

ISSN: 2450-8160

Herald pedagogiki. Nauka i Praktyka

wydanie specjalne



Warszawa
2021

Editorial Team

Editor-in-chief: *Gontarenko N.*

EDITORIAL COLLEGE:

W. Okulicz-Kozaryn, *dr. hab, MBA, Institute of Law, Administration and Economics of Pedagogical University of Cracow, Poland;*

L. Nechaeva, *PhD, PNPUI Institute K.D. Ushinskogo, Ukraine.*

K. Fedorova, *PhD in Political Science, International political scientist, Ukraine.*

Aryslanbaeva Zoya, *Ph.D. in Uzbek State Institute of Arts and Culture Associate Professor of "Social Sciences and Humanities."*

Karimov Ismoil, *Kokand State Pedagogical Institute*

Nishanova Ozoda, *National University of Uzbekistan named after Mirzo Ulugbek*

Isamova Pakiza Shamsiyevna, *candidate of pedagogical sciences, associate professor of Uzbek State World Languages University, Republic of Uzbekistan, Tashkent city.*

(wydanie specjalne) Volume-2, № 3 May 2022

ARCHIVING

Sciendo archives the contents of this journal in ejournals.id - digital long-term preservation service of scholarly books, journals and collections.

PLAGIARISM POLICY

The editorial board is participating in a growing community of [Similarity Check System's](#) users in order to ensure that the content published is original and trustworthy. Similarity Check is a medium that allows for comprehensive manuscripts screening, aimed to eliminate plagiarism and provide a high standard and quality peer-review process.

About the Journal

Herald pedagogiki. Nauka i Praktyka (HP) publishes outstanding educational research from a wide range of conceptual, theoretical, and empirical traditions. Diverse perspectives, critiques, and theories related to pedagogy – broadly conceptualized as intentional and political teaching and learning across many spaces, disciplines, and discourses – are welcome, from authors seeking a critical, international audience for their work. All manuscripts of sufficient complexity and rigor will be given full review. In particular, HP seeks to publish scholarship that is critical of oppressive systems and the ways in which traditional and/or “commonsensical” pedagogical practices function to reproduce oppressive conditions and outcomes. Scholarship focused on macro, micro and meso level educational phenomena are welcome. JoP encourages authors to analyse and create alternative spaces within which such phenomena impact on and influence pedagogical practice in many different ways, from classrooms to forms of public pedagogy, and the myriad spaces in between. Manuscripts should be written for a broad, diverse, international audience of either researchers and/or practitioners. Accepted manuscripts will be available free to the public through HPs open-access policies, as well as we planed to index our journal in Elsevier's Scopus indexing service, ERIC, and others.

HP publishes two issues per year, including Themed Issues. To propose a Special Themed Issue, please contact the Lead Editor Dr. Gontarenko N (info@ejournals.id). All submissions deemed of sufficient quality by the Executive Editors are reviewed using a double-blind peer-review process. Scholars interested in serving as reviewers are encouraged to contact the Executive Editors with a list of areas in which they are qualified to review manuscripts.

METHODOLOGICAL FOUNDATIONS OF THE INVALIDITY OF A TRANSACTION IN CIVIL LAW

Musaev Kodirbek Abdukodirovich

Independent researcher at Tashkent State University of Law,
3rd category Lawyer
qodir2605@umail.uz

Abstract: This article examines the methodological foundations of the invalidity of an transaction in civil law from a scientific and theoretical point of view. Also on the topic of this study, special attention was paid to the issues of scientific opinions of scientists from CIS countries and foreign countries, the rule of law or the basics of morality, antisocial and insignificant transactions, and opinions were expressed by the author. It should also be noted that the recognition of a transaction as invalid has not been studied in civil law as an object of monographic research, it is precisely because of this relationship that it involves a comprehensive study in civil law relating to the theoretical and significant in practice application of the right to recognize a transaction as invalid. The author tried to theoretically comprehensive study the invalidity of a transaction made for the purpose, obviously contrary to the fundamentals of law and order or morality, to fully disclose the problems on this topic from a modern scientific point of view. In particular, during the study of the topic, conclusions were drawn about the invalidity of the transaction.

Keywords: transactions, invalidity of transactions, voidable transaction, law and order, basis of morality, court, void transaction, defective transaction, antisocial transaction, offense, voidable transaction.

One of the main goals of the New Uzbekistan Development Strategy for 2022-2026 is to develop and expand the regulatory impact assessment of legislation in the framework of the application of elements of the "smart regulation" model to ensure the stability, quality and effectiveness of legal regulation of social relations [1].

Proceeding from these goals, the legal regulation of social relations in civil legislation is of great importance. At the same time, the development of the Institute of transaction and transaction invalidity, the application of the right to practice and the expansion of scientific research are one of the urgent tasks.

In the legal literature, for many years, the issue of recognizing the validity of a transaction as a transaction or classifying it as a violation has been rising. The approach to the notion that a transaction is not valid, in most cases, will have to determine that it is a legal fact.

H.R. Rahmankulov said that the main requirement for a transaction is its compliance with the law. This requirement applies to transactions that are unlawful directly in terms of content and purpose, and not in relation to any transactions that violate the law, that

is, are concluded without compliance with it and are recognized as invalid [2].

According to I.R. Rustambekov, it is especially important to address the issue of protection of the rights of service providers and sellers in concluding transactions with consumers [3].

D.D. Grimm argued that the invalidity or invalidity of a transaction does not, under normal circumstances, lead to an objective legal conclusion relating to this type of transaction [4].

I.B. Novisky noted that the transaction is a legal action carried out by one or more worthy people who enter into a relationship as a subject of property rights, aimed at establishing, altering or nullifying civil legal relations [5].

V.P. Shakhmatov said that the validity of the transaction is understood to be a transaction that does not correspond to the signs of the composition of transactions in the norms of law due to its socially harmful or socially unacceptable properties [6].

I.B. Zakirov believes that the transactions on the content, which do not comply with the requirements of the legislation, as well as the transactions concluded for the purpose of deliberately opposing the principles of law enforcement or morality or morality, is not true in itself, as indicated in Article 116 of the Civil Code. The "law" shown in this article is applied in a broad sense to the question. This article applies not only transactions concluded in violation of documents issued by the Oliy Majlis of the Republic of Uzbekistan, but also agreements concluded in violation of all documents issued on the basis of laws. [7].

In our opinion, law and order are an objective and subjective conditioned state of social life, which is characterized by a system of legal relations based on the principles of internal consistency, law and legitimacy, as well as democratic, humane and moral requirements, rights and obligations, freedom and responsibility.

As R.B. Osokin points out, actions that violate the moral foundations of a society harm them by violating the individual moral norms, principles, and values that exist in society [8].

A.V. Naumov correctly noted that social morality is defined as a set of ideas, norms of conduct, traditions, views on values. [9].

In our opinion, the foundations of law and order and morality are the economic and social foundations of the state, state security, the basic constitutional rights and freedoms of citizens.

In order to protect the rights and legitimate interests of citizens, the Institute for the invalidity of transactions serves as a legal mechanism for the deprivation of legal force of the transaction and the restoration of violated rights, as a result of which it is one of the means of civil-legal protection and causes a variety of scientific approaches.

O. Okyulov believes that three issues should be addressed when the transactions are found to be invalid. Who will remain in the property on the transaction found to be invalid, who will receive compensation (subject to the introduction of the compensation system) and the liability measures applied to the non-party who committed the acts on

the basis of which the transaction is invalid [10].

The invalidity of the transaction is the basis for the application of the consequences of its invalidity, which gives the right to compensate for the damage caused to the affected parties.

It should be noted that the theoretical views of H.R. Rahmonkulov, I.B. Zakirov, O. Okyulov, I.R. Rustambekov on the institute of the agreement play an important role in the scientific community.

It should be noted that in theory and practice it is necessary to distinguish between the notions of the invalidity of the transaction and the notion of non-concluded transactions. The main criteria for distinguishing these concepts include the grounds and consequences of finding the transaction invalid or unconstitutional [11].

In order to find out the transaction established by civil law as invalid, the grounds for violation of the terms of its validity are related to the following::

- will and desire-unity of desire;
- relevant and legal subject of the transaction;
- the transaction must provide for all important conditions, that is, the content of the transaction should not go beyond the limits established by the legislative requirements;
- the transaction must be formalized in the appropriate form established by the legislative requirements;
- the transaction should not contradict the principles of law enforcement or morality.

The invalidity of the transaction is different from the fact that it does not have any consequences from contracts that have not been concluded, since there are no grounds for the consequences. In this case, it is impossible to recover the damage. The only way to protect in this case is to prove the illegality of the actions of the parties and apply the consequences for the violation.

Thus, the institutions of the invalidity and unstructured nature of transactions are completely different and have different legal consequences.

S.S. Jelonkin notes that the role of the invalidity of the transaction in the system of legal facts is determined by the fact that it is connected with other bases of the existence of civil-legal relations, and practical conclusions are formed on the legal nature of the invalidity of the transaction [12].

A civil law textbook edited by S.A. Stepanov states that the invalidity of an transaction, even if it is an transaction or just called a transaction, is an act committed in violation of the provisions of the law. [13].

S.A. Stepanov distinguishes the differences between disputable and spontaneous unreal transactions as follows:

Firstly, in itself, an invalid transaction does not bring any legal consequences, and the disputed transaction, on the contrary, leads to the desired consequences of the participants, and these consequences will be available until the court cancels the transaction.

Secondly, the court finds that the transaction that can be canceled is invalid, and

only after that it applies the consequences of its invalidity, and with respect to the transaction that is not valid, the court immediately applies the consequences of the invalidity of the transaction.

Thirdly, the requirement for the application of the consequences of the invalidity of the transaction, which is not valid in itself, can be imposed by any interested party, while the requirement for the invalidity of the dispute transaction can only be imposed by those persons who are clearly specified in the law.

From the fourth the term of the claim for the application of the consequences of transactions, which in itself is not valid, is determined to be three years, a year when finding out that the disputed transactions are invalid [14].

E.A. Sukhanov believes that the degree of action taken in the form of the invalidity of the transaction leads to its illegality [15].

The classification of the grounds for the invalidity of transactions is determined in advance by the conditions of their validity, namely: defects in content, in the subject, in Will and form.

Defective transactions in the composition. The content of the transaction is its terms. The drawback in the content is that the terms of the transaction do not comply with the legislation or other legal acts. Transactions with defects in the composition include: transactions that are not in accordance with the requirements of legislation; transactions concluded for purposes that contradict the principles of law enforcement or morality; transactions of a legal entity that does not have a license to engage in appropriate activities.

Defective transactions within the subject. The transaction is a voluntary, personal action aimed at the occurrence, modification or cancellation of civil rights and obligations. The person making the transaction must be a legal entity, that is, have the right to be treated. Transactions with a defect in the composition of the subject include: a citizen who is found to be incompetent; minors under the age of fourteen; minors under the age of fourteen to the age of eighteen; a citizen with limited ability to be treated by the court; a legal entity that is contrary to the purposes of its activity.

Will defective transactions. The group of invalidity of this transaction includes transactions that do not correspond to the will of those who make them. Transactions with defects of the will include: under the influence of deception, violence, threats or unfavorable circumstances; by a citizen who can not understand his actions or manage them [14].

At the same time, in the scientific literature, it is used as anti-social agreements that the transaction is not real. An anti-social transaction is a socially dangerous and illegal aggression on the rights and interests of the state and society, which is protected by law, committed in the form of a transaction [17].

A transaction that does not meet the mandatory requirements of the law and is not valid from the moment of its conclusion, regardless of the fact that it is recognized as such by the court, is considered invalid in itself.

In our opinion, the invalidity of the transaction is an act committed in violation of the rules provided for by law.

Ya.Kantorovich considered the realization of subjective right as anti-social, contrary to the socio-economic purpose [18].

Analyzing the development of the institute of anti-social transactions in the practice of law enforcement, it is possible to determine the scope of transactions, which today deliberately contradict the principles of law enforcement or morality.

One of the grounds for recognizing that the transaction is not valid is the nature of the transaction or its general direction to the law [19].

The system of general and continental law emphasizes the general "illegality" of the transaction as a universally recognized basis. At the same time, illegality is defined as the violation of the purpose of the transaction by applicable normative legal acts or by law enforcement.

In English law, various doctrinal approaches were formed in the classification of transactions into law. The invalidity of the transaction in the law is divided into transactions that are contrary to universal law and public order [20].

I.V. Matveev emphasizes that legal fact in the invalidity of the transaction, that is, paying special attention to the presence of signs of the transaction, is still a transaction that the transaction is not valid, since it is an expression of will in a certain form. This action will be aimed at establishing, changing or canceling legal relations, and as a result of which legal relations will arise, the participants of the invalidity of the transaction will not be obliged to pursue any goals for the right. As a result, the author concludes that "the transaction is invalid in its content, form and direction"[21].

F.S. Hephass believes that the invalidity of the transaction is an illegal act and manifests itself an offense [22].

The validity and invalidity of the transaction in the subject of civil law are allocated on the basis of compliance with the terms of validity of the following transactions:

- legality of the content of the transaction;
- ability of the subject to participate in the transaction;
- compatibility of the will of the participant of the transaction with his real will;
- compliance with the form of the transaction.

Violation of at least one of these conditions of the validity of transactions will be grounds for recognizing the transaction as invalid, unless otherwise provided for by law.

M.I. Baytin noted that law enforcement is the implementation of the requirements of legality in real life, in the process of applying law and in other forms ... to guarantee the implementation of the rights of the subject and the fulfillment of the legal obligations of the subjects of the law [23].

Based on the above, the ideas put forward by E.A. Sukhanov, F.S. Heifetz and M.I. Baitin seem reasonable.

In our opinion, this does not provide a basis for linking the validity of the transaction

to the institution of the transaction, that is, legal actions aimed at achieving a certain legal result, which the participants of the transaction seek.

As correctly noted in the legal literature, the solution to the invalidity of the transaction can be divided into the following.

1. Any transactions that are not in accordance with the requirements of the legislation, if the law does not provide for other consequences, are considered invalid in itself.

2. Only those transactions that are clearly stated in the law that are not true in itself, are found to be not true in itself.

3. In itself, an invalid transaction arises on the basis of the interpretation of the norm. If there are direct legislative prohibitions in the norm, and its purpose is to deprive the parties of the legal consequences of any actions of legal significance committed by the subjects of civil law, then the transaction that does not comply with this norm, in itself, will be considered invalid [24].

In our opinion, the basis of law enforcement is understood by the state as the basic norms established by it on the social, economic structure of society, aimed at observance and respect for such a structure, the provision of legal rules and the protection of fundamental rights and freedoms of citizens.

Anti-socialism of the transaction is determined taking into account all circumstances during the judicial proceedings, the essence of the offenses committed by the parties and their consequences.

L.V. Tshennikova believes that anti-social transactions are associated with a violation of public interests. Therefore, it would be much more correct to call the term "law enforcement bases" "public enforcement bases" [25].

The basis of morality is ethics, kindness and evil, good and evil, justice and injustice, honesty and dishonor, respect and disrespect, and are recognized as a set of other ideas. In relation to the institute for the invalidity of transactions, there are no legal definitions of the concepts of the basis of law and morality, but this is not considered a drawback, the individuals and judicial authorities themselves determine the essence of the content in these categories.

S.S. Jelonkin said that when the transaction is executed, the court will find that the settlement decision is invalid. Without such a decision, it is impossible to admit that the transaction is not real [26].

In some legal dictionaries, the concept of "law enforcement" is given the following definitions:

Law enforcement is the most important component of the public order, it is the result of the implementation of various social norms and has its own means of influencing the activities of people [27].

Law enforcement is a healthy sense of the interests of society, which is common throughout the territory in matters of Culture, well-being, safety, health, etc [28].

According to E.A. Sukhanov, when talking about the basics of law enforcement, it is necessary to understand the basic principles of law, the expression of its essence, which

determine the boundaries of the implementation of rights and freedoms in society. The basis of morality is the dominant ideas of goodness and evil, evil and good, justice and injustice in a particular society [29].

In our opinion, the basis of law and order is established as a set of norms of officially recognized forms, which are issued by the state, sanctioned.

It should also be noted that the right of action is not an integral part of the law and order principles. O.E.Saulyak believes that the relationship between actions in law is the most important indicator of law enforcement [30].

Law enforcement describes the state of legal regulation of social relations as the norm of the legal life of society.

Law and order are a procedural order in which the subjects of law take action taking into account time, place, method, form, stage and other factors. The subject of law ensures the existence of law and order through the implementation of the methods of legality in its activities.

In the Italian Civil Code, the institution of the invalidity of a contract is regulated asymmetrically. Chapter 12 on disputed contracts is divided into three sections, to them - due to defects in legal capacity dispute (Dell'incapacit?), due to defects in the contract dispute (Dei vizi del consenso) and on the claim to recognize that the disputed agreements which are invalid (Dell'azione di annullamento) are divided into parts.

According to S.I. Ojegova, morality is "the internal, spiritual qualities that govern a person, the moral norms, the rules of behavior are determined by these qualities. One of the main concepts of morality is the norms and rules of behavior that govern people in their lives. Unlike legal norms, non-compliance with them does not result in imprisonment and the person who violates them will only be criticized by the public. But morality, like law, is historically conditioned and changeable: what is recognized as moral in one society is manifested as immoral in another [14].

In our opinion, morality is an effort to combine individual needs. These moralities are words and actions that correspond to generally accepted norms in society, and those that violate them are considered immoral.

In place of the conclusion, it should be said that the investigation of the relevant norms of the Civil Code, the study of judicial practice and the correct legal assessment of the problem in order to apply correctly and accurately the transaction to the practice of law enforcement, which is not valid and deliberately contradicts the principles of law enforcement or morality, serves.

References:

1. Decree of the President of the Republic of Uzbekistan No. PF-60 of January 28, 2022 "On the Development Strategy of New Uzbekistan for 2022-2026". <https://lex.uz/docs/5841063>
2. Rahmonqulov H.R. Agreements. Study guide. T.: TSU Publishing House, 2010. 176 pages.
3. Rustambekov I.R. Problems of regulation of civil law relations on the Internet. Monograph. - Tashkent: TSU, 2017. - 310 p.
4. Gutnikov O.V. Invalid transactions in civil law. Theory and practice of challenging. M.: Berator-Press, 2003. 576 p.
5. Novitsky I.B. Deals. Limitation of actions. M.: Gosyurizdat, 1954. P. 17
6. Shakhmatov, V. P. Compositions of illegal transactions and their consequences / under. ed. V.A. Nosova. Tomsk: ed. Tomsk University. 1967. P.164.
7. Zokirov I.B. Civil Law: Textbook. Part I I.B.Zokirov; Editor-in-Chief: H.Rahmonkulov: Fifth revised and supplemented edition.-T.: TSU Publishing House, 2009. 611 pages.
8. Criminal law: textbook / ed. N.I. Vetrova, Yu.I. Lyapunova. 4th ed. M.: Publishing house "Jurisprudence", 2008. - 752 p.
9. Naumov A.V. Russian criminal law: Course of lectures: Special part. M.: Yurid. lit., 2004. Vol. 2. 832 p.
10. Oqyulov O. The Civil Code is the legal basis of our daily lives. Criteria of fairness. Scientific-practical, legal journal. №5th issue, 2020
11. Sokolov D.O. Transaction and invalid transaction in the system of legal facts // Crimean Academic Bulletin. - 2017. - No. 4. - P. 170
12. Zhelonkin S.S. The place of invalidity of transactions in the system of legal facts / S.S. Zhelonkin // Bulletin of the St. Petersburg University of the Ministry of Internal Affairs. 2013. No. 1. - P. 67-71.
13. Civil law: textbook: in 3 volumes / under. edited by S.A. Stepanov. M.: Prospect; Ekaterinburg: Private Law Institute, 2010. Vol. 1. - 640 p.
14. Civil law: textbook: in 3 volumes / ed. S.A. Stepanova. M.: Prospect; Ekaterinburg: Private Law Institute, 2010. Vol. 1. - 640 p.
15. Russian civil law: textbook: in 2 volumes / otv. ed. E.A. Sukhanov. 2nd ed., stereotype. - M.: Statute, 2011. T. 1. - 958 p.
16. Ozhegov S.I. Explanatory dictionary of the Russian language. - M.: Oniks, 2008. - 736 p.
17. Danilov I.A. Invalidity of antisocial transactions // Legal world. 2011. No. 4. P. 36-38.
18. Kantorovich Ya.A. Basic ideas of civil law. Kharkov: Legal Publishing House of the NKJU of the Ukrainian SSR, 1928. P. 69-70.
19. Egorov Yu.P. Legislative requirements for transactions // Law and Economics. 2004. No. 6. S. 21 - 28.

20. Cheshire, Fifoot, and Furmston, "Law of Contract", OUP Oxford; 2017. 17 edition. P. 896.
21. Sklovsky K.I. The Deal and Its Action (2nd ed.). Commentary on Chapter 9 of the Civil Code of the Russian Federation (the concept of types and form of transactions. Invalidity of transactions). - M., Publishing house "Statut", 2015
22. Kheifets F.S. Invalidity of transactions under Russian civil law. - M.: "Yurayt", 2007
23. Baitin M.I. Essence of law (modern normative legal understanding on the verge of two centuries). 2nd ed., add. M.: Publishing House "Law and State", 2005. 544 p.
24. Tololaeva N.V. The ratio of some grounds for the invalidity of the transaction / N.V. Tololaeva // Judge. - 2015. - NNº 10.
25. Shchennikova L.V. Antisocial transactions / Arbitration justice in Russia.-2007.- No. 12.- P. 47.
26. Zhelonkin S.S. Invalidity of transactions: topical issues of application of individual norms of the Civil Code of the Russian Federation / S.S. Zhelonkin // Law and Economics. 2010. No. 4. P. 73-75.
27. Big legal dictionary / ed. A.Ya. Sukhareva, V.D. Zorkina, V.E. Krutskikh. M.: INFRA-M, 1998. 790 p.
28. Civil and commercial law of foreign states: textbook / otv. ed. E.A. Vasiliev, A.S. Komarov. M.: International relations, 2004. T. I.
29. Sukhanov E.A. Civil law: textbook: in 2 vols. M., 2004. T. 1. 816 p.
30. Saulyak O.P. Essence of law and order: theoretical and methodological research: author. dis... Dr. jurid. Sciences. M., 2010. 53 p.