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## CURRENT OPPORTUNITIES OF FORENSIC-PSYCHOLOGICAL EXPERTISE IN SOLVING THE QUESTION OF WILL

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### ABSTRACT

*This article examines the main problems associated with forensic psychological examination in the Republic of Uzbekistan in civil proceedings. The psychological and legal mechanisms of the concept of transaction ability are revealed, taking into account both the circumstances of the case and mental states caused by the individual psychological characteristics of the research subject.*

**KEYWORDS:** *Transaction, Forensic Psychological Examination, Mental State, Ability To Deal, Expression Of Will, Delusion, Deception.*

### INTRODUCTION

In the Resolution 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 legal 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 committing a transaction value of their actions and to guide them, the courts should, based on the rules of Art. 59 of the Code of Civil Procedure on the admissibility of means of proof to discuss the issue of conducting an appropriate (psychological) examination in the case "[9].

In the Resolution 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, production of forensic examination and assessment of the conclusion of an expert in civil cases" in paragraph 6 it is noted that "on within the meaning of the procedural law, the judge has the right (taking into account the opinion of the persons participating in the case) to appoint in the

case the production of an “appropriate” examination (medical, psychiatric, merchandising, accounting, etc.)”[10].

According to this Resolution, “in all cases when, according to the circumstances of the case, it is necessary to find out the mental state of a person, at the time of the commission of a certain action, a forensic psychiatric examination should be appointed, for example, when considering cases on invalidating transactions based on the motive of their being committed by a citizen who is unable to understand the meaning of their actions or to direct them (article 121 of the Civil Code)”[10].

A comparative analysis of the above-mentioned "Resolutions" allows us to conclude that the provisions of the "Resolution" of 12.12.2008 contradict the provisions of the "Resolution" of 22.12.2006, since the concept of "mental state" (ability-inability) the subject of civil procedure is considered in the context of research by specialists of various competencies. This circumstance leads to the vagueness of court decisions and delays as a result of the terminology unspecified in the legislation on the subject of research when conducting an “appropriate” (psychological? Or psychiatric?) Examination.

### **Main part**

In the context of our expert research and conceptual directions abroad, the purpose of forensic psychological research should be legally justified, taking into account scientific data of a purely psychological direction. State of affairs in civil proceedings of the Republic of Uzbekistan. develops in such a way that psychiatry does not define the concept of “incapacity” in capable subjects (see 121 of the Civil Code of the Republic of Uzbekistan). Despite the set of circumstances in which a person cannot make the right decisions due to individual properties, somatic diseases, age, etc., through which legally significant situations are refracted, such subjects are recognized by psychiatrists as legally capable.

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

It is generally accepted that transactions are always acts of conscious, purposeful, volitional actions of persons who perform these actions to achieve certain legal consequences. The expediency of these actions is sometimes questioned, since the subject of will expression may be psychologically untenable in making decisions.

Today, the doctrine of the transaction occupies one of the central places in the foreign representation of civil law theories. In our country, despite the demand for the solution of this issue by the courts, insufficient attention is paid to the doctrine of the transaction both from the side of jurisdiction and from the side of psychology. According to scientific definitions, will and will are key elements of the composition of a legal transaction. The content of these concepts is not revealed without understanding the category of the vice of will.

In civil law, "flaw of will" is conditioned in the category reflecting the conditions of invalidity of legal acts. If we bear in mind the forensic psychological examination of the vice of will, then in this case there is a lack of awareness on the solution of these issues in the noted context. It should be noted that when "vice of will" is meant, it means the absence of a freely formed will and the will of the subject of the study.

Representations of judges, as a rule, are limited to the area of legal capacity 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 a mental disorder, or, if any, the preservation of the ability to understand the nature and meaning of one's actions and to lead them);
- 2) The objective presence of deception, threat, violence, malicious agreement, a combination of difficult life circumstances (from a legal point of view).

### **MATERIAL METHOD**

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

The psychological criteria, in spite of their importance, inherent in the very norms of the law and recognized by many researchers abroad, in Uzbekistan remain unspecified.

So, it is impossible to establish the "vice of will" without substantiating the mechanisms of formation of this very vice of will. There are internal mechanisms that are intrinsically related to emotional stress syndrome. And also external reasons concerning the legal interpretation of events are significant. These reasons are due to the substantive value that differentiates delusion as an essential element of the invalidated transaction. In this case, the counterparty's reckless fault has a legal connotation. And in this case, the transaction should be qualified as made under the influence of deception. Additional essential criteria should be taken into account, due to the likelihood of the subject of the transaction being defrauded.

One of the means of proving "flaw of will" is the examination of the inability of a mentally capable subject to control his actions in the circumstances of a time period. Posthumous forensic psychological examination of a person who has committed a legally significant act in the period preceding death is appointed in absentia.

It should be noted that the introduction of differentiated clarity, legislative accuracy and professional competence in the definition of the concepts: "ability" (transaction ability) ("inability") of a subject to make correct decisions in legally significant situations, is essential when making judicial decisions for the appointment of forensic psychological examinations of persons who have committed legally significant actions.

As T.N. Security during a forensic psychological examination, "the subject of an examination of a vice of 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 execution, to fully freely and consciously determine the goal and make a decision on its achievement, entailing change of his rights (including their emergence or termination), the ability to direct his actions to implement the decision. At the same time, the object of examination of the vice of will is the mental activity of the subject of civil law relations during the period of the formation of his intention to conclude a transaction, the expression (declaration) of this intention and the actual conclusion of the transaction.

An algorithm for expert research and a set of methods for studying the mental characteristics of the subject of the transaction, including the study of the peculiarities of the legal relationship situation, 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 the court recognizes the invalidity of transactions in the Republic of Uzbekistan, Art. 122. Civil Code of the Republic of Uzbekistan. (delusion). In legal systems (England, USA, Germany, France, Russia, etc.) "delusion" is the reason for the invalidity of the transaction. In Roman private law, "delusion" 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, "delusion" must be substantial. In Austria, the concept of "delusion" refers to the basic properties of what a person's intention is directed at. In France, a rule is established according to which delusion discredits the contract if it served as the main reason for the delusional conclusion. In this context, it is meant that in some legal systems, in order to give a delusion a legal meaning, it is important that the actions of the delusional person are in good faith.

In Roman private law, consideration of this issue begins with dividing "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), error in persona. D.I Meyer expressed a similar opinion.

According to Yu.S. Gambarov and K.P. Pobedonostsev, delusion is established in the ratio of delusion and error. According to the authors, the most developed classification of "delusion" is contained in English law, and from it begins the consideration of classifications of delusion in foreign countries. For example, you can give Pollock's classification: an error in the nature of the transaction; error in the face; error in the subject of the contract; error in defining the terms of the contract.

Samonda's classification of delusions contains in such forms as: in expression (in verbis); in agreement (in consensu); at the base (in causa). Cheshire and Fifuta's classification of misconceptions includes: common mistake; Mutual mistake; Unilateral mistake.

In French law, there are 3 types of error: 1) error in the nature of the transaction and in the identity of its subject; 2) a mistake in the face and essential qualities of the subject; 3) a mistake in the insignificant 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 made under the influence of a delusion of significant importance may be recognized by the court as invalid at the claim of the party acting under the influence of the delusion. At the same time, the law specifically establishes what exactly should be understood as a delusion that has significant meaning.

According to E.A. Kolomiets, "delusion is the result of the vicious formation of the will of the party to the transaction, which had a decisive impact on the completion (conclusion) of the transaction and (or) the determination of its conditions, which are essential. This result may be based on an erroneous premise caused by the careless actions (inaction) of third parties, or received by the erringer on his 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 in some way of external and (or) internal factors. The consequence of the delusion is a significant inconsistency of the resulting legal consequences with the expected [12].

K. Annenkov, analyzing the volitional process in case of delusion, noted that a person, "making an expression of will, although he wanted it to entail a certain legal consequence, but in fact expressed his will not about the consequence to which it is directed, but about another, the onset of which it did not want, not realizing that the consequence is undesirable for it" [1].

S.I. Vilnyansky believed: "A delusion or mistake consists in the absence of a correct idea of some factual circumstance that is of significant importance, that is, about such a circumstance, with a correct understanding of which the person would not have made the transaction" [13].

In view of the above, from a psychological and legal point of view, "delusion" should be understood as the content of "flaw of will" in which one party, under the influence of the other party, is introduced into ideas that do not correspond to reality about the circumstances existing for a given transaction. In this case, it should be emphasized that an erroneous idea of the elements of the transaction should arise from the agent not intentionally, without the influence of the counterparty to the transaction. The psychological mechanism of "delusion" occurs through the establishment by the agent of the transaction of incorrect connections and relations in the system "object-reflection-image" at the level of representation. In the system of the noted connections, failures are possible, which are explained by psychological factors (sensation, perception, individual characteristics). And the role of psychological expertise in court proceedings in civil cases arising from the circumstances specified in Art. 122 of the Civil Code of the Republic of Uzbekistan, allows you to establish the degree of distortion of the psychological factors of the agent of the transaction.

Under the influence of physical disabilities (blindness, deafness, dumbness, hearing loss, low vision), the likelihood of a perception error increases. And, consequently, the possibility of such a person's delusion about the circumstances of the transaction increases. The specific reason for the appointment of an examination is the presence of reasonable doubts about the ability of one or another party to correctly perceive any essential elements of the transaction when it is made.

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

Under the "deception" and "error" German scientists, K. Zweigert and H. Ketz assumed the similarities, which consists in the conclusion of an agreement under the influence of delusion. It should be noted that in case of deception, the error is provoked by the counterparty to the transaction. Therefore, this type of delusion can be designated as provoked "deception" [15].

Innocent or negligent misrepresentation, intentional or negligent, is covered 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. So, in England, for example, such transactions are called false, or fraudulent (fraudulent misrepresentation). In France and other countries of the Romanesque legal system, it is a matter of deception (dol or dolo), in Germany and Switzerland, it is malicious (arglistiger) or deliberate deception, in Austria, it is a "cunning" (List), in Holland, it is a deception (bedrog).

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

A.S. Ioffe noted: "If specific circumstances indicate that with a correct understanding of the moments perceived as a result of deception in a false light, the counterparty would not have agreed to conclude this transaction, it should be considered completed under the influence of deception" [5].

In the position of Yu.S. Gambarov, every dishonest act can be considered the reason for deception, and not just the "action or inaction" of the counterparty to the transaction. In the present understanding, 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 ideas is the result of deception. Expanding the concept of "deception", it is necessary to keep in mind the suppression of the truth, contrary to good conscience and legal civil norms.

Thus, deception is understood as deliberately misleading the other party in order to persuade it to complete 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 mind of another subject. The deceiver acts deliberately, i.e. not only conveys false information, but also hides his true intentions.

Conducting a psychological study of the motivational sphere of the parties will facilitate the court's legal assessment of the counterparty's actions. And this is important, because the distinction between negligence and intent is important for the correct qualification by the court for making the counterparty responsible for the civil transaction. It should be noted that in these circumstances, the expert decides the issue of psychological motivation, and the court makes the 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 the conclusion of the 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, there are two components, namely: "violence" and "coercion". Like E.V. Vaskovsky that "violence is also compulsion, when the will of a person is completely suppressed and the action being performed is not the action of the person, apparently committing it, but the action of the violator, so that the person over whom the violence is performed is only an instrument of his action". The position of D.I. Meyer demonstrates a more consistent version of the definition of "coercion". As the author points out, this is characterized in those cases "when a person is not brought to the level of a tool, but

performs a certain action itself. Then we can talk about the influence of coercion on the will and the legal meaning of an action committed under duress”[8].

## CONCLUSION

Thus, taking into account the above concepts, it should be noted that the conduct of a forensic psychological examination to bring scientific clarity to the consideration of issues related to the transaction. In this case, for example, under "violence" in civil cases when making transactions should be understood as moral (mental) or physical pressure that may be exerted on the agent of the transaction by the counterparty. In this case, a combination of difficult circumstances is created in which the agent, placed in a position of hopelessness, makes decisions in favor of the agent on extremely unfavorable conditions for himself. The parameters noted in the context cannot be considered without a psychological expert study of these states.

## REFERENCES:

1. Anenkov K. System of Russian civil law. Vol. 1. - M. 1910 .-- P. 47.
2. Vaskovsky E.V. Civil law. - M., 1914 .-- 572 p.
3. Civil Code of the Republic of Uzbekistan. Lex.uz.
4. Gambarov Yu. S. Civil law. General part / Ed. and with a foreword. V.A.Tomsinov. - M., 2003 .-- S. 761.
5. German law. Part I. Civil Code. - M., 1996 .-- S. 279.
6. Zezekalo A.Yu. Delusion when making a deal. - Tomsk, 2011 .-- 198 p.
7. Kolomiets Evgeny Alexandrovich. Delusion and deception as conditions for the invalidity of transactions: Dis. ... Cand. jurid. 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 some issues arising in judicial practice in connection with the application of legal norms governing transactions." Lex.uz.
10. Resolutions 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, production of forensic examination and assessment of the conclusion of an expert in civil cases." Lex.uz.
11. Sekerazh TN Theoretical and methodological foundations for the diagnosis of "flaw of will" in a forensic psychological examination. Dissertation for the degree of Cand. jurid. n. - M. 2004.
12. Sklovsky K. Transaction and invalidity of the transaction: the main provisions of the updated chapter of the Code // Economy and law. - M., 2014. No. 1.
13. Holodenko Yu. V. Invalidity of transactions with vices of will: diss ... cand. jurid. n. - M., 2008 .-- 246 p.
14. Khalfina P. O. Contract in English civil law / P. O. Khalfina. - M., 1959 .-- S. 247.
15. Zweigert K. Introduction to comparative jurisprudence in the field of private law: in 2 volumes / K. Zweigert, H. Ketz. - [trans. with it.] - M., Mezhdunar. Relations. - T. 2. Basics. - 1998 .-- 480 p.