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LEGALITY AS THE BASIS FOR THE VALIDITY OF TRANSACTIONS IN CIVIL LAW

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Annotation. The article highlights a comprehensive study of the institution of legal acts in the civil law of Ukraine, tracing their evolution from Roman law to modern legal structures. The central place in the study is occupied by the conceptual distinction between the categories of "legality" and "legality" in the context of legal acts, where legality appears as a complex characteristic that encompasses not only compliance with positive law, but also consistency with the principles of civil law and legal customs.

A key aspect of the study is the analysis of public order as a fundamental criterion for the validity of legal acts in accordance with Article 228 of the Civil Code of Ukraine. The author offers an expanded interpretation of the concept of public order, including violations of regulatory acts relating to the state structure, political system and economic security of the state.

The practical component of the study focuses on judicial practice regarding challenging the validity of legal acts due to violations of public order, especially in cases involving tax authorities. The necessity of preliminary establishment of the intention of the parties in criminal or administrative proceedings before recognizing a transaction as violating public order is substantiated. Specific mechanisms for improving the application of Article 228 of the Civil Code of Ukraine are proposed through the introduction of clear criteria for assessing violations of public order.

The methodological basis of the study is a synthesis of historical-legal and dogmatic analysis, which includes the study of the sources of Roman law, modern legislation of Ukraine, judicial practice and doctrinal provisions of civil law. The results obtained have both theoretical value for the development of civil science and practical significance for optimizing law enforcement in the field of invalidity of transactions.

Key words: Roman law, transaction, legality of transaction, public order, invalidity of transaction, civil law.

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Relevance of the research topic. Roman law, as the fundamental basis of modern civil law, created a detailed system of regulating transactions, which is striking in its depth and relevance even after a millennium. Roman lawyers developed concepts and principles that became the cornerstone of the modern understanding of transactions as legal facts. They established basic requirements for the validity of transactions, determined the conditions for their conclusion and execution, and also developed mechanisms for protecting the rights of the parties in case of violation of the terms of the transaction [1, p. 67].

In the modern civil legislation of many countries of the world, one can trace the direct reception of Roman legal structures regarding transactions. In particular, Ukrainian civil law adopted the Roman concept of dividing transactions into unilateral, bilateral and multilateral, requirements for the form of the transaction, and grounds for recognizing transactions as invalid. The modern understanding of will and expression of will as necessary elements of a transaction also originates in Roman law, where the theory of defects of will and their influence on the validity of a transaction was developed in detail.

It is especially important that modern civil legislation has preserved and developed the Roman tradition of protecting the rights of a bona fide party to a transaction. The institutions of restitution, compensation for damages, and recognition of transactions as invalid due to fraud or mistake all have their roots in Roman law. Modern civil codes, including the Civil Code of Ukraine, although they have adapted these provisions to modern realities, have preserved the basic principles and approaches developed by Roman lawyers, which indicates the universality and viability of Roman private law [2, p. 693].

The state of development of the problem. The issue of the legality of legal acts in civil law, as well as their historical development from Roman law to the present day, has been the subject of research by many famous scholars. The fundamental basis for understanding the concept of legal acts in Roman law was the works of classical novelists. In particular, special attention should be paid to the works of D. Dozhdiev “Roman Private Law”, I. Novytsky “Roman Law”, O. Pidopryhora “Roman Private Law”, which analyze in detail the institution of legal acts in Roman law and its influence on the formation of modern civil law structures. Among modern Ukrainian civilists, a significant contribution to the study of the legal nature of legal acts and the conditions of their legality was made by such scholars as E. Kharitonov, O. Kharitonova, V. Borisova, I. Spasybo-Fateeva, R. Maydanyk, V. Kossak. Their works reveal the essence of a transaction as a legal fact, analyze the conditions of its validity and the consequences of non-compliance with the requirements of the law regarding the form and content of transactions. Particular attention is paid to the study of the relationship between will and expression of will in a transaction, which dates back to Roman law.

The issue of the invalidity of transactions and their legal consequences was thoroughly studied by V. Luts, Z. Romovska, O. Dzera, N. Kuznetsova. In their works, parallels were drawn between the Roman and modern

understanding of the legal consequences of the invalidity of transactions, and the development of the institution of restitution was analyzed. Among foreign researchers, it is worth noting the works of Y. Pokrovsky "History of Roman Law", G. Pukhta "Course of Roman Civil Law", which laid the theoretical foundation for understanding the evolution of the institution of transactions from Roman law to the present day.

Separately, it is necessary to highlight the dissertation studies of recent years devoted to various aspects of legal acts: works by V. Zhekov on legal acts that violate public order; O. Perova on the invalidity of legal acts committed under the influence of error; I. Davydova on the invalidity of legal acts committed with the use of information technologies. These studies demonstrate how classical Roman concepts are adapted to the challenges of modern civil turnover.

Thus, the purpose of the study is a comprehensive theoretical and legal analysis of the legality of transactions in civil law, the determination of their essential features, conditions of validity and the development of scientifically substantiated proposals for improving the legal regulation of the institution of transactions in modern civil law of Ukraine.

Presentation of the research material. In the category of transactions, the key feature and requirement is legality, and the general requirement, which is established in Part 1 of Article 203 of the Civil Code, is compliance with the content of the Civil Code, other acts of civil legislation, as well as the moral principles of society. To understand legality, we must clarify one important circumstance: the correlation of the content of the concepts of "legality" and "legality". The methodological basis here can be the provision that the content of the concept of civil law is broader than the content of the concept of civil legislation [3, p. 69-70]. Accordingly, legality is unconditional compliance with the norms of positive law, and legality is both the norms of positive law and other sources of civil law, in particular its principles, customs, and requirements that are usually imposed.

So we are talking about a literal narrow interpretation of the concept of legality, as legality, and a broad interpretation – as compliance with all sources of civil law.

In this regard, T.V. Bobko notes that "the doctrine of prohibitions and permissions in the perspective of the content of transactions: under the legality of the content of a transaction, two requirements of the law should be understood – negative and positive. Negative conditions imposed by the law on the content of a transaction are prohibitions, positive conditions – what should be provided for in the transaction itself" [4, p. 6]. Quite interesting is her comprehensive approach to the issues of transactions, which consists in the fact that a transaction is "... considered as an act of private will, firmly "built-in" into certain fiscal, tax and accounting mechanisms, as a result of which there is a mutual influence and regulation of the form and content of transactions, which is important for their civil law regulation" [4, p. 4]. It indicates that a transaction as an act of private will and a legal fact is the basis for the emergence of other industry legal relations.

The term "transaction" itself indicates that it is one that complies with the law and is committed in accordance with the requirements of the rules of law. In other words, the sign of its legality is inherent in it and is constitutive. It is not for nothing that the legislator presumes in Art. 204 of the Civil Code of Ukraine the legality of the transaction. If we proceed from the fact that the transaction is one of the most common grounds for the emergence, change and termination of civil legal relations in the system of legal facts, then as a result of its recognition as invalid, such a ground disappears at least according to the rules of formal logic – a non-legal act cannot cause normal civil legal relations, but is only one of the violations that cause protective legal relations. This aspect, unfortunately, is overlooked in modern studies.

In connection with the above, the problems associated with the invalidity of transactions, and the grounds for the emergence of protective obligations and the application of the consequences of invalid transactions are quite relevant. Until now, these issues were considered self-evident. However, if we disassemble the transaction as an action on a valid one, which meets the requirements of Art. 203 of the Civil Code of Ukraine and thus acquires the status of a transaction as a legal category, and invalid actions, which, if challenged, do not generate the legal consequences that their participants intended, then the essence of the problem and the need to solve it becomes clear. In other words, if a person is still able, as a result of the application of conventions, through interpretation, to establish what is meant by the category of "invalid transaction", then artificial intelligence, in particular PC, does not perceive it. Thus, the research task of this part of the study is to solve the dilemma of an invalid non-legal action, which supposedly does not cause legal consequences, but in fact leads to the following: the subjective rights protected by law and the interests protected by law of the person who suffered from such a violation are violated; the right to protection and application of such a method of protecting civil rights as declaring the transaction invalid arises; the victim or other persons in his interests acquire the right to seek protection in court.

Let's try to solve it consistently on the basis of a formal-legal approach. Thus, according to Art. 203 of the Civil Code of Ukraine, the conditions for the validity of a transaction are established, and one of them is compliance with the requirements for its content. Then the presumption of the legality of a transaction is not sufficiently clear. It, in essence, ignores the requirements for a transaction that are established in Art. 203 of the Civil Code of Ukraine. At least, the question of whether a transaction can contradict the Civil Code of Ukraine, other acts of civil legislation, as well as the moral principles of society (Part 1 of Art. 203 of the Civil Code) remains open. Due to Art. 204 of the Civil Code and the expression of the will of the party, these requirements are ignored, and with a sufficiently professional approach, it is generally possible to prove the opposite and the person who suffered will turn into a violator. We are not talking about other ways of influencing the injured party.

The above-mentioned case law of the Supreme Court of Ukraine in the Summary is indicative in this regard. Regarding the invalid transaction under

study, the main thing is that the content of the transaction must not contradict the public order of the state, enshrined in the legislation of Ukraine. In Art. 228 of the Civil Code of Ukraine, the term "transaction that violates public order" is used and it is indicated that it is a violation of the constitutional rights and freedoms of a person and a citizen, destruction, damage to the property of an individual or legal entity, the state, the Autonomous Republic of Crimea, a territorial community, illegal appropriation thereof. This approach is seen as a departure from those basic values, primarily life and health, which are specified in Art. 3 of the Constitution of Ukraine [8]; property orientation of understanding the content of public order; an attempt to differentiate human and citizen rights, despite the fact that the Civil Code does not include the idea and possibility of retort in rights based on citizenship; property violations against the state and against an individual, legal entity and public entities are actually equated.

It is obvious that the term "public order" requires detailed study, including the additional inclusion of the condition of the deliberate contradiction of these actions to the interests of the state and society, as well as to the principles of public morality. After clarifying its content, it is possible to substantiate such a ground for the invalidity of a transaction as a violation of public order by the committed transaction, moreover, with a purpose that is deliberately contrary to the interests of the state and society, which is defined in the new wording of Art. 228 of the Civil Code of Ukraine.

A deeper epistemological basis is also seen here. This is due to the fact that since the time of the famous statement of the Roman lawyer Gaius, the concept of public and private law has been embedded in the consciousness of every lawyer: public law concerns the interests of the state, and private law concerns the interests of the individual [2, p. 694]. In addition, the civil legislation of Ukraine is designed to regulate private law relations, to which the category of public order can hardly be attributed. Therefore, the right to agree to the terms of a transaction that infringes on the rights of its party cannot be elevated to the rank of public, but is only a private matter of this party. Accordingly, there is a certain and quite significant difference between the public standard, which is the requirements of the law, and its private application by a party to an action that does not meet the requirements established by law. Only in the case when the parties, concluding a transaction at the expense of violating public order, try to obtain private benefit or even profit, then at the same time there is a violation of public order and a violation of civil law norms.

Allocating only individual crimes, administrative or civil offenses as the basis for the invalidity of a transaction under Art. 228 of the Civil Code of Ukraine, the question arises: will actions prohibited by criminal or administrative legislation (for example, actions aimed at smuggling, giving a bribe, etc.), or even those aimed at undermining economic security or changing the constitutional order, etc., which, in turn, are not covered by the above article, be recognized as null and void on the grounds of violation of public order? If we analyze the considered null and void transaction, then the

constitutional rights of a person and a citizen, the violation of which is the basis for the nullity of a transaction that violates public order, are enshrined in the Fundamental Law of the State – the Constitution of Ukraine, which in Article 3 proclaims a person, his life and health, honor and dignity, inviolability and security as the highest social value. In addition, if the transaction is aimed at destroying, damaging the property of an individual or legal entity, the state, the Autonomous Republic of Crimea, or a territorial community, or illegally seizing it, the person's actions will be classified as crimes or administrative offenses, and, as a result, will violate the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses.

The legislator separated the violation of public order from other grounds for the invalidity of transactions, guided by the violation by the transaction of such regulatory legal acts of the state as: the Constitution of Ukraine, the Criminal Code and the Code of Ukraine on Administrative Offenses. Therefore, it can be argued that the public order of the state is violated in the event of a violation of the regulatory acts in which it is enshrined.

It is necessary to clearly distinguish transactions that violate public order from other grounds for the invalidity of transactions, as well as to determine the limits of application of Art. 228 of the Civil Code of Ukraine, which could be used by courts when considering cases of this category.

To determine the criteria for the application of Art. 228 of the Civil Code of Ukraine, it should be noted that currently relevant are cases that are considered by commercial courts on claims of tax authorities about intentional evasion of business entities from paying taxes. As a rule, tax authorities file claims with commercial courts to declare transactions invalid on the basis of Art. 49 of the Civil Code of the Ukrainian SSR, as those committed with a purpose contrary to the interests of the state and society [9, p.18].

Trials involving tax authorities and business entities are often accompanied by a violation of the rights and legitimate interests of the latter in connection with unlawful interference in their economic activities, since economic courts quite often issue decisions to refuse to satisfy the claim. The judge motivates the decision, first of all, by the fact that the tax authorities do not provide evidence that would indicate the intention of the parties to conclude an agreement with a purpose contrary to the interests of the state and society (to intentionally evade taxes).

It is quite difficult to prove the intention of the parties during the consideration of a civil case in court, and the consequence of the plaintiff's failure to provide evidence of the existence of a purpose contrary to the interests of the state and society is the court's refusal to satisfy the claim of the interested person, even if such an intention of the parties actually took place.

Since Art. 228 of the Civil Code of Ukraine for a transaction that violates public order, provides for the presence of the intention of the parties (parties) for an illegal result, as well as its contradiction with public legal acts of the state, we believe that such intention should be established during the investigation of a criminal case and its consideration in court or at the time of issuing a resolution on an administrative offense.

The possibility of such an order for establishing the intention of the parties is also due to the fact that one of the signs of a transaction that violates public order is its prohibition by the norms of criminal or administrative legislation. As M. Sibilov notes, these transactions violate exclusively public legal norms, which simultaneously constitute offenses in the form of a crime or administrative tort [9, p.20].

Based on the above, a transaction can be defined as violating public order if it is aimed (committed with intent) at violating public legal regulatory acts of the state, which determine the foundations of state order, political system and economic security of the state, and is qualified as a crime or administrative offense in the manner established by law. In this regard, Article 228 of the Civil Code of Ukraine should, in our opinion, be subject to a broader interpretation, and the term "public order" should be considered as an assessment criterion enshrined in public legal regulatory acts of the state. Transactions aimed (committed with intent) at violating public legal regulatory acts: the Constitution of Ukraine, currency, customs, tax, antimonopoly and other public legal legislation, which enshrines the foundations of state order, political system, economic security of the state, and at the same time are crimes or administrative offenses. These include, in particular, transactions aimed at violating the constitutional rights and freedoms of man and citizen; evasion by business entities from paying taxes; illegal alienation or use of objects of property rights of the Ukrainian people; transactions aimed at the illegal circulation of objects withdrawn from free circulation or objects whose circulation is restricted; transactions committed with the aim of violating antimonopoly legislation and aimed at engaging in prohibited types of economic activity, as well as others aimed at violating public law regulations. The determination of a transaction as one that violates public order must be preceded by a court verdict on bringing the participant (participants) of such a transaction to criminal liability, which has entered into force, or a resolution of the competent authority on bringing the named persons to administrative liability.

The proposed procedure for applying Art. 228 of the Civil Code of Ukraine will not lead to an ambiguous interpretation of this void transaction in judicial practice, and will also allow for reasoned decisions on the violation of public order by the parties by the transaction. In addition, this will also serve to clearly define the consequences of the invalidity of anti-public transactions. One way or another, both practice and litigation will have clearer criteria for resolving cases on the recognition of anti-public transactions as invalid.

Conclusions. Based on the results of the study, it can be concluded that the legality of transactions is a key and constitutive feature of this legal category. At the same time, it is important to distinguish between the concepts of "legality" and "legality", since legality is a broader concept and includes compliance not only with the norms of positive law, but also with other sources of civil law, in particular its principles, customs and generally accepted requirements.

Special attention in the context of the legality of transactions should be paid to the issue of public order as a criterion for their validity. The analysis shows that a transaction can be defined as violating public order if it is aimed at violating public legal normative acts of the state that determine the foundations of state order, political system and economic security of the state, and is qualified as a crime or administrative offense in the manner established by law. In this case, it is important to clearly distinguish transactions that violate public order from other grounds for the invalidity of transactions. In order to improve the legal regulation of the institution of transactions, it is necessary to introduce clearer criteria for defining a transaction as violating public order. In particular, it is advisable to establish that the definition of a transaction as violating public order must be preceded by a court verdict on bringing a participant in such a transaction to criminal liability, which has entered into force, or a resolution of a competent authority on bringing to administrative liability. Such an approach will avoid ambiguous interpretation of this type of invalid transactions in judicial practice and will ensure the issuance of reasoned decisions.

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