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The Role of Interest in Legal Fictions

Abstract

This paper deals with the interest and its influence on the legal sphere illustrated by the example of the institution of legal fictions. The author also considers the interrelation between private and public interests and their features in legal fictions.

Keywords: Legal interest, fiction, benefit, private law, public law.

The category of interest is widely used in modern sciences. It is mentioned in the works of economists, psychologists, sociologists and other representatives of different branches of science. The interests of individuals, social groups, organizations and governments play a significant role in social life. Obviously, they can influence the legal field as well.

In legal science, this phenomenon is regarded as a basis for the appearance, alteration and termination of the legal relations. Any legal relation cannot appear without an apparent or conceivable interest. The alteration and the termination of the interest are an important legal factor. Such examples are found in the Russian legal system. One of them is enshrined in Article 166, Paragraph 2 of the Civil Code of the Russian Federation. It states that the claim for recognizing the disputed deal to be invalid may be lodged by the persons, pointed out in the present Code. The claim for the application of the consequences of an insignificant deal may be submitted by any interested person. This example displays a direct link between the termination of a legal relation of obligation and the legal interest enshrined in law.

Considering the role of the interest in law, many jurists define it as a system of government - protected and - authorized norms expressing the government's will which is the result of private and special interests [2.P.15]. These interests enshrined in law or expressed in any other way are recognized by the government. According to this statement, the interest is an essential characteristic of law which allows the latter to perform the functions of the main regulator of various social relations [10.P.93]. Law itself is a universal compromise means which allows the government to protect sensible interests and their ways of satisfaction and to find a compromise between private and public interests [6.C.27,28].

Referring to the essence of the interest in legal studies it should be noted that there is no universal view on this subject among jurists. However, Professor V. P. Griбанov offered quite an accurate definition of the suggested category. He rejected

the view according to which the interest equals profit. The latter is always associated with some property acquisition while there exist both property and private non-property interests. Gribanov also considered it unacceptable to regard interest as a benefit taking into account the fact that the notion of benefit itself needs to be researched. Moreover, benefit as well as profit are something the interest is targeted at and cannot be its substance. The nature of the interest is a necessity which can be expressed in different aspects. Meanwhile, Gribanov points out that the necessity and the interest are two distinct categories. The necessity is normally an objective need determined by the material life of the society. The interest is a reflected need, a necessity perceived by people's mind and possessing a form of conscious determination [3.P.234-240].

Interest can be either private and individual or public and belonging to the whole nation. Such interest differentiation existed at early stages of legal knowledge for describing state-legal phenomena. Ancient Roman jurist Ulpian introduced the notion of interest to differentiate private and public law [7.P.13].

A collection of interests underlying any political-legal formation has a multifaceted structure. One of the purposes of the government is providing common interests for all citizens and organizations [5.C.41-50]. Undoubtedly, governmental regulation may be performed against the instantaneous individual or a group of individuals' interests for the sake of the priorities of the social or governmental development. Law considers interests through three dimensions: personal, social and governmental which may be interrelated and pass from one dimension into another. Thus, it is impossible to equal or oppose governmental and social interests. The government's interest is targeted on the search of the most appropriate means of satisfying and protecting social and private interests. The government's interests do not dominate any other ones, they are a link in a collection of multilevel interests [6.P.31,32].

A striking example of the combination and interrelation of private and public interests is an institution of legal fictions (from Latin "tales"). Legal fiction is a nonexistent condition which is admitted by a legislator as real and mandatory due to certain circumstances.

Bearing in mind the history of this institution it should be noted that the development of the idea of legal fictions was rather slow. It was connected with the fact that a fiction as a legal engineering technique didn't normally appear in legal systems of ancient governments due to their primitive development and immaturity. As a result, legal fictions were neither thoroughly comprehended nor used consciously. A more detailed analysis of the legal systems of that period leads to the conclusion that fictions though being not directly mentioned were identified in Ancient Babylonian, Ancient Egyptian, Ancient Jewish, Old Indian and Old Russian law [9.C.61-64].

Ancient Roman jurists made a significant contribution to the development of the institution of legal fictions. They were scrutinizing and developing fictions from a legal point of view. The majority of modern legal fiction theories are based on the works of jurists of the XIX century who, in their turn, relied on Roman law. Still, they didn't have a definition of a legal fiction. However, the absence of a legal or doctrinal definition of a fiction was compensated by rich practical experience. What's more, such state of things allowed to use fictions in practice in a very flexible way.

In Roman law fictions had the following meaning:

- fictions were used to maintain high efficiency in the regulation of certain types of social relations;
- fictions were necessary for the systematization and improvement of the existing legal system;
- fictions helped solve certain social disputes in a fast and simple way [8.P.33-37].

Consequently, at early stages of legal system development there existed a necessity in the means for effective satisfaction of private and public interests. Such legal engineering technique is still alive and widely used in modern legislation.

It can be said that a fiction is an artificial formation which being contrary to reality is applied for achieving a number of legal consequences or desired legal judgements. The application of fictions leads to strengthening the speculation in law and is considered a white lie [4.P.217-269].

Taking everything into account, it can be noticed that the legal interest is a basis for the fiction creation and application. First and foremost, through the fiction in law the government is able to perform its function. Enshrining fictions in legal acts, the jurist tries to satisfy their interest targeted at maintaining the stability of civil circulation and the quality of justice. Simultaneously, fictions protect private interests and the interests of a group of individuals. Moreover, the existence of such subject of law as a legal person is at some extent based on the legal fiction.

Thus, the interest is an essential element in the institution of legal fictions. Indeed, the satisfaction and protection of common interests underlie the application of fictions in law. Moreover, it would be wrong to consider that the legal interest is significant only in the institution of legal fictions. The latter is just one of the possible cases of the interest influencing the appearance, alteration or termination of different legal relations.

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