

## **MATTERS OF TRANSACTIONS IN THE PERFORMANCE OF A FORENSIC PSYCHOLOGICAL EXAMINATION**

Makhmudova Hulkar Tilabovna

Candidate of psychological sciences,

Associate Professor, Department of Service Psychology  
activities of the Academy of the Ministry of Internal Affairs of Russia.

e-mail: Khulkar\_makhmudova@mail.ru

tel: (90) 354-88-82

### **Abstract**

This article discusses issues related to business ability due to a defect in the will of the research subject in civil processes. The mechanisms of defective expression of will are revealed, the trends characteristic of psychological research in this direction are explained.

**Key words:** forensic psychological examination, vice of will, will, deal, psyche, subject, volitional regulation.

The decree of the President of the Republic of Uzbekistan (01/17/2019) "On measures to further improve forensic science activities" places great responsibility on experts. The measures indicated by the President reflect the goals of accelerated development of forensic activities in the Republic of Uzbekistan. The formation of the legal framework should be carried out by forensic activities not only by state, but also by non-state structures. The aforementioned law also imposes on experts the responsibility for introducing new scientific developments with their subsequent application in practice.

Updating the legislation related to transformations in the field of forensic examinations in civil proceedings in the Republic of Uzbekistan (Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 17 of December 22, 2006 in paragraph No. 11) posed new challenges for the legal proceedings and requires new approaches to solving them. An increase in the number of illegal transactions, transaction fraud, psychological and physical impact at the time of the transaction, based on the rules of Article 59 of the Civil Procedure Code "on the admissibility of evidence", the issue of conducting an appropriate - psychological - examination in the case should be discussed.

There are incapacitated subjects whose mental state is investigated by psychiatrists: Art. 119 Civil Code of the Republic of Uzbekistan. ("Invalidity of a transaction made by a citizen recognized legally incompetent"), Art. 120 Civil Code of the Republic of Uzbekistan. ("Invalidity of a transaction made by a citizen of limited legal capacity"). There are psychological elements of disability in a competent subject, the study of which is the responsibility of psychologists. This is explained by the fact that during the transaction the subject could be subjected to violence, psychological pressure, and could also be in a state of stress, panic, depression (with concomitant somatic diseases and age-related features), which is provided for in the Civil Code of the Republic of Uzbekistan. (Articles 121.122.123 of the Civil Code of the Republic of Uzbekistan) [2].

The subject of psychological research (both in the practice of criminal investigations and in the judicial investigation of civil cases) is behavioral disorganization, which is based on an individual inclination to the emotional response of the subject to extreme situations of varying degrees of complexity. The diagnostic capabilities of forensic psychological examinations in the indicated aspect have scientifically substantiated value and this can serve as evidence in the consideration of civil cases.

Unfortunately, the insufficient development of a theoretical and methodological basis for the subject types of forensic psychological examinations in civil cases in the Republic of Uzbekistan leads to numerous disagreements among psychiatrists and psychologists, as well as judicial instances. As rightly noted T.V.

Sakhnova, - "The subject of psychiatry is the human psyche in pathology, the subject of psychology is a healthy psyche" [8]. This explanation is sufficient to distinguish the subject of psychological expert research from the subject of psychiatric examination. The behavioral characteristics of a pathological person (mentally disabled) differ from normal (mentally full) human behavior, which can end up in unfavorable circumstances and react to them in an uncharacteristic way. In this case, we are talking about a vice of will. As T.N. notes Sekerazh, "the subject of an examination of a flaw of the will is the establishment of circumstances significant for the court: the subject's ability to make a civil law transaction in the period related to its completion, fully and freely determine the purpose and make a decision on its achievement, entailing a change in his rights (in including their occurrence or termination), the ability to manage their actions to implement the decision"[9].

In the practice of expert institutions in the Republic of Uzbekistan, examinations are often appointed aimed at allowing psychiatrists to be carried out by psychologists, since there are objective justifications for this psychological competence. Courts sometimes do not have information about the competence of an expert psychologist. In the courts of the Republic of Uzbekistan. cases of "purchase and sale", wills and deeds issued by persons capable or incapable of making adequate volitional decisions are currently in greater demand for psychological examination.

In civil law, when a court recognizes the invalidity of transactions, a number of psychological grounds are provided for:

- a) the inability of a capable entity to understand the significance of their actions or to manage them at the time of the transaction (Article 121 of the Civil Code of the Republic of Uzbekistan);
- b) the influence of error (Article 122 of the Civil Code of the Republic of Uzbekistan);
- c) deception, violence, threat, malicious agreement of the representative of one party with the other side, combination of difficult circumstances (Article 123 of the Civil Code of the Republic of Uzbekistan).

In jurisprudence, all of these noted in Article Code of Criminal Procedure of the Republic of Uzbekistan mental states are called a "vice of will", which means a violation or inferiority of volitional regulation of a legally significant behavioral act. Thus, the formation of an understanding of the will is associated with an understanding of the rational aspiration, by which a person is guided on the basis of informed decisions. Unlike reason, the will is capable of acts of goal-setting, in which Aristotle also allowed the possibility of a conflict between the choice of reason and aspiration, where the moral act will be controlled by the mind.

From a psychological point of view, the will can be considered as a free choice, in which there is a process of deliberation (weighing motives). Supporters of this concept are W. James, G.I. Chelpanov, V. Frankl, B. Allahverdov, V.I. Selivanov, V.K. Kalin. 1968 philosopher B.F. Porshnev put forward a position according to which the idea of will is associated with the possibility of committing one or another act from the options of choice (which act to commit). According to the author, an arbitrary choice among a person's actions is determined by volitional decisions that a person consciously makes. In this case, we mean a person who is mentally healthy, socially adapted, without any psychophysiological disorders, etc. In his opinion, "It is not enough for the psychologist to talk about one or another motivation for an act, it is necessary to talk about an arbitrary choice among the motives themselves, from which the victory of one virtual act over another already arises. So, before the act there are irreconcilable motives. An act is a manifestation of personality"[1].

The presence of two trends noted by the author is associated with the state of inconsistency in a person, which is leveled by the act of choice, due to the assessment of the situation, i.e. "The choice is not the preference of one possibility, but the suppression, the removal of another, which is how the first is released." So, from a psychological point of view, the will is a conscious mental activity that regulates a person's

behavior and activity and directs him to overcome any obstacles on the way to achieving his goals when committing targeted actions and actions. Will is always associated with the consciousness of a person, the level of development of his personality. The reduced level of volitional regulation by the subject of his actions, which does not go beyond the limits of the mental norm, within the framework of sanity is expressed in the reduced ability of the subject to comprehensively evaluate one or another significant situation for him and adequately to her and his ability to make decisions, to fully manage his actions aimed at achievement of goals.

According to the opinion of O.A. Krasavchikova, who believed that "... giving a legal assessment of a person's behavior, one should proceed not only from what behavior is expressed as action, but also from what is the relationship between the action and the conscious volitional process that caused (caused) this action "[5]. So, the psychological criteria of "vice of will" include a decrease in the level of volitional regulation and impaired ability to manage their actions. The psychological criteria of reduced ability to manage their actions within the limits of the mental norm include:

- intellectual decline, which makes decision-making difficult in certain conditions, taking into account cognitive dissonance, difficulty in predicting, and planning for his next actions;
- the presence of certain individual psychological properties, i.e. stable character traits that are formed into a "conformal type" of a person making decisions under the influence of externally-conditioned stimuli with increased suggestibility.

These features are manifested with reduced volitional regulation in a person who has lost the ability to express his will and plan his life. Such individuals are characterized by: increased anxiety, constant concern, excessive caution, excessive suspicion, suspiciousness; lack of initiative, independence, courage in choosing one's own line of behavior, with the achievement of the set goal, reduced self-control, a tendency to complicate the events around. Self-doubt arising from experiences characteristic of the above characteristics of a person, with low self-esteem, cause a feeling of inferiority and a constant expectation of failure. Such people have motives for avoiding failures, a decrease in emotional stability (stress resistance), and control over their emotions.

When the question is about the subject's abilities for volitional regulation of behavior, factors are revealed that also testify to the insufficient ability of the subject to understand the meaning of his actions and manage them. In this case, there are problems associated either with the psychological inability (transactional ability) of the subject, or from the point of view of law. In the definitions of the will there are such ideas as the reason for consent, desire, effort and overcoming obstacles. In judicial instances, it is necessary from a psychological point of view to reveal the concepts of "vice of will". To do this, it is necessary to determine the expert concept of a vice of will, since the general psychological phenomena not diagnosed by the expert are of legal importance, but expert forensic psychological concepts that are consistent with the law [3].

According to Yu.V. Kholodenko, "the will is the intentionally conscious determination of a person to perform an action or to refrain from performing it, formed under the influence of a certain motive, due to a strictly defined desire that arose without any outside interference, and based on free (independent and independent) choice by a person one or another version of his behavior, necessary for him to satisfy his needs by achieving the intended result with appropriate, from his point of view, means and ways. Based on the proposed definition of will, the viciousness of the transactions in question should be determined through the absence or deformation of such a characteristic of will as determination. In this regard, a flaw of the will manifests itself in separate compositions in the following:

- in transactions made under the influence of a delusion, although the will is expressed freely, the determination to make such a transaction was initially discredited by a random combination of circumstances or by the imprudence of one of the parties to the transaction;

- in transactions completed under the influence of deception - the depravity of the will is due to an incorrect awareness of the determination to make a transaction by one entity as a result of the intentional actions (inaction) of the second entity;

- in enslaving transactions - determination to conclude a transaction does not arise as a result of intentional awareness of the consequences of the transaction and the desire for it, but is forced, due to a combination of any external factors objectively pushing to complete the transaction and obtain a result that is not typical in a normal situation, about what the counterparty to the transaction knows and what it uses;

- in transactions made by a citizen who is not able to understand the meaning of his actions or direct them, determination appeared at the moment when the citizen was in a state that did not allow him to deliberately realize the desired result;

- in pretended and imaginary transactions, the commitment to the concluded transaction is absent on both sides of the transaction;

- in transactions concluded under the influence of threat, violence and by malicious agreement of a representative of one party on the other, only one of the entities has no determination to complete the transaction, which is recognized by both parties, and the transaction is concluded only as a result of external factors that simply did not allow to express to the other side his disagreement with her conclusion”[10].

Thus, in view of the foregoing, the concept of “transactionability” (a vice) from the point of view of psychology (when using legal parameters) includes a person’s misconception about the purpose of his actions in legally significant circumstances, which is caused by violations that define disorganized behavior. These circumstances are clarified during forensic psychological examinations in the course of research on the basis of a comparative analysis of the materials of a civil case and the person who is the subject of a particular lawsuit.

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