

SIGNIFICANCE OF JUDICIAL PSYCHOLOGICAL EXAMINATION OF DEALABILITY IN UZBEKISTAN

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Abstract. *This article discusses issues related to the ability to deal, due to a defect in the will of the subject of research in civil proceedings. The article reveals the psychological and legal mechanisms of the concept of bargaining power, taking into account the individual psychological characteristics of the subject under the circumstances of a legally significant period of its behavior.*

Keywords: *transaction, forensic psychological examination, mental state, individual psychological characteristics, bargaining power, expression of will, delusion, deceit.*

From a psychological point of view, it should be noted that when the question of the invalidity of transactions arises, it implies the solution of issues related to the deformation of the volitional self-regulation of the behavior of a person in a legally significant situation [1, p. 135-142].

A person's volitional actions are associated with his specific behavioral characteristics, here we always mean any mechanisms due to physiological or psychological factors of human nature. According to E.P. Ilyina, "Human behavior is determined by various physiological and psychological mechanisms. These are, on the one hand, unconditioned reflex and conditioned reflex mechanisms that determine the involuntary activity of a person, and, on the other hand, voluntary control associated not only with physiological, but also with psychological mechanisms" [2, p. 12-13].

These mechanisms not only determine the activity of a person, but are themselves determined by a number of factors, where the first of them is a combination of psychological properties. In particular, according to V.I. Selivanov, "The will of the individual is nothing but a certain set of properties that has developed in the process of life, characterizing the level of conscious self-regulation of behavior achieved by the individual" [3, p.132].

Considering this phenomenon within the framework of general psychological theory, one should keep in mind both possible violations of a person's intellectual capabilities, and disorders of volitional self-regulation of behavior in a legally important period of time - when making a particular transaction. The psychological parameters of the deformed will are determined by a diverse range of psycho-emotional states: mental tension (fear, stress), frustration in a hysterically accentuated personality, and also quite often a personality asthenization syndrome as a result of a somatic disease that weakens psychological compensatory mechanisms that affect adequate adaptation in the social environment.

At present, taking into account the formed methodology of this type of examination, the subject of forensic psychological examination in cases of recognition of a transaction as invalid is the assessment of the mental state of a person at the time of its completion, taking into account a combination of clinical, personal, social and somatogenic factors [4, P. 93-100].

It should be noted that the significance of a forensic psychological examination in determining the ability of a research subject to deal lies in the fact that without it it is impossible to determine the leading individual psychological characteristics of a person who has made a transaction. Only when a certain set of motivational, cognitive and emotional disorders is identified, one can testify to the deformation of volitional regulation of behavior in the context of a legally significant transaction. In addition, these violations are somehow determined by the biographical scenario of the subject, his psychological resistance to stressors [5, p. 220-239] and deliberate psychological impact [6, p. 378-398], which are important factors in the study.

In recent years, in the Republic of Uzbekistan, "judicial practice" is expressed in the fundamental disregard for the need to conduct homogeneous forensic psychological examinations in civil proceedings related to bargainability. This circumstance actualizes the need for theoretical substantiation and practical development of the issues of competence and competence of an expert psychologist in civil proceedings, where cases of negotiability are considered.

In the practice of expert institutions in the Republic of Uzbekistan, examinations are often assigned exclusively to psychiatrists, although in each such examination there is, of course, the subject of psychologists' work. One of the reasons for this is that the courts sometimes do not have information about the competence and competence of an expert psychologist. 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.

As for the transaction, it can be declared invalid according to three civil law norms: Art. 121, 122, 123 of the Civil Code of the Republic of Uzbekistan. Practice shows that the most common is the appointment of a forensic psychiatric examination in a civil case on the recognition of a transaction as invalid under Art. 121 Civil Code of the Republic of Uzbekistan. This register considers a violation of the subjective side of the transaction in the form of a transaction by a citizen, although capable, but in a state where he was not able to understand the meaning of his actions and manage them.

Also, taking into account civil law, when declaring the invalidity of transactions in the Republic of Uzbekistan by a court. provided for by Art. 122 of the Civil Code of the Republic of Uzbekistan. (delusion) and 123 of the Civil Code of the Republic of Uzbekistan (Invalidity of a transaction made under the influence of deception, violence, threats).

In science, the grounds for the invalidity of transactions have been studied quite well. So, K. Annenkov, analyzing the volitional process under delusion, noted that a person, "making an expression of will, although he wished that it entailed 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 consequences were undesirable for it" [7, p. 47].

Both delusion and "fraud" are an attribute of the invalidity of transactions when considering the issue of negotiability. In the position of Y.S. Gambarov, every dishonest act can be considered a reason for deception, and not just the "action or inaction" of the counterparty of the transaction. In the present understanding, deceit (dolus) is opposed to the concept - bonafides, i.e. good conscience [8, p. 761]. Any immoral and evil behavior that aims to influence another's will by false ideas is the result of deception.

Hence, deceit is understood as the deliberate misrepresentation of the other party in order to persuade it to complete the 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 intentionally, i.e. not only conveys false information, but also hides its true intentions.

Based on the foregoing, it should be noted that conducting a psychological study of the motivational sphere of the parties will undoubtedly facilitate the court's legal assessment of the actions of the transaction counterparty. And this is important, because the distinction between negligence and intent is important for the correct qualification by the court of the factors of imposing liability on the counterparty of a civil law transaction.

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 the norms of legislation governing transactions" in paragraph 11 "When challenging the validity of a transaction on the basis of a citizen's inability to understand at the moment transaction value of their actions and manage 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].

At the same time, in the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 12.12.2008 No. N 24 "On some issues arising in judicial practice in connection with the appointment, production of a forensic examination and the assessment of the conclusion of an expert in civil cases" notes: "in all cases when, due to the circumstances of the case, it is necessary to ascertain the mental state of a person at the time he committed a certain action, a forensic psychiatric examination should be appointed, for example, when considering cases on invalidating transactions based on the motive of their commission by a citizen who is unable to understand the meaning of his actions or manage them (Article 121 of the Civil Code)" [9].

A comparative analysis of the above resolutions allows us to conclude that the provisions of the resolution of December 12, 2008 contradict the provisions of the resolution of December 22, 2006, since the concept of "inability" for a subject of civil procedure is considered in the context of research by specialists of various competencies. This circumstance leads to vagueness of court decisions and delays as a result of terminology not specified in the legislation on the subject of research when conducting an "appropriate" (psychological? or psychiatric?) examination.

In the context of our expert research and conceptual directions abroad, the appointment of forensic psychological research should be legally justified, taking into account scientific data of a purely psychological direction. Despite the set of circumstances under which a person cannot make the right decisions due to individual psychological properties, identified signs of a psychological impact on them, psychosomatic disorders or diseases, age, etc., through which legally significant situations are refracted, such subjects, as a rule, are recognized by psychiatrists as allegedly "capable".

In our opinion, in this context, attention should be paid to the essential moment of identifying the ability (inability) of the subject of civil proceedings to fully understand their legally significant behavior and guide to action. This circumstance depends not only on the presence (absence) of pathological changes in the psyche, but, to a greater extent, on external and internal psychological factors that determined the behavior of the individual in a legally significant period of time [11, p. 881-887].

As you know, the absence of any mental disorders (mental illness) and dementia for psychiatrists is the only criterion on the basis of which a conclusion is made about the capacity of

a legal entity. Solving the issues of "incapacity of capable subjects" is included in the research parameters of psychological symptom complexes, the identification and justification of which is within the competence of forensic psychologists, who consider both the circumstances of the life of the subject of the study, and various psycho-emotional states leading to a change in personality parameters in non-pathological subjects. In this context, both somatic and age, external and internal criteria are taken into account, which largely determine the outcome of events of a legally significant period. These parameters are found in the process of psychological research using the biographical method and a set of psychodiagnostic tools.

Thus, the inclusion of psychologists in the composition of the commissions of comprehensive examinations of the ability to deal should increase the validity of the conclusions regarding the identification of the ability or inability of the subject to make the right decisions in legally significant situations, which is essential when making court rulings in such cases.

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