

PROBLEMS OF IMPROVING CIVIL LAW GOVERNING RELATIONS IN THE FIELD OF INVALIDITY OF TRANSACTIONS

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The relevance of the article is that at present, a large number of transactions are concluded by participants in civil turnover. However, far from always due attention is paid to the conditions of validity of transactions. The reasons for this can be both the lack of proper legal literacy of the parties to the transaction, and various abuses of unscrupulous participants in civil turnover. As a result, the concluded transaction can be declared invalid with all the consequences provided for in this case by the legislation.

According to court statistics, the number of cases that consider claims for invalidating transactions is steadily growing. When resolving these disputes, courts often encounter gaps in the field of legal regulation of invalidity of transactions. An important problem is the protection of the interests of bona fide participants in civil turnover, whose rights may be violated as a result of the recognition of the transaction invalid. Therefore, such legal regulation in the field of disability is necessary.

Recognition of transactions as invalid violates the stability of civil turnover. However, if the conditions for the validity of transactions are not met, then these transactions will not contribute to the development of civil law relations. Accordingly, the institution of invalidity of transactions is necessary in civil law, and the clarity of the statement of the provisions of this institution, as well as the uniform practice of applying legal norms, is becoming important. Accordingly, a number of guidance is required from the highest judicial authorities on the invalidity of transactions.

The current legislation does not contain answers to many questions that arise in practice when recognizing transactions as invalid, therefore there is a need for scientific research that will improve the legal regulation in the field of invalidity of transactions.

Particular attention is paid to the definition of the concept of an invalid transaction and the establishment of the reasons for invalidity, the study of the relationship between the concepts of an invalid transaction, legal fact and transaction, the division of invalid transactions into void and voidable, the problems of establishing the invalidity of a transaction, the individual compositions of invalid transactions are investigated, the legal consequences of transaction invalidity are analyzed, law enforcement practice in this area, proposals are made to improve the law bodies.

Despite the large number of works, a number of controversial issues of the institution of invalidity of transactions have not yet received due consideration. Also, most research in this area was carried out on the basis of previously existing legislation. Therefore, there is a need for further work on the development of transaction invalidity problems.

In accordance with the goal, the following research objectives are determined: to investigate the relationship between the concepts of an invalid transaction, legal fact and transaction; analyze the feasibility of securing in the Civil Code of the Republic of Kazakhstan the division of invalid transactions into void and disputable; consider the main problems of legal regulation of invalidity of transactions and develop proposals for improving legislation in this area;

- analyze the legal regulation of the invalidity of transactions that do not comply with the law or other legal acts and are committed with a purpose contrary to the foundations of law and order or morality; consider the main problems of legal regulation of the invalidity of transactions with defects of will; explore law enforcement practices in the field of transaction invalidity;

- analyze the legal consequences of the invalidity of transactions;

- formulate proposals for improving legislation.

The object of the dissertation research is public relations arising from the recognition of a transaction invalid.

The subject of the study is the norms of civil law in their historical development, regulating the invalidity of transactions, as well as an analysis of the existing practice of applying these standards and the prospects for improving the institution of invalidity of transactions.

The empirical base of the study was the materials of the judicial practice of courts of general jurisdiction and arbitration courts of the Republic of Kazakhstan on cases of invalidity of transactions; statistics of the judiciary, facts reflected in the scientific literature and periodicals.

The legal and regulatory framework of the study was made up of the current and expired regulatory acts of the Republic of Kazakhstan, as well as foreign legislation regulating the invalidity of transactions.

Since the beginning of the XXI century, in the Concept of Legal Policy of the Republic of Kazakhstan, one of the areas of legislative activity in the field of private law is the improvement of the institution of recognition of transactions as invalid [1].

The corresponding need is dictated, it seems, first of all, by the needs of Kazakhstan's law enforcement (mainly judicial and arbitration) practice. However, one should not underestimate the definite influence on Kazakhstan's rulemaking of foreign experience, primarily the Russian Federation, and the processes of globalization, which, according to the fair remark of Professor A.G. Didenko, “lead to the rapprochement of various state and national systems, which necessitates the unification of legal facts in order to resolve conflicts of principle in the same way” [2]

As you know, the distinction between void and contested transactions has been carried out for several centuries and is, one might say, classic. The categories of void and contested transactions were used in both Roman law and European law. So, for example, the rules on the nullity and viability of transactions are contained in the French Civil Code of 1804 (Napoleon's Code), the German Civil Code of 1896, and others [3].

In the textbook of Russian civil law, Professor V.I. Sinai also distinguishes between two main types of invalidity of transactions: nullity and contestability. As a criterion for their delineation, a private or public interest that is violated by an invalid transaction is indicated: “a. The nullity of a legal transaction is such its invalidity that takes place in relation to all persons and, as such, is not subject to subsequent correction as a general rule. b. The challenge, as opposed to nullity, is the invalidity of the transaction only in relation to certain persons, and it is the participants in the transaction or creditors in the tender.”[4].

In Soviet law, classification of invalid transactions was carried out not through the definition of void and disputable transactions, but by establishing in the law the specifics regarding the grounds, procedure and consequences of invalidating disputable or void transactions. And although in the Civil Code of the Kazakh SSR in 1963 there was no direct consolidation of void and disputable transactions, such a classification was generally recognized [5].

At present, insignificant and contested transactions are provided for in the laws of many states of near and far abroad: Russia, Belarus, Ukraine, Germany, France, Moldova, Azerbaijan, Armenia, Georgia, Uzbekistan and others.

According to Professor Yu.G. Basina, “The main distinction between void and disputed transactions ... is that the disputed transaction is invalidated by a court decision, and no judicial decision is required to invalidate a void transaction. But this feature is not reliable enough. If participants in a void transaction (or at least one of them) do not agree with its assessment of invalidity, no matter whom it comes from, then a court decision on this issue cannot be dispensed with.”[6].

Such a separation should be made depending on whose will is violated in the transaction: if the will of the state is violated, then an indefinite circle of people can prove the invalidity of the transaction. If the will of a particular person is violated, then only that person can, as a rule, prove the invalidity of the transaction. Corresponding changes would be useful to make to the Civil Code of the Republic of Kazakhstan.

In the scientific literature, proposals have also been made to abandon the constructions of void and disputable transactions in view of the terminological inaccuracy of the relevant categories: “the opposition of disputable and void transactions does not fit with the fact that the disputed transaction becomes void as a result of the contest. Therefore, it is more preferable to divide invalid transactions into absolutely invalid and relatively invalid”.

Along with critical views on the distinction between void and contested transactions, the doctrine also presents a significant number of opinions of proponents of such a classification. So, for example, Professor A.G. Didenko believes that “The division of invalid transactions into void and disputable is important for both theoretical and practical reasons. Take the extreme case as an example: a deal has been concluded to organize a contract crime. The assertion that such a transaction is valid until it is declared invalid by the court does not meet the humanistic purposes of law. The same can be said of an apparently lawless or immoral transaction. From a practical point of view, it is important that certain strictly defined transactions are not subjected to a special judicial procedure for invalidating them. This will simplify the procedure for the suppression of obvious offenses. So, if the court considering the case of violation of the obligation finds that the transaction on the basis of which the violated obligation has arisen is void, but in relation to this transaction the court never raised the issue of the fact of its invalidity, the court should not apply sanctions to the violator of the obligation.”[7].

Returning to the question of the normative securing of void and contested transactions, we note that in the post-Soviet space the corresponding division was first enshrined in the Model Civil Code for the member states of the Commonwealth of Independent States, adopted by the Resolution of the Interparliamentary Assembly of the Member States of the Commonwealth of Independent States (St. Petersburg October 29, 1994) [8]. And, despite the fact that the Model Civil Code is only a recommendatory act, the normative consolidation of void and contested transactions was reproduced by the legislators of the Russian Federation (Article 166 of the Civil Code of the Russian Federation), Republic of Belarus (Article 167 of the Civil Code of the Republic of Belarus), Azerbaijan Republic (Article 337 of the Civil Code AR), Armenia (Article 303 of the Civil Code of Armenia), Georgia (Article 61 of the Civil Code of Georgia), Ukraine (clauses 2, 3 of Article 215 of the Civil Code of Ukraine) and others.

Kazakhstan legislator has chosen a different approach. As one of the developers of the draft Kazakhstan Civil Code, Professor Yu.G. Basin, “the Civil Code of the Republic of Kazakhstan, unlike the norms of the Model Civil Code and the Civil Code of the Russian Federation, does not divide invalid transactions into void and disputable, since this division is of practical importance only to determine who has the right to demand recognition of the transaction as invalid - the party to the transaction, another interested individual, or authorized state body. And this is specifically mentioned in the articles defining the specific grounds for invalidity”[9].

After a number of years after the adoption of the general part of the Civil Code of the Republic of Kazakhstan, when a certain judicial practice was formed in cases related to invalidity of

transactions, another developer of the code was Professor M.K. Suleimenov criticized the inherent in Art. 157 of the Civil Code of the Republic of Kazakhstan approach on the possibility of recognizing the invalidity of a transaction only on the basis of a court decision: “Unfortunately, in Kazakhstan there is no division of transactions into void and disputable. We now acknowledge that we made a mistake in preparing the draft Civil Code. In practice, many problems arise. In particular, any transaction, even manifestly illegal, even knowingly contrary to the foundations of law and order or morality, may be declared invalid only by a court decision. Consequently, with the passage of the limitation period, even such a transaction can no longer be invalidated. It is urgent to introduce the concepts of void and contested transactions into the Civil Code of the Republic of Kazakhstan ”[10].

Meanwhile, the debate on the feasibility of normative fixing of void transactions is only one of the relevant aspects of this topic in the Republic of Kazakhstan. Another no less practically significant problem is that according to the current version of the Civil Code of the Republic of Kazakhstan, in fact, there is serious uncertainty regarding the need for a judicial procedure to declare a transaction invalid. So, in a number of legislative norms, the grounds for the invalidity of transactions are provided, but they do not explicitly state that the procedure for invalidating a transaction is exclusively judicial. On the contrary, the relevant norms are formulated in such a way that the invalidity of the transaction follows from the very provision of the law and does not require judicial recognition of invalidity. For example, you should pay attention to p.p. 1,2,3,5 Art. 159 of the Civil Code, Clause 1, Article 158 of the Civil Code of the Republic of Kazakhstan, which, unlike other similar standards, imperatively establish: "invalid transaction ...". Thus, the Civil Code, in fact, establishes the insignificant nature of such transactions. In other cases, the legislator uses the wording corresponding to the nature of the disputed transactions: “a transaction may be invalidated ...” (for example, paragraph 1 of article 157, paragraphs 4, 6,7, 8, 9 10, 11 of article 159 of the Civil Code RK).

Kazakhstan legislation already provides for both void and contested transactions. However, the absence of a general norm governing the relevant division, as well as the consequences of void transactions creates unreasonable uncertainty regarding invalid transactions, which, according to the current version of legislative acts, are settled using the wording “invalid transaction ...”, “The transaction is declared invalid ...”, “the transaction is invalid ...”, etc. : clause 1 of article 158, p.p. 1-3 tbsp. 159, Article 168, 315, 319, 414, 428, 429, 506, 508, 510, 526, 530, 641, 701, 764, 765, 807, 809 of the Civil Code of the Republic of Kazakhstan, Art. 74 of the Law of the Republic of Kazakhstan "On Joint Stock Companies", Art. 82 of the Law of the Republic of Kazakhstan "On Inland Water Transport", Art. 43 of the Code of the Republic of Kazakhstan "On marriage (matrimony) and family", Art. 36 of the Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use", Art. 11-2 of the Law of the Republic of Kazakhstan “On Grain”, etc.

According to the cited edition, any inconsistency of the transaction with the peremptory norm of an act of any level of the hierarchy is sufficient for such a transaction to be automatically considered invalid outside the procedure for declaring it invalid by the court. This opens up excessively broad grounds for possible judicial arbitrariness when the courts can ignore the consequences of transactions without judicially declaring them invalid on the basis of relevant claims for recognition of invalidity.

In order to correct the stated state of affairs in relation to the narrow problem considered above, it is proposed, firstly, to introduce a direct legislative division of non-viable transactions into void and disputable and, secondly, the content of the transaction does not comply with the mandatory legislation (clause 1 of article 158 of the Civil Code of the Republic of Kazakhstan) Provide as a basis for contestability of the transaction.

According to the approach established in the theory of civil law, a contested transaction can be declared invalid only on the basis of a court decision. Those. the disputed transaction will not be deemed invalid until the court decision on the recognition of such a transaction is invalid. A void transaction is invalid regardless of the judicial recognition of it as invalid. Those. an insignificant

transaction from the moment of its conclusion does not generate and cannot produce the consequences desired for its participants.

Thus, if the transaction is void, the judicial protection of the violated rights should consist in the direct application by the court of the consequences of its invalidity without prior judicial recognition of it as invalid.

Given the absence in the legislation of the Republic of Kazakhstan of direct legal support for dividing transactions into invalid and disputed, it is necessary to establish the presumption of disputed transactions along with legislative consolidation of invalid and disputed transactions. Any transaction will be considered controversial unless the legislator expressly provides for the invalidity of the transaction.

1) by law, establish the separation of invalid transactions, which actually exists in Kazakhstan and needs a legislative definition of the legal regime of invalid transactions;

2) the addition of a special article in the Civil Code of the Republic of Kazakhstan, which states that the nullity of the transaction established by the legislative acts of the Republic of Kazakhstan does not prevent the person concerned from requiring the court to declare it invalid.

The adoption of the foregoing will improve the judicial and arbitration practice in cases involving invalidity of transactions, as well as increase the level of preparation of transactions correctly and protect participants in contractual relations.

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