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Research Article

COMPARATIVE ANALYSIS OF FOREIGN EXPERIENCE ON INVALIDITY OF CORRUPT DEAL

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ABSTRACT

There is no distinction between legal capacity and legal capacity. Instead, the single concept of legal entity (legal capacity) applies. True, in practice there is passive and active ability to deal. In other words, it is interpreted as the ability to independently perform legal actions. Legal subjectivity is considered formally equal and, according to the general rule, begins with the birth of a person and ends with his death. In the Anglo-American legal system, finding a person missing and declaring him dead do not exist as independent legal institutions.

KEYWORDS

Distinction, legal capacity, legal entity, ability, independent, formally equal, Anglo-American legal system, independent legal institutions.

INTRODUCTION

The non-validity of transactions is based on the fact that the requirements established by law have been violated. It is known that the invalidity of agreements and contracts is defined differently in different legal systems. In the continental legal system, the invalidity of transactions is based on the grounds provided for in the legislation, and if the invalidity is not provided for in the legislation, such transactions are considered valid even though they are not provided for in the legislation. However, in the Anglo-American legal system, judicial precedent applies to the invalidity of contracts and their legal consequences, and even today, the judicial practice of two or three hundred years ago is used concerning the invalidity of certain types of contracts. Therefore, we will reveal the legal consequences of the non-validity of transactions in foreign countries by analyzing the legislation and

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practice of the countries belonging to these two legal systems.

The continental legal system is mainly based on the laws of two countries, France and Germany. The French Napoleonic Civil Code of 1804 provided for the grounds of invalidity of contracts.

It should be noted that the French Civil Code adopted in 1804 plays an important role in the codification of the civil law of the countries of the world, and it is called institutional (adopted from the institutions of the ordinary textbook on Roman law, which is part of Justinian's codification).

In French civil law, there are no special rules on agreements and their invalidity. Since French civil law is based on an institutional system, the rules related to transactions are covered within each institution. However, in Chapter II of Title III of the French FC "On Contracts or Contracts of Obligations" entitled "Conditions Important for Ensuring the Legality of the Agreement", Part I, called "On Agreements", provides for the agreement in concluding a contract and its validity. In particular, according to article 1109 of the French FC, if consent to an agreement was obtained by mistake or by force or deception, it is considered that there was no such agreement in practice. According to Article 1110, if the mistake relates to the essence of the subject matter of the agreement, it leads to the cancellation of the agreement.

The coercion committed against the obligee leads to the invalidity of the contract, although such coercion is used by a third party in favor of the person entering into the contract (Article 1111).

Violence is an act whose purpose is to affect a reasonable person in such a way that, as a result, the person is put in fear and causes significant and real damage to his life and health. In this case, the person's age, gender and status are taken into account (Article 1112).

Coercion leads to the invalidity of the contract not only when the contract is committed against one of the parties, but also when it is committed against the husband or wife of the contracting parties, their relatives, the contract is considered invalid (Article 1113).

Fraud can cause the agreement to be invalid if it is clear from the actions of one of the parties that he does not intend to enter into the contract. Fraud, as a rule, is not provided and does not require proof.

In French law, special attention is paid to the will and its form as a type of unilateral agreement, and the grounds for invalidating the will. In testamentary succession, the inheritance goes to the persons named in the will. A will can be drawn up in different forms - a written will be written by the testator's hand, a will solemnly announced in the presence (with the participation) of a state official (notary), to be kept in the presence of witnesses, a certain order of heirs is determined in succession according to the law (discharges, protocols).), which means that when there is a line of heirs who are closer to the bequeather, the remaining heirs are not called to the inheritance.

In France, the law (article 968 FC) directly prohibits both joint and mutual wills.

The legislation provides for the following basic forms of a will.

A will in the form of a public document - a will is drawn up in the presence of an official (usually a notary) according to the procedure established by law (in France, a will is drawn up in the presence of two notaries or two witnesses). The main priority of this form is that the validity of the will is guaranteed and

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the content of the will is made in full compliance with the will of the testator. Preservation of the will is ensured by formal delivery to a notary or other official, as provided by law.

A confidential will is drawn up and signed by the testator and submitted to a notary public in the presence of witnesses, usually in a sealed folder. This form preserves the confidentiality of the will and it is directly stated in French and German legislation (Articles 969 and 1007 of the FC) (GFT paragraph 2232).

Article 3 of the French FC uses the term "capacity" to mean capacity and legal capacity. At the same time, this term also means the ability to enter into a transaction. Article 488 of the Civil Code reflects the norm that an adult citizen is capable of all acts of civil life. In judicial practice and legal literature, capacity for dealing (capacity d.exercice) and legal capacity (capacity de puissance) are distinguished from each other.

Mandatory requirements for the registration of business entities are defined in the laws. They are usually recorded in commercial registers maintained by courts or administrative authorities. For example, in France, such registers are maintained by commercial courts.

Issues related to the invalidity of contracts are defined in the FFK mainly in connection with the invalidity of marriage. In this case, if the form of the transaction and the ability to enter into the transaction are not observed, the rules of invalidity of such transactions are established. Also, it is stipulated that the agreements made deliberately contrary to the requirements of legal acts and rules of law and ethics are invalid, and the things received or may be received by the parties under such agreements shall be collected for the benefit of the state.

The legal system of the Federal Republic of Germany (FRG) is a member of the Romano-Germanic legal family and serves as a foundation for its creation. The content of civil legislation of the GFR is determined by the peculiarities of the socio-economic model of this country. Basic economic relations (first of all, property relations) are strengthened at the Constitutional level. Article 20, Part 1 of the Federal Republic of Germany adopted on May 23, 1949 and amended on May 20, 1997 states that "The Federal Republic of Germany is a social and democratic republic." According to Article 14, Part 1 of the Constitution, "Property rights and inheritance rights are guaranteed. The content and procedure of their use shall be determined by the law", in part 2, "Property rights shall be borne by the owner. In the use of property, common interests should be taken into account, and in part 3 of the article, it is confirmed that "Compulsory alienation of property from an individual is allowed only to satisfy public interests." GFR exists today in the form of a final social model that needs to be confirmed as a result of long historical reforms. Consequently, the FRG has already made a significant contribution to the foundation of continental law in addition to having its stable civil law a century ago. The main source of German civil law is the German Civil Code (Code), which was adopted on August 18, 1896 and entered into force on January 1, 1900. In this code (law), the major sections of the civil law are compiled in the form of a book and it consists of 5 books, i.e. the general part, the law of obligations, the law of property, the law of family, and the law of inheritance. Along with the French civil code, German civil law had a great influence on the formation of continental civil law.

In addition to the German Civil Code (Tuzuki), "On Joint Stock Companies" adopted on September 6, 1965, "On Bills of Exchange and Checks" of 1933, "On Basic Terms of Contracts" of December 9, 1978, "On April 14, 1974" "On personal and property insurance" and other legal

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documents also serve as a source of civil law. At the moment, in the German civil legal system, which determines the civil-legal status of a person in society, the fact that his legal capacity is established at the age of 21 is also characteristic. But at the same time, according to Article 476 of the GFT, marriage of a person under the age of 21 or emancipation of a person according to Article 478 of the GFT allows him to have full legal capacity.

The third section of the first book of the GFT is called "transactions" and it sets out a number of rules dealing with transactions that are not valid per se. First of all, it stipulates the norms regarding legal capacity, and states that citizens who do not have legal capacity do not have legal capacity, and the agreement concluded by them is invalid. In particular, according to Article 105 of the GFT, the expression of the free will of an incapacitated person is invalid by itself.

As one of the grounds for finding the transaction invalid, Article 125 of the GFT stipulates non-compliance with the form of the transaction required by law. Failure to comply with the form specified in the contract itself will result in its invalidity in the event of a dispute in this regard.

Agreements concluded without compliance with the requirements of the law are grounds for finding the agreement invalid. According to Article 134 of the GFT, an agreement that violates the prohibition established by law is invalid by itself, unless otherwise established by law.

According to Article 138 of the GFT, an unethical transaction is void per se.

In particular, a transaction made by a person using another person's shameless state, inexperience, lightness or lack of will to promise him a service or for the property benefit of himself or a third party is invalid by itself.

According to Article 141 of the GFT, if the person who entered into an invalid transaction confirms it, this situation is considered a new transaction.

If the parties approve an invalid contract, then they must give each other what they would have received if the contract had been considered valid since the conclusion of the contract.

It should be noted that in the countries that are part of the continental legal system, there is a difference between the fact that the agreements are considered invalid and not concluded (non-existent). Of course, such a distinction was not understood in Roman law and medieval law. Until then, the documents on the invalidity of the transaction itself contained instructions that were considered not concluded. The separation of the status of "inauthentic - considered unconstitutional" was caused by the practical need that arose in the field of legal regulation of marriage in France in the 19th century. At that time, the principle of "pas de nullites sans texte" ("there is no nullity without a text", that is, the absence of this rule if the law does not explicitly state this) was in force in France. The strict application of this principle may lead to very illogical consequences in some cases, for example, marriages between humans and animals were allowed, since there was no specific prohibition on this in the law. In order to eliminate this situation, the rule of unstructured marriage was created in doctrine and practice, and it began to be applied to all types of contracts at a constant pace. Therefore, "unstructured" became a form of disorder and was equated with the consequences of inauthenticity in itself. Today, the concept of non-constitutionality and non-individual invalidity goes beyond the French doctrine and is used in the laws of Germany and Italy.

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In these countries, it is considered that a contract that is not valid per se is not concluded and the same consequences are applied to them.

The approach to further clarification of the distinction between invalid and conflicting contracts is almost identical in French and Italian law (in Italy, the Napoleonic Code was sometimes directly applicable, and the Italian codice civile adopted in 1865 was practically a copied copy of the Napoleonic Code, later in Italy the Italian Civil Code was adopted in 1942). In this country, the rules of invalidity of the contract show that the rules set out in French and German law are expressed in a mixed situation.

The provisions of Chapters X-XIII of the Italian Civil Code are directly devoted to the invalidity of contracts, in which contracts concluded by a person incapable of dealing, contracts concluded contrary to the rules of law and ethics, contracts concluded for negligence and many similar contracts concluded contrary to the requirements of the law are valid. it is implied that it is not.

Although the general range of sources in the English legal system is the same - statutes, case law, customs, their proportions vary.

Although more laws are passed in later times, they do not play the same role in the legal system as in the continental legal system. In England, there are no codified civil law documents - codes. Laws were adopted regarding separate institutions of civil law - legal entities, property rights, trade, etc., but they were not systematized. There are only documents that are systematized to one degree or another, but still they only concern some institutions of civil law.

Even today, English law continues to develop under the decisive influence of case law. If in continental law, the creation of regional and strict systematic norms is considered to be not very suitable for the practice needs of the lawyer, while the lawyer of the English system is ready to follow every path of the practice. Doctrine develops casuistically by generalizing individual precedents.

In English law, the rules about persons are divided into rules for natural and legal persons. Regulation of the legal subject of individuals is not very clear in positive law. The main attention is focused on the content of the components of the subject of law, which are needed in practice.

There is no distinction between legal capacity and legal capacity. Instead, the single concept of legal entity (legal capacity) applies. True, in practice there is passive and active ability to deal. In other words, it is interpreted as the ability to independently perform legal actions. Legal subjectivity is considered formally equal and, according to the general rule, begins with the birth of a person and ends with his death. In the Anglo-American legal system, finding a person missing and declaring him dead do not exist as independent legal institutions.

When it comes to legal entities, it is worth noting that their essence has not been developed enough. Instead of the universal category of legal entities, there are two main types of legal entities, partnerships (partnerships) and companies (in the UK) or corporations (in the US, public corporations in the UK). There are several types of companies, they mainly differ from each other in terms of company obligations, debts, and liability of partners (participants). Limited partnerships are not legal entities. One of the types of companies is a limited partnership company, which is a legal entity.

Property (property and ownership). This is one of the most basic, important concepts of English law.

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Material law does not exist as a system of norms aimed at regulating the relations of persons to objects. "Property" is replaced by "property". The rights of the owner in relation to his property and the property of others are also included in the property right. According to the continental legal system, immovable property is also not considered a right to its object, because the state is the supreme owner of the land. In this sense, not every owner of land is an owner.

The division of property rights is allowed not only horizontally - in space, but also vertically - in time. For example, one owner has the right to receive income from the rental of a plot of land, while another has the right to receive income from its use. Some property can be given to one owner for life, it can be given to another owner only after his death, in both cases it is about the right of ownership that is divided between current and future owners. Therefore, the content of these different property rights is determined by the original will of the owner or the agreement of the owners.

Property is interpreted in a very broad sense. In addition to traditional rights, it also includes certain claim rights (for example, rights to pensions, allowances, alimony, etc.), absolute rights, especially if they can be alienated (intellectual property). Thinking in this place is related to the following logical conditions: if the right can be alienated, although it has its own characteristics, it is considered a thing, therefore, it can be an object of property.

In 1985, housing law reforms were carried out in England. The main piece of legislation is the Housing Act 1985 (HousingAct 2004).

In England, the law governing property rights defines the transfer of land and fixtures from one person to another, and this right is protected (ThelawofPropertyAct 1925, LandlordandtenantAct, 1985).

Under Section 1 of the English Companies Act, two or more persons can register a company for statutory purposes. The company is formed at the expense of the funds contributed by the founders in return for taking the share.

The above-mentioned features of the interpretation of property in the English legal system are clearly manifested in the trust. The essence of the trust property is that the founder of the trust - the original owner (stilor) transfers the property to the trustee, the trustee must transfer the property or income obtained as a result of the use of this property to the beneficiary (beneficiary). As a beneficiary, the trust institution can also be third parties (the public in the broad sense, the crowd). Both the trustee and beneficiary are owners, but their rights differ in scope. If the trustee manages (uses) the property entrusted to him, the beneficiary has the right to receive income and return the item. The scope of the rights of each owner may change depending on the conditions under which the trust was established (it may be established by law, contract or unilateral agreement). For example, the trustee may be given the right to distribute or not distribute a share of the proceeds to the beneficiary. At the same time, it is also possible to have such a trust property, within the framework of which this right can be terminated at any time and the object can be taken back. Therefore, such a "rubber" construction of the trust can be introduced and modified in various forms. For this reason, it is used in the most unexpected situations - in cases of unjust enrichment, between the company and its directors, principal and agent, succession and similar relations. However, his main appointment and task is to ensure effective management of the property of persons who do not want or are unable to manage their own property. In the same sense and for the same reasons,

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this construction is being adopted by other legal systems.

Any party interested in canceling the contract can apply to the court with a request to cancel the contract in the following situations:

- when the other party rejects the proposal to change or cancel the agreement;

- when a response is not received within the period specified in the offer;

- when the answer is not received within the period specified by the law or the contract.

Also, Article 116 of the FC contains a provision about a transaction that is not valid by itself. According to it, an agreement with content that does not comply with the requirements of legal documents, as well as an agreement made with a purpose against the principles of law, order or morality, is invalid by itself. It is important and appropriate to have such a general provision in the law. In order to consider the transaction as controversial, it depends on whether it is not concluded by the law and is recognized by the court based on the claim of the interested party. If an invalid agreement by itself is considered invalid from the moment of its conclusion, regardless of whether or not they file a lawsuit, the disputed agreement may be considered by the court based on the claim of the parties and declared invalid by the court's decision. The disputed agreement is considered valid until it is declared invalid by the court, and its continuation ceases to be valid in the future from the time when it is declared invalid by the court. Making an unreal deal is considered an illegal act and causes certain negative legal consequences.

If the request to declare the disputed transaction invalid can be made by the persons specified in this code, any interested person can request to apply the consequences of invalidity of the invalid transaction. The court may apply such consequences to its initiative.

In the current civil code, a three-year statute of limitations for the invalidity of transactions is established, and in the civil legislation of the Russian Federation, unlike disputed transactions, an extended statute of limitations is provided for self-invalid transactions, which is set at 10 years. Based on this case, it would be appropriate to introduce an extended period of action for the invalidity of contracts to the FC as well.

Also, the requirements for the annulment of the contract are different.

This difference can be seen in the fact that, first of all, when it is disputed that the agreement is invalid, it is illegal, and various circumstances require the cancellation of the agreement regardless of its legality.

Also, cancellation of the contract only results in the cancellation of future obligations and does not eliminate the rights and obligations that arose during the contract's validity.

If the statute of limitations for annulment of the contract is established, it is not limited by any time limit and can be filed at any time during the contract's validity.

To ensure the uniform application of legal requirements by the courts in the resolution of disputes related to transactions, on December 22, 2006, Plenum Decision No. 17 "On some issues arising in the application of legal norms regulating transactions in judicial practice" was adopted, in which the transactions are invalid, detailed guidance explanations were provided to the courts regarding

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the correct application of legal norms in resolving disputes related to the termination of the agreement.

REFERENCES

1. Положение о порядке проведения трансплантации почки и (или) доли печени, а также гемопоэтических стволовых клеток костного мозга, утвержденное Постановлением Кабинета Министров Республики Узбекистан от 21.06.2021 г. № 387
2. Проект закона "О трансплантации органов и тканей человека" Сайт Законодательной палаты Олий Мажлиса РУз https://parliament.gov.uz/ru/laws/discussed/35809/
3. Уголовный кодекс Республики Узбекистан / вступит. сл. М.Х. Рустамбаева, А. С. Якубова, З. Х. Гулямова. СПб., 2001. (с послед. изм. и доп.)
4. Закон о трансплантации органов и (или) тканей человека (в ред. Федеральных законов от 20.06.2000 N 91-ФЗ, … , от 23.05.2016 N 149-ФЗ, от 08.12.2020 N 429-ФЗ) https://normativ.kontur.ru/document?moduleId=1&documentId=98490
5. Блинов А. Г. Уголовно-правовая охрана пациента в международном и зарубежном законодательстве / под ред. Б. Г. Разгильдиева. М., 2010. С. 58 – 59.
6. Преступления против личности в уголовном праве Беларуси, России и Украины / П. А. Андрушко, А. А. Арямов, Н. А. Бабий [и др.]; отв. ред. А. И. Чучаев. М., 2014. С. 86.
7. Уголовный кодекс Республики Армения / науч. ред. Е. Р. Азаряна, Н. И. Мацнева; предисл. Е. Р. Азаряна; пер. с арм. Р. З. Авакяна. СПб., 2004.