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LEGAL NATURE OF THE INSTITUTION OF INVALID TRANSACTIONS IN THE RUSSIAN FEDERATION

NATUREZA JURÍDICA DA INSTITUIÇÃO DE TRANSAÇÕES INVÁLIDAS NA FEDERAÇÃO RUSSA

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Abstract: The institution of invalid transactions in Russian law began to be developed in the 19th century. In the 21st century, this institution of civil law is still being studied by scholars. In the Russian doctrine, there are various scientific schools with their approaches to the epistemological essence of this institution. Since the doctrine has not suggested a unanimous opinion regarding the institution under study, there are often opposite decisions in law enforcement, which oppresses the weak party in civil legal relations who seek protection in court. Given the broad nature of this institution, the authors of the article do not pursue the goal of using empirical data from law enforcement and conducting an in-depth analysis of judicial practice. The article considers doctrinal views on the institution of invalid transactions. The topic is disclosed from the standpoint of general (systemic, theoretical, and historical analysis) and special scientific methods (comparative-legal, logical, and technical-legal analysis, specification, and interpretation). The study aims at determining the theoretical and practical nature of recognizing some transactions as invalid in the Russian Federation. The authors analyze various scientific schools and theoretically substantiate conditions for the recognition of transactions as invalid. Judicial practice is also partially considered. As a result, the authors make conclusions regarding the epistemological essence of the institution of invalid transactions.

Keywords: Transaction. Invalid transaction. Voidable transaction. Will. Declaration of will.

Resumo: A instituição de transações inválidas na legislação russa começou a ser desenvolvida no século XIX. No século XXI, essa instituição do direito civil ainda está sendo estudada por acadêmicos. Na doutrina russa, há várias escolas científicas com suas abordagens sobre a essência epistemológica dessa instituição. Como a doutrina não sugeriu uma opinião unânime sobre a instituição em estudo, muitas vezes há decisões opostas na aplicação da lei, o que oprime a parte fraca nas relações jurídicas civis que buscam proteção no tribunal. Dada a natureza ampla dessa instituição, os autores do artigo não perseguem o objetivo de utilizar dados empíricos da aplicação da lei e realizar uma análise aprofundada da prática judicial. O artigo considera as visões doutrinárias sobre o instituto das transações inválidas. O tema é divulgado do ponto de vista de métodos científicos gerais (análise sistêmica, teórica e histórica) e especiais

(análise, especificação e interpretação jurídico-comparativa, lógica e técnico-jurídica). O estudo tem como objetivo determinar a natureza teórica e prática do reconhecimento de algumas transações como inválidas na Federação Russa. Os autores analisam várias escolas científicas e fundamentam teoricamente as condições para o reconhecimento de transações como inválidas. A prática judicial também é parcialmente considerada. Como resultado, os autores tiram conclusões sobre a essência epistemológica da instituição de transações inválidas.

Palavras-chave: Transação. Transação inválida. Transação anulável. Testamento. Declaração de testamento.

1. INTRODUCTION

The disclosure of the epistemological essence of the institution of invalid transactions is of great theoretical importance since transactions are the most common legal facts that entail the emergence, change, or termination of civil legal relations. Transactions are also an essential element of the legal system of any state. In the theory of law, a transaction is considered a legal act based on an external expression of a person's will aimed directly at a certain legal consequence. In 1907, G.F. Shershenevich emphasized that a legal transaction was originally called an external expression of volitional intention and aimed at establishing or terminating legal relations (Shershenevich, 1995). Unlike Shershenevich, D.I. Meyer (1997, p. 177) considers "any legal action aimed at changing the existing legal relations" a legal transaction. Classic theorists of Russian civil law give different interpretations of the concept of transaction. There are other definitions of transactions in the doctrine. The study of this issue is crucial for understanding the institution of invalid transactions. Unfortunately, there are no comprehensive monographs on the invalidity of transactions in the current Russian doctrine. The lack of information determines the contradictions between some scientific views and judicial practice. For example, to recognize a transaction as invalid, the party that disputes the transaction must provide the court with evidence of a violation of a specific legal act that regulates the specified transaction as voidable. Otherwise, in the absence of such evidence, this transaction might be void. When considering such disputes, the courts have difficulties in assessing the defectiveness of the transaction to apply a particular type of voidability. Various theories of invalid transactions developed in the last century, including the legal theory, the tort theory, the theory of executive force, the subjective theory, and the theory of the objective method. These are based on different approaches to the recognition of transactions as invalid, which aggravates the inconsistency of judicial practice.

2. METHODS

In the course of the study, we used general scientific methods, including the principle of objectivity and consistency, as well as theoretical and historical analysis. In addition, we applied the following special scientific methods: comparative-legal, logical, and technical-legal analysis and specification. The methodological basis of the study was the theory of cognition.

3. RESULTS

A transaction is a volitional action that is based on the need of a person and encourages them to perform certain actions to achieve the desired result. Having set a certain goal, a person begins to carry out actions according to their motives. To become motives, incentives for activity should be recognized by a given person, i.e. go through their will. Thus, a transaction is a volitional action conducted by a person. To determine the status of a transaction, it is important to comply with three conditions: the legal action has changed the existing legal relations, these changes might consist in the out-of-court transfer of some right from one person to another, and the legal action aimed at changing the existing legal relationship and undertaken to this effect. A transaction is considered valid when it recognizes the quality of a legal fact that generates the legal result that the parties to some transaction wanted to achieve. The legislator identified the following criteria that must be met to recognize the transaction as valid:

a) Requirements for the goal and legal content;

b) Requirements for the parties: the ability of individuals and legal entities to participate in the transaction;

c) The conformity of will and its declaration;

d) Compliance with the form of a transaction.

When analyzing the first condition, it is worth noting that the transaction must meet the criteria of legality and feasibility. The requirements for this purpose are specified by the legislator in Articles 168-170 of the Civil Code of the Russian Federation. If at least one of the conditions is not met, the transaction becomes invalid.

The main idea of transactions in European civil law goes back to the scientific works of F.C. von Savigny, who proposes the division of transactions into the actions of the parties involved and random circumstances. Under free actions, the scholar understands actions in which the will of the person performing them is directly aimed at the formation or termination of a legal relationship. This kind of free action is called a declaration of will or legal transaction

(the views of F.C. von Savigny quoted in Grimm, 1900, pp. 1-3). Savigny contributed to civil law not only by defining the concept of transaction but also indicating in which directions the doctrine of transactions should be developed. The scholar also built a complete doctrine of a legal transaction, characterizing the will as the only important and creative civilistic principle, on the one hand, and as an internal, hidden phenomenon, on the other.

The external and visible sign, with the help of which will is expressed, is called the declaration of will. Under normal conditions, in which a person (a subject of civil law) performs their volitional actions, there is a correspondence between will and its declaration. In this case, such a ratio is not random but regular. The correlation of will and its declaration stipulates the civil legal regulation of social relations that develop as a result of free legal actions. According to Savigny (as quoted in Grimm, 1900), "Nevertheless, a violation of this relationship is conceivable, and a contradiction arises between will and its declaration, resulting in a false feature of will" (p. 247). From the viewpoint of a person who expressed the false feature of will, such a situation cannot be considered normal. Indeed, this interest often conflicts with the interests of third parties. After establishing the discrepancy between will and its declaration, they are classified (depending on the reasons that caused this contradiction) and then the legal significance of each type of situation is determined.

A great contribution to the concept of transaction was made by the Russian scholar D.I. Meyer (1915, p. 106), who for the first time outlined the basic principles of civil law in the book "Russian Civil Law" and classified a transaction as a legal action. However, not every action is important in the field of law. An action becomes legally significant only if one person comes into contact with another, and only then does the concept of free will arise. One's will can manifest itself in consciousness but such manifestations are internal and are not a transaction. According to Meyer (1915, p. 107), not every external manifestation of will is considered a legal action and should be related to the law. When analyzing the scientific works by Meyer, we can conclude that they contradict Savigny's teachings on the relationship between will and its declaration. The contradiction relates not only to the concept of transaction but also to any legally significant actions. However, Meyer considered the issues that encouraged Russian civilists to discuss and develop the sources of the legal force of transactions. The scholar to a large extent determined the legality and legal effectiveness of transactions, but could not renounce the fundamental thesis of his well-known German predecessor: "A legally significant action [...] exists only when it is a product of will". Considering this or that position, we will be able to resolve the problem formulated by Savigny about the legal nature of transactions in

different ways, when the person's will coincides with the actual will of the party in the transaction. Since any transaction is a product of positive law, then the unconditional priority should be given to the declaration of will. If we rely on the fact that the transaction is a product of private will, then it is not a transaction due to the absence of volitional nature. Therefore, there is no transaction if the signs of any obvious action indicate that the person has no intention to make a transaction, i.e. to achieve certain legal goals.

According to N.L. Duvernois (2004), a transaction is a general legal and technical concept, i.e. *negotium (actus)*. On the contrary, Meyer (1997) regards a legal transaction as "any legal action aimed at changing the existing legal relations" (p. 178). Despite a different understanding of transactions, there is one general condition: a legal action aimed at such a change cannot be considered a transaction. Therefore, such actions must be volitional.

In legal science, there are other viewpoints regarding the essence of transactions. For example, M.M. Agarkov (1946) claims that "a transaction was a legal fact made by one or more persons acting as subjects of property rights, establishing, changing or terminating civil legal relations to which such a fact is directed" (p. 55). Consequently, the distinguishing feature of transactions is as follows: 1) the practical action; 2) the legitimacy of such an action; 3) the focus on the emergence, change, or termination of legal relations (will). In turn, V.P. Shakhmatov (1967) argues that both transactions and their consequences are legal means to achieve the desired changes in the existing social relations.

A transaction is usually understood as an action aimed at achieving certain legal goals, but Shakhmatov understands it and its consequences as means for achieving completely different results, i.e. to influence actual relations by establishing, changing, or terminating the relevant civil rights or obligations. However, this scholar does not give a generalized definition of a transaction and prefers presenting the definitions of valid and invalid transactions. It seems that only a valid transaction should be recognized as legitimate. Invalid transactions either violate legal prohibitions or have composition shortcomings.

Modern Russian legislation understands a transaction as the actions of citizens and legal entities aimed at establishing, changing, or terminating civil rights and obligations. Despite a rather definite concept of transaction in the legislation, there are many opinions in the doctrine regarding the acceptability and scientific validity of such a definition.

Transactions in civil law are characterized by certain features, including a volitional orientation to the generation of civil legal results and a lawful nature. The Russian doctrine understands a transaction as a combination of the person's will to make a transaction and its

declaration. Transactions are the main legal fact that generates, changes, or terminates the civil rights and obligations of a person. Any transaction is the will of a subject to create or terminate their rights and obligations concerning other persons.

The institution of invalid transactions associated with general transactions has a long history and was covered by Roman lawyers. Roman law was based on two legal systems: civil law (*ius civile*) and praetorian law (*ius honorarium*). A transaction that did not comply with the basic legal order ius civile (*non valet*) was considered initially void and did not have any legal consequences. In Ancient Rome, this transaction was recognized as null and void by virtue of the law (Shakhmatov, 1967). Based on the postulates of Roman law, J. Baron (1898) mentions the legal consequences of voidable transactions, where one of the parties was authorized to challenge it. A voidable transaction can be called conditionally valid since its voidability depends on the parties to the transaction, where one of the parties may recognize it as invalid, which creates the principle of transformative law.

Some Russian scholars, including O.A. Krasavchikov, F.S. Kheifets, and M.M. Agarkov, believe that the legitimacy of the transaction is constitutive. Thus, invalid transactions cannot be classified as illegal actions (Krasavchikov, 2005). In turn, K.I. Sklovskii (2016) emphasizes that not all transactions could be declared invalid by the court for the reason that they violated someone's interests or it was impossible to protect the violated interest (for example, the party to the disputed transaction was liquidated) or other methods of protection were required. The recognition of some transactions as invalid by law because of their imperfection, without considering the protection of the private rights and interests of the parties to the transaction, is contrary to the fundamental principles of civil law. According to A.A. Kiselev (2004), the statement that the legitimacy or illegality of a transaction is not its essential element blurs the boundaries and creates difficulties in distinguishing between such concepts as a transaction and an offense. Invalid transactions are actions that have the features of an offense since there is a defect in their legal procedures, and sometimes illegal actions of one party, for example, unjust enrichment due to the non-fulfillment of the contract, damage to the property rights of a person, etc. If invalid transactions violate a certain rule of law, they should entail the consequences provided for any illegal action, namely: the abolition of their legal force or the prevention of their legal effect.

According to O.V. Gutnikov (2003), "an invalid transaction can be both a legal and illegal action" (p. 94). However, this opinion is disputable. In particular, V.A. Tarkhov (1997)

argues that "the concepts of legal and illegal transactions were contradictory, and the transaction had legal nature" (p. 223).

Invalid transactions involve only the external manifestation of transactions. Due to their unfair practices and defects, they have no legal force and are not recognized as legal facts, and the rules of law on the validity of transactions are pointless. Yu.A. Tarasenko believes that the interests of persons who committed actions that fell under the concept of invalid transaction were violated not by the very fact of such transactions but by their exercise of supposedly existing subjective rights or the performance of their accompanying duties (Belov, 2007). The conditions for the validity of a transaction follow from its definition as a legitimate legal action of parties to civil law aimed at establishing, terminating, or changing their civil rights and obligations. To recognize a transaction as valid, it must comply with the legal norms outlined in regulatory legal acts. This requirement can be met under the following conditions:

– The transaction does not conflict with the law and other regulatory legal acts;

– The transaction complies with legal norms;

– The transaction must be made not for the sake of appearance but to generate legally significant consequences;

– The person's will is expressed in the proper form, which is provided for by the rules of law for this type of transaction;

– In the process of forming the will of a person, no unlawful extraneous impacts arise, i.e. there is no defect in the will of the parties, while the thoughts of a person at the time of the transaction are not subject to revision from the outside, they are free from any external or internal factors.

The contradiction of at least one of the conditions will directly indicate the invalidity of the transaction.

Since the legality of transactions means their compliance with the requirements of the law, their content must adhere to the Civil Code of the Russian Federation, President Decrees, and other legal acts. In cases of conflict between the norms contained in legal acts, the legality of a transaction is determined through the hierarchical subordination of some acts to others. When proving the legality of a transaction, it should be borne in mind that Russian civil law allows the use of controversial and understudied institutions, including the analogy of law and the analogy of right. Yu.F. Bespalov argues that legal actions and transactions by the analogy of law had civil law consequences because their content did not contradict the civil legislation on similar relations. Legal actions recognized as transactions by the analogy of right are subject to legal

protection because their content corresponds to the general principles and meaning of civil law, the requirements of good faith, reasonableness, and justice (Bespalov, 2016).

Given the fact that a transaction is always a volitional act, then only able-bodied citizens can make it. Persons with partial or limited legal capacity are entitled to independently carry out only those transactions that are permitted by law. Legal entities having only legal capacity and not using the concept of legal capacity can make any transactions that are not prohibited by law. However, we should keep in mind that the legislator has also identified certain types of actions for which it is necessary to obtain a special permit (license).

The manifestation of the will to perform certain actions by a legal entity is entrusted to its body (sole or collegiate). As a general rule, the legal consequences of such actions arise directly from the legal entity and not from individual bodies, if the latter acted within the limits granted to it by law or internal rules. Some exceptions to this rule are provided for by law, for example, in Articles 173 and 174 of the Civil Code of the Russian Federation.

The validity of the transaction is manifested when the will and one's declaration of will coincide. The discrepancy between the goals set and the person's intentions serves as the basis for declaring the transaction invalid. In some cases, the discrepancy between will and its declaration might be the result of errors or significant misconceptions regarding the subject and terms of the transaction. The concept of flaw in the will differs from the discrepancy between will and its declaration. In this regard, the will of the party to the transaction might coincide but not reflect the actual desires and goals of the person, therefore it is a result of a fraudulent agreement between the representative of the party and the other party or distorted by a malicious agreement between them.

The Russian doctrine postulates various grounds for the invalidity of transactions, i.e. imaginary and feigned transactions. Such transactions purposefully deceive conscientious parties to civil transactions. There are also incidents when affiliated or interested parties to the transaction resort to such transactions to imitate contractual legal relations, thereby covering up another transaction. If the parties abuse their rights, their common goal becomes to conceal the real motives for the transaction. Such transactions are recognized as imaginary or feigned.

A general viewpoint in Russian legal science is that an imaginary transaction is made for its own sake, where the parties do not pursue the goal of gaining appropriate legal consequences from this transaction. Such transactions are considered void since there is no sign of a transaction, i.e. special focus of a volitional act on the establishment or termination of civil rights and obligations. Such transactions often have a goal that does not comply with the law. If the

intent of the parties to the transaction is established, which assumed the semblance of a transaction for a purpose that differs from the current legislation, the legal consequences are applied established in Article 169 of the Civil Code of the Russian Federation. If any property is transferred to the other party during an imaginary transaction, the general procedure is applied, which is provided for in Article 169 of the Civil Code of the Russian Federation. In any other cases, when any property is transferred to the other party to the transaction, generally accepted legal consequences occur, which are provided for in Clause 2 of Article 167 of the Civil Code of the Russian Federation and imply bilateral restitution.

According to Yu.S. Gambarov (1911), voidability is an invalidity of a special kind and lesser force, and there are significant differences between voidable transactions and void ones. In the scholar's opinion, 1) the voidability of a transaction can only be established for a certain group of people whose rights were affected by this transaction; 2) a voidable transaction, just like a void transaction, has legal force for the entire period until it is declared invalid by the court; 3) a voidable transaction determined concerning certain people allows its subsequent approval as a defective transaction; 4) there is a distinction according to the prescriptive limit for contesting a transaction, i.e. there are differences between void and voidable transactions since a longer period of limitation is established for a void transaction to eliminate the irrefutable uncertainty created during its conclusion.

Void transactions have no right to exist; they are doubtful for the court and can be recognized as valid by virtue of contestation or cancellation. In the event of the nullity of the transaction, the lawsuit is aimed at simple certification and confirmation of this state and is establishing by nature. An invalid transaction is void and, in accordance with Clause 1 of Article 168 of the Civil Code of the Russian Federation, is considered void from the moment the transaction is made due to its invalidity. By virtue of a direct indication of the law, an invalid transaction essentially contradicts the legal result to which it was directed. In conformity with the law and the court decision, the parties to an invalid transaction have rights and obligations. By virtue of Clause 2 of Article 167 of the Civil Code of the Russian Federation, if a transaction is invalid, each of the parties is obliged to return to the other everything received under the transaction (including when this is expressed in the use of property or service rendered) or to reimburse its value in money, i.e. bilateral restitution is applied.

Since an invalid transaction is considered void from the moment it is made, it becomes impossible for legal accounting from the day it was concluded. In addition to bilateral restitution, the court has the right to award damages and compensate for damages. The legislation also

provides for other legal consequences of declaring a transaction invalid, such as Clause 3 of Article 73 of the Civil Code of the Russian Federation (the lack of consent of a participant in a general partnership).

G.F. Shershenevich (2005) uses the following concept of double restitution: "Everything that was transferred to one person within a voidable transaction must be returned according to ownership" (p. 126). Bilateral restitution is used as a law enforcement measure, which is also confirmed by A.V. Matveev. The scholar believes that any transaction is sanctioned by the court to the same extent. If both parties have fulfilled the terms of the transaction, then both parties have the right to return their property. Moreover, if only one party fulfilled the terms, it is endowed with a restitution claim. The restitution claim itself provides the right to protection only in cases where the transaction protects the private interests of its participants. Exceptions to this rule may be provided by law, but are sometimes allowed by the courts without such an indication.

As an additional measure of protecting the rights of the parties, it is important to pay attention to the principle of avoiding double restitution. Under this principle, everything that was transferred in bad faith by the parties to the transaction is transferred in favor of the state. A similar principle applies in a situation where both parties acted in bad faith and violated the law. To establish restitution in favor of the state, it is important to establish a certain condition: the purpose and meaning of the transaction are contrary to the foundations of legal order and morality.

Depending on the consequences, invalid transactions should be divided into three groups:

1) Transactions that were made with a person abusing the right, which led to the infliction of undesirable consequences for the other party (for example, when a transaction was made under the threat of violence or deceit);

2) Transactions that are recognized as invalid due to an error of one of the parties and the specified error was not obvious to the other party when it was made;

3) Transactions in which one of the parties did not consider the interests of the other party, for example, where the transaction was made with a legally incompetent person or with a person who at the time of the transaction was from 14 to 18 years old.

Within the framework of the consequences of invalid transactions, the first group of grounds assumes that one party to the transaction must be compensated for losses. In the other

two groups, real damage is compensated by virtue of Subclause 1 of Clause 1 of Article 15 of the Civil Code of the Russian Federation.

When analyzing special rules governing the consequences of invalid transactions, it is important to pay attention to Clause 1 of Article 61 of the Bankruptcy Law. It establishes that all the property transferred by the debtor or a third party for the debtor under a transaction that was subsequently declared invalid is subject to return to the bankruptcy estate. If it is impossible to return the subject of the transaction in kind, such a person under a disputed transaction is obliged to reimburse the market value of the specified property at the time of its acquisition under the disputed transaction. This rule should be common to all types of invalid transactions made by the debtor when there were signs of insolvency or when the transaction was made at the expense of the debtor's property. It is also worth mentioning that when a transaction is declared invalid as a transaction with defects, the restored claims for bilateral restitution might be included in the register of creditors' claims.

We believe that good faith in transactions plays a key role in challenging such transactions; therefore, it is important to define the concepts of parties' honesty and conscientious transactions. In accordance with Clause 3 of Article 1 of the Civil Code of the Russian Federation, when establishing, exercising, and protecting participants in civil law relations must act in good faith. By virtue of Clause 4 of Article 1 of the Civil Code of the Russian Federation, no one has the right to take advantage of their illegal or malicious behavior. The civil doctrine and Russian legislation suggest that good faith in transactions is presumed from the very beginning. The concept of good faith is not enshrined at the legislative level since its legal definition is very difficult to determine. In the future, it would not be used and interpreted as it would be necessary for the parties to the transaction. No concept of good faith fixed at the legislative level predetermines the need to disclose this feature in each specific case based on the arguments presented. I.B. Novitskii (1916) claims that conscientiousness as a well-known subjective state is considered when a strict legal sequence is violated and the legal effect fully or partly occurs due to the failure to implement the actual composition, suggesting its occurrence. In this case, an unauthorized person acts as an authorized person, and the third parties who have entered into business relations remain in the same position as if they were dealing with an authorized person, and good conscience, as it were, makes up for the missing legitimation.

4. CONCLUSION

Based on our study, we drew the following conclusions:

1. Any transaction should have a certain legal result. Therefore, there is no transaction if the signs of any obvious action indicate that the person has no intention to make a transaction, i.e. to achieve certain legal goals.

2. The issue of good faith in transactions plays a key role in contesting transactions, therefore, in each case of contesting transactions, it is important to define such concepts as the party's honesty and the fair execution of the transaction.

3. A restitution claim grants the right to protection only in those cases where the transaction protects the private interests of its participants. Exceptions to this rule may be provided for by the law, but sometimes they are allowed by the courts without such an indication in the law.

4. Void transactions have no right to exist, they are doubtful for the court and can be recognized as valid by virtue of contestation or cancellation. In the event of the nullity of the transaction, the lawsuit is aimed at simple certification and confirmation of this state and is establishing by nature.

5. The validity of the transaction is manifested when the will and one's declaration of will coincide. The discrepancy between the goals set and the person's intentions serves as the basis for declaring the transaction invalid.

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