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Forensic psychological analysis in cases of invalidating a transaction concluded by a legal person

Theoretical, methodological and practical aspects in cases of invalidating a transaction concluded by a legal person are outlined.

Peculiarities of forensic psychological analysis in cases of invalidating a transaction concluded by a legal entity are studied. Referring to forensic expert practice, the object, subject, tasks of this subject type of forensic psychological analysis are determined. Issues which are solved by forensic psychological analysis in cases on invaliding transaction are indicated. Boundaries of a forensic psychologist competence are outlined. Recommendations are provided as to the reference list of source data required for conducting forensic psychological analysis. Based on forensic expert practice, an algorithm for analyzing source data when conducting a forensic psychological analysis in cases of invalidating a transaction concluded by a legal entity is outlined. The main components that should be identified when conducting a forensic examination of this subject type of forensic psychological analysis are indicated.

The experience of scientists and practitioners demonstrates that a problem of will is inseparable from problems of personality, consciousness, self-awareness, motives, needs, emotions, cognitive activity of a person. Considering that intellectual, volitional and emotional processes, states and personality traits act in interconnection, this type of research (as one of the complex subject types of forensic psychological analysis) requires further theoretical analysis of the objective and subjective factors of a person wrong actions (entity of civil law relations) in legally significant circumstances to solve methodological and practical tasks of expertology.

Keywords: *examiner; will, case of invalidating transaction, psychological research, forensic psychological analysis.*

Formulation of Research Problem. The analysis of forensic expert practice demonstrates that one of the most difficult subject types of forensic psychological analysis is psychological analysis in cases of invalidating agreements concluded by a legally capable person. Such examination is performed in accordance with Articles 225, 229, 230, 231, 233 of the Civil Code of Ukraine¹. However, as of today, there is no scientifically sound and proven methodology for conducting such subject type of forensic psychological analysis, as well as there is no unified methodological approach to solve expert tasks in this area in the Register of methods of forensic examinations², the procedure for maintenance of which was approved by the order of the Ministry of Justice of Ukraine No. 1666/5 (as amended and supplemented)³ dated on 02.10.2008. The relevance of this research is due to insufficient development of criteria for conducting forensic psychological research in civil cases on invalidation of agreements concluded by a legally capable person.

Analysis of Essential Researches and Publications. Attempts to study the content of intellectual and volitional components of the legal criterion of inability have been made by such authors as N. V. Alikin, O. V. Hutnykov, S. M. Kornieiev, D. O. Malkin, O. N. Sadykov, T. V. Sakhnova, F. S. Safuanov, T. M. Sekerazh⁴.

¹ Цивільний кодекс України : Закон України від 16.01.2003 р. № 435-IV (as amended and supplemented.). URL: <https://zakon.rada.gov.ua/laws/show/435-15> (date accessed: 13.03.2021).

² Реєстр методик проведення судових експертиз // Офіційний сайт Міністерства юстиції України. URL: <https://rmpse.minjust.gov.ua> (date accessed: 13.03.2021).

³ Порядок ведення Реєстру методик проведення судових експертиз : затв. наказом Мін'юсту України від 02.10.2008 р. № 1666/5 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/z0924-08> (date accessed: 13.03.2021).

⁴ Е. г., Алікіна Н. В. Аналіз помилкових дій особистості у судово-психологічній експертизі (консультативний приклад). *Криміналістика і судова експертиза* : міжвідом. наук.-метод. зб. Київ, 2013. Вип. 58 (1). Р. 415—424 ; Гутников О. В. Недействительные сделки в гражданском праве. *Теория и практика оспаривания*. Москва, 2003. 576 р. ; Белов В. А., Белевич А. В., Витрянский В. В., Дюжева О. А., Ем В. С., Зенин И. А., Козлова Н. В., Копылов А. В. и др. Практикум по гражданскому праву : учеб. пособ. Ч. 2 ; отв. ред. С. М. Корнеев. Москва, 2002. 432 р. ; Малкин Д. А. Экспертная оценка психического состояния лиц, совершивших сделки (в рамках комплексной судебной психолого-психиатрической экспертизы) : автореф. дис. ... канд. мед. наук. Москва, 2004. 28 р. ; Садиков О. Н. Недействительные и несостоявшиеся сделки. *Юридический мир*. 2000. № 6. Р. 8 ; Сахнова Т. В. Основы судебно-психологической экспертизы по гражданским делам : учеб. пособ. Москва, 1997. 136 р. ; Сафуанов Ф. С., Переправина Ю. О., Черненко А. Д. Нейропсихологическое исследование при судебно-психологической экспертной оценке делоспособности. *Психология и право*. 2018. Т. 8. № 4. Р. 115—127. DOI: 10.17759/psylaw.2018080411 (date accessed: 13.03.2021) ; Секераж Т. Н. Теоретические и методические основы диагностики «порока воли» в судебной психологической экспертизе : дис. ... канд. юрид. наук. Москва, 2004. 205 р.

Issues concerning certain aspects of personality volition have been studied by philosophers (Aristotle, H. Bergson, O. Henisaretskyi, R. Descartes, F. M. Dostoevsky, Platon, I. Kant, N.O. Lossky, F. Nietzsche, J. Ortega y Gasset, J. Fichte, F. Schelling, A. Schopenhauer and others ¹), psychologists (N. K. Arch, L.S. Vygotzky, L.I. Bozhovych, V.A. Ivannykov, Ye. P. Ilin, V. K. Kalin, V. I. Selivanov, B. M. Smynov, S.L. Rubinstein, M. H. Yaroshevskyi ²), psychiatrists (V. M. Bekhteriev, E. V. Korolova A. R. Mokhonko, L. O. Muhandseva, N. K. Kharytonova and others ³), lawyers (M. I. Brahinskyi, O. M. Erdelevskyi, I. V. Matvieiev, I. B. Novytskii, N. V. Rabynovych, H. I. Strelnykova, N. D. Shestakova and others). However, the *volition* concept in philosophy, psychology, law, medicine coincide only partially.

The **Article purpose** is to summarize theoretical, methodological and practical aspects associated with the performance of forensic psychological analysis in cases of invalidation of agreements concluded by a legally capable person.

¹ Е.г., Новая философская энциклопедия : в 4 т. ; науч.-ред. совет : В. С. Стёпин, А. А. Гусейнов, Г. Ю. Семигин, А. П. Огурцов. Москва, 2000. URL: <https://iphlib.ru/library/collection/newphilenc/document/HASH2828150c93bb42edd37028#> (date accessed: 13.03.2021); Достоевский Ф. М. Собрание сочинений : в 15 т. ; редкол. : М. Г. Фридляндер и др. Ленинград, 1990 ; Лосский Н. О. Основные учения психологии с точки зрения волюнтаризма. *Вопросы философии и психологии*. Москва, 1991. Кн. 64 (IV). Р. 779—823 ; Кн. 65 (V). Р. 905—950 ; Ортега-и-Гассет Х. Избранные труды ; сост., ред. А. М. Руткевич. Москва, 1997. 704 p.

² Е.г., Ach N. Analyse des Willens ; E. Abderhalder (ed.). *Handbuch der biologischen Arbeitsmethoden*. Berlin, 1935. Teil E. Abt. VI ; Выготский Л. С. Мышление и речь : собр. соч. в 6 т. Москва, 1982 ; Божович Л. И., Славина Л. С., Ендовицкая Т. В. Опыт экспериментального изучения произвольного поведения. *Вопросы психологии*. 1976. № 4. Р. 55—68 ; Иванников В. А. К сущности волевого поведения. *Психологический журнал*. 1985. Т. 6. № 3. Р. 47—55 ; Ильин Е. П. Психология воли. 2-е изд., перераб. и доп. Санкт-Петербург, 2009. 368 p. ; Калинин В. К. Волевая регуляция деятельности : автореф. дис. ... д-ра психол. наук. Тбилиси, 1989. 36 p. ; Селиванов В. И. Волевая регуляция активности личности. *Психологический журнал*. 1982. Т. 3. № 4. Р. 14—25 ; Смирнов Б. Н. О разных подходах к проблеме воли в психологии. *Вопросы психологии*. 2004. № 3. Р. 64—70 ; Рубинштейн С. Л. Основы общей психологии. Санкт-Петербург, 2002. 2-е изд. 720 p. ; Ярошевский Г. М. История психологии от античности до середины XX в. : учеб. пособ. Москва, 1996. 416 p.

³ Е.г., Бехтерев В. М. Объективная психология : в 3 т. Санкт-Петербург, 1907—1910 ; Королёва Е. В. Судебно-психиатрическая оценка психических расстройств у лиц, совершивших сделки : автореф. дис. ... д-ра мед. наук. Москва, 2010. 42 p. ; Мохонько А. Р., Муганцева Л. А. Судебно-психиатрическая экспертиза в гражданском процессе : тез. науч.-практ. конф. Санкт-Петербург, 2013. Р. 13 ; Харитонов Н. К., Сафуанов Ф. С., Малкин Д. А. Экспертная оценка делкоспособности по гражданским делам в рамках комплексной судебной психолого-психиатрической экспертизы : пособ. для врачей. Москва, 2005. Р. 5.

Main Content Presentation. Based on the definition of agreement as a legal fact of voluntary and legitimate action of a natural or legal person aimed at emergence, change or termination of civil rights or obligations ¹, psychological research on invalidation of agreements concluded by a legally capable person is intended for determining peculiarities of a person's psychology (subject of civil law relations) in a juridically relevant situation. Volitional processes, states and personality traits are subject to psychological analysis. Volition is one of the most difficult concepts in psychology. Volition is viewed as an independent mental process, as an aspect of other vital mental phenomena, as a unique ability of a person to consciously regulate their activities and behavior.

In Max Vasmer's Etymological dictionary it is mentioned that in different languages the volition word derives from such words as *command* (Russian), *prevail* (Russian), *want* (Russian), as well as with the meaning: *desire, choice* (Rus.), *will, selection* (Rus.), *better* (Rus.), *power, authority* (Rus.) ². The theoretical concept of volition is rooted in philosophy, where volition (Lat. *voluntas*) is interpreted as the ability of mind to self-determination, in particular moral, as well as creation of a specific causality. Volition issues began to develop within the problem of free will and initially had no clear ontological connotations, limited to the areas of ethics, epistemology and psychology³. Platon firstly viewed *will* as a special subject of reflection and understood it as a synthesis of rational evaluation and desire (and the latter is distinguished as the ability of soul). Aristotle considered volition as a specific causality, different from the "pure" intellectual sphere and from "pure" affects, and also provided terms for classical traditional concepts (will, choice, decision, arbitrary, goal, etc.). In Descartes' system, the concept of volition is somewhat broader than the concept of intelligence, but, in fact, volition is a modus of thinking. According to Kant, volition is the ability to determine the action based on the idea of laws. According to the philosophy of J.G. Fichte, will is an ability equal to intelligence, at the same time the act of will has a logical priority in the process of self-determination of the rational *I*. In view of V. A. Schopenhauer, the volition acquires an ontocosmic status and acts as an irrational force: volition to live, which is devoid of a subjective source and is objectification of the world will (universal metaphysical model). According to F. Nietzsche, Schopenhauer's "will to live" turns to an ontological "will to power" ⁴. Thus, in the metaphor of will, philosophers singled out primarily the

¹ Велика Українська енциклопедія. Тематичний реєстр гасел з напряму «Юридичні науки»; укладачі: В. Л. Бабка, М. М. Шумило; за ред. д. і. н., проф. А. М. Киридон. Київ, 2017. 152 р.

² Фасмер М. Этимологический словарь русского языка : в 4 т. : пер. с нем. 2-е изд., стереотип. Москва, 1986. Т. 1. С. 347—348.

³ Новая философская энциклопедия ... URL: <https://iphlib.ru/library/collection/newphilenc/document/HASH2828150c93bb42edd37028#> (date accessed: 13.03.2021).

⁴ Ibidem.

intellectual-imperative aspect, a component of firm rational intention, action of thought, aiming to fulfill a goal.

Having moved from philosophy to psychology, the definition of will has lost its moral aspect and is viewed as a conscious self-regulation of human activities and behavior, which ensures overcoming of internal and external obstacles while purposeful actions and deeds¹.

As S. L. Rubinstein emphasizes, due to the presence of will, a person overcomes the limits of impulsive, instinctive actions and finds freedom in relation to them, gaining the opportunity to change it. In contrast to the impulsive action, which seems to tear through a person and break out of him, the act of will comes from a person and is directed by him². Thus, the will helps a person to break free from external circumstances and, contrary to impulsive impulses and emotions, to control his behavior, to direct it to achieve a consciously set goal.

V. M. Bekhteriev considered consciousness in unity with the will. The founder of reflexology noted that awareness is directly linked to the will, that awareness is realized “in and through” the act of will³.

In research papers by L. I. Kazmirenko, O. I. Kudermina, O. Ye. Moisieieva, it is stressed that volitional activity necessarily unfolds as a series of acts and actions that provide for realization by a person of one's efforts and the nature of mental processes: evaluation of a situation; choice of direction for future actions; selection of means needed for goal fulfillment, decision-making, etc. Will (as a mental process) is inextricably linked to cognitive and emotional activities of a man. It is known, volitional regulation of behavior always starts with an intellectual act: awareness of a challenging situation. Analysis of a challenging situation requires intensification of volitional processes. Without thinking participation, the volitional process would not be conscious and would lose the actual volitional nature. Nevertheless, will and thinking are not identical concepts, as will is not just the outer shell of thinking. In contrast to thinking, the will does not make up a stand-alone product, it only helps to perform an action and implement a chosen strategy of behavior. Thus, in the concept of *will*, the holistic nature of an individual psyche can be observed: the problem of will relates to and is inseparable from personality problems, consciousness, self-awareness, needs, motivational and emotional spheres, cognitive activity of a person⁴.

Ye. P. Ilin singles out four functions of the will: control over states and the organization of mental processes, regulation of various parameters of actions,

¹ Краткий психологический словарь ; сост. : Л. А. Карпенко ; под общ. ред. А. В. Петровского, М. Г. Ярошевского. Москва, 1985. Р. 48.

² Рубинштейн С. Л. *Op. cit.*

³ Бехтерев В. М. *Объективная психология*. Москва, 1991. 476 р.

⁴ Казміренко Л. І., Кудерміна О. І., Мойсєєва О. Є. *Психологія : підручник ; за заг. ред. Л. І. Казміренко*. Київ, 2015. 213 р.

initiation and implementation of volitional actions, the choice of action due to conflict of motives and goals ¹.

N. K. Arch, L. S. Vyhotskyi, L. I. Bozhovych, V. I. Selivanov, researchers of the problem of will, emphasize that one of its functions is to consciously overcome obstacles. V. I. Selivanov notes, the criterion of conscious overcoming of difficulties is basic for all volitional acts of a man, in general he distinguishes volitional regulation from other properties of psyche and forms of control ².

According to V. A. Ivannykov, the real mechanism for changing or initiating volitional efforts is to change the meaning of action. The possibility of participation of personality semantic formations in control over activity has been also noted by L. S. Vyhotskyi, who observed a change in the behavior of children in the event of a change in the meaning of a situation itself. At the same time, the meaning of a situation conditioned for the child all the power of effective motivation associated with a situation: regardless of the fact that a situation was progressively losing attractive features that things and direct activities with them contained. D. M. Uznadze ³ expressed a similar point of view on the role of meaning in behavior. Having initiated the concept of physical and psychological behavior, this scientist considered psychological only such physical activity of a person which he experiences as a carrier of a certain meaning, significance, value. The motive of volitional behavior, according to D. M. Uznadze, consists in change of behavior value. It is the awareness of the superiority of a particular value, characteristic of a particular behavior, and altering of one of them is the motive for a personal decision ⁴. In research papers by L. I. Bozhovych, instructions that the volitional act involves an individual as a whole and the result depends on what meaning a conflict situation possesses for a person, what position an individual takes in relation to this situation. I. M. Siechenov believed that the meaning of actions is determined by higher human needs, being decisive for the choice of volitional action ⁵.

After analyzing the psychological literature, we can single out two main functions of the will: motivational and regulatory. The motivational function ensures human activity and is manifested in the system of a person's goals and behavior specific motives to achieve these goals. In contrast to reactive response, when an action is directly conditioned by a situation, the activity generates an action as a result of the specifics of a subject's internal states, which manifests itself at the time of an action. Activity is characterized by arbitrariness, that is determined by a consciously defined goal. If a person does not need to perform a certain action, but he is obliged to perform it, the volitional process forms ancillary motivation, changing the meaning of an action and increasing its

¹ Ильин Е. П. *Op. cit.*

² Селиванов В. И. *Op. cit.*

³ Узнadзе Д. Н. *Психология установки*. Санкт-Петербург, 2001. Р. 414.

⁴ Иванников В. А. *Op. cit.*

⁵ Сеченов И. М. *Избранные произведения*. Москва, 1953. 336 р.

significance for a person (through self-reassessment of the motive significance, by changing a role, position of a person, anticipation and overcoming of the consequences of actions) . Development of motivations for the act of will is also achieved through creation of an additional meaning for an action (by means of setting of a more specific goal, when one action is a part of another). At the same time, a new auxiliary motive starts influencing a person owing to not motivating, but meaning-making function. Encouraging a person to act creates a certain structured system in the form of motives hierarchy: from satisfaction of basic physiological needs to higher impulses associated with the experience of spiritual, moral, aesthetic and intellectual feelings. Analyzing the concept of will as a moral self-regulation of behavior, it can be emphasized that its main characteristic is subordination of personal motives to socially significant. The regulatory function of the will ensures a purposeful orientation of activity in a certain direction to achieve the greatest effect of activity and is able to inhibit performance of actions and behavior contradicting the worldview, ideals and beliefs of an individual¹. An integrator of will for a particular person is volitional orientation based on the system of views on the world around, understanding of the purpose and significance of his activities. I. B. Novytskii, a civil attorney, emphasizes that will which is not expressed externally, does not matter in terms of law, since law does not pay attention to one psychological process of will² formation. Therefore, as a matter of law, an objectified result of this psychological process is of great importance, when the will is manifested externally. In the legal literature there is the concept of *defect of will*. There is no such concept in psychology, thus, when establishing a certain conditional nature of this term, it should be stressed that lawyers use the *defect of will* phrase to denote certain emotional and volitional personality disorders, behavioral disorders, specific intellectual and volitional inferiority of regulation by the subject of civil law relations of significant actions from the point of view of own interests which do not reflect his genuine will. Such a low level of will control over one's actions by a person is not outside a mental norm. Within the limits of sanity, it is manifested in the reduced ability of the subject to fully assess a particular situation which is meaningful for him and adequately make decisions, comprehensively manage his actions aimed at fulfilling certain goals³:

T.V. Sakhnova, analyzing the legal literature on the topic of *defects of will*, notes that externally the defect of will can be interpreted as follows:

- non-conformity of will with will expression (a decision was made consciously and freely, but actions are not harmonized with it, not aimed at achieving a goal set by the agreement subject);

¹ Казміренко Л. І., Кудерміна О. І., Мойсєєва О. Є. *Op. cit.*

² Новицкий И. Б. *Op. cit.* P. 245.

³ Романов В. В. *Юридическая психология : учеб. пособ. для СПО. 3-е изд., перераб. и доп.* Москва, 2019. 170 p. [Электронный ресурс]. URL: <https://urait.ru/bcode/433474> (date accessed: 13.03.2021).

- inadequate development of the will itself under its formal expression (direction of action corresponds to a chosen goal, but a decision itself is approved neither independently nor freely) ¹.

V. F. Yenhalichev, S. S. Shypshyn believe that (psychologically) in the case of non-conformity of will with the will expression, the insufficiency of volitional component of an agreement (the intellectual side is full) is distinguished as the main, and in the case of inadequate development of the will: the lack of intellectual component (while the volitional side is full). Above all, V. F. Yenhalichev, S. S. Shypshyn also emphasize that the integrity of psyche should always be taken into account, namely intellectual, volitional and emotional processes, states and traits of a person in conjunction. To prove the existence of a defect of will as a legally significant circumstance, it is crucial to identify such peculiarities of mental processes and states of a subject which would allow to reach a right conclusion about the ability to understand the actual meaning of performed actions and willpower to control them ².

As T. M. Sekerazh notes, in law, *defect of will* is considered as a summarizing category regarding conditions of invalidity of legal acts. A summarizing psychological criterion of *defect of will* is the inability of a legally capable person to understand the meaning of his actions or to manage them as a result of a specific emotional state, mistaken belief on the activity purpose or under the influence of external influence (violence, threat, coincidence of severe circumstances) ³.

N. V. Alikina stresses that in case of reasonable doubts about the ability of a person to rightly perceive any significant elements while agreement conclusion, it is advisable to assess psychological factors (memory, attention, thinking, emotional state) affecting the nature of a person's (more often of old age, as forensic expert practice shows) perception of peculiarities and a real maintenance of a situation being considered in a case. In such cases, it is possible to conduct a forensic psychological analysis. Such research involves performing psychological analysis of initial data on external circumstances (event situation of agreement conclusion and events preceding this situation), determining a person internal state, that is establishing the presence (absence) of individual psychological traits and state of a person, specific conditions of his microsocial position and conditions of concluding an agreement (coincidence of circumstances of special unfavorability, dependence, threats, increased obedience, depression, helplessness, confusion, etc.) on the ability to understand the actual meaning of his own actions, consciously manage them and predict their consequences ⁴.

¹ Сахнова Т. В. *Op. cit.*

² Енгальчев В. Ф., Шипшин С. С. Практикум по судебной-психологической экспертизе : учеб.-метод. пособ. 2-е изд., перераб. и доп. Калуга, 2013. 286 р.

³ Секераж Т. Н. *Op. cit.*

⁴ Пашковська Т. Визнання угод недійсними: психолог розбереться? // Офіційний сайт «Юридичної газети». 24.02.2017. URL: <https://jur-gazeta.com/publications/events/viznannya-ugod-nediysnimi-psiolog-rozberetsya.html> (date accessed: 19.03.2021).

According to paragraph 6.4 of Scientific and methodical recommendations concerning preparation and appointment of forensic examinations and expert researches (hereinafter referred to as *Recommendations*), main tasks of forensic psychological analysis are identification in the examinee of:

- *individual psychological traits, character traits, leading personality traits; motivating factors of mental life and behavior;*
- *emotional reactions and states;*
- *patterns of mental processes, the level of their development and individual properties*¹.

According to the above-mentioned Recommendations, the object of psychological analysis is mentally healthy people².

According to the definition provided by T. M. Yehorova and V. V. Yehorov, the object of forensic psychological analysis is a person as a personality (examinee) and a set of information sources reflecting information about mental activity of the examinee in legally significant circumstances³.

T. M. Yehorova, N. V. Alikina, T. V. Savkina emphasize that research subject of forensic psychological analysis in cases of invalidation of agreements concluded by a person is a set of psychological facts revealing individual psychological traits of the individual, specifics of his cognitive and volitional spheres in circumstances of conclusion of the agreement being considered in a case⁴.

According to paragraph 6.7 of the Recommendations, tasks of a forensic psychologist while conducting this type of forensic psychological analysis include: establishing the degree of understanding by the examinee of an actual content of his actions and their consequences, his ability to make a conscious decision and implement it by his actions; identification of non-pathological mental anomalies in a legally capable person which impede adequate reflection of reality, as well as coverage of the issue on personal significance of circumstances under which an agreement was concluded for a person.

¹ Науково-методичні рекомендації з питань підготовки та призначення судових експертиз та експертних досліджень : затв. наказом Мін'юсту України від 08.10.1998 р. № 53/5 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98> (date accessed: 19.03.2021).

² Ibidem.

³ Єгорова Т. М., Єгоров В. В. Дискусійні питання щодо об'єкта та предмета судової психологічної експертизи. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів Міжнар. наук.-практ. конф., присвяч. 150-річ. з дня народж. заслуж. проф. М. С. Бокаріуса (Харків, 18—19.04.2019). Харків, 2019. Р. 428—430.

⁴ Єгорова Т. М., Алікіна Н. В., Савкіна Т. В. Диференціальний підхід до проведення судової психологічної експертизи як підстава визначення її предметних видів. *Ароцкерівські читання* : зб. мат-лів Міжнар. наук.-практ. конф., присвяч. 90-річ. від дня народж. видат. вченого-криміналіста, д-ра юрид. наук, проф. Л. Ю. Ароцкера (Полтава, 25.05.2017). Харків, 2017. Р. 155—157.

Given the purpose of forensic psychological analysis on cases of invalidation of agreements, a forensic psychologist is addressed with the task of establishing: individual psychological traits of a person; personal significance of circumstances in which an agreement was concluded for a person; emotional state of a person during agreement conclusion by him ¹.

In accordance with the above questions, a forensic psychologist can answer main questions posed for psychological research, namely: *“Was a person able, taking into account particular circumstances, completely freely and consciously make decisions and implement them in his actions?”*, *“Or was a person able, taking into account established circumstances, to realize — and to what extent — an actual content of their own actions and their consequences?”*, *“Was a person able to fully and consciously make a decision being adequate for a situation, and fully consciously implement it?”* ².

Considering issues posed to a forensic expert, to conduct a psychological analysis, actual data must be provided to a forensic expert allowing to perform a complete analysis of psychological circumstances under which an agreement is concluded, as well as information on individual psychological traits of a person (subject of civil law relations) during lifetime and directly during agreement conclusion. Apart from the above initial data, answering questions of this subject type of forensic psychological analysis is quite challenging.

It is known from the scientific literature that competence of forensic psychological analysis includes the establishment of the degree of understanding by the examinee of his own actions and the ability to manage them; ability to make meaningful (considering all essential conditions) decisions; identification of psychological anomalies in a legally capable person that impede adequate reflection of reality; determining the ability of a witness to correctly perceive circumstances corresponding to a case and to provide relevant evidence ³ based on them.

M. M. Kochenov adds to this list the ability of a forensic psychologist when diagnosing a person's individual psychological traits to identify a tendency to increased suggestion, impulsivity, annoyance, rigidity, etc. which could significantly affect the subject behavior, as well as establish possibilities of a certain mental state (confusion, loss of landmarks, etc.) in a person and expertly assess their impact on the quality of individual actions performance ⁴ in specific conditions.

¹ Науково-методичні рекомендації ... URL: <https://zakon.rada.gov.ua/laws/show/z0705-98> (date accessed: 19.03.2021).

² Ibidem.

³ Кобера А. В. Судово-психологічна експертиза як форма використання психологічних знань в юриспруденції. *Наукові записки Національного університету «Острозька академія». Серія : Психологія.* 2008. Вип. 11. Р. 93—99. URL: https://nbuv.gov.ua/UJRN/Nznuoapp_2008_11_13 (date accessed: 19.03.2021).

⁴ Ibidem.

In view of T. V. Sakhnova, when performing a research, a forensic psychologist establishes the fact of incorrect, erroneous reflection by a person of agreement conclusion peculiarities, highlights reasons of psychological nature of such errors (external and internal). Whithin the content of error as a defect of will, the main is that the will of a non-compliant party is formed not on the basis of a balanced and free decision, but under the influence of misconceptions about essential elements of an agreement (or due to their ignorance). Thereby, the fact of making a mistake is established by court¹.

V. A. Polianska, considering the issue of carrying out multidisciplinary forensic psychological and psychiatric analyses under this category of civil cases, emphasizes that a forensic psychologist's competence includes identification of such legally significant personality traits as increased suggestibility, increased obedience, exposure to others' influence, the impact of somatic diseases on the psychological state, emotional state in a psycho-traumatic situation. At the same time, a forensic expert in no case solves tasks as to capacity or incapacity of a person, validity or invalidity of an agreement².

Conclusions. Thus, summarizing achievements of scientists and practitioners, peculiarities of conducting forensic psychological analyses in cases of invalidation of agreements concluded by a legally capable person are determined. The concept of *will* and its synthesized criteria in law, philosophy and psychology are outlined. Based on forensic expert practice, the object, subject, tasks of this subject type of forensic psychological examination, as well as the limits of competence of a forensic psychologist are determined. Recommendations are provided regarding the approximate list of initial data necessary for conducting psychological research on cases of invalidation of agreements concluded by a legally capable person. Experience of scientists and practitioners indicates that the problem of will cannot be separated from problems of personality, consciousness, self-awareness, motives, needs, emotions, cognitive activity. Given that intellectual, volitional and emotional processes, states and personality traits operate in interrelation, this type of research (as one of the most complex subject types of forensic psychological analyses) requires further theoretical analysis of objective and subjective factors of a person's (subject of civil law relations) mistaken actions in legally significant circumstances to solve methodological and practical problems of expertology.

References

Ach, N. (1935). *Analyse des Willens* ; E. Abderhalder (ed.). Handbuch der biologischen Arbeitsmethoden. Berlin. Teil E. Abt. VI.

¹ Сахнова Т. В. *Op. cit.*

² Полянская В. А. Компетенция психолога в комплексной судебной психолого-психиатрической экспертизе сделкоспособности. *Сибирский юридический вестник*. 2006. № 4 (35). P. 97—101.

- Alikina, N. V. (2013). Analiz pomylkovykh dii osobystosti u sudovo-psykholohichnii ekspertyzi (konsultatyvnyi pryklad). *Kryminalistyka i sudova ekspertyza* : mizhvidom. nauk.-metod. zb. Kyiv. Vyp. 58 (1) [in Ukrainian].
- Bekhterev, V. M. (1907—1910). *Obiektivnaia psikhologiiia* : v 3 t. Sankt-Peterburg [in Russian].
- Bekhterev, V. M. (1991). *Obiektivnaia psikhologiiia*. Moskva [in Russian].
- Belov, V. A., Belevich, A. V., Vitrianskii, V. V., Diuzheva, O. A., Em, V. S., Zenin, I. A., Kozlova, N. V., Kopylov, A. V. i dr. (2002). *Praktikum po grazhdanskomu pravu* : ucheb. posob. Ch. 2 ; otv. red. S. M. Korneev. Moskva [in Russian].
- Bozhovich, L. I., Slavina, L. S., Endovitskaia, T. V. (1976). Opyt ehksperimentalnogo izucheniiia proizvolnogo povedeniia. *Voprosy psikhologii*. № 4 [in Russian].
- Braginskii, M. I., Vitrianskii, V. V. (2000). *Dogovornoe pravo*. Kn. 2 : Dogovory o peredache imushchestva. Moskva [in Russian].
- Dostoevskii, F. M. (1990). *Sobranie sochinenii* : v 15 t. ; redkol. : M. G. Fridlender i dr. Leningrad [in Russian].
- Ehrdelevskii, A. M. (2002). Zabluzhdenie otnositelno prirody sdelki. *Zakon*. № 1 [in Russian].
- Engalychev, V. F., Shipshin, S. S. (2013). *Praktikum po sudebno-psikhologicheskoi ehkspertize* : ucheb.-metod. posob. 2-e izd., pererab. i dop. Kaluga [in Russian].
- Fasmer, M. (1986). *Ehtimologicheskii slovar russkogo iazyka* : v 4 t. : per. s nem. 2-e izd., stereotip. Moskva. T. 1 [in Russian].
- Gutnikov, O. V. (2003). *Nedeistvitelnye sdelki v grazhdanskom prave. Teoriiia i praktika osparivaniia*. Moskva [in Russian].
- Iaroshevskii, G. M. (1996). *Istoriia psikhologii ot antichnosti do serediny XIX v.* : ucheb. posob. Moskva [in Russian].
- Ilin, E. P. (2009). *Psikhologiiia voli*. 2-e izd., pererab. i dop. Sankt-Peterburg [in Russian].
- Ivannikov, V. A. (1985). K sushchnosti volevogo povedeniia. *Psikhologicheskii zhurnal*. T. 6. № 3. S. 47—55 [in Russian].
- Kalin, V. K. (1989). *Volevaia reguliatsiia deiatelnosti* : avtoref. dis. ... d-ra psikholog. nauk. Tbilisi [in Russian].
- Kazmirenko, L. I., Kudermyna, O. I., Moisieieva, O. Ye. (2015). *Psykhologiiia* : pidruchnyk ; za zah. red. L. I. Kazmirenko. Kyiv [in Ukrainian].
- Kharitonova, N. K., Safuanov, F. S., Malkin, D. A. (2005). *Ehkspertnaia otsenka sdelkosposobnosti po grazhdanskim delam v ramkakh kompleksnoi sudebnoi psikhologo-psikhiatricheskoi ehkspertizy* : posob. dlia vrachei. Moskva [in Russian].
- Kobera, A. V. (2008). Sudovo-psykholohichna ekspertyza yak forma vykorystannia psykholohichnykh znan v yurysprudentsii. *Naukovi zapysky Natsionalnoho universytetu «Ostrozka akademiia»*. Seriiia : Psykholohiia.

- Vyp. 11. URL: https://nbuv.gov.ua/UJRN/Nznuoapp_2008_11_13 (data zvernennia: 19.03.2021) [in Ukrainian].
- Koroleva, E. V. (2010). *Sudebno-psikhiatricheskaia otsenka psikhicheskikh rasstroistv u lits, sovershivshikh sdelki* : avtoref. dis. ... d-ra med. nauk. Moskva [in Russian].
- Kratkii psikhologicheskii slovar (1985) ; sost. : L. A. Karpenko ; pod obshch. red. A. V. Petrovskogo, M. G. Iaroshevskogo. Moskva [in Russian].
- Losskii, N. O. (1991). Osnovnye ucheniia psikhologii s tochki zreniia voliuntarizma. *Voprosy filosofii i psikhologii*. Moskva. Kn. 64 (IV). S. 779—823 ; Kn. 65 (V) [in Russian].
- Malkin, D. A. (2004). *Ehkspertnaia otsenka psikhicheskogo sostoiianiia lits, sovershivshikh sdelki (v ramkakh kompleksnoi sudebnoi psikhologo-psikhiatricheskoi ehkspertizy)* : avtoref. dis. ... kand. med. nauk. Moskva [in Russian].
- Matveev, I. V. (2002). *Pravovaia priroda nedeistvitelnykh sdelok*. Moskva [in Russian].
- Mokhonko, A. R., Mugantseva, L. A. (2013). *Sudebno-psikhiatricheskaia ehkspertiza v grazhdanskom protsesse* : tez. nauch.-prakt. konf. Sankt-Peterburg [in Russian].
- Naukovo-metodychni rekomendatsii z pytan pidhotovky ta pryznachennia sudovykh ekspertyz ta ekspertnykh doslidzhen* : zatv. nakazom Min'iustu Ukrainy vid 08.10.1998 r. № 53/5 (zi zmin. ta dopov.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98> (data zvernennia: 19.03.2021) [in Ukrainian].
- Novaia filosofskaia ehntsiklopediia* (2000) : v 4 t. ; nauch.-red. sovet : V. S. Stepin, A. A. Guseinov, G. Iu. Semigin, A. P. Ogurtsov. Moskva. URL: <https://iphlib.ru/library/collection/newphilenc/document/HASH2828150c93bb42edd37028#> (data zvernennia: 13.03.2021) [in Russian].
- Novitskii, I. B. (1954). *Sdelki. Iskovaia davnost*. Moskva [in Russian].
- Obzor praktiki primeneniia zakonodatelstva o zakliuchenii, izmenenii, rastorzhenii dogovorov* : utv. Prezidiumom Federalnogo arbitrazhnogo suda Uralskogo okruga ot 21.06.2002 g. protokol № 3. URL: <https://fasuo.arbitr.ru/node/1420> (data zvernennia: 13.03.2021) [in Russian].
- Ortega-i-Gasset, KH. (1997). *Izbrannye trudy* ; sost., red. A. M. Rutkevich. Moskva [in Russian].
- Pashkovska, T. (2017). *Vyznannia uhod nediisnymi: psykholog rozberetsia? //* Ofitsiinyi sait «Iurydychnoi hazety». 24.02.2017. URL: <https://yur-gazeta.com/publications/events/viznannya-ugod-nediysnymi-psiolog-rozberetsya.html> (data zvernennia: 19.03.2021) [in Ukrainian].
- Polianskaia, V. A. (2006). Kompetentsiia psikhologa v kompleksnoi sudebnoi psikhologo-psikhiatricheskoi ehkspertize sdelkosposobnosti. *Sibirskii iuridicheskii vestnik*. № 4 (35) [in Russian].

- Poriadok vedennia Reestru metodik provedennia sudovikh ekspertiz* : zatv. nakazom MiN'iustu Ukraini vid 02.10.2008 r. № 1666/5 (zi zmin. ta dopov.). URL: <https://zakon.rada.gov.ua/laws/show/z0924-08> (data zvernennia: 13.03.2021) [in Ukrainian].
- Rabinovich, N. V. *Nedeistvitelnost sdelok i ee posledstviia*. Leningrad, 1960. [in Russian] 171 s.
- Reiestr metodyk provedennia sudovykh ekspertyz* // Ofitsiinyi sait Ministerstva yustytstii Ukrainy. URL: <https://rmpse.minjust.gov.ua> (data zvernennia: 13.03.2021) [in Ukrainian].
- Romanov, V. V. (2019). *Iuridicheskaia psikhologiiia* : ucheb. posob. dlia SPO. 3-e izd., pererab. i dop. Moskva [Elektronnyi resurs]. URL: <https://urait.ru/bcode/433474> (data zvernennia: 13.03.2021) [in Russian].
- Rubinshtein, S. L. (2002). *Osnovy obshchei psikhologii*. Sankt-Peterburg. 2-e izd. [in Russian].
- Sadikov, O. N. (2000). Nedeistvitelnye i nesostoivshiesia sdelki. *Iuridicheskii mir*. № 6. S. 8 [in Russian].
- Safuanov, F. S., Perepravina, Iu. O., Chernenkov, A. D. (2018). Neiropsikhologicheskoe issledovanie pri sudebno-psikhologicheskoi ehkspertnoi otsenke sdelkosposobnosti. *Psikhologiiia i pravo*. T. 8. № 4. DOI: 10.17759/psylaw.2018080411 (data zvernennia: 13.03.2021) [in Russian].
- Sakhnova, T. V. (1997). *Osnovy sudebno-psikhologicheskoi ehkspertizy po grazhdanskim delam* : ucheb. posob. Moskva [in Russian].
- Sechenov, I. M. (1953). *Izbrannye proizvedeniia*. Moskva [in Russian].
- Sekerazh, T. N. (2004). *Teoreticheskie i metodicheskie osnovy diagnostiki «poroka voli» v sudebnoi psikhologicheskoi ehkspertize* : dis. ... kand. iurid. nauk. Moskva [in Russian].
- Selivanov, V. I. (1982). Volevaia reguliatsiia aktivnosti lichnosti. *Psikhologicheskii zhurnal*. T. 3. № 4. S. 14—25 [in Russian].
- Shestakova, N. D. (2008). *Nedeistvitelnost sdelok*. 2-e izd., ispr. i dop. Sankt-Peterburg [in Russian].
- Smirnov, B. N. (2004). O raznykh podkhodakh k probleme voli v psikhologii. *Voprosy psikhologii*. № 3 [in Russian].
- Tsyvilnyi kodeks Ukrainy* : Zakon Ukrainy vid 16.01.2003 r. № 435-IV (zi zmin. ta dopov.). URL: <https://zakon.rada.gov.ua/laws/show/435-15> (data zvernennia: 13.03.2021) [in Ukrainian].
- Uznadze, D. N. (2001). *Psikhologiiia ustanovki*. Sankt-Peterburg [in Russian].
- Velyka Ukrainska entsyklopediia*. Tematychnyi reiestr hasel z napriamu «Iurydychni nauky» (2017) ; ukladachi : V. L. Babka, M. M. Shumylo ; za red. d. i. n., prof. A. M. Kyrydon. Kyiv [in Ukrainian].
- Vygotskii, L. S. (1982). *Myshlenie i rech* : sobr. soch. v 6 t. Moskva [in Russian].
- Yehorova, T. M., Alikina, N. V., Savkina, T. V. (2017). Dyferentsialnyi pidkhid do provedennia sudovoi psykhologichnoi ehkspertyzy yak pidstava vyznachennia yii predmetnykh vydiv. *Arotskerovski chytannia* : zb.

mat-liv Mizhnar. nauk.-prakt. konf., prysviach. 90-rich. vid dnia narodzh. vydat. vchenoho-kryminalista, d-ra yuryd. nauk, prof. L. Yu. Arotskera (Poltava, 25.05.2017). Kharkiv [in Ukrainian].

Yehorova, T. M., Yehorov, V. V. (2019). Dyskusiini pytannia shchodo ob'iekta ta predmeta sudovoi psykhologichnoi ekspertyzy. *Aktualni pytannia sudovoi ekspertyzy i kryminalistyky* : zb. mat-liv Mizhnar. nauk.-prakt. konf., prysviach. 150-rich. z dnia narodzh. zasluzh. prof. M. S. Bokariusa (Kharkiv, 18—19.04.2019). Kharkiv [in Ukrainian].

Т. Г. Харіна, О. А. Герасименко
Судово-психологічна експертиза
за справами про визнання недійсними угод,
укладених дієздатною особою

Узагальнено теоретичні, методичні та практичні аспекти, що стосуються проведення судово-психологічних експертиз за справами про визнання недійсними угод, укладених дієздатною особою. Зважаючи на експертну практику, визначено об'єкт, предмет, завдання цього предметного виду судово-психологічної експертизи й межі компетенції судового експерта-психолога. Надано рекомендації щодо орієнтовного переліку вихідних даних, необхідних для проведення психологічного дослідження за такими справами. Досвід науковців і практиків свідчить, що проблема волі невіддільна від проблем особистості, свідомості, самосвідомості, мотивів, потреб, емоцій, пізнавальної діяльності людини.

Ключові слова: підекспертна особа, воля, справа про визнання угоди недійсною, психологічне дослідження, судово-психологічна експертиза.

Т. Г. Харина, О. А. Герасименко
Судебно-психологическая экспертиза в делах о признании
недействительной сделки, заключённой дееспособным лицом

Обобщены теоретические, методические и практические аспекты по делам о признании недействительной сделки, заключённой дееспособным лицом.

Изучены особенности проведения психологического исследования по делам о признании недействительной сделки, заключённой дееспособным лицом. Исходя из экспертной практики, названы объект, предмет, задачи этого предметного вида судебно-психологической экспертизы. Указаны вопросы, которые ставят на решение психологической экспертизы по делам о признании сделки недействительной. Очерчены границы компетенции судебного эксперта-психолога. Даны рекомендации относительно ориентировочного перечня исходных данных, необходимых для проведения психологического исследования. С опорой на экспертную практику указан алгоритм анализа исходных данных при проведении психологического исследования по делам о признании недействительной сделки, заключённой дееспособным лицом. Указаны основные составляющие, которые

необходимо выявить при проведении экспертного исследования по этому предметному виду психологической экспертизы.

Опыт учёных и практиков свидетельствует о том, что проблема воли неотделима от проблем личности, сознания, самосознания, мотивов, потребностей, эмоций, познавательной деятельности человека. Учитывая, что интеллектуальные, волевые и эмоциональные процессы, состояния и свойства личности действуют во взаимосвязи, указанный вид исследования (как один из сложных предметных видов судебно-психологической экспертизы) нуждается в дальнейшем теоретическом анализе объективных и субъективных факторов ошибочности действий лица (субъекта гражданско-правовых отношений) в юридически значимых обстоятельствах для решения методологических и практических задач экспертологии.

Ключевые слова: подэкспертное лицо, воля, дело о признании сделки недействительной, психологическое исследование, судебно-психологическая экспертиза.

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Contributors

The authors contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.