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JUDICIAL-PSYCHOLOGICAL EXAMINATION OF FAIL OF WILL

(transactional ability)

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Resume:

This article discusses the main problems associated with forensic psychological examination in the Republic of Uzbekistan on civil processes. The psychological and legal mechanisms of the concept of business ability are disclosed, taking into account both the circumstances of the case and the mental states caused by the individual psychological characteristics of the subject of the study.

Keywords: transaction, forensic psychological examination, mental state, dealability, expression of will, delusion, deception.

In the Decree of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 22, 2006 No. 17 “On some issues arising in judicial practice in connection with the application of legislative norms governing transactions” in paragraph 11 “When challenging the validity of a transaction on the basis of a citizen’s inability to understand at the time of commission transactions meaning their actions and lead them, the courts should, based on the rules of Art. 59 Code of Civil Procedure on the admissibility of evidence to discuss the issue of conducting the relevant (psychological) examination in the case ”[9].

In the Decree of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 12/12/2008 No. 24 “On some issues arising in judicial practice in connection with the appointment, conduct of a forensic examination and assessment of the opinion of an expert in civil cases” in paragraph 6 it is noted that “ within the meaning of the procedural law, the judge is entitled (taking into account the opinions of the persons participating in the case) to appoint in the case the production of the “relevant” examination (medical, psychiatric, commodity, accounting, etc.) ”[10].

According to this Decree, “in all cases when it is necessary to ascertain the mental state of a person at the time of the case, a forensic psychiatric examination should be assigned, for example, when considering cases on invalidating transactions based on the reason that they were committed by a citizen who is unable to understand the significance of their actions or to direct them (Article 121 of the Civil Code) ”[10].

A comparative analysis of the aforementioned "Resolutions" allows us to conclude that the provisions of the "Resolutions" dated 12. 12. 2008 are contrary to the provisions of the "Resolutions" dated 22. 12. 2006, since the concept of "mental state" (ability-failure) the subject of the civil process is considered in the context of studies of specialists of various competencies. This circumstance leads to vagueness of court decisions and delays as a result of terminology unspecified in the legislation on the subject of the study when conducting an "appropriate" (psychological? Or psychiatric?) Examination.

In the context of our expert studies and conceptual directions of foreign countries, the purpose of forensic psychological research should be legally justified taking into account scientific data of a purely psychological direction. The state of affairs in civil proceedings of the Republic of Uzbekistan. develops in such a way that in psychiatry the concept of "incapacity" is not defined for capable entities (see 121 Civil Code of the Republic of Uzbekistan). Despite the totality of circumstances in which a person cannot make the right decisions due to individual characteristics, somatic diseases, age, etc., through which legally significant situations are refracted, such subjects are recognized as capable by psychiatrists.

According to the above, the question arises of how the court should navigate in determining the purpose of a psychological or psychiatric examination?

It is generally accepted that transactions always constitute acts of conscious, focused, volitional actions of persons who commit these actions to achieve certain legal consequences. The appropriateness of these actions is sometimes called into question, since the subject of will expression may be psychologically inconsistent in decision-making.

To date, the doctrine of the transaction is one of the central places in the foreign representation of theories of civil law. In our country, despite the relevance, insufficient attention is paid to the decision of the matter by the courts, the study of the transaction from both the jurisdiction and the psychology side. According to scientific definitions, will and expression of will are key elements of the composition of a legal transaction. The content of these concepts is not disclosed without understanding the category of vice of will.

In civil law, a "vice of will" is stipulated in the category reflecting the conditions for the invalidity of legal acts. If we bear in mind the forensic psychological examination of a vice of will, then in this case there is a lack of awareness on resolving these issues in the context noted. It should be noted when "vice of will" is implied, meaning the absence of a freely formed will and will of the subject of research.

Judges' submissions are usually limited to the scope of the parties to the transaction. They usually take into account two factual circumstances:

1) legal capacity (the criterion of which is the absence of mental disorder, or, if there is one, the preservation of the ability to understand the nature and significance of their actions and manage them);

2) the objective presence of fraud, threat, violence, malicious agreement, a combination of difficult life circumstances (from a legal point of view).

Taking into account the theory and practice in this area, it should be noted that there were works in the field of theory, the so-called transaction capacity, of such authors as: L.A. Jachimovich, T. B. Dmitrieva N.K. Kharitonova, K.L. Immerman, E.V. Queen, D.N. Korzun, A.Yu. Ruzhnikov. At the same time, the examination of "transactionability" still requires a special theoretical justification and study of the criteria for expert evaluation.

The psychological criteria, in spite of their significance, laid down in the very norms of the law and recognized by many researchers from abroad, remain unspecified in Uzbekistan.

So, ascertaining a "vice of will" is impossible without justifying the mechanisms of formation of this very vice of will. There are internal mechanisms that are internal to the emotional stress syndrome. And also external reasons concerning the legal interpretation of events are significant. These reasons are due to the substantive value, which differentiates the error, as an essential element of the transaction, recognized invalid. In this case, the counterparty's reckless guilt is legal. And in this case, you should qualify the transaction as completed under the influence of fraud. It should take into account additional significant criteria, due to the probability of the subject of the transaction to be deceived.

One of the means of proving a "vice of will" is the examination of the inability of a mentally competent subject to control his actions in the circumstances of a temporary period. A posthumous forensic psychological examination in respect of a person who has committed a legally significant act in the period preceding death is assigned in absentia.

It should be noted that the introduction of differentiated clarity, legislative accuracy and professional competence in the definition of concepts: "ability" (business ability) ("not ability") of an entity to make the right decisions in legally significant situations is essential in making judicial decisions for the appointment of forensic surveys of persons who have committed legally significant actions.

As T.N. notes When conducting a forensic psychological examination, "the subject of an examination of a vice will is the establishment of circumstances significant for the court: the ability of the subject of a civil law transaction during the period related to its completion to fully and freely determine the purpose and make a decision on its achievement, entailing a change in his rights (including their occurrence or termination), the ability to manage his actions to implement the decision. At the same time, the object of the examination of a vice of will is the mental activity of the subject of civil law relations during the formation of his intention to complete a transaction, the expression (declaration) of this intention and the actual completion of the transaction.

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The algorithm of expert research and a set of methods for studying the psychological characteristics of the subject of the transaction, including the study of the characteristics of the legal relationship, the personal characteristics of the subject of the transaction, the characteristics of his mental activity during the period related to the transaction (including the mental state and motivating factors of behavior) ”[11].

Taking into account civil law, when a court recognizes the invalidity of transactions in Uzbekistan, art. 122. Civil Code of the Republic of Uzbekistan. (misconception). In the legislative systems (England, USA, Germany, France, Russia, etc.), “error” is the reason for the invalidity of the transaction. In Roman private law, “error” was considered as the basis for the invalidity of the transaction, which is a flexible approach to resolving property disputes.

In the Civil Code of the Russian Federation, “error” must be material. In Austria, the concept of "error" refers to the basic properties of that in relation to which the intent of a person is directed. In France, a rule is established according to which misconception discredits a contract if it served the erring person as the main motive for concluding it. In this context, it is understood that in some legal systems, in order to give a legal meaning to a misconception, it is important that the actions of the most mistaken are conscientious.

In Roman private law, consideration of this issue begins with the division of “error” into errors in the object (error corporis), errors in the name (error nominis), errors in the material (error in materia), errors in quality (error qualitatis), errors in the basis (error falsae causae), errors in the face (error in persona). A similar opinion was expressed by D. I. Meyer.

According to the views of Yu.S. Gambarova and K.P. Pobedonostsev, error is established in the ratio of "error" and "error." According to the authors, the most developed classification of “error” is contained in English law and it begins with the consideration of classifications of error in foreign states. For example, you can give Pollock's classification:

- an error in the nature of the transaction;
- a mistake in the face;
- an error in the subject of the contract;
- an error in determining the terms of the contract.

Classification of errors Samonda contains in such forms as:

- in the expression (in verbis);
- in agreement (in consensu);
- at the base (in causa).

The classification of Cheshire and Fifut misconceptions includes:

- “common mistake”;
- “mutual mistake” (mutual mistake);

- “unilateral error”.

French law distinguishes between 3 types of error:

1) an error in the nature of the transaction and in the identity of its subject;

2) an error in the face and essential qualities of the subject;

3) an error in the non-essential qualities of the subject and the motives of the transaction.

For example, in accordance with Part 1 of Art. 178 of the Civil Code of the Russian Federation, a transaction concluded under the influence of a delusion of material significance may be declared invalid by a court at the suit of a party acting under the influence of a delusion. Moreover, the law specifically establishes what exactly should be understood as a delusion that is of significant importance.

According to E.A. Kolomiets, “the error is the result of the vicious formation of the will of the participant in the transaction, which had a decisive influence on the commission (conclusion) of the transaction and (or) the determination of its conditions that are of significant importance. This result may be based on an erroneous premise caused by reckless actions (inaction) of third parties, or received by an erring person on their own ”[7].

The idea of the purpose of the transaction and the expected results may be distorted. In this case, it is necessary to consider the issues of the influence of the formation of external and (or) internal factors in any way. The consequence of the error is a significant discrepancy between the legal consequences of the expected [12].

K. Annenkov, analyzing the volitional process in error, noted that the person, “making the will, although he wanted it to entail a well-known legal consequence, but in fact expressed his will not about the consequence to which it is directed, but about another, the onset of which she did not want, not realizing that the consequence was undesirable for him ”[1].

S.I. Vilniansky believed: “The error or mistake lies in the lack of a correct idea of any factual circumstance that is of significant significance, that is, about such a circumstance, if correctly presented, about which a person would not have committed a transaction ”[13].

According to A.Yu. Zezekalo, ".... in the fundamental criterion for the materiality of a mistake made during the transaction, its effect on the unity of will and expression of will is taken into account. In accordance with the specified criterion, a significant misconception should be understood as the misconception that was the cause of the discrepancy between the internal will and the will of the person committing the transaction (error in the transaction). On the contrary, the error that took place at the stage of the formation of the will of a person does not lead to a discrepancy between the will and the will, and is therefore called a mistake (error) in the motives ”[6].

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In view of the foregoing, from a psychological and legal point of view, "misconception" should be understood to mean the content of a "vice of will" in which one side, under the influence of the other side, is introduced into representations that do not correspond to reality about the circumstances of the transaction. In this case, it should be emphasized that the erroneous idea of the elements of the transaction should not occur intentionally for the agent, without the influence of the counterparty of the transaction. The psychological mechanism of "error" occurs through the establishment by the transaction agent of incorrect connections and relations in the "object-reflection-image" system at the presentation level. Malfunctions are possible in the system of marked connections, which are explained by psychological factors (sensation, perception, individual characteristics). And the role of psychological examination in the trial of civil cases arising from the circumstances referred to in Art. 122 of the Civil Code of the Republic of Uzbekistan, allows you to establish the degree of distortion of psychological factors of the agent of the transaction.

Under the influence of physical disabilities (blindness, deafness, dumbness, hearing loss, low vision), the probability of perception error increases. And, therefore, the likelihood of such a person's confusion regarding the circumstances of the transaction is increasing. A specific reason for the appointment of an examination is the existence of reasonable doubts about the ability of one or another party to correctly perceive any significant elements of the transaction when it is completed.

In the Civil Code of the Republic of Uzbekistan. Art. 123 provides for "Invalidity of a transaction made under the influence of fraud, violence, threat, malicious agreement of a representative of one party with the other party or a combination of difficult circumstances." "A transaction made under the influence of fraud, violence, threat, malicious agreement of a representative of one party with the other party, as well as a transaction that a citizen was forced to make due to a combination of difficult circumstances on extremely unfavorable conditions for himself than the other side took advantage of (enslaving transaction), may be declared invalid by the court at the suit of the victim "[3].

Under "deception" and "mistake", German scientists K. Zweigert and X. Ketz assumed similarities in concluding a contract under the influence of error. It should be noted that when cheating, the error is provoked by the counterparty to the transaction. Therefore, this type of error can be designated as provoked "deception" [15].

Intentional or negligent statements that contribute to error (innocent or negligent misrepresentation) are spoken in English law. In this context, there is a distinction between reckless and deliberate statements that mislead the agent of the transaction. Such transactions are called differently in different countries. For example, in England, for example, such transactions are called false or fraudulent (fraudulent misrepresentation). In France and other countries of the Roman legal system, we are talking about cheating

(dol or dolo), in Germany and Switzerland - about malicious (arglistiger) or deliberate cheating, in Austria - about "tricks" (List), in Holland - about cheating (bedrog)

According to P.O. Halfin, any form of guilt, including the provision of false information, intent, negligence, are associated with the relevance of these actions as fraudulent [13].

A.S. Joffe noted: “If specific circumstances indicate that, with a correct understanding of the moments taken as a result of fraud in a false light, the counterparty would not have entered into this transaction, it should be considered perfect under the influence of fraud” [5].

In the civil code of Ukraine, Art. 230 Civil Code deception is considered as intentional misrepresentation by one party to the transaction by the other party. All this has to do with circumstances, the content of which is determined in Part 1 of Art. 222 Civil Code. In the parameters considered, it should be borne in mind that the misconception concerned the nature of the transaction, the rights and obligations of the parties. In other words, there are properties and quality of a thing whose value is reduced for its intended purpose [16].

In the position of Yu.S. Gambarova, every dishonest act can be considered a cause of fraud, and not just the "action or inaction" of the counterparty to the transaction. In the real sense, deception (dolus) is opposed to bonafides, i.e. good conscience [4].

Any immoral and evil behavior that aims to influence someone else’s will through false representations is a consequence of deception. Expanding the concepts of “deception”, it is necessary to keep in mind the silence of the truth, which contradicts a good conscience and legal civil norms.

Thus, fraud is understood as a deliberate misrepresentation of the other party in order to induce it to conclude a transaction. From a psychological point of view, “deception” is characterized by the conscious creation of a false idea about certain circumstances of reality in the consciousness of another subject. The deceiver acts intentionally, i.e. not only conveys false information, but also hides its true intentions.

Conducting a psychological study of the motivational sphere of the parties will facilitate the court's legal assessment of the actions of the counterparty to the transaction. And this is important, because the distinction between negligence and intent is important for the proper qualification by the court to assign responsibility to the counterparty of a civil law transaction. It should be noted that in these circumstances, the expert decides the question of psychological motivation, and the court makes a conclusion about the legal motive (guilt-innocence) of the subject.

When making transactions, the term “violence” is identified, according to E.V. Vaskovsky, “with mental violence”, i.e. the influence of one person on the will of another through a threat, the result of which is consent to a transaction. When it comes to physical violence, then, according to the author, the will of one of the counterparties is completely absent [2].

In the concept of coercion, according to D.I. Meyer, includes two components, namely: "violence" and "coercion." Like E.V. Vaskovsky that “violence is also coercion, when a person’s will is completely suppressed and the action is not represented by the action of the person who appears to be committing it, but by the action of the rape, so that the person who is subjected to violence is only an instrument of his action”. Position D.I. Meyer demonstrates a more consistent version of the definition of a concept as “coercion”. As the author points out, this is characterized in cases “when a person is not brought to the extent of an instrument, but he himself performs a certain action. Then there may be talk about the effect of coercion on the will and the legal significance of the action committed by coercion ”[8].

The concept of "violence", K.L. Pobedonostsev and K. Annenkov were divided into physical or moral (mental).

Thus, taking into account the above concepts, it should be noted that conducting a forensic psychological examination will bring scientific clarity on the consideration of issues related to the transaction. At the same time, for example, by “violence” in civil matters during transactions, one should understand the moral (mental) or physical pressure that may be exerted on the transaction agent by the counterparty. In this case, a combination of difficult circumstances is created in which the agent, put in a position of hopelessness, makes decisions in favor of the agent on extremely unfavorable conditions. The parameters noted in the context cannot be considered without a psychological expert study of these conditions.

List of references

1. Anenkov K. System of Russian civil law. T.1. - M. 1910. - S. 47.
2. Vaskovsky E.V. Civil law. - M., 1914 .-- 572 p.
3. The Civil Code of the Republic of Uzbekistan. Lex.uz.
4. Gambarov Yu. S. Civil law. General Part / Ed. and with the foreword. V.A. Tomsinova. - M., 2003 .-- S. 761.
5. German law. Part I. Civil Code. - M., 1996 .-- S. 279.
6. Zekekalo A.Yew. Misconception in the transaction. - Tomsk, 2011 .-- 198 p.
7. Kolomiets Evgeny Aleksandrovich. Delusion and deception as a condition of invalidity of transactions: Dis. ... cand. legal sciences. - Krasnodar, 2005 .-- 179 p.
8. Meyer D.I. Russian civil law. - St. Petersburg. 1910. - 720 p.
9. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 22, 2006, No. 17, “On Certain Issues Arising in Judicial Practice in Connection with the Application of Legislation Governing Transactions”. Lex.uz.

10. Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 12. 12. 2008 G. No. 24 “On some issues arising in judicial practice in connection with the appointment, conduct of a forensic examination and assessment of the opinion of an expert in civil cases”. Lex.uz.

11. Sekerazh T. N. Theoretical and methodological foundations of the diagnosis of “vice of will” in forensic psychological examination. Thesis for the degree of Cand. legal n - M. 2004.

12. Sklovsky K. Transaction and the invalidity of the transaction: the main provisions of the updated chapter of the Code // Economy and law. - M., 2014. No. 1.

13. Kholodenko Yu. V. Invalidity of transactions with vices of will: diss ... cand. legal n - M., 2008 .-- 246 p.

14. Halfina P. O. Treaty in English Civil Law / P. O. Halfina. - M., 1959. - S. 247.

15. Zweigert K. Introduction to comparative law in the field of private law: in 2 volumes / K. Zweigert, H. Quetz. - [per. with him.] - M., Intern. Relationship. - T. 2. The basics. - 1998 .-- 480 s.

16. The Civil Code of Ukraine // The Verkhovna Rada of Ukraine, 2003 p. - No. 40-44. - S. 356.