

# Legal Facts in Federal Constitutional Proceedings

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## ABSTRACT

Within the research we attempt to characterize the essence of the legal fact, its conceptual content and main features in the context of correlation with the bases of the constitutional judicial process. The authors first applied the approach to the study of the legal fact in the implementation by the Constitutional Court of the Russian. The analysis of the constitutional and legal literature shows that the scientists and constitutionalists, noting the existence of legal facts, do not characterize this legal category in the structure of constitutional legal relations. It is necessary to recognize as a feature of legal facts that there are grounds for the emergence and dynamics of constitutional legal relations in the area of activity of the Constitutional Court, which is not always the specific nature of a life circumstance fitting the ideal legal model. In analyzing the grounds for hearing the case, the authors point out that if the applicant does not comply with the requirements for application which leads to impossibility of its acceptance, the Secretariat of the Constitutional Court does not refuse to accept the case what cannot be considered as a restriction of the applicant's right to appeal to the Constitutional Court. According to the authors, the Law of the Russian Federation on Amendments to the Constitution of the Russian Federation of 14.03.2020 no. 1-FCL "On Improvement of Regulation of Certain Issues of the Organization and Functioning of Public Power" opens up new perspectives in the study of the legal fact in the context of constitutional justice.

**Keywords:** *Constitutional litigation, constitutional proceedings, legal facts, constitutional legal relations, the Constitutional Court, the Constitution*

## 1. INTRODUCTION

Formed by many decades and a fairly stable theory of Russian law is not often at the present stage subjected to doctrinal rethinking. This provision is fully true for the doctrinal theory of legal relations, an integral element of which is legal facts as the basis for the emergence of change or termination of legal relations.

The initiatives designated by the President of the Russian Federation in 2020 to amend the text of the Constitution of the Russian Federation caused the need to return to the issue of constitutional legal relations in the area of constitutional justice, including the role of legal facts as circumstances initiating constitutional proceedings in the Constitutional Court of the Russian Federation.

## 2. DOCTRINAL APPROACHES TO THE LEGAL FACT IN CONSTITUTIONAL LEGAL RELATIONS

Undoubtedly, to consider the legal facts in the context of the federal constitutional judicial process without the analysis of existing approaches in the theory of Russian law to the category of the legal fact and its essence is

impossible, so let's turn to the achievements of the theoretical doctrine in the declared area.

It should be noted that until now in the theory of Russian law, there is no unity in the formation of the definition of the legal fact [1–8]. In a generalized form this category refers to certain circumstances of life, with which the rules of branch law bind the occurrence of legal consequences [9–11].

Individual scientists in considering the category of "legal facts" distinguish their own approaches to their classification. Thus V.N. Sinyukov, noting the dual nature of legal facts, singles out fact-phenomena (actual events, actions), as well as the facts in the form of a legal model (sentence, court decisions, various Acts of competent authorities), which reflects the facts-phenomena.

V.V. Dolinskaya also points to the importance of such a characteristic as the specificity of legal facts in her works, noting that only facts "which can be formally validated, the existence or absence of which can be reliably ascertained" can be considered as such.

In constitutional law, legal facts are generally considered taking into account the positions already present in the general legal theory, but taking into account the specifics of constitutional and legal relations, the nature of the legally significant consequences, characteristic patterns and characteristics caused by them.

Traditionally, in the constitutional law, certain hypotheses

of the constitutional and legal norms, specific life circumstances (conditions), with the occurrence of which constitutional and legal relations arise, change or terminate, are considered as the legal fact.

At the same time, scientists-constitutionalists, noting the existence of legal facts, do not always pay due attention to the importance of the legal fact in the structure of constitutional legal relations. Although individual positions still take place. In particular, T.V. Mokina characterizing constitutional legal relations notes that their dynamics (emergence, change or termination) is usually preceded by a legal fact as a “real life event, with the emergence of which people have rights or obligations” [12].

An essential characteristic of legal facts in constitutional legal relations is not only their ability to initiate and accompany the movement of legal relations but also to carry out the human rights function. For any other branch of Russian law as for the constitutional provision on protection and conservation of human and civil rights and freedoms do not acquire such importance. In this regard, the legal facts within the framework of constitutional legal relations involve not only the movement of legal relations, but also initiate the processes of protection of the law, which in the context of the activities of the Constitutional Court of the Russian Federation is of particular importance.

In this connection, unlike, for example, civil relations in which certain facts that do not acquire legal significance never give rise to legal consequences, facts that give rise to legal relations in the area of constitutional proceedings directly correlate with specific consequences that always have legal significance. Such a quality of constitutional legal relations according to E.V. Lung is caused by breadth, multivolume, multilayeredness and particular importance for society and the state. The essence of this approach is based by the author on the special connection of constitutional and legal relations with state-legal relations [13].

The state-volitional nature of legal facts is obvious here, which are the basis of constitutional legal relations, which has been repeatedly emphasized in legal literature [14–17]. Traditional general legal division of legal facts into events and actions by individual authors have been developed to the level of their own approaches to classification. Thus V.N. Sinyukov, noting the dual nature of legal facts, singles out the phenomenon facts (actual events, actions), as well as the facts in the form of a legal model (sentence, court decisions, various Acts of competent authorities), which reflects the phenomenon facts [18].

With regard to the material aspect or phenomenon fact, we note that this is a vital circumstance that has an external form of expression.

Concerning the legal aspect or legal model, it should be noted that circumstances must be provided for by the rule of law. The basis of a certain legal result is not the phenomenon of validity itself, but the corresponding legal model fixed in the norm of law.

As for legal facts that are capable of initiating a constitutional lawsuit, we shall consider it possible to

break the above mentioned through reasons and grounds for consideration of the case at the Constitutional Court of the Russian Federation listed in Article 36 of the Federal Constitutional Law of 21.07.1994 No. 1-FCL [19], where the reasons in the form of a request, petition or complaint reflect the nature of the phenomenon fact, and bases characterize the legal model, in the presence of which the phenomenon facts receive the necessary legal impetus for the initiation of constitutional legal relations.

With regard to the legal momentum under consideration, the status of factual circumstances in the legal literature has traditionally been defined as “legally insensitive and legally significant facts”. These are, in fact, the consequences of legal facts, which may have different content and means.

The analysis of article 36 of the Federal Code “On the Constitutional Court of the Russian Federation” leads to a very interesting observation, to be specific, to the question: do all the circumstances of significance in the constitutional judicial process belong to facts of legal significance and correspond to the etymological meaning of the notion of “fact”?

This question is due to the fact that the “apparent uncertainty” in the matters referred to in the law is more appropriately characterized by the phrase “not exactly.” That is, the uncertainty that has arisen has yet to be investigated, and specific life circumstances are to be established. In this regard, it is necessary to recognize as a feature the legal facts, which are the bases of the emergence and dynamics of constitutional legal relations in the area of activity of the Constitutional Court of the Russian Federation, which is not always a specific nature of a life circumstance fitting in the ideal legal model.

V.V. Dolinskaya indicates the importance of such characteristics as the specificity of legal facts, noting that only facts “which can be formally fixed, the presence or absence of which can be reliably established” can be considered as such [20].

The above-mentioned testifies to the fact that the consequences of legal facts in constitutional legal relations cannot be considered unequivocally. On the one hand, the consequences of the movement of constitutional legal relationship are already the fact of their origin, change or termination. On the other, within the framework of the relationship of facts with the results of the implementation of initiated legal relations, the consequences can acquire very specific outlines in the form of a conclusion on incompliance with the Constitution of the Russian Federation of a specific normative legal act. This can include a decision on the possibility of non-performance of the act of the European Court of Human Rights and many others.

Concluding the conversation about the essential features of legal facts in constitutional legal relations, it should be noted that specificity, ability to reliably establish the presence or absence of actual circumstances that will bring into motion legal relations in the area of activity of the Constitutional Court of the Russian Federation (their fixing, documenting, certification) in the science of constitutional law is not fully considered and a detailed

discussion on this subject may be the subject of a separate study.

### **3. LEGAL FACT AS A REASON AND BASIS FOR CONSIDERATION OF CASES IN THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION**

Legal regulation of constitutional control by the Constitutional Court of the Russian Federation in the form of justice is fixed by the relevant provisions of the Constitution of the Russian Federation and Federal Constitutional Law No. 1-FCL of 21 July 1994 "On the Constitutional Court of the Russian Federation".

In the Resolution of the Constitutional Court of the Russian Federation of June 16, 1998 no. 19-P "On the case concerning the interpretation of certain provisions of Articles 125, 126 and 127 of the Constitution of the Russian Federation" by the supreme body of constitutional control, the legal position, universally bound to this day, was expressed: "Determining the competence of the Constitutional Court of the Russian Federation is based on the obligation to implement it in a specific form of justice - constitutional proceedings - and therefore establishes the main features of this form, namely, the subjects of verification and initiators of case consideration, the types of procedures involved and the legal consequences of the decisions made. For other courts, there is no such regulation at the constitutional level. Consequently, the Constitution of the Russian Federation does not imply that they verify the constitutionality of the normative acts listed in article 125 as the subject of regulatory control by the of the Constitutional Court of the Russian Federation, singlehandedly and independently exercising judicial power through constitutional proceedings".

Regarding the legal facts, this legal position is valuable in that the list of legal facts that are capable of initiating constitutional litigation is fully specified in the mentioned legal acts and they are expressed on grounds and causes for consideration by the Constitutional Court of the Russian Federation.

The presence of these characteristics in the appeal is a necessary component of the implementation of the right of everyone to judicial protection of their rights and freedoms, as it is formulated in article 46 of the Constitution of the Russian Federation, and the petitioners do not have the discretion to choose both the grounds and the causes for judicial protection in constitutional proceedings.

In accordance with Art. 36 of the Federal Constitutional Law of 21.07.1994 no. 1-FCL [14] (hereinafter — FCL "On the Constitutional Court of the Russian Federation"), the reason to consider a case in the Constitutional Court of the Russian Federation shall be an appeal to the Constitutional Court of the Russian Federation in the form of a request, petition or complaint that meets in form and content the requirements of this Federal constitutional law. General requirements to appeal to the Constitutional Court

of the Russian Federation are reflected in Article 37 of the FCL "On the Constitutional Court of the Russian Federation", in particular, regardless of the form of appeal, it must be issued in writing, signed by the authorized person or persons and sent either by traditional mail or electronically by filling in a special form on the official website of the Constitutional Court of the Russian Federation in the information and telecommunication network "Internet" or in the form of a digital document signed by the strengthened qualified digital signature.

It is important to note that the aforementioned article of the FCL "On the Constitutional Court of the Russian Federation" contains mandatory requirements to the content of the appeal, the failure to comply with which may result in impossibility of the Constitutional Court of the Russian Federation implementing constitutional proceedings. Thus, the application must contain the following: The Constitutional Court of the Russian Federation, as the body to which the appeal is sent, the name of the applicant (the citizen's complaint includes the surname, name and middle name); address and other data about the applicant; name and address of the state body that issued the act to be verified or participating in the dispute on competence; norms of the Constitution of the Russian Federation and FCL "On the Constitutional Court of the Russian Federation", giving the right to appeal to the Constitutional Court of the Russian Federation, etc.

Failure by the applicant to comply with the above-mentioned requirements to the application entails impossibility of acceptance by the Constitutional Court of the Russian Federation to its proceedings in view of non-compliance with the criteria of its admissibility for constitutional proceedings.

In such cases, in accordance with § 23 of the Rules of the Constitutional Court of the Russian Federation, the Secretariat of the Constitutional Court notify the applicant of the non-compliance of his application with the requirements of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", at the same time, if the applicant does not agree with the conclusion contained in the notification received from the Secretariat of the Constitutional Court on the non-conformity of the application with the requirements of the of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" and requires adoption by the Constitutional Court of a decision on this issue, the question of compliance of the application with the requirements of the FCL "On the Constitutional Court of the Russian Federation" shall be submitted for consideration in a session of the Constitutional Court (§ 24 of the Rules of the Constitutional Court of the Russian Federation).

It should be noted that the existing conclusion of individual scientists that the Secretariat of the Constitutional Court of the Russian Federation refuses to consider the case and reveals the existence of a reason to consider [21] is groundless, since the Secretariat of the Constitutional Court of the Russian Federation does not refuse to accept the case for consideration, but notifies of

non-compliance of the appeal with formal requirements. This is evidenced by the legal position of the Constitutional Court of the Russian Federation. This in its determination indicated that the duty of the Secretariat of the Constitutional Court of the Russian Federation to notify the applicant of non-compliance with the requirements and to give recommendations on the elimination of shortcomings can not be considered as a restriction of the applicant's right to appeal to the Constitutional Court of the Russian Federation [22]. Refusal to accept an application for consideration is the exclusive prerogative of the Constitutional Court, which, by its motivated determination in accordance with Article 43 of the Federal Constitutional Law "On the Constitutional Court" of the Russian Federation", formulates this decision.

The existence of grounds for appeal to the Constitutional Court of the Russian Federation is the second significant sign of the legal fact that allows the Constitutional Court of the Russian Federation to start constitutional proceedings on appeal of the claimant.

In accordance with Article 36 of the FCL "On the Constitutional Court of the Russian Federation", a basis for consideration of the applicant's case is found. There is uncertainty as to whether the conformity with the Constitution of the Russian Federation of a law, other normative act, a treaty between public authorities, an international treaty that has not entered into force. On the other hand, there can be uncertainty that has emerged due to the possibility of execution of the decision of the interstate body for the protection of human rights and freedoms based on the provisions of the relevant international treaty of the Russian Federation in the interpretation. This presumably leads to their discrepancy with the Constitution of the Russian Federation. Alternatively, there is a found contradiction in the positions of the parties on the belonging of powers in disputes on competence. In addition, there is also uncertainty in the understanding of the provisions of the Constitution of the Russian Federation, including the nomination by the State Duma of charges to the President of the Russian Federation concerning treason or commitment of other serious crime.

It should be noted that these grounds are enumerated in an exhaustive manner. In this regard, it is clear that the absence of at least one of these grounds in the application implies impossibility of carrying out constitutional proceedings by the Constitutional Court of the Russian Federation and these are grounds for refusal of acceptance of appeal to consideration by the Constitutional Court of the Russian Federation.

The practice of the Constitutional Court of the Russian Federation has a significant number of decisions in which the Constitutional Court of the Russian Federation not only pointed to the importance of having grounds for appeals to it within the constitutional framework of court proceedings, but also revealed the essential characteristics of each of the grounds provided by Art. 36FCL "On the Constitutional Court of the Russian Federation". Thus, for example, in the Decision of the Constitutional Court of the

Russian Federation of 29.09.2016 no. 1835-O, the court specified that the FCL "On the Constitutional Court of the Russian Federation" provides in Chapter XII for a special procedure of consideration of cases on the constitutionality of laws on complaints of violation of constitutional rights and freedoms of citizens, articles 96 and 97 of which contain criteria for admissibility of such appeals to the Constitutional Court of the Russian Federation. If the law contested in the complaint affects the rights and freedoms of citizens, but there is no reason to believe that it violates the constitutional rights and freedoms of the applicant in his particular case, such a complaint may not be accepted by the Constitutional Court of the Russian Federation for consideration and is subject to rejection as it does not meet the requirements of the Federal Constitutional Court of the Russian Federation.

In another example, the Constitutional Court of the Russian Federation stated in its Decision No. 217-0 of June 8, 2004 that the basis for applying to the Constitutional Court is its conviction of unconstitutionality of applied or subject to application norms of the law, reasoned by legal arguments given in the procedural document adopted by the court in the form prescribed by law.

The Law of the Russian Federation on the amendment to the Constitution of the Russian Federation dated 14.03.2020 no. 1-FCL "On improvement of regulation of certain issues of organization and Functioning of Public Power" adopted by the Federal Assembly of the RF expanded the list of legal facts for the Constitutional Court of the Russian Federation to begin constitutional proceedings. Among them, we would like to mention the following: for complaints about violation of the constitutional rights and freedoms of citizens by laws and other normative acts applied in a particular case, appeal to The Constitutional Court of the Russian Federation will be admissible only if all other domestic measures have been exhausted; the President of the Russian Federation has the right to submit a request to the Constitutional Court of the Russian Federation in accordance with the procedure established by the FCL "On the Constitutional Court of the Russian Federation" for verifying the constitutionality of the laws of the subject of the Russian Federation before their promulgation by the highest official of the subject of the Russian Federation (the head of the highest executive body of the state power of the subject of the Russian Federation).

#### **4. CONCLUSION**

Thus, the legal facts in federal constitutional proceedings are of fundamental importance for the beginning of the implementation of justice by the Constitutional Court of the Russian Federation. Their list is in continuous development based on the level of development of legislation, legal culture of the population and public authorities. The degree of development of the judicial system and its ability to effectively ensure supremacy of

law and direct effect of constitutional rights and freedoms in the territory of the Russian Federation has been shown.

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