

**LEGAL FICTIONS AS IDEOLOGICAL SOURCE OF LAW****Elena V. Abramova***Dostoevsky Omsk State University, Omsk, Russia***Article info**

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The subject. The article studies legal fictions from the point of view of their correlation with ideological sources of law.

The purpose of the article is to confirm or disprove hypothesis that legal fictions may be described as one of the ideological sources of law.

The methodological basis for the study includes analysis and synthesis, interpretation of legal literature.

Results, scope of application. Legal fictions are legal provisions enshrined in the text of regulatory legal acts in the form of separate regulatory regulations. They play an important role in lawmaking and in the mechanism of legal regulation. Fictions perform the function of protecting various interests and the function of procedural economy, contribute to the rapid and correct resolution of the case on the merits, have the necessary impact on the participants of the proceedings.

Legal fictions have their own set of features. They are characterized by a) the deliberate falsity of the assumption; b) this assumption is legally irrefutable, the possibility of proving the opposite is excluded; c) the assumption is legal, provided for in regulatory legal acts; d) assumption, which is given the importance of legal facts.

The ideological significance of legal fictions as sources of law is manifested in the fact that they are associated with legal norms, in the content of many of them; this is a special kind of legal norm, in the content of which there is a certain fiction; fictions are one of the means of formalization of normative material and simplification of the structure of actual compositions. Legal fictions are widely used in the gaps in the law, are one of the ways to effectively fill them. Legal fictions bring clarity to the legal regulation of public relations, being a necessary part of legal regulation. Fictions participate in legal regulation in two forms (types): through theoretical and practical (normative) constructions. Theoretical fictions, being a part of the legal doctrine, act as independent regulators (for example, constructions of the legal entity, the state, etc.). Legal fictions perform certain functions. They eliminate the uncertainty in the legal regulation; they help to simplify legal relations and make legal regulation stable and stable; they help to translate everyday reality into legal reality; they help to simplify legal relations and make legal regulation stable and stable. Conclusions. Legal fiction can be considered an ideological source of law, if we consider it as a legal fact, its variety. But this characteristic is not prevailing among other significant properties of legal fictions.

## 1. Introduction

Questions related to legal fictions are complex. They have not received independent constructive development in general theory of law. Legal fictions are mainly studied in certain branches of law. Moreover, some authors treat them negatively, associating them with fictitious actions and fictitious norms. To fiction are often treated with hostility, believing it unnecessary and harmful to the law [1, p. 30]. The possibility of using fiction in law is denied by some scholars, because it has no place in the exact science of law. W. G. F. Dormidontov argued that "fiction accepts the nonexistent, or vice versa, therefore, it is a lie. But this is, of course, not correct: fiction and deception notions incompatible. About fiction can be to speak only then, when fiction permissible all and when no one on this expense not is deceived" [1, p. 137].

Legal fictions undoubtedly play a positive role in lawmaking and law enforcement. They protect the public interest and contribute to procedural economy, prompt and correct resolution of the legal case on the merits, as well as have a positive impact on the participants of the proceedings.

Difficulties of research of the subject arise already at a stage of establishment of definition of functions of the right. They are perceived either as the main provisions and definitions of the theory of state and law, which do not cause doubts and do not allow other interpretations. Some authors consider them as a means of legal technique in the form of specific legal provisions, constructing nonexistent conditions of legal reality [3, p. 45]; or as a special technical technique used in law-making and in legal practice [4, p. 460], "in which reality is brought under a certain formula that does not correspond to it and perhaps has nothing to do with it, so that then from it to draw appropriate conclusions" [23, p.218].

Some researchers consider legal fiction to be a legal fact of a special nature [3, p. 453]; an assumption of a fact that does not correspond to reality [5, p. 2]. Many consider fiction as a special rule of law arguing that "legal fiction is fixed in the relevant legal sources and used in legal practice of a special kind of legal norm" [6, p. 21].

## 2. Attributes of legal fictions

To determine the concept of legal fiction, it is necessary to refer to its features. The complexity of establishing the signs of legal fictions is complicated by the fact that they differ in a wide variety [7, p. 3] and often contradict each other. The analysis of existing points of view allows to speak about them as the independent phenomenon having a number of features. They should be based on the keyword "assumption". Thus, the legal fiction is:

1. The false assumption. Knowingly false - the main feature of legal fiction, emphasizing its uniqueness. This, according to some scholars, is an error in the legal mantle [4, p. 460]. The legislator who establishes a false position consciously changes reality, the incorrect position included in the rule of law acquires the character of a conditional truth, because legal norms have an imperious character. Hence the incorrectness of the conclusion that "the error, despite its obviousness, does not penetrate into its content, it refers only to its shell" [8, p. 48].

2. The legally irrefutable assumption. We are talking about a legal conviction. Fiction is the fact of the death of two citizens on the same day can be refuted in the presence of a death certificate, but will not create legal consequences. Legal fiction is constructed in such a way that the possibility of proving the opposite is excluded.

3 The assumption is legal. Legal fiction is a legal phenomenon provided for in normative legal acts. "The legality of legal fictions has its distinctive feature of the evidence and premeditation of its creation. Legal fictions are not implied, not assumed, but specifically enshrined in the norms of law" [8, p. 48].

4. Assumption, which is given the meaning of legal facts. Legal fiction is a legal fact of a special nature [9, p. 48].

5. The assumption is universal. This fact assumes that legal fictions are used by all branches of law and their existence is not limited to historical frameworks.

In the literature, it is customary to distinguish three types of sources of law: material (social relations), ideological (legal doctrines, principles of law, legal consciousness) and legal, the form of law (normative

legal acts, judicial precedent, normative contract).

### 3. Legal fictions are the ideological source of law

There are good reasons for attributing legal fictions to ideological sources of law. First, many rules of law are based on the content of fictions. They contain a generalized centuries-old experience, which is always perceived by subsequent generations. The obligation to use the provisions contained therein is indisputable from the standpoint of sanity, morality and justice and therefore does not require special evidence.

Secondly, fiction can be considered as a form of utopian consciousness [1, p. 30]. It is an independent intellectual operation, its purpose is to provide a contrived justification for a similar use of legal provisions. Freedom, justice, truth and good in some cases require legal registration, but they are not able to be extracted from the provisions of the existing legislation at the moment, so we have to bring this actual composition to the current rule of law. From the moment of its formation, the position is devoid of truth. In this context, fiction is not a right.

Legal fiction is a kind of "metaphor". Dictionaries define fiction either as deliberate fiction or as a system of indisputable statements enshrined in the rules of law. Thus, we are dealing with a logical inconsistency—a legal fiction at the same time and a true and incorrect statement [10, p. 117].

Fiction fixes a far-fetched fact that contradicts reality and has no real basis for making concrete legal conclusions from it in the future [11, p. 25-28]. It can be argued that the use of legal fictions leads to the consolidation of fiction in law and is good [11, p. 25-28].

3. Fictions are implemented in a normative legal document through law-making technique, playing a multi-aspect role: reception, fact, means. The law-making subject, using them, makes out in the legal form such provision which obviously is unreliable [12, p. 262].

In law-making fiction is used as a technical technique, as "a way of formulating the law, when the legal situation is modeled with an explicit and voluntary contradiction with the concrete reality. It points to a legal rule that will become binding and

will protect the invented fact from any challenge. Thus, fiction is a legal entity that contradicts reality, but is consciously used for legal decisions" [13, p. 200].

Thus, legal fiction is a universal technical and legal method of developing and implementing legal norms, which has a special purpose in the mechanism of legal regulation of public relations and is one of the ways to overcome the state of uncertainty in legal regulation.

4. Fictions are one of the means of formalizing normative material and simplifying the structure of legal structures [14, p. 16].

For fiction to become legal, it must be enshrined in official legal documents, sources of law. They complement the classical legal norms, help to get out of the most difficult situations and conflicts. Fiction should be considered as a special kind of legal norm containing a certain fiction [15, p. 29].

The legislator, says T. V. Kashanina, introduces the fiction to the regulations is not a good life. Other ways to resolve the legal situation, which has a greater degree of uncertainty, "are more expensive (in time or material costs), and therefore become ineffective" [13, p. 200-201]. "Fictions are a kind of lifeline that the legislator gives to the subject who resolves specific legal situations" [16, p. 3-36].

The normative approach seems to some authors unconvincing, since "the norm is a form of fixing fiction in law. Fiction, as well as presumption, is included in the legal norm, the obligation of which is established by the legislator" [11, p. 218].

5. Legal fiction can be considered an ideological source of law, if we consider it as a legal fact, its variety. This opinion is held by many researchers, calling them a special legal fact [9, p. 453], understanding fiction as a phenomenon or event that does not exist, in the established legal procedures recognized as existing [17, p.355].

In this case, legal fictions, being a necessary part of the mechanism of legal regulation, bring clarity to the regulation of public relations, Some authors consider fiction to be an assumption of a fact that is not true [18, p. 5].

Legal fiction definitely, not supposedly "establishes a specific fact that does not correspond to reality, so it is not subject to refutation. This is the meaning of this means of legal technology, so it cannot be an

assumption" [19, p. 7-13].

K. K. Panko agrees that "fictions give life circumstances the importance of legal facts, but believes that in themselves they are not legal facts, but only replace them in cases where a change in legal relations requires a fact, and the real reality in this regard allows a gap" [20, p. 20].

M. L. Davydova denies the recognition of fictions as legal facts, since they are not actions, not events, but a substitute for legal fact. This happens when the situation allows for a gap, and the development of public relations requires a fact [21, p. 19]. It seems that legal fictions perform the role of an additional legal act certifying the already existing legal relationship. This implies the presence of a legal gap, the absence of a specific legal norm on this issue for the resolution of the legal case. The existing relation is, as it were, recognized as symbolic in order to restore its significance through a fiction - an additional act.

Fictions participate in legal education in two forms (types): through theoretical and practical (normative) constructions. "As part of the legal doctrine, theoretical fictions are not considered independent regulators. Conditionally, irrespective of the fact of fixing in the standard legal text, they can be called conceptual as they do not fix imperious rules, but assume existence of the assumption in the concept.

Regulatory fictions include legal provisions enshrined in the text of a regulatory legal act in the form of separate regulatory regulations. They are considered to be means of legal technique" [22, p. 114].

#### 4. Conclusions

Legal fictions, as an ideological source of law, play a positive and very multifaceted role in law education and law enforcement, performing certain functions: a) focus on eliminating uncertainty in legal regulation; b) simplification of legal relations; c) ensuring the strength and stability of legal regulation; d) translation of legal reality into legal reality. And, according to

T. V. Kashanina, they help to achieve justice sometimes on the brink of or contrary truth [13, p. 203]. The use of legal fictions in lawmaking in

some cases is the only possible means of regulating public relations.

Legal fictions are widely used in the gaps in the law, are one of the ways to effectively fill them. Most often, this happens when the legislator is either not ready, or for one reason or another at the moment does not want to eliminate them. Fictions complement an incomplete system, trying to make it complete. Legal fictions create the law and order that the legislator desires. But as the volume of legislation is constantly growing and the legal technique is improving, fictions as a way to fill gaps will become a thing of the past.

Thus, from the point of view of the legal form, legal fictions should be considered as a specific technical legal method of writing the text of a legal document that officially recognizes the provisions that are not true at the time of its establishment. Legal fictions, from the point of view of their content, reveal the desire of the legislator to eliminate the gap in the regulation of public relations [6, p. 10]. Legal fiction can be considered an ideological source of law, if we consider it as a legal fact, its variety.

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