Sys Rev Pharm 2020;11(11):533-536
A multifaceted review journal in the field of pharmacy

Legal Nature of Invalid Transactions

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ABSTRACT
The article investigates the grounds for determining transactions as invalid on the basis of the analysis of the civil legislation of Ukraine. The features of invalid transactions have been determined. Gaps in the legislation of Ukraine, as well as the unequal application of the legislation in the field of invalidity of the transactions by the courts have been manifested, ways to overcome them having been identified. The article defines the legal nature of invalid transactions and their place in the system of legal facts.

Keywords: Science Preparation, Higher Education Institution Training, Principle of Clarity, Discipline, Pedagogy.

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INTRODUCTION
The Civil Code (hereinafter the CC) of Ukraine has significantly eliminated a number of gaps in the problems of declaring the transactions invalid and raised new questions about the theoretical understanding of the conceptual provisions of invalidity of the transactions, further improvement of normative and legal regulation in this area of relations. The laconic normative and legal regulation of this institute hides many problems of both theoretical and practical directions. One of the most controversial questions in the science of civil law was and remains the question of determining the legal nature of invalid transactions and their place in the system of legal facts. It should be noted that the imperfection of a number of provisions of the civil legislation, the dispersion of normative legal acts regulating the related civil legal relations, only contributes to the increase in the number of civil cases on the recognition of legal acts as invalid. There is a tendency of involuntary usage of such means of protection of civil rights, as recognition of the transaction as invalid and restoration of the situation which existed before violation (bilateral restitution). V.V. Vitryansky noted that most such methods of protection are used by involuntary debtors to evade liability in connection with non-performance or improper performance of the contract as the recognition of the transaction as invalid [1, p. 803]. Given the specific state of affairs, there exists a set of theoretical and practical aspects, which remains insufficiently researched and debatable.

MAIN TEXT
The scientific interest in the study of invalid transactions dates back to the pre-revolutionary period. The first scientific developments on this issue were set out in N. Rateryaev's monograph "Invalidity of legal transactions under Russian law", which was published in 1901 [2]. N.V. Rabinovich made a significant contribution to the study of invalid transactions ("invalidity of transactions and its consequences" [3]). Later, V.P. Shakhmatov ("Compositions of illegal transactions and the consequences conceived by them" [4]), F.S. Heifetz ("invalidity of transactions under Soviet Civil Law" [5]), and K.L. Razumov ("Defects of the will as a basis for the invalidity of transactions: a comparative legal analysis and international unification" [6]), whose scientific provisions had already been based on the Central Committee of 1963, were concerned with the problems of invalid transactions. Thus, certain types of invalid transactions were the subject of dissertation research by N.S. Khatniuk, V.O. Kucher, V.I. Zhekov, and O.V. Perova. There are also a large number of scientific publications on relevant issues in collections of articles and legal scientific periodicals.
However, despite the wide interest of scholars in the problems of invalid transactions, today there are still many theoretical and practical issues around the block of transactions concluded in violation of the law, including those that apply to the unity of the will and expression of the will of the participants in the transaction, and there is still no single position on the legal nature of invalid transactions and their place in the system of legal facts.
Based on the results of scientific achievements and doctrinal provisions made in the field of invalid transactions, the purpose of this article is to determine the legal nature of invalid transactions and their place in the system of legal facts.
Despite the considerable amount of research that has accumulated around the block of invalid transactions, there is no consensus in civil doctrine on the legal nature of invalid transactions. The fact of the consequences of its invalidity after the commission of a transaction has posed the question to scientists: what exactly is an invalid transaction? Is it a transaction at all, is it a special type of offense, or perhaps a separate legal fact?
The analysis of the researched literature on this question allowed us to allocate some basic approaches to the definition of the legal nature of invalid transactions.
In the science of Soviet civil law, the question of whether an invalid transaction is a legal fact in general and a transaction, in particular, has provoked heated controversy. At the same time, the main argument of the opponents of recognizing invalid transactions as a legal fact, and hence a transaction, was that a legal fact is a fact of real reality, with which the law connects the occurrence of certain legal consequences. As an invalid transaction does not cause legal consequences, there are no grounds to consider it a legal fact. One of the supporters of this approach, S.F. Kechekyan, noted that the term "invalid transaction", which is actively used in law and in practice,

does not cause legal consequences, and therefore cannot be attributed to the number of legal actions [7].

Of the several contemporary authors, D.O. Tuzov denies the significance of a legal fact in relation to an invalid transaction. He notes that invalidity is a denial of legal significance, legal meaning, and an invalid transaction is the absence of a legal fact, an action that is indifferent to the law [8].

Nevertheless, such a view of the nature of invalid transactions did not find support among representatives of civil thought. As noted by O.V. Gutnikov, the position of those who do not consider an invalid transaction a legal fact in general or a transaction, in particular, is based on two fundamentally erroneous theses:

1) invalidity refers only to the transaction-fact, and not to the transaction-legal relationship.

2) transactions as a legal fact always entails the very legal consequences to which the will of its parties was directed [9].

Among the active supporters of the second approach, "an invalid transaction is an offense", is F.S. Heifetz, who not only committed invalid transactions but also those transactions that objectively do not meet the requirements of the law. According to the scientist, the peculiarity of civil law and civil liability, which implies liability without guilt, allows all invalid transactions to be considered offenses, regardless of whether they were committed through the fault or without the fault of their participants. To determine the nature of invalid transactions, the author introduces the term "non-tort offense", which is characterized by objective illegality, while it does not cite its concept and does not disclose its content [10].

The reasoning of V.B. Isakov, who attributed invalid transactions to the so-called defective legal facts, is quite close to the understanding of an invalid transaction as an offense. He believed that the defect of a legal fact is based on the defect of the socio-legal situation. Such a situation should be considered defective in which there are no necessary features [11].

I.V. Matveev, directly investigating the legal nature of invalid transactions, proposes to consider them as a specific type of violations committed in the field of civil law. From his point of view, a transaction and an invalid transaction have different legal nature, as the former achieves or can achieve the required legal result, and the latter does not create this result (insignificant invalid transaction), or it is nullified by the court (disputed invalid transaction). Thus, an invalid transaction is an act committed in the form of a transaction, in respect of which the law and (or) the court established a violation of at least one of the conditions of validity of the transaction, it is not able to generate those civil-legal consequences, the onset of which was wanted by its subjects [12]. Investigating the legal consequences of invalid transactions, the scientist connects their occurrence with the infringing party with the imposition of civil liability. It is no coincidence that it is noted that invalid transactions are civil offenses only in most cases (selected by the author) [12]. Thus, he acknowledges that in some cases invalid transactions are not civil offenses at all.

Similar considerations were expressed by V.I. Zhekov. Investigating transactions that violate public order, he agrees that valid and invalid transactions are different groups of legal facts that have different legal nature and do not create a single generic concept. From his point of view, invalid transactions are a generalizing category for a group of illegal actions different in nature [13]. At the same time, among the invalid transactions, the author singles out those for the consequences of which not only the objective criterion (illegality of actions) is important but also the subjective criterion (guilt). He notes that it is no coincidence that as a consequence of the invalidity of these transactions, the legislation may provide for adverse consequences for the guilty party: recovery of all proceeds from the invalid transaction to the state revenue, and in some cases - losses. These consequences of an invalid transaction are a sanction for the committed offense and are a measure of liability. Transactions recognized as invalid on the basis of only one objective criterion cause consequences for the parties in the form of bilateral restitution - the restoration of the state that existed before the violation of the law. Nevertheless, these consequences do not occur as a result of the transaction, which the parties expected when committing it, but are a coercive measure. To sum it up, V.I. Zhekov concludes that by its legal nature, an invalid transaction is a civil offense or misdemeanor. The nature of the recorded consequences of the invalidity of the transaction is determined by the degree of guilt of the person who committed the transaction [13].

Somewhat similar views are shared by other scientists, for example, T.S. Kulmatov [14] and O.V. Gutnikov. At the same time, O.V. Gutnikov rightly notes that in defining the notion of the invalidity of a transaction, it is important to distinguish between the notion of a transaction as a legal fact and a transaction as a legal relationship. He notes that the invalidity is the denial of the legal consequences of the transaction (expression of the will) which under normal conditions should have occurred. It follows that when we talk about the "invalidity of the transaction", it should be about the invalidity (denial) of the transaction-legal relationship, i.e. the invalidity (denial) of those rights and obligations that should have arisen as a result of the transaction, but due to certain grounds did not arise [19]. Thus, according to the author, it is not a denial of the transaction-legal fact (as believed by some people), but a denial of the transaction-legal relationship [9].

Thus, approaching the question of determining the place of invalid agreements among wrongful acts, many of the supporters of the approach in question encounter obvious difficulties of classification: having established that an illegal act can be attributed to offenses (torts), they try to find among the illegal actions "appropriate" category, which could be attributed to invalid transactions. After such a category cannot be found, attempts are made to distinguish invalid transactions into an independent category of illegal actions [20].

The third approach is characterized by the fact that invalid transactions are independent types of transactions and differ from each other in such features as legality or illegality (D.M. Genkin, I.B. Novitsky, V.P. Shakhmatov, N.V. Rabinovich, K.L. Razumov, and others). The authors of this approach proceed from the fact that the legality or illegality of the action is not a necessary feature of the transaction but is important only for its consequences [4], [6], [15].

Thus, according to D.M. Genkin, an invalid transaction in many respects is actually close to torts (offenses) but has significant differences from them. In particular, the main feature that distinguishes a transaction from a tort, in his opinion, is the direction of action to establish, change and terminate a civil relationship, while in the case of an offense, the violator does not want the onset of certain consequences [15].

I.S. Samoshchenko, criticizing the supporters of the diametrically opposite approach, spoke categorically against the need to create a separate category of "non-tort offenses", noting that it does not correspond to the principles of the theory of offense, because invalid transactions, considered through the prism of the theory of offense, are divided into two groups - some of them, in fact, meet the characteristics of the offense, but the rest - cannot be considered offenses. From his point of view, transactions prohibited by civil law are illegal actions, and under certain conditions they are offenses. Thus, a prohibited, i.e. invalid transaction is a transaction that entails special consequences for its participants [16].

Defending this position, N.V. Rabinovich considered that it is the illegality of an invalid transaction that determines the nullification of the transaction and determines the consequences that determine its recognition as invalid. Nevertheless, in her opinion, it does not follow from this that it ceases to be a transaction, but becomes a tort, just as an illegal administrative act does not cease to be an act or a contract that is not performed ceases to be a contract [21]. Trying to defend her position, the author tried to apply the main features of the transaction to an invalid transaction [3]. However, later M.I. Braginsky quite convincingly demonstrated the imperfection of such an attempt, citing as an example a fictitious transaction, for which none of the features named by the scientist is peculiar [1].

When determining the legal nature of an invalid transaction, the opinions of the authors of the quadruple legal approach are characterized by a certain compromise, they deny both the idea of “an invalid transaction is a transaction in any case” and the idea that “invalid transaction is always an offense”. Researchers in this area come to the conclusion that an invalid transaction is primarily a legal fact, but it does not relate to either transactions or offenses, i.e. it is a special "illegal legal fact".

Quite peculiar considerations on this subject are contained in the work of N.S. Khatniuk. The author puts forward a thesis on the belonging of an invalid transaction by its nature to a certain (selected - by the author) category of legal facts, but not to offenses. At the same time, it tries to single out quite peculiar, as it seems, signs of an invalid transaction: the transaction is invalid from the moment of its conclusion; it becomes invalid with time, whereas at first it was effective; in fact, the transaction itself is valid but can be declared invalid in court [17]. However, from the content of the work it is still not clear to which legal facts, from the point of view of their traditional classification, the dissertation student refers the invalid transactions [22].

V.O. Kucher, exploring in his work the category of "illegality" in the context of insignificant transactions, concludes that it is impossible to classify all, without exception, insignificant transactions as illegal actions. Defining the concept of illegality due to violation of another's subjective right, the author considers that illegal, in particular, cannot be attributed to transactions that can be recognized by the court as valid, in other words, the court recognizes them as valid precisely because they have no such feature as an illegality. As an example, he cites a transaction that goes beyond the domestic and is committed by the guardian in favor of the ward without the permission of the body of guardianship and trusteeship and which, in accordance with Part 1 of Art. 224 of the Civil Code of Ukraine shall be null and void until the court declares it valid. However, as the author notes, it is not illegal, as it was committed in favor of the ward [18]. The work also provides other examples, which confirm the thesis of the dissertation that the invalidity of the transaction, which is established by law, is not yet a reason to classify such a transaction as illegal. In conclusion, V.O. Kucher concludes that a void transaction is illegal only if a person fails to comply with the rules of objective law at the time of its commission, which causes a violation of such a transaction of subjective rights, interests of another party, or third party, or public order. In cases determined by law, the court recognizes insignificant transactions as valid due to the absence of illegality in them [18].

CONCLUSION

The result of the proposed study is the following conclusions.

The analysis of the transaction and the invalid transaction through the prism of the classification of legal facts traditional for the domestic theory of law allows their assignment to the group of lawful actions or wrongful acts. In this case, valid transactions as legal acts and invalid transactions as illegal ones are initially referred to different categories of legal facts, despite the use of the term "transactions" in relation to both categories. However, when classifying invalid transactions as offenses, it is necessary to take into account the dialectical unity of the obligatory elements of the offense: causing damage, wrongful act, a legal connection between wrongful act and damage, and guilt of the offender. The definition of a civil offense is firmly entrenched in the science of civil law precisely because of the combination of objective and subjective elements, that is, if an invalid transaction contains all the elements of a civil offense, it belongs by its legal nature to a civil offense. The absence of any of the elements of the offense in the commission of an invalid transaction (for example, wrongdoing, guilt, or damage) indicates the impossibility of qualifying it as an offense, but to declare it invalid only one of its objective norms is sufficient.

Thus, a transaction committed in violation of the general requirements that are necessary for the validity of the transaction (Article 203 of the CC of Ukraine), as a legal fact, refers to illegal actions, and, consequently, to offenses. However, despite the invalidity of the transaction from the point of view of objective law, under certain conditions, such transactions may be recognized by the court as valid, as long as they do not violate specific subjective rights of others, do no harm, contain signs of illegality and so on. Under these conditions, a transaction that is invalid only on objective grounds becomes valid (in force) by a court decision that has established the absence of any violation of the subjective rights of another party, third party, or public interest as a result of committing such a transaction. So, it is not a legal transaction (which arose at the beginning) that is recognized as valid but a legal transaction that later led to certain legal consequences.

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