., which are reflected in the laws, with normative content and regulators act of public relations. Second, as a means of political and legal reality that is in the state, reflecting the social needs of modern society and is set in a concrete unity of law and state law and politics, law, spiritual and moral principles. Third, as a practical expression of political and legal reforms that meet the ideals, principles and requirements of modern social development, to promote the implementation of the ideal of constitutional and legal state space, which makes this ideal becomes part of the constitutional and legal validity.

By theoretical and methodological factors may also be attributed plans and programs. For example, the plan of legislative activities of Parliament – Parliament of Ukraine. Plans and programs are formalized, sequential list of actions to implement the principles, methods and mechanisms of constitutional development, sound doctrine. Examples of programs and plans include the following: «The National Action Plan on Implementation of the UN Convention on the Rights of the Child» [4] «The program of Ukraine's integration into the European Union» [5] and others.

Thus, constitutional concepts, doctrine, plans, programs, on the one hand, positive theoretical and methodological factors qualitatively renewed understanding and development of legal facts and improve the mechanism of constitutional and legal regulation, on the other hand, independent legal facts that give rise to, change or suspension of constitutional and legal relations. The above shows that the problems of constitutional strategy, which includes issues of planning and forecasting, conceptual and long-term approaches to the practice of law, sufficient attention in constitutional law.

The next group – the organizational and technical factors that reflect the process of preparation and adoption of legal acts, the direct impact on the formation of new legal facts in constitutional law in Ukraine. This group can be attributed to factors such as legal and technical, systematic, linguistic (lexical-semantic), scientific theory, and others.

The effectiveness of the mechanism of constitutional and legal regulation primarily depends on the quality of the actual models circumstances (which are transformed into legal facts) contained in the regulations. However, the development of legal facts facilitates not only the number and content of the regulations, but also the technical improvement. Unfortunately, in practice, a large number of regulations in constitutional law have certain shortcomings, which include the uncertainty of meaning, stylistic negligence, incorrect registration details, incorrect compositional semantic construction of the act, terminological ambiguity, contradiction content of existing regulations recently adopted, underdevelopment scientific conceptual framework of political, economic, social, constitutional reform, unsystematic and spontaneous legislative activities and others. Everything is numbered negative factors affecting the quality of the mechanism of constitutional and legal regulation, law enforcement and understanding of the legal facts, which, in turn, leads to defects in legal facts.

Under the legal-technical factors of legal facts in constitutional law in the broad sense is meant to improve the legal machinery. By definition K. Maximova, «legal technique – a combination of technical and legal tools, techniques and rules of practical use to create regulations, their interpretation, application and ordering» [6, 7]. In the literature there has been a diversity of views on the understanding of legal technology. It is considered as that ensures accurate, quality regulations, and how that contributes to legal purposes [7, p. 70]. In any sense of the legal machinery affects the law-making contributes to the successful study of social relations, identify significant problems of social development needs of legal regulation and optimal regulatory settlement widest range of public relations by strengthening the legal provisions of relevant models of actual circumstances. Today in constitutional law not covered by legal regulation are quite a few issues, so legislators should correct this situation and take a series of laws: «On the status of the village, the mayor», «On the constitutional and legal responsibility», «On the Status of the President of Ukraine», «On the territorial structure of Ukraine», Electoral Code of Ukraine and many others that contribute to the development of legal facts and improvement of the mechanism of constitutional and legal regulation.

Lexical-semantic factors in the development of legal facts are the proper use of language in the process of law-making. Language – the most important means of transmission, compilation and exchange of views. It characterizes humans as rational beings. As the D. Dolotova, «... with words systematized experience and knowledge of the surrounding world formed thought without language is impossible to human life» [8, p. 136]. Indeed, the law-making should worry about getting the law accurately reflect objective reality and are able, becoming a legal facts cause legal consequences.

Thus, the proper use of law-maker of these rules will ensure optimal development of legal facts in constitutional law and Ukraine will increase the effectiveness of the constitutional and legal regulation.

Respect for linguistic rules will also help identify and eliminate corruption factors which are understood terms of legal nature, creating opportunities for corruption. Until scientists corruption factors include: 1) the factors set for enforcement fairly wide margin of appreciation free or opportunity groundless exceptions to general rules, and 2) factors that contain vague, unrealistic, difficult exercise or burdensome requirements [9, 116]. In order to prevent corruption, such as the Russian Federation was established institute anti-corruption expertise of legal acts. Ukraine has introduced anti-corruption expertise of the Law of Ukraine «On Prevention and Combating Corruption» on April 7, 2011 [10]. The main objective is to identify the anti-corruption expertise of draft legal acts norms that may contribute to the occurrence of corruption.

Another group of organizational and technical factors in the development of legal facts are systematic, which are ac-

counted for and systematization of existing regulations in order to achieve unity of law, solving conflicts, eliminate gaps in the constitutional and legal regulation and more.

The process of legal facts in constitutional law affects many other factors, but the above is enough to realize the importance of taking them into account in order to improve efficiency and further development of the mechanism of constitutional and legal regulation.

The analysis of the factors influencing the development of legal facts in constitutional law Ukraine, let's talk about them quite a wide variety: each group has relative autonomy in relation to other groups located in the historical dynamics and depending on the focus of legal policy may hold preferred position the strategic development of the legal system. Therefore, to establish an effective system of law is important to identify strategic priorities for the development of legislation, distinctive legal guidelines.

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## ІСТОРІЯ ВПРОВАДЖЕННЯ ІНСТИТУТУ СУДОВОГО СЛІДЧОГО В РОСІЙСЬКІЙ ІМПЕРІЇ В АСПЕКТІ СУДОВОЇ РЕФОРМИ 1864 РОКУ

## HISTORY OF THE IMPLEMENTATION OF THE INSTITUTE OF CORONER IN THE RUSSIAN EMPIRE IN THE ASPECT OF JUDICIAL REFORM OF 1864

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У статті розглядається інститут судового слідчого, впроваджений судовою реформою 1864 року, та аналіз механізму його становлення і функціонування в Російській імперії.

**Ключові слова:** судовий слідчий, повноваження, судова система, реформа, Російська імперія.

В статье рассматривается институт судебного следователя, внедренный судебной реформой 1864 года, а также анализ механизма его становления и функционирования в Российской империи.

**Ключевые слова:** судебный следователь, полномочия, судебная система, реформа, Российская империя.

This article is dedicated the institution of judicial investigator, judicial reform implemented in 1864, and analysis of the mechanism of its formation and functioning of the Russian Empire.

**Key words:** judicial investigator, powers, judicial system, reform, the Russian Empire.

*Наказ судебным следователям 1860-го имел большие достоинства. Он создавал новую должность, не связанную органически с полицией (в столицах следователи назывались приставами следственных дел), и освобождал деятельность лиц, занимавших эту должность, от ряда стеснительных формальностей, отнимавших массу времени не только без пользы, но и со вредом для дела и для лишаемого свободы обвиняемого.*

Кони А.Ф.