

## **LEGAL PROBLEMS THAT INVALIDATE A TRANSACTION MADE FOR A PURPOSE KNOWN TO BE CONTRARY TO THE FOUNDATIONS OF LAW AND ORDER OR MORALITY**

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**Abstract:** The legal problems of the invalidity of a transaction made for a purpose that is obviously contrary to the foundations of law and order or morality have been scientifically and theoretically investigated. The experience of foreign countries on this issue, its genesis and legal concepts were also touched upon. At the same time, special attention is paid to the legal consequences of the invalidity of the transaction, antisocial and controversial transactions, the theoretical aspects of the recognition of the transaction invalid by the court are studied. In addition, in the legislative acts on the invalidity of the transaction in the Europe countries, the relevant norms have been investigated, and the author has expressed his opinion and comments. An attempt has been made to widely publicize the factors recognized as invalid, as well as issues of restitution. In this regard, it should be particularly noted that he tried to comprehensively study the legal aspects of invalidation of the transaction, which indicates the relevance of this topic.

**Keywords:** Invalidity of a transaction, fundamentals of law and order, fundamentals of morality, public order, disputed transactions, void transactions, antisocial transactions

To date, the study of the concepts of law and order and ethics has aroused interest for researchers, but its application in judicial practice has caused some uncertainty. Further research will require an in-depth analysis of the concept of law and order, the fundamentals of ethics, and the concepts of public order. Any violation of the principles of morality leads to a violation of the principles of law and order.

Article 40 of Book 3 of the Dutch Civil Code stipulates that non-self-valid transactions are contrary to moral or public order in terms of content and purpose [1, P.79].

A similar situation is reflected in Swiss law, where, under Article 20 of the Swiss Commitment Act of 1911, a contract is considered invalid in its own right if it is intended to achieve an unlawful or unethical purpose [2].

German courts recognize as invalid contracts entered into by the debtor in difficult circumstances for purposes contrary to public order. British jurisprudence has supported a similar situation [3].

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When the interests of a weak economic counterparty are sufficiently damaged, the contract is declared invalid under traditional French law. Judicial practice has established that public order does not allow the validity of indefinite obligations [4].

The term public order was first used in the 1804 French Civil Code. In French law, the observance of the French public order in relation to the regulation of internal transactions is first mentioned in Article 6 of this Code.

Thus, while the English courts now consider contracts to sell slaves invalid, in the mid-nineteenth century English courts considered contracts to sell slaves to be valid [1, P.89].

In accordance with the legislation of France, Germany and England, in case of damage to the rights and interests of one of the parties, the treaties are considered as contrary to public order.

Based on the above, it can be concluded that the agreements are contrary to public order on various grounds.

As H.R. Rahmonkulov rightly points out, an agreement entered into for the purpose of deliberately contrary to law and order or moral principles is not valid from the very beginning.

Deliberately entered into for purposes contrary to law or order or ethics constitute the most “dangerous” or most harmful component of an unrealistic transaction. They are included in the category of transactions that are not real in itself, which, if executed, will have extreme consequences. In practice and in theory, such transactions are called anti-social.

The main signs of this agreement are the following, firstly, the purpose: the transaction is concluded for a purpose contrary to law or morality; secondly, at least one of the parties to such an agreement will have a merciless intention.

The deal seems legitimate in both content and form, but the goal makes it a very dangerous non-real deal. Second, it is clear that law and order or moral principles are considered by law as equal criteria for assessing the risk of a transaction. That is, in order for a transaction to be considered invalid, it is sufficient on this basis that it was concluded, for example, for a purpose contrary to moral principles. [6].

O. Oqyulov believes that one of the most problematic issues in the current civil code was the issue of the grounds for the invalidity of transactions and the application of its consequences. According to this, after the transaction is found to be invalid, inevitably the consequences of its invalidity must be applied. It was not uncommon for a conscientious objector to be slandered in transactions involving homes and cars [7].

A.A. Gromov points out that he insists that the transaction will harm the public interest as a basis for its authenticity [8].

In our opinion, the transaction concluded contrary to the principles of law or morality violates the imperative norms of the law.

For our research, it is necessary to define the content of the concepts of “basic of law and order”, “moral principles” and “public order”.

As noted in the legal literature, the basis of law and order is understood by the state as norms aimed at observance of the economic and social structure of society, observance of legal instructions, protection of the rights and freedoms of citizens.

For the ratio, it is sufficient to consider the situation with the violation of the principles of morality. Any violation of the principles of morality will be a violation of the principles of law and order, but a violation of the principles of law and order will not be a violation of the principles of morality.

In this regard, A.N. Laptev argues that the mention of ethics along with the legal order is not important [9].

In contrast to the practice of law and order, the judicial practice of some states on cases of finding anti-social transactions invalid in foreign countries, taking into account the current civil legislation, has developed significantly. All this allowed to develop certain criteria, which were considered contrary to the public order or morality of a particular transaction.

In modern French law, according to articles 1131 and 1133 of the French civil code, transactions aimed at acts contrary to public order or morality are considered invalid in itself.

From the norms of the Italian civil code in 1942 a similar meaning arises: according to Article 1343, the purpose of the obligation is illegal if it contradicts the Imperial norm, public order or morality; according to Article 1354, the contract is considered to be invalid in itself if it contains grounds that are intentionally contrary to Imperial norms, public order or morality [10].

In the study of the legal nature of the invalidity of transactions, the absence of its right and purpose, the presence of a sign of Will in the invalidity of the transaction, distinguishes them from other legal institutions.

The legal consequences of a transaction are consistent with the purpose of concluding the transaction until it is declared invalid by a court, and the consequences of the invalidity of the transaction do not apply to it [11].

Failure of the parties to comply with at least one of the conditions of validity of the transactions will lead to their invalidity.

According to IR Rustambekov, it contradicts the provision of Article 366 of the Civil Code of the Republic of Uzbekistan that a contract may be concluded in any form provided for the conclusion of transactions. In accordance with Article 107 of the Civil Code of the Republic of Uzbekistan, transactions can be concluded by copying

documents, letters, telegrams, telephonograms, teletypograms, faxes by means of conversion from signature to facsimile. It should be noted that the above-mentioned norm of the Civil Code of the Republic of Uzbekistan can confuse the sides of e-commerce, since Article 116 of the Civil Code of the Republic of Uzbekistan enshrines the following rule: the transaction in the context of non-compliance with the requirements of legislation is in itself invalid [12].

Recognition of the grounds for the fact that the transaction in civil law is invalid is associated with violation of the terms of its validity, they include the following:

- will and desire-unity of desire;
- legitimacy of the subject of the transaction;
- all important conditions must be stipulated in the transaction, that is, the content of the transaction should not exceed the limits established by the legislator;
- the transaction must be formalized in the form prescribed by law;
- the transaction should not contradict the principles of law and order and morality.

The theory that transactions are not real causes conditionally not to comply with their content, will, content and form of the subject.

Thus, the norms of the law on the invalidity of transactions depend on economic and legal reasons, consisting in the need to protect the interests of citizens and the state.

In transactions that do not comply with the requirements of the legislation (Article 116 of the Civil Code), it is understood that the definition of the transaction itself is not valid, not only in the legislation, but also in compliance with the requirements of legislative acts.

A transaction that does not comply with the requirements of the legislation, unless such a transaction is established in the legislative acts as a dispute or other consequences are provided for, and also a transaction prohibited by law, is considered invalid in itself.

T.I. Illarionova believes that finding the transaction invalid is a preventive measure, and restitution is a recovery measure [13].

V.L. Slesarev noted that all sanctions in case of invalidation of the transaction have the property of restitution and include three safeguards, including the invalidation of the transaction, the return by the parties of everything received under the transaction - restitution and return of the received in kind if not, monetary compensation [14].

In the legal literature there are different opinions about the legal nature of restitution. If some authors recognize restitution as an obligation, others categorically deny the necessity of restitution.

The legal nature of the dispute transaction, which links the parties with rights and obligations, derogates the need for judicial participation in the application of its cancellation and the consequences of the invalidity of the transaction.

In our opinion, the legal nature of the damages caused by the invalidity of the transaction, their specific features and compensation for damages caused by the violation in accordance with the terms of the contract are of practical importance for judicial practice.

In the legal literature, from a doctrinal point of view, the legal nature of the damage caused by the invalidity of the transaction and the legal norms applied in their compensation are controversial [15].

A self-invalid transaction does not have legal consequences regardless of whether it is declared invalid by the court, but rather the conclusion of a disputed transaction has legal effect and can be declared invalid only if it is recognized by the court, which requires a separate claim [16].

According to O.V. Gutnikov, a non-authentic transaction is a serious violation of the terms of validity, and the law makes it as simple and convenient as possible to recognize non-authentic transactions as invalid [17].

The fact that the transaction is not valid is not a legal fact, but a violation.

Thus, the foundations of morality are elements of the foundations of law and order.

A non-concluded contract does not lead to any consequences other than the fact that the transaction is not valid, because there is no basis for the consequences.

In our opinion, the fact that the transactions are not real, and the institutions of the concluded transactions are completely different, leads to different legal consequences.

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1. If the law does not provide for other consequences, any transactions that are not in accordance with the legislation are invalid.

2. Transactions that are directly not valid in the law are only recognized as invalid.

3. The invalidity of the transaction is based on 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 is considered invalid [18].

It provides a brief analysis of the legal regulation of the fact that anti-social transactions in civil law of developed foreign countries (USA, Great Britain, France and Germany) are not valid. The term “Advanced legal order” was used in differerance with

the full development of norms for anti-social transactions in the legal systems of these states.

If the structure or execution of the transaction in the US damages the public interest, it is an unlawful transaction.

Contrary to law, transactions are divided into two types of transactions contrary to positive law and public order.

Contracts that violate public order in English civil law can be viewed primarily as contracts that violate the “common law” rule, as public order in the UK, like most American states, is governed by “common law” rules.

At the end of the eighteenth century, Judge Lord Mansfield declared all contracts contrary to morality to be illegal, while the imposition of legal sanctions on moral norms led to its becoming a legal norm [19].

The invalidity of contracts concluded on the basis of law and order and morality is also established in French civil law. Article 6 of the French Civil Code stipulates that private transactions can not violate laws that affect public order and morality [20].

Thus, French civil law considers anti-social transactions, that is, transactions that are contrary to public order and morality, to be invalid.

According to paragraph 134 of the German Civil Code, if the law does not provide for a different rule, then the transaction itself is considered invalid if it violates the ban established by law. According to paragraph 138, a transaction that violates morality is considered not real in itself [21].

It should be noted that, unlike the civil law of England, America, and France, in German law, anti-social transactions are considered to morality, not public order.

In our opinion, a transaction that is not true in itself is a violation of the prohibitions expressed in the law, the fact that its consequences are not real is directly established, or the purpose of which is to violate them, the transaction itself is considered invalid.

V.G. Golishev noted that the invalidity of the transaction is “aimed at establishing, amending or abolishing the civil rights and obligations of citizens and legal entities, but understands the behavior of citizens and legal entities that, as a result of the entry into force of the law, have legal consequences [22].

S.S. Alekseev believes that the invalidity of the transaction is a transaction that does not bring the necessary legal consequences for these parties, but under certain conditions leads to the occurrence of negative consequences for them [23].

The greatest difficulty in the practice of law and order lies in the fact that a transaction entered into for a purpose that is intentionally contrary to the principles of law and order and morality is not valid. Therefore, there are many cases when a transaction is not recognized as invalid by the courts on this basis.

The rules that determine the validity of anti-social transactions existed in the legislation of Germany, Austria, Switzerland, Spain and other countries [24].

As V.P. Shakhmatov noted, the transaction is considered invalid and unenforceable if it does not comply with social norms, but with the requirements of legal norms [25].

According to Y.P. Egorov, the rule of law and order is understood as the most important, basic norms of the socio-economic structure of society, and non-compliance with the rule and order of law can lead to a violation of territorial integrity, political and economic sovereignty, social stability [26].

M.A. Blinova noted that the seizure of the property received as a result of the invalidity of the transaction to the state income is based on taking into account the necessity. When concluding transactions contrary to the principles of law and morality, the interests of society are violated, therefore, punitive measures are broken in favor of the victim in relation to the offender [27].

N.V. Vaseva believes that the implementation of the transaction without rights is socially harmful [5].

Among the above definitions, in our opinion, the definitions of the invalidity of the transaction given by V.G. Golishev, S.S. Alekseev, V.P. Shakhmatov and M.A. Blinova are relatively more comprehensive.

Taking into account the negative consequences of the invalidity of transactions that contradict the principles of law enforcement or morality, we would like to make proposals to reduce the scope of cases in which such consequences can be applied.

In conclusion, it should be noted that the issue of the invalidity of the transaction and its consequences is very relevant. The main reason for this is that a large number of transactions are concluded by citizens and legal entities, as well as other participants in the civil law turnover. However, there are problems with the invalidity of transactions that need to be resolved at the legislative level. Basically, the most important difficulties in law and order practice lie in transactions that are deemed invalid and entered into for purposes that are intentionally contrary to the principles of law and order and moralities.

Thus, the improvement of existing legislation governing legal relations in this area, as well as achieving uniformity and stability of the norms of this legislation in practice, ultimately guarantees the rights and freedoms of individuals and legal entities in this area and ensures constitutional principles.

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