

## **REVIEW OF THE HUMAN ACTIONS AS LEGAL FACTS IN THE PROPERTY LAW**

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### **Abstract**

The legal facts have always been of interest to the legal scientists, since the creation, the modification and the termination of the civil law depend on them. Legal facts are all the facts and circumstances that would cause any legal consequences. The theory classifies them into two groups: events and human actions. Most often, the legal relations in the civil law are caused by certain human actions. Hence the interest in human actions as legal facts. The human actions occur as legal facts in the three branches of the civil law, but with different frequency. The author of this article gives an overview of the human actions that produce legal relations in the property law. This will determine what kind of legal consequences are caused by certain human actions. The emphasis in this paper is placed on both, positive and negative human actions in the property law. This kind of review of the Law on Ownership and Other Property Rights will show that both, positive and negative actions produce legal consequences. Also, this article shows the importance of the human actions as legal facts in the property law, because human actions depend from the free will of the subject and the free will is basic principle in the civil law. This principle means free initiative, i.e. free disposition or freedom in the exercise of the subjective property right. Free will of the human actions represents the importance of the human actions as legal facts in the property law.

**Key words:** *legal facts, human actions, free will, property rights.*

### **I. INTRODUCTION**

The creation, the modification and the termination of the subjective civil rights and relations are conditioned by the occurrence of certain circumstances called legal facts. Legal facts can be all facts and circumstances that occur in nature, but only if they cause creation, modification or termination of a subjective civil right. Hence, they got the name legal, as they produce legal consequences and they create legal relations. Therefore, the legal facts in theory are also listed as sources of civil legal relations.

For the legal facts to produce legal consequences, it is necessary for them to be recognized as such by the law. Not any circumstance occurring in nature can produce legal consequences, since

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\* Ilina Stefanovska Zdravevska, LL.M, PhD student at Ss. Cyril and Methodius University in Skopje, Faculty of Law, Iustinianus Primus in Skopje, e-mail: [ilina.stefanovska@yahoo.com](mailto:ilina.stefanovska@yahoo.com)

the law does not recognize them as such.<sup>1</sup> These circumstances draw their strength from the law. The norms regulate the relations between the subjects when it comes to implementation of the legal facts. It follows that legal facts are all the events and human actions that cause the creation, the modification or the termination of a subjective civil right.

The events include birth, adoption, the flow of time, death, force majeure, illness, intellectual disabilities.

The human actions are different legal facts than the events, as they depend on the subjects' will, contrary to the events, which it cannot be influenced upon. Human actions are willing legal facts which are connected by the law to certain legal consequences.<sup>2</sup> They can be positive and negative and legal or illegal. The human actions consist of: giving (*dare*), committing (*facere*), as positive human actions and omitting (*non facere*) and enduring (*pati*), as negative human actions. Positive human actions produce legal consequence with one's doing or giving. Negative human actions are also called passive actions because they exist when the entity is obliged to endure something, to which he would not, if there had not been the specific obligation for him. In this sense, there is no violation of the negative action if one of the parties had no responsibility for such action. Such actions are seen in the easements, neighbor laws, and especially in our region they are expressed through the right to necessary passage.

As it has already been said the human actions depend from the free will of the subject. Free will of the human actions represents the free initiative of the subjects in the property and legal relationship and it is also called a free disposition. It includes the autonomy of the will of the entities to enter into legal relations.<sup>3</sup> Free will is the first principle upon which the system of the civil and legal norms is built. It is also a basic criterion in the exercise of the subjective property rights because the purpose of the exercise of any subjective property right is precisely the realization of the interest of the holder of that right. Free will of the human actions represents the importance of the human actions as legal facts in the property law.

## II. REVIEW OF HUMAN ACTIONS IN THE LAW ON OWNERSHIP AND OTHER PROPERTY RIGHTS

In the property law, the human actions are expressed in the Law on Ownership and Other Property Rights,<sup>4</sup> as well as in the special laws in small parts. Both the positive and the negative human actions are expressed.

It can be undoubtedly stated that in the provisions on the content and the legal effect of the right of ownership, all forms of human actions are defined. Namely, in the provision of Article 8 of the Law on Ownership and Other Property Rights the right of ownership is defined as a right of possession, complete use and dispose of the personal item as per the personal will, unless it is contrary to any law or to any right of another person. The acts of giving and committing occur if the holder of that right uses his item. This results in positive actions. The negative actions, on the

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<sup>1</sup> Also Гале Галев, Јадранка Дабовиќ – Анастасовска, „From the multitude of circumstances that actually occur in practical life, legally relevant are only those that are recognized and appropriately protected by the objective law, as such“ in *Облигационо право*, Скопје: Центар за Европско Применето Право и Економија (ЦЕППЕ), 2009, 181.

<sup>2</sup> Радмила Ковачевиќ – Куштримовиќ, *Граѓанско право (Општи део)*, Друго измењено и допуњено издање, Неш: 1995,140.

<sup>3</sup> More for free will in Гале Галев, „Слободата на договарањето и нејзината економска основа – стоквното производство“, *Годишник на Правниот Факултет во Скопје*, (1999-2001) : 147- 165.

<sup>4</sup> Закон за сопственост и други стварни права, *Службен весник на Република Македонија* (18/2001, 31/2008, 92/2008, 139/2009, 35/2010).

other hand, can be seen in paragraph 2 of this Article which stipulates the duty of everyone to refrain from violations of another person right to ownership.

Also, the human actions are sources of the civil legal relations both in the general and in the specific restrictions on the right of ownership. Namely, Article 9, paragraph 1 stipulates the right to ownership in accordance with the nature and the purpose of the item, as well as with the general interest established by law. The provision represents the positive human actions. The negative human actions are expressed in paragraph 2 which establishes the ban of performing the right to ownership contrary to the purpose, which is legally recognized and established, or against the morals of the society. The first part of the provision relates to the institute prohibition of abuse of rights taken in its objective sense and it obliges the holder of the property right to use his right only within the limits set by the objective law. The second part of the provision is concerned with the prohibition to performing the right to property contrary to the morals of society. Paragraph 2 of the same Article also refers to the negative human actions and establishes the *ban on performing* the right of ownership in order to cause damage to another person or to prevent to perform his right. This provision represents the subjective concept of prohibition of abuse of rights because there is exercise of the right of ownership with sole purpose to cause damage to another, in theory known as vexatious exercise of the right of ownership. The second part of the provision "or to limit the exercise of their right" means fraudulent exercise of the right, as by the taken actions the other party is unable to use their right. This provision provides negative human actions for the other party.

The negative human actions are also foreseen in the particular restrictions of the right of ownership, as it is expected from the entity - the owner of the property in the use of their real estate to refrain from certain actions. Besides the negative human actions, also the positive human actions are present in this provision because as despite the restraint, the owner is obliged to remove the causes that stem from his real estate, which complicate the use of other real estate (transfer of smoke, unpleasant odors, heat, soot, shock, noise, leakage of waste water, etc.) over the usual measurements given the nature and the purpose of the real estate and given the local circumstances, unless the law stipulates otherwise.

The human actions as legal facts are also visible in the provisions of neighbor law. Namely, in the provision of Article 17 highlighted are the actions of commission, omission and patience. Paragraph 2 defines the neighbor law as mutual and considerate exercise of the right to ownership which is stipulated by the provisions of this or any other law, so that they authorize the owner of a property regarding the exercise of his right of ownership to require the person who owns another neighboring real estate, in their benefit to *endure, omit or commit* anything that relates to their property, and to seek separation from the neighboring property, as determined by law.<sup>5</sup> The neighbor may exercise his right i.e. to demand from the others acts of patience, omission or commission in accordance with the provision of Article 17, paragraph 2 of the Law on Ownership and Other Property Rights, "if this or any other law provides the owner patience, omission or commission, due to mutual and considerate exercise of the right to ownership, then the owners of the neighboring real estate for which they have a justified interest are authorized by it, to request it as their right to enforce in court proceedings unless another way of protection is provided. Just as the owner, authorized to require this are also those who possess the real estate on the basis of rights derived from his right."

The negative human actions have their perhaps most important purpose in Article 24 of the Law on Ownership and Other Property Rights which allows the use of other people's real estate for

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<sup>5</sup>Article 17, paragraph 1, op. cit.

some construction actions. Notably, Article 24, paragraph 1, stipulates that the owner of the property on which it is necessary to carry out the actions essential for its use, upon his request or upon a proposal from the competent authority, may temporarily use another's property to carry out the necessary construction actions, placing the scaffolding and the like, if it cannot be performed otherwise.

Particularly important is the provision of Article 25 of the Law on Ownership and Other Property Rights in which the legislator presents the negative human actions taken in their most basic meaning. Namely, the provision emphasizes the actions of patience even without the consent of the owner of the service item, due to public interest determined by law.

The human actions which lead to the creation, modification, or termination of the legal relations in the property law are also presented in the right to easement,<sup>6</sup> both the property easement and the personal easement. In this case, the legislator emphasizes the negative human actions. In fact, the negative human actions have their largest usage in the easement.

Property easement is the right of the owner of a real estate (privileged item) for the needs of that real estate to perform certain actions on the property of another owner (service item) or to require the owner to refrain from carrying out certain actions that otherwise would be entitled to carry out on his property.<sup>7</sup> In the property easement, there are all the kinds of human actions (giving, commission, omission and patience). Depending on the nature of the item, the property easements can be field,<sup>8</sup> household<sup>9</sup> and community and technical<sup>10</sup>.

The legislator reiterates the passive human actions during the use of someone else's item in Article 197, paragraph 3 of the Law on Ownership and Other Property Rights, where it is established that the owner of the service item must not do (execute) anything that would prevent the exercise of the easement or make it significantly more difficult, but they are not obliged themselves to do anything, unless otherwise is specified. However, the easement must have a reasonable purpose and it is performed in a way that least burdens the service item.<sup>11</sup>

As the property easement is established by a legal act (agreement, will), by decision of the state and with maintenance, it would be justified to determine the compensation of these actions, if there is any. The legislator regulates the compensation in Article 203 of the Law on Ownership and Other Property Rights, establishing the right to compensation for the owner of the service item for his negative human actions. If the owner of the service item and the owner of the privileged item do not agree on the compensation, the amount of the compensation will be determined by the court at the request of the owner of the service item, taking into account all the circumstances.<sup>12</sup>

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<sup>6</sup> The easement is a property right of another person's item, which consists in authorizing its bearer to a certain volume and in a certain way to use that item and the owner is obliged to tolerate or not to do anything, Article 192, op. cit.

<sup>7</sup> Article 192, paragraph 1, op.cit.

<sup>8</sup> Field easements are the right on the pedestrian crossing, passage of cattle, passage with carts, motor vehicles and other vehicles, the right to draw water, the right to water supply and drainage through foreign lands and others, Article 195, paragraph 1, op.cit.

<sup>9</sup> Household easements are right to necessary passage through other party's property, the right to utilize other party's wall, the right to convey the smoke through the neighbor's chimney, right to leakage of rainwater and other water through the neighboring land, the right to install a television antenna of another building, etc. Article 195, paragraph 2, op.cit.

<sup>10</sup> The community and technical easements are the right to convey gas, pipeline, water and other pipes on other's land, the right to convey television cables on a third party's land etc, Article 195, paragraph 3, op.cit

<sup>11</sup> Article 197, paragraph 2, op. cit.

<sup>12</sup> Article 203, paragraph 2, op.cit.

The situation is similar with the personal easements. The personal easement is a property right to other's item which authorizes a person, who is in a special relationship with the owner of the service item to use his item in a certain way, and the owner of that item must endure.<sup>13</sup> The personal easements include the following: the right of usufruct,<sup>14</sup> the right to use<sup>15</sup> and the right to housing<sup>16</sup>. In all these, the human actions have the main role of creation, modification, or termination of the legal relationship. The actions of patience are particularly present with the owner of the service item. Namely, Article 211 of Law on Ownership and Other Property Rights sets out the obligation of the owner of the service item to endure the usufruct, and he can perform his right to property if it does not violate the right of usufruct. Similar to property easements, the personal easements are based on legal act (agreement, will) and with maintenance. But unlike them, with the personal easements, the owner of the service item is not entitled to compensation, which is due to the very reason for which they have been established, and which is mostly because of the needs of the immediate family.

Other property right where it takes human actions to produce a legal relationship is the real burden, but, unlike the easements where the negative human actions are predominant, in the real burden, emphasis is placed on the positive human actions. Namely, the real burdens are specified giving and doing which should be carried out successively in favor of a particular property or person by the existing owner of the particular property (the burdened real estate) on the burden of that real estate.<sup>17</sup> The matter of the real burden is precisely the human actions expressed through giving or doing by the owner of a particular burdened property.

### III. CONCLUSION

The legal facts are a group of events and human actions that cause certain legal consequences, and because the human actions are such legal facts that depend on the will of the person, they always have and always will be the subject of interest by the science.

In the property law, the human actions cause particular interest by the civil law specialists, because all kinds of human actions, both positive and negative human actions are expressed, and they cause different legal consequences. Therefore, the author of this article provides an overview of these actions in the Law on Ownership and Other Property Rights.

This kind of review of the Law on Ownership and Other Property Rights shows that both, positive and negative actions produce legal consequences. This review also shows that the human actions depend on the free will of the person, contrary to the events, which it cannot be influenced upon. This is why the human actions are important to the property law, because of the free will of the subject which is a basic principle in property law. It is also the first principle upon which the system of the civil and legal norms is built.

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<sup>13</sup> Article 192, paragraph 3 op. cit.

<sup>14</sup> The right of usufruct is a personal easement which authorizes its holder (usufructuary) without compensation to use some item (service item) in accordance with its purpose, keeping its essence, Article 210, paragraph 1, op.cit.

<sup>15</sup> The right to use is the right to use another party's item within the limits of the needs of the owner of that right and the members of his family, without changing the essence and the purpose of that item and without extracting other property gains from them, Article 221, op. cit.

<sup>16</sup> The right to housing is the right of others' apartment building, apartment or a separate part of the building or apartment to be used for living for the needs if the owner of that right and the members of his family and other dependent persons, Article 223, op.cit.

<sup>17</sup> Article 236 op.cit.

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