

**Halyna YANOVYTSKA, Anna YANOVYTSKA, Uliana
ANDRUSIV, Mariya MYKHAYLIV, Marta KRAVCHYK**

Invalidity of Transactions: Analysis of Grounds and Civil Legal Consequences

DOI: [https://doi.org/10.34625/issn.2183-2705\(34\)2023.ic-03](https://doi.org/10.34625/issn.2183-2705(34)2023.ic-03)

Secção I

Investigação Científica*

* Os artigos presentes nesta secção foram sujeitos a processo de revisão segundo o método *blind peer review*.

Invalidity of Transactions: Analysis of Grounds and Civil Legal Consequences

Nulidade das transacções: Análise dos fundamentos civis e consequências jurídicas

Halyna YANOVYTSKA¹
Anna YANOVYTSKA²
Uliana ANDRUSIV³
Mariya MYKHAYLIV⁴
Marta KRAVCHYK⁵

ABSTRACT: The article examines the grounds for the invalidity of transactions under the legislation of Ukraine and their legal consequences, which are considered by the doctrine. Separate foreign legislation on problems of invalidity of transactions in other countries is analyzed. The ratio of void and voidable transactions is determined according to their legal definition and judicial practice. A study of transactions that do not comply with the law and the extent of the legal capacity of the participants was conducted. Problems of non-compliance with the form of the transaction, concluding the transaction with defects of will. Attention was also paid to the distinction between fictitious and pretended transactions. To provide a more detailed analysis of the object of study, classifications of invalid transactions were considered. This made it possible to reveal that the legislator singles out fictitious and imaginary transactions in a separate group, namely transactions with flaws in purpose. A comparative legal analysis of the object of study with the national legislation and several European countries was carried out. In particular, the legislation of Germany and the Republic of Lithuania. Judicial practice was considered to identify rules on recognizing transactions as invalid.

KEYWORDS: void and voidable transaction, transaction with defects of will, fictitious and pretended transaction, civil code, Supreme Court.

RESUMO: O artigo examina os motivos de invalidade das transacções ao abrigo da legislação da Ucrânia e as suas consequências jurídicas, que são consideradas pela doutrina. É analisada a legislação estrangeira específica sobre problemas de invalidade de transacções noutros países. A proporção de transacções nulas e anuláveis é determinada de acordo com a sua definição legal e a prática judicial. Foi efectuado um estudo das transacções que não estão em conformidade com a lei e a extensão da capacidade jurídica dos participantes. Problemas de incumprimento da forma da transacção, celebração da transacção com vícios de vontade. Também foi dada atenção

¹ Department of Civil Law and Process, Ivan Franko Lviv National University, 79000, 1 Universytetska Str., Lviv, Ukraine.

² Department of Commercial Legal Disciplines, Lviv State University of Internal Affairs, 79007, 26 Horodotska Str., Lviv, Ukraine.

³ Department of Civil Legal Disciplines, Lviv State University of Internal Affairs, 79007, 26 Horodotska Str., Lviv, Ukraine.

⁴ Department of Civil Law and Process, Ivan Franko Lviv National University, 79000, 1 Universytetska Str., Lviv, Ukraine.

⁵ Department of Civil Law and Process, Ivan Franko Lviv National University, 79000, 1 Universytetska Str., Lviv, Ukraine.

à distinção entre transacções fictícias e fingidas. Para uma análise mais detalhada do objeto de estudo, foram consideradas as classificações das transacções inválidas. Foi assim possível constatar que o legislador distingue os negócios fictícios e imaginários num grupo à parte, nomeadamente os negócios com vícios de finalidade. Foi efectuada uma análise jurídica comparativa do objeto de estudo com a legislação nacional e de vários países europeus. Em especial, a legislação da Alemanha e da República da Lituânia. A prática judicial foi considerada para identificar as regras de reconhecimento de invalidade das transacções.

PALAVRAS-CHAVE: negócio nulo e anulável, negócio com vícios de vontade, negócio fictício e fingido, Código civil, Supremo Tribunal.

Introduction

One of the methods of providing civil rights and interests protection of the person is to void the transaction. Today, transactions are the basis for the emergence of civil relations and one of the ways to realize the rights and interests of legal subjects. However, transactions must meet the requirements of their validity established by the Civil Code of Ukraine⁶. Law can directly establish the invalidity of the transactions and therefore the court's recognition of such invalidity is unnecessary. Such transaction is void. Another type of invalid transaction is a voidable transaction, the invalidity of which is not directly enshrined in legislation, but at the same time one of the participants or another interested person has the right to deny its validity on the grounds enshrined in law. In this case, the court must declare it invalid. The grounds for invalidity of transactions in private law correspond to the grounds for invalidity of transactions in public law. The latter are reflected in Part V of the Vienna Convention on the Law of Treaties⁷.

Analysis of both the invalidity of transactions in general and, for example, the transactions with “defects of will”, has always attracted attention in doctrine and practice. The present stage of development of such legal relations “requires” the formation of sustainable case law on these issues. The ambiguity of the case law is that the courts of general jurisdiction do not always apply the same rules of law that establish grounds for determining the invalidity of transactions, and very often do not take into account the practice of the Supreme Court of the precedent plan. This state of affairs is quite a serious problem, as it complicates the process of protecting the rights and interests of the transaction parties.

⁶ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁷ Vienna Convention on the Law of Treaties. 1986. Available from https://zakon.rada.gov.ua/laws/show/995_118#Text.

As noted by S. M. A. Mirbehbahani, A. Dancob, and G. R. Golchin Rad⁸, one of the rather debatable issues in the theory of civil law is the abuse of law, which is one of the grounds for declaring a deed invalid. This is due to several circumstances. First of all, according to D.P. Tsvihun⁹, this is the novelty of this category, as the official normative consolidation of this concept took place only after the adoption of the Civil Code of Ukraine¹⁰. Secondly, according to M. Usmonova¹¹, the evaluative nature of this legal basis provides a great opportunity for discretion by the court and in general should be noted. In the process of legal application, a sufficiently large number of consequences arise that can be applied to a person abusing this right. As noted by I. Dzera¹², in this regard, in practice, a question arises regarding the application of other, general consequences provided for by national legislation.

The invalidity of transactions and its related grounds and civil legal consequences has garnered the attention of several scholars over the years. This complex topic interweaves various aspects of law, governance, and regulation. Wishah et al.¹³ explored the transformation of null legal actions in their analytical study. Their findings delve into the transformational nature of legal actions that are rendered null, providing a comprehensive understanding of the dynamics at play. In the realm of Ukrainian law, Zaitsev et al.¹⁴ addressed the legal nature of invalid transactions. Their research highlighted the unique characteristics of invalid transactions and emphasized the need to understand these characteristics in the broader context of legal systems and traditions.

⁸ MIRBEHBAHANI, S. M. A., DANCOB, A., and GOLCHIN RAD, G. R. Investigating the status of invalidity and non-influence of government transactions. *Political Sociology of Iran*, 2022, vol. 10, pp. 1975-1990.

⁹ TSVIHUN, D. P. Pravovi naslidky nediysnosti pravochniv [Legal consequences of invalidity of legal acts]. *Carpathian Legal Bulletin*, 2021, vol. 38, pp. 40-43.

¹⁰ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

¹¹ USMONOVA, M. Legal consequences of non-authenticity of transactions. *Oriental Renaissance: Innovative, Educational, Natural and Social Sciences*, 2022, vol. 5, pp. 1020-1028.

¹² DZERA, I. Issues in the Legal Framework of Invalidity of Transactions in Ukraine. *Access to Justice in Eastern Europe*, 2019, vol. 1, n. 2, pp. 67-81.

¹³ WISHAH, R. A., AGHERBAWI, Y. A., JADALHAQ, I. M. Transformation of null legal actions: an analytical study. *Journal of Governance and Regulation*, 2023, vol. 12, n. S1, pp. 272-281.

¹⁴ ZAITSEV, O., KOITOR, V., ISAIEV, A., BILENKO, M., SAVCHENKO, A. Legal nature of invalid transactions. *Systematic Reviews in Pharmacy*, 2020, vol. 11, n. 11, pp. 533-536.

Katz and Zamir¹⁵ have taken a distinct approach by focusing on the substitution of invalid contract terms. Their work combines theoretical and empirical methodologies to shed light on how invalid contract terms can be replaced or substituted. From a European perspective, Bělohlávek¹⁶ navigates the realm of Czech law and examines the issue of partial invalidity of legal acts. As presented in *Pravnik*, this research accentuates the nuances of partial invalidity, emphasizing that not all aspects of a legal act might be invalid. This differentiation is crucial as it implies that certain components of a transaction or contract can be upheld while others are nullified. Similarly, Yalçintaş¹⁷ delved into the nullity of non-compete agreements in employment law, comparing Turkish and Belgian Law. Darázs¹⁸ offers a historical lens by revisiting partial invalidity in German private law legislation during the late modern period before the enactment of the German Civil Code (BGB). Published in the *Journal on European History of Law*, this retrospective analysis provides valuable insights into the historical evolution of concepts related to invalidity in one of Europe's pivotal legal systems.

Based on this, it is worth noting the need to conduct a detailed analysis of the grounds and consequences of declaring the deed invalid. This will provide an opportunity to clarify a large number of issues that arise during law enforcement, and to identify the main problems and ways to solve them. In turn, this will help to improve the effectiveness of the functioning of civil law.

The method of comparative analysis made it possible to identify the features of certain grounds for declaring a transaction as “invalid”, “voidable” and “void”, to explore the mechanism of legal regulation of invalidation of transactions in the legislation of Ukraine and foreign countries. Sociological methods of cognition

¹⁵ KATZ, O., ZAMIR, E. Substituting Invalid Contract Terms: Theory and Preliminary Empirical Findings. *Law and Social Inquiry*, 2023, vol. 48, n. 3, pp. 780-818.

¹⁶ BĚLOHLÁVEK, A. J. Partial invalidity of legal acts in czech law. *Pravnik*, 2021, vol. 160, n. 4, pp. 233-260.

¹⁷ YALÇINTAŞ, D. Invoking the Nullity of Non-compete Agreements in Employment Law: A Comparison of Turkish and Belgian Law. *International Journal of Comparative Labour Law and Industrial Relations*, 2022, vol. 38, n. 3, pp. 331-358.

¹⁸ DARÁZS, L. Partial invalidity in German private law legislation in the late modern period before bgb. *Journal on European History of Law*, 2021, vol. 12, n. 1, pp. 98-104.

were used in the analysis of regulations, court decisions^{19,20} etc. The historical-theoretical method became the basis for the study of the genesis of relations arising based on transactions and civil consequences in the case of invalidation of the latter. This was facilitated by the analysis of the scientific literature of different years^{21,22,23}. The method of analogy, taking into account the experience of foreign countries^{24,25}, allowed the conclusion of the necessity of reforming Ukrainian regulation and of focusing on promising innovations in this area.

General provisions of transaction

The Civil Code of Ukraine²⁶ at Article 204, enshrines the presumption of legality of a transaction, according to which the transaction is valid if its void is not expressly established by law or if it is not declared invalid by a court. This presumption means that the transaction is considered lawful: it gives rise to, changes, or terminates civil rights and obligations until this presumption is rebutted, in particular, based on a court decision that has entered into force.

For the transaction to be considered valid, the parties must comply with certain conditions established by law. According to Article 203²⁷, the general requirements for compliance with the transaction are that the content of the transaction cannot contradict the Civil Code²⁸, other regulatory legal acts, as well as the interests of the state and society; the person who carries out the transaction must have the necessary degree of legal capacity established by law;

¹⁹ European Court of Human Rights. 2021. Case of Atima limited v. Ukraine No. 56714/11. Available from <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%2201-210016%22%5D%7D>.

²⁰ Supreme Court of Ukraine. 2011. Ruling No. 6-26869sv09. Available from <https://zakononline.com.ua/court-decisions/show/4283893>.

²¹ ROMANIUK, Ya. Pidstavy i tsyvil'no-pravovi naslidky vyznannya pravochynu nediysnym [Grounds and civil consequences of invalidation of the transaction]. Lviv: Raystr-7, 2010.

²² DAVYDOVA, I. (2014). Nediysnist' fiktyvnoho pravochynu: zahal'na kharakterystyka [Invalidity of sham transaction: a general overview]. *Juridical Scientific and Electronic Journal*, 3, 47-49.

²³ LAVRINENKO, I. Problemy ukladennya pravochyniv iz vadamy voli predstavnykom [Problems of the conclusion deals with defect of volition by a representative]. *Legal Bulletin*, 2018, vol. 8, pp. 124-130.

²⁴ German Civil Code. 2002. Available from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0348

²⁵ Civil Code of the Republic of Lithuania. Available from 2000. <https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf>.

²⁶ Civil Code of Ukraine. 2003. Article 204. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>

²⁷ Idem, Civil Code of Ukraine. 2003. Article 203.

²⁸ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>

the will of the participant in the transaction must be free and correspond to his inner will; transactions must be made in the form that is regulated by the current legislation.

Law can directly establish the invalidity of transactions and therefore the court's recognition of such invalidity is unnecessary. Such a transaction is void. Another type of invalid transaction is voidable. Law does not directly establish its invalidity, but one party or another interested person denies its validity because is regulated by law. In this case, the court must declare it invalid.

One of the ways to protect civil rights and interests is to invalidate the transaction. According to Articles 16, 203, 215 of the Civil Code of Ukraine²⁹, for a court to declare a disputed transaction invalid, it is necessary to:

- sue one of the transaction parties or another interested person;
- the existence of grounds for challenging the transaction;
- establishing whether the subjective civil right or interest of the person who applied to the court is violated (not recognized or disputed).

The statute of limitations is also important in this case. This means the period within which a person can apply to the court to protect his civil rights or interests. A general statute of limitations of three years has been set for appealing to the court to declare a transaction invalid.

It should be noted that a transaction could be declared invalid only if it has been concluded. In a separate opinion of judge V. Krat³⁰, is stated that “the rules on the invalidity of the transaction can be applied only to committed a unilateral transaction. If a party does not sign a unilateral transaction, then, of course, it is not committed. Accordingly, such a unilateral transaction cannot be qualified as invalid (void or voidable)”.

The court decisions in which this error was made, should be revoked, stating in the reasoning part of the decision that the disputed power of attorney is not made, and therefore should be denied satisfaction of claims for invalidation of transactions.

²⁹ Civil Code of Ukraine. 2003. Articles 16, 203, 215.

³⁰ Commercial Court of Cassation of the Supreme Court Ruling No. 910/18289/. 2020. Available from https://verdictum.ligazakon.net/document/97350258?utm_source=buh.ligazakon.net&utm_medium=news&utm_content=cons12.

Summarizing the grounds for invalidity of the contract, which are determined by foreign law and doctrine, J. Klabbers³¹ points out that they may rely on a procedure or authorization that contains inappropriate character; may be the result of deceptive acts or intentions; or they may be the result of coercion. According to this author, treaties are often conceptualized as the result of ad idem consensus; if so, then the reality of the consensus is given preference, and if ad idem is affected by fraudulent acts, coercion, or misrepresentation, it can be inferred that there is no ad idem consensus. As a consequence, in a meaningful sense, there is no contract.

Pursuant to Articles 215 and 216³², the requirement to declare a disputed transaction invalid and the application of the consequences of its invalidity, as well as the requirement to apply these consequences of a void transaction, may be presented by any of the parties to the transaction or by another interested person whose rights and interests were violated as a result of the transaction. The decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine Decision No. 6-605cs16³³ states: a person (interested person) who was not a party to the transaction may also challenge the transaction, at the time of the court consideration, has no property or property right to the subject of transaction and/or does not claim that the property in kind be transferred to their possession. The claims of the interested person, who in court seeks to declare the transaction invalid, are aimed at bringing the parties to the invalid transaction to the state that they, the parties, had before the transaction. The self-interest of the interested person is that the subject of the transaction is owned by a particular person or that the party (parties) of the transaction is in a certain legal position, as it depends on the further possibility of legal exercise of the rights of the interested person.

Transactions that do not comply with the law and the amount of civil capacity of the participants and with “defects” of the will

Transactions that do not comply with the law violate the rights and interests of other persons or participants in the transaction. Such is a transaction made

³¹ KLABBERS, J. The Validity and Invalidity of Treaties. In: D. Hollis (Ed.), *The Oxford Guide to Treaties: Second Edition* (pp. 545-567). Oxford: Oxford University Press, 2020.

³² Civil Code of Ukraine. 2003. Articles 215 and 216..

³³ Judicial Chamber for Civil Cases of the Supreme Court of Ukraine Decision No. 6-605cs16. 2016. Available from <https://zakononline.com.ua/court-decisions/show/57933051>.

without the permission of the body of guardianship and care. It is void. Lack of consent affects the emergence of civil rights and obligations. The next example is the conclusion of a transaction by a legal entity without a special permit (license). The activity of a legal entity without a license is illegal and is prohibited. Therefore, contracts entered into in this manner are void.

Transactions that contradict the statutory tasks and goals of the legal entity may be declared invalid. A legal entity, through the implementation of its own activities through state bodies that act by applicable law, may acquire civil rights. The actions of the bodies of a legal entity are the actions of the legal entity itself. If the transaction is concluded in violation of the provisions of the statute, it is invalid because the legal entity had no right to perform it.

One of the important conditions for the validity of the transaction is a sufficient amount of capacity of its participants. The legislator, about a transaction committed by an infant, proceeds from the presumption of its legality in the case of approval by legal representatives. In the absence of its approval, it is void. The automatic invalidation of the transaction would not protect the rights and interests of the infant. The transaction is declared null and void without the application of the relevant civil consequences. About a minor, the situation is different: a transaction committed by a minor outside their civil capacity may be declared invalid. Therefore, it is necessary to unify the principles of validity of transactions committed by infants and minors.

Circumstances that affect the amount of capacity may be age, mental disorders, drug abuse, and alcohol. Accordingly, the civil consequences in the form of the emergence, change, or termination of civil rights and obligations are not valid. Therefore, this category of transactions should be declared invalid only by a court.

According to the current legislation, the lack of conformity of the will of the participant of the transaction to their internal will causes a defect in the legal composition of the transaction. Transactions, in which the will does not correspond to the expression of will, constitute the institution of invalid transactions with “defects” of the will. It is presented in the Civil Code of Ukraine³⁴ by separate norms, which define the legal consequences of the transactions

³⁴ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>

made as a result: an error, the malicious agreement of representatives of the parties, a difficult circumstance, deception, and violence.

Generally, modern Ukrainian civil law studies based on the developments of the Soviet era in the thoughts of understanding the concept of deception. Z. Romovska³⁵ considers deception as a process aimed at paralyzing the will of the future counterparty, and as a result manifested itself in the occurrence of such legal consequences, which under normal conditions could not occur.

A transaction that was carried out through the influence of deceit belongs to the category of transactions with a defect of will. The fact is that in its commission the formation of a person's will occurs under the influence of an external factor – deception, like false information about the circumstances of the transaction caused by the actions of others. In resolving disputes on the invalidation of transactions under Article 230³⁶, the courts must keep in mind that the relevant requirements can be satisfied only if the plaintiff proves the facts of deception.

The deception can occur in the form of active behavior or notification of any circumstances that do not exist (notification of inaccurate information about the subject of the contract, providing forged documents on ownership of the selling object, on the right to commit such a transaction), and in the form of deliberate omission of circumstances that may prevent the conclusion of the transaction. The transactions of the parties, one of which promised the other party to assist in employment, training, construction, etc., but did not fulfil such promises, cannot be declared invalid under the commented article. The subject of deception may be either the party to the transaction or a third party who acted with the knowledge or at the request of the party to the transaction. If the deception was committed by a third party on its own initiative, there are no grounds for invalidating the transaction.

It is also necessary to distinguish between an error and deception, as in practice there are often doubts about the correct qualification of the transaction. Deception is certainly guilty, deliberate actions of a party that tries to convince the other party of such properties and consequences of the transaction that cannot occur. The error is the result of a misconception about the circumstances

³⁵ ROMOVSKA, Z. *Ukrayins'ke tsyvil'ne pravo. Spadkove pravo: pidruchnyk* [Ukrainian civil law. Inheritance law: Academic course]. Kyiv: Atika, 2005.

³⁶ Civil Code of Ukraine. 2003. Article 230. <https://zakon.rada.gov.ua/laws/show/435-15#Text>

of the transaction. In the case of deception, the consequences of the transaction are known and desirable for one of the parties, while in the case of error, both parties may misunderstand the circumstances of the transaction. Establishing the presence of intent on the part of the unscrupulous party to mislead the other party to encourage it to enter into a transaction is a prerequisite for qualifying the invalidity of the transaction under Article 230 of the Civil Code of Ukraine³⁷.

The key difference between an error and deception is the intent that is required to recognize a transaction as a result of deception. The Civil Court of Cassation within the Supreme Court³⁸ states that a person's intent implies that they “are aware of the fact of the presence or absence of specific circumstances, as well as that the other party if they were aware of such information, would not enter into unfavorable legal relations for it. It is worth noting the deception, since if the party denies the existence of certain circumstances that may prevent the completion of the transaction or may hide their presence. That is, deception occurs when incorrect information is either provided or withheld to commit a transaction. And this is done intentionally, for the transaction to be made. All these circumstances are the presence of intent in the actions of the defendant, the significance of the circumstances in respect of which the person was deceived, and the very fact of deception must be proved by the person who acted under the influence of deception. If everything other than intent is proven, it is considered that an error has occurred. Establishing the intention of an unscrupulous party to mislead the other party to encourage it to enter into a transaction is a prerequisite for qualifying the invalidity of the transaction under Article 230 of the Civil Code of Ukraine³⁹.

An equally important reason for the invalidity of the transaction is an agreement between a representative of one party and another, which has evil intentions. In general, the will to commit acts can be exercised by the participants themselves or with the help of other persons – representatives. This corresponds to the general civil law principles of the exercise of subjective civil rights. The

³⁷ Civil Code of Ukraine. 2003. Article 230. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>

³⁸ Civil Court of Cassation within the Supreme Court No. 523/16625/14-c. 2020. Available from <http://iplex.com.ua/doc.php?regnum=104392881&red=100003970294588d15954d5d47c06d53ce706d&d=5>.

³⁹ Idem, Civil Code of Ukraine. 2003. Article 230.

representative (attorney) is obliged to perform certain actions of a legal nature on behalf and at the expense of the other party (principal) by the power of attorney agreement. The action, which is implemented by the attorney, provides an opportunity to create, change, or terminate the civil rights and obligations of the principal. Based on this, the principal provides the attorney with the powers to perform specific actions, the result of which is the emergence, change or termination of the civil rights and obligations of the principal themselves.

Judicial practice contains a caveat that to invalidate the transaction entered into as a result of an agreement between a representative of one party with another, which carries malicious intent. It is necessary to establish intent in the actions of the representative: the representative is aware that they are committing the transaction contrary to the interests of the principal and wishes (or consciously allows) their occurrence, as well as the presence the agreement of the representative of one party with the other party and the occurrence of adverse consequences for the principal due to this. At the same time, it does not matter whether the participant of such an agreement received any benefit from the execution of the transaction, or whether the transaction was performed to cause harm to the principal⁴⁰. In turn, the Supreme Court noted that the necessary features of a transaction committed as a result of a malicious agreement between a representative of one party and another are:

1. The existence of a deliberate collusion between the representative of the injured party to the transaction and the other party to obtain personal or mutual benefit.
2. Occurrence of negative consequences for the principal and his disagreement with such consequences.
3. The actions of the representative are carried out within the limits of the powers granted to him⁴¹.

T. Skhab draws attention to the following aspects:

But before talking about declaring the contract invalid, it is necessary to determine what the essence of such a malicious agreement is. These actions violate the rights and legally protected interests of the party that suffers

⁴⁰ Supreme Court of Ukraine No. 9 “On the judicial practice of consideration of civil cases on the recognition of transactions as invalid”. 2009. Available from <https://zakon.rada.gov.ua/laws/show/v0009700-09#Text>.

⁴¹ Supreme Court of Ukraine Decision No. 357/6663/16-c. 2018. Available from <https://verdictum.ligazakon.net/document/75447641>.

losses from such negotiations. An example may be overpricing the payment transaction in order to pay part of the overpaid amount to the representative, purchasing an item of inferior quality, etc. Thus, the malicious agreement of the representative of one party to the transaction with the other consists in the committed actions, the consequence of which is a worsening of the situation for the party represented, if objectively it was possible to avoid these negative consequences in the event of the transaction being committed by the party himself. Therefore, having united in common interests, the parties agree with a specifically defined malicious purpose⁴².

It might not be possible to invalidate the transactions made as a result of the malicious agreement of the representative of one party with the other party without clarifying the attitude towards this person whose interests were represented. The principal may be interested in the legal consequences of the committed transaction even in the presence of such malicious agreement. Therefore, it is not possible to invalidate the transactions made as a result of the malicious agreement of the representative of one party with the other party without clarifying the attitude towards this person whose interests were represented. The malicious agreement of the representative of one party with the other party to the transaction must be causally related to negative consequences of a property or non-property nature, which would not have occurred without it. At the same time, it is necessary to take into account the possible interest of the represented party in the emergence, change, or termination of civil rights and obligations even under such circumstances. Accordingly, the principal himself makes the final decision regarding the need to invalidate such a transaction. Therefore, if they do not object to the civil legal consequences of the transaction executed by the representative in his interests, the latter remains valid. However, this does not deprive the principal of the right to demand compensation for property losses from the representative who improperly performed the duties of attorney.

According to I. Lavrinenko⁴³, there is a position that the principal party deserves legal protection of its interests in any case. The essence of representation lies precisely in the fact that the representative must act on behalf

⁴² SKHAB, T. Obmezhennya dohovirnoyi svobody na stadiyi vedennya perehovoriv [Limitation of contractual freedom at the stage of negotiations]. *Scientific Bulletin of the Uzhhorod National University: Law Series*, 2012, vol. 20, n. 2, pp. 255-258.

⁴³ LAVRINENKO, I. Problemy ukladennya pravochyniv iz vadamy voli predstavnykom [Problems of the conclusion deals with defect of volition by a representative]. *Legal Bulletin*, 2018, vol. 8, pp. 124-130.

and in the interests of his principal. Violating their duty to act in the interests of their principal, that is, being aware of the latter's needs, but not acting accordingly, they do not fulfill their function of ensuring the interests of another subject of civil turnover. This is the basis for the principal to apply to the court with a demand to declare the transaction invalid as having been made under the influence of a malicious agreement of their representative with another party.

The external manifestation of the will of the attorney must be the expression of the will of the person on whose behalf they perform the transaction. Therefore, a deviation from the formally defined powers granted to the attorney by the principal is illegal and should not give rise to any civil legal consequences for the principal. According to O. Dlogush⁴⁴, a defect of will when committing a transaction is a deviation in the process of formation of the will of a participant in the transaction due to misconceptions, or misleading about the circumstances that are of significant importance for the commission of the transaction, a coincidence of grave circumstances that lead to improper formation of the will or as a result of circumstances that exclude the existence of a real will at the time of committing the transaction.

It is worth noting that it can also be declared invalid by the court, regardless of who initiated such a transaction, the fact that a person committed under the influence of a difficult circumstance for them, and under extremely unfavorable conditions.

The concept of “difficult circumstances” is given by practice. According to Supreme Court of Ukraine Decision No. 6-551cs16:

difficult circumstances can be a serious illness of a person, members of their family or relatives, the death of a breadwinner, the threat of losing housing, or the threat of bankruptcy, and other circumstances, to eliminate or reduce which it is necessary to enter into such a transaction. A person (individual or legal entity) must commit such a transaction voluntarily, without violence, deception, or mistake. The person contesting the transaction must prove that in the absence of a difficult circumstance, the transaction would not have been committed at all or would not have been committed under such conditions⁴⁵.

⁴⁴ DLOGUSH, O. Nediysnist' pravochyniv z defektamy voli [Invalidity of transactions with defects of the will]. Kyiv: Taras Shevchenko Kyiv National University, 2013.

⁴⁵ Supreme Court of Ukraine Decision No. 6-551cs16. 2016. Available from <https://court.gov.ua/sud1590/pravovipoziciivsu/6-551cs16>

When invalidating a transaction committed under the influence of a difficult circumstance, it is necessary to find out the following basic facts:

1. The fact that the person committed the transaction under the influence of difficult circumstances. The legislator does not provide a definition or signs of a difficult circumstance. A difficult circumstance is not any unfavorable material, social, or other situation, but its extreme forms. A difficult circumstance is an evaluative category and must be determined by the court taking into account absolutely all the circumstances that are connected with the case.
2. The terms of the transaction are extremely unfavorable for the plaintiff.
3. A causal connection between the fact that the plaintiff concluded the transaction on conditions that were extremely inappropriate for him, and a difficult circumstance⁴⁶.

In the literature, there is no modern comprehensive study of the problems of this type of transaction with defects of will as a transaction committed under the influence of violence. However, this does not fully correspond to modern realities. The legislator in Article 231 of the Civil Code of Ukraine⁴⁷ regulates:

A criminal act committed by a person against their true will as a result of the application of the impact of the physical or mental plane on them from the other side or another person is recognized by the court as such that it is invalid. The guilty party (another person), which has realized the impact on the other side of the physical or mental plane, is obliged to compensate them in double the number of losses and harm of a moral nature, which was committed in connection with the commission of this act.

The Plenum of the Supreme Court of Ukraine according to decision No. 556/2085/19 draws attention to the following:

when resolving disputes about the invalidation of a transaction committed by a person under the influence of violence, the courts must take into account that the violence must be expressed in illegal, but not necessarily criminal, actions. Violent actions can be committed both by the party to the transaction and by another person – both in relation to the other party to the transaction and in relation to their family members, relatives, etc. or their property. The fact of violence does not necessarily have to be established by a court verdict in a criminal case⁴⁸.

⁴⁶ UMETSKA, G. *Predmet dokazuvannya v spravakh pro vyznannya pravochyniv nediysnymy* [The subject of proof in cases of declaration of invalidity of transactions]. *Forum Prava*, 2012, vol. 4, pp. 950-958.

⁴⁷ Civil Code of Ukraine. 2003. Article 231. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>

⁴⁸ Supreme Court of Ukraine Decision No. 556/2085/19. 2021. Available from <https://verdictum.ligazakon.net/document/101955097>.

The statement of judge V. Krat⁴⁹ is correct: violence can be present or only the threat of its implementation. Therefore, physical and mental violence or violence and threats are usually distinguished. Physical violence is a danger to a person as a living being when damage is caused to their body, organs, or natural body functions due to mechanical, chemical, physical, or biological impact on them.

Violence also causes fear of unfavorable consequences for the person. This is expressed, as a rule, in illegal actions, which, however, are not always criminal. In particular, how violence can be considered the impact on a person who is in a dependent position from the other party to the transaction. For example, a threat to publicize real facts from a person's life, which they would not like to bring to the general public and which became known to another person not as a result of illegal collection of information, a threat to deprive of inheritance, etc. The following opinion of S. Gerasimovsky⁵⁰ is interesting:

The object of violence can be both the participant (party) of the transaction and a person close to them. The subject, in turn, can be:

- the counterparty of the transaction;
- the person in whose favor the transaction is concluded (for example, an heir under a will);
- any person who commits violent acts against one counterparty of a transaction with the knowledge or at the request of another counterparty in order to induce the first to enter into a transaction.
- Today, cases of the use of violent actions in order to induce a person to conclude a transaction are quite common (mainly this concerns the conclusion of gift contracts or other contracts regarding the alienation of property). There are also cases when the parties to such a transaction are persons who abuse alcoholic beverages and lead an antisocial lifestyle.

⁴⁹ Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 387/554/18. 2020. Available from <http://iplex.com.ua/doc.php?regnum=88570594&red=10000386639365b2d660682eb74d211adc2501&d=5>.

⁵⁰ GERASIMOVSKY, S. Pravochny, vchyneni pid vplyvom nasyil'stva yak vyd osporyvanykh pravochnyiv [The transactions committed under the influence of violence as a type of the voidable transactions]. *Legea si Viata*, 2013, vol. 5, pp. 41-43.

Supreme Court of Ukraine decision No. 556/2085/19⁵¹ is also significant, where it was concluded that in order to recognize a transaction as invalid due to its execution under the influence of violence or threats, it is necessary to have a physical or mental influence on a person in order to encourage the conclusion of the transaction. In contrast to violence, the threat consists in the implementation of only mental, but not physical influence, and takes place in the presence of both illegal and legal actions. It can be the basis for declaring the transaction invalid when, due to the circumstances that took place at the time of its execution, there were reasons to believe that the refusal of the participant in the transaction to commit it could cause harm to his legitimate interests.

Failure to comply with the form of the fictitious and pretended transaction

The result of non-compliance with the form of the transaction is the entailment of various consequences in the legal aspect. For example, non-compliance with the written form is not grounds for its invalidation. That is about establishing the fact of committing the transaction, and not about its invalidity. However, failure to comply with the mandatory written form results in the void of the transaction. With the help of the transaction form, the will of its participants is recorded. That is, not in all cases the non-observance of the written form of the transaction is grounds for its invalidation. It is necessary to analyze the legislation in each specific case for the requirement to comply with the mandatory written form and the civil legal consequences of its non-compliance.

The division of transactions into oral and written is a common practice in different countries. According to paragraph 3 of Article 74 of the Civil Code of Poland⁵², the testimony of witnesses cannot be used to confirm a transaction between enterprises.

The increased requirements stipulated in the current legislation for such a condition of the validity of transactions as a written form with a notarized certificate make it possible to understand the validity of the intentions (authenticity of will) of the parties. If both parties agreed on absolutely all the terms of the contract and set it out in writing, and there was a full or partial execution of the

⁵¹ Supreme Court of Ukraine Decision No. 556/2085/19. 2021. Available from <https://verdictum.ligazakon.net/document/101955097>.

⁵² Civil Code of Poland. 1964. Article 74, paragraph 3. Available from <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093>.

contract, but one of the parties evaded its notarization, the court may recognize such an agreement as valid. The following contract notarization is not required. In this case, the unscrupulous party has to evade the notarization, and the right to sue arises in the scrupulous party who fully or partially fulfilled the contract. It should be borne in mind that such evasion can be expressed both in inaction and in active opposition to the certification of the contract. The validity or otherwise of the transaction due to non-compliance with the written form with a notarized certificate depends on the requirements defined by law. This form is required to confirm the true will of the parties to the contract and is also an additional legal means of preventing violations of other conditions of validity of the transaction.

Today's scientists, like I. Davydova⁵³, in turn, also pay a lot of attention to fictitious and pretended transactions.

According to the provision, which is regulated by Article 234 of the current Civil Code of Ukraine⁵⁴, a fictitious transaction is one that was implemented without the intention of creating legal consequences that were due to this transaction. It is important to determine the place of fictitious transactions among other invalid transactions. In the scientific literature, there are several approaches regarding their assignment to one or another group of invalid transactions. Some scientists classify fictitious transactions as transactions with defects of will, others, in turn, claim that they should be classified as transactions with defects in content or as so-called illegal transactions⁵⁵.

This classification of invalid transactions is carried out according to the criterion of non-compliance with the requirements necessary for the validity of the transaction, which, in turn, are outlined in Article 203 of the Civil Code of Ukraine⁵⁶.

Thus, it can be argued that transactions with defects of will contradict part 3 of Article 203⁵⁷, which establishes the requirement that the will of the participant in the transaction is characterized by the fact that it must correspond to their inner

⁵³ DAVYDOVA, I. (2014). Nediysnist' fiktyvnoho pravochynu: zahal'na kharakterystyka [Invalidity of sham transaction: a general overview]. *Juridical Scientific and Electronic Journal*, 3, 47-49.

⁵⁴ Civil Code of Ukraine. 2003. Article 234. <https://zakon.rada.gov.ua/laws/show/435-15#Text>

⁵⁵ SKIDANOV, K. Diysna volya osib u fiktyvnykh ta udavanykh pravochyna [Actual will of persons in fictitious and pretended transactions]. *Theory and Practice of Legal Science*, 2013, vol. 14, pp. 1-12.

⁵⁶ Civil Code of Ukraine. 2003. Article 203. <https://zakon.rada.gov.ua/laws/show/435-15#Text>

⁵⁷ Civil Code of Ukraine. 2003. Article 203, part 3.

will and be free. The position according to which fictitious transactions are classified as transactions with defects of will appear to be justified, but at the same time, it is necessary to find out what is the difference between the concepts of “will” and “expression of will” used by the legislator in Article 203 of the Civil Code of Ukraine. In the decision in case No. 182/5322/18⁵⁸, the Civil Court of Cassation of the Supreme Court defined will and confirmed it in case No. 387/554/18⁵⁹.

According to the court's position, the will of the parties consists of their agreement to assume certain obligations. In addition, the will must be mutual, bilateral, and aimed at achieving a certain goal. Expression of will, in turn, is an external expression of will, and a transaction is a combination of will and expression of will. However, when concluding a fictitious deed, no one influences the will of the parties themselves, without distorting the expression of will. On the contrary, the parties themselves hide their own will, which is not revealed when the will is revealed⁶⁰. Accordingly, fictitious transactions should not be classified as transactions with defects of will. Having analyzed in detail articles 234, 235 and article 203 of the Civil Code of Ukraine⁶¹, one can notice a certain regularity between the definitions of fictitious and pretended transactions and part 5 of article 203 of the Civil Code of Ukraine⁶², which requires the transaction to be aimed at the real occurrence of legal consequences caused by it.

Accordingly, it can be argued that the legislator singles out fictitious and pretended transactions in a separate group of invalid transactions - transactions with purpose deficiencies. It is also interesting to compare the concept of a fictitious transaction established in the Civil Code of Ukraine⁶³ with the definitions established in the codes of European countries.

⁵⁸ Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 182/5322/18. 2019. Available from <http://iplex.com.ua/doc.php?regnum=83775222&red=10000307d807f1df90171064bea7d03e0fa3bb&d=5>.

⁵⁹ Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 387/554/18. 2020. Available from <http://iplex.com.ua/doc.php?regnum=88570594&red=10000386639365b2d660682eb74d211adc2501&d=5>.

⁶⁰ Idem, Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 387/554/18. 2020.

⁶¹ Civil Code of Ukraine. 2003. Articles 203, 234, 235. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁶² Civil Code of Ukraine. 2003. Article 203, part 5.

⁶³ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

For example, the German Civil Code⁶⁴ defines a fictitious transaction as one that is done only to create an appearance, and with the defines that a fictitious transaction is made only intent of both parties. In turn, the Civil Code of the Republic of Lithuania⁶⁵ creates an appearance without the goal of achieving real legal consequences between its parties. Therefore, when comparing the definitions fixed in the codes of different states, as noted by R. Tashian⁶⁶, it can be seen that they are not the same. Accordingly, in order to supplement the provisions of the Civil Code of Ukraine⁶⁷, when applying the law, it is advisable to also use the resolutions of the plenums of the higher courts, which were mentioned earlier⁶⁸.

However, the biggest difference between the legislation of Ukraine and European states in the context of this topic is that the latter do not have a definition of the concept of a pretended transaction and identify it with a fictitious one, unlike the Civil Code of Ukraine⁶⁹, which enshrines separate provisions regarding both fictitious and pretended transactions.

Legal consequences of the invalidity of the transaction

Article 216 of the Civil Code of Ukraine⁷⁰ lays down general information on the consequences of the invalidity of the transaction, which are legal. The main consequence of concluding a transaction that does not comply with the requirements of the norms that are regulated by law and are recognized as invalid is bilateral restitution. It consists of the fact that each party to an invalid transaction must return to the other party everything that it received for the execution of such a transaction.

If it is impossible to return in kind what was received under a transaction recognized as invalid, then the value of what was received is subject to return – compensation received under an invalid transaction is made in cash. The amount

⁶⁴ German Civil Code. 2002. Available from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0348.

⁶⁵ Civil Code of the Republic of Lithuania. 2000. Available from <https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf>.

⁶⁶ TASHIAN, R. Classification of invalid transactions in present law doctrine of european countries. *Scientific Journal of Polonia University*, 2021, vol. 3, pp. 190-194.

⁶⁷ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁶⁸ TASHIAN, R. Classification of invalid transactions in present law doctrine of european countries. *Scientific Journal of Polonia University*, 2021, vol. 3, pp. 190-194.

⁶⁹ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁷⁰ Civil Code of Ukraine. 2003. Article 216.

of compensation is assessed not based on the prices that existed at the time the transaction was concluded, and not those that existed at the time of filing the lawsuit but based on those that existed at the time of compensation.

Since the validity or invalidity of a void transaction is determined directly by the law and does not depend on the will of the parties, the consequences of its invalidity are determined directly by the law. At the same time, the legal consequences for determining the invalidity of a void transaction, which are enshrined in law, cannot be changed by agreement of the parties. However, the court on its own initiative, guided by its own convictions and case materials, has the right to determine exactly what consequences of invalidity of a void transaction will be applied in each individual case. At the same time, the proposals or wishes of the parties have no legal significance.

The content of the transaction may be in a different relationship with the requirements of the law, some of its conditions may contradict these requirements, others may not. Therefore, the question arises about the possibility of invalidating a part of the transaction. In this connection, Article 217 of the Civil Code of Ukraine⁷¹ establishes that the invalidity of a separate part of the transaction does not entail the same for its other parts and for it as a whole, if it can be assumed that the transaction would have been made without including the invalid part. That is, the invalidity of individual parts of the transaction does not exclude the validity of the transaction in general only in cases where it can be assumed that the transaction can be concluded without including its invalid parts. If there are no grounds for such an assumption, the transaction is considered invalid.

It is important to note that the denial by one of the parties of the fact of committing a transaction or disputing its individual parts can be proved by written evidence, means of audio and video recording, and other evidence. Because, logically, the court's decision cannot be based only on the testimony of witnesses. If a transaction, for which the law establishes its invalidity in the event of non-compliance with the requirement for a written form, was concluded orally and one of the parties performed an act, and the other party confirmed its performance, in

⁷¹ Civil Code of Ukraine. 2003. Article 217. <https://zakon.rada.gov.ua/laws/show/435-15#Text>

particular by accepting execution, such a transaction may be recognized by the court as valid in the event of a dispute.

According to the established practice of the European Court of Human Rights, this right would be illusory if the domestic legal system of a Contracting State allowed a final judgment, which is binding, to remain null and void to the detriment of one of the parties⁷².

Judicial practice makes conclusions regarding the rules for recognizing transactions as invalid:

- a demand for the application of the consequences of the invalidity of the transaction can be filed both simultaneously with a demand to declare the voidable transaction invalid, and in the form of an independent demand in the case of a void transaction and the presence of a court decision to declare the transaction invalid. The consequence of recognizing the transaction (contract) as invalid cannot be its termination, since these are mutually exclusive requirements;
- the transaction can be declared invalid only on the grounds, defined by law, and with the application of the consequences of invalidity provided by law. If during the consideration of the dispute on the invalidity of the transaction as contested and the application of the consequences of its invalidity, it is established that there are grounds provided for by law to consider such a transaction void, the court, indicating the nullity of such a transaction, simultaneously applies the consequences of the invalidity of the void transaction;
- according to Article 216⁷³ and the general principles of civil law, the court has the opportunity, on its own initiative, to apply restitution in the event of the invalidity of a disputed transaction. Other consequences of the invalidity of the transaction that is being disputed are applied by the court in accordance with Article 11 (the court determines, within the limits established by this Code, the procedure for conducting proceedings by the principle of proportionality, taking into account: ensuring a balance of interests of the private and public plan; tasks

⁷² European Court of Human Rights. 1997. Case of Hornsby v. Greece. Available from https://zakon.rada.gov.ua/laws/show/980_079#Text.

⁷³ Civil Code of Ukraine. 2003. Article 216. <https://zakon.rada.gov.ua/laws/show/435-15#Text..>

of justice; cost of litigation; claim; specifics of the subject of the dispute; the complexity of the case, etc.)⁷⁴;

- courts must take into account that the fulfilment or non-fulfilment by the parties of the obligations arising from the transaction is important only for determining the consequences of its invalidity, and not for declaring the transaction invalid. If the transaction has not yet been executed, it is such that it does not create any legal consequences (part one of Article 216 of the Civil Code of Ukraine⁷⁵);
- in accordance with the first part of Article 215 of the Civil Code of Ukraine⁷⁶, the basis for determining the invalid nature of the transaction is the non-compliance by the party with those requirements, the list of which is regulated by Article 203 of the Civil Code of Ukraine⁷⁷, precisely at the time of the execution of the transaction. A transaction that has not been committed cannot be recognized as invalid. In this regard, the courts must correctly determine the moment of execution of the transaction (Articles 205-210, 640 of the Civil Code of Ukraine⁷⁸, etc.);
- transactions (contracts) are not concluded if do not have the conditions ^{established} by law necessary for their conclusion (absence of consent to all essential terms of the contract; acceptance was not received by the party that sent the offer; property was not transferred, if in accordance with the legislation for the execution of the transaction its transmission is required, etc.). According to Articles 210 and 640 of the Civil Code of Ukraine⁷⁹, a transaction is also not committed if it is not state registered, if the transaction is subject to such registration. Having established these circumstances, the court refuses to satisfy the claim for recognition of the transaction as invalid. The consequences of invalidity of a transaction do not apply to a transaction that has not been committed.
- restitution as a way of protecting civil law (part one of Article 216 of the Civil Code of Ukraine⁸⁰ applies only in the case of a contract concluded between the parties that is void or declared invalid. In this regard, the demand for the ^{return} of

⁷⁴ Civil Procedure Code of Ukraine. 2004. Article 11. Available from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

⁷⁵ Civil Code of Ukraine. 2003. Article 216, part one. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁷⁶ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁷⁷ Civil Code of Ukraine. 2003.

⁷⁸ Civil Code of Ukraine. 2003. Articles 205-210, 640.

⁷⁹ Civil Code of Ukraine. 2003. Articles 210 and 640.

⁸⁰ Civil Code of Ukraine. 2003. Article 216, part one.

property that was transferred for the conclusion of a transaction, whose nature is invalid, according to the rules of restitution, can only be presented to the party of the invalid transaction;

- the provision of the first part of Article 216 of the Civil Code of Ukraine⁸¹ may serve as a basis for filing a claim for the return of the property transferred for the transaction, whose nature was invalid, which was transferred to a third party. Claims of the property owners for the invalidation of the following transactions regarding the alienation of this property, which were made after the invalid transaction, are not admissible. In this case, the property can be claimed from a person who is not a party to the invalid transaction, by filing a vindication lawsuit, in particular from a bona fide acquirer - on the grounds provided for by the first part of Article 388 of the Civil Code of Ukraine⁸².
- violation of the requirements of the law regarding the conclusion of the transaction in written form is the basis for declaring it invalid only in the case when it is expressly provided for by the law.

Restitutory consequences occur during the commission of an invalid transaction and its execution by at least one of the parties in full or in part. Such legal consequences determine the legal fate of property transferred under an invalid transaction. If the parties have executed an invalid transaction, then they must return to the initial state according to legal consequences. At first glance, the legal consequences are clear. If, for example, the transaction is declared invalid, then bilateral restitution takes place, that is, the parties return to the previous state that existed before the conclusion of this transaction. At the same time, the property status of the injured party is restored. When resolving a conflict between the parties, it should be taken into account that the property transferred to the parties by an invalid transaction may not be preserved. Then it is obliged to reimburse the value of the property, at the price prevailing at the time of reimbursement. In case of damage, or moral damage, they will be compensated by the guilty party.

In the judicial process, the victim as a party to the process must provide evidence of the violation of his rights and freedoms, otherwise, the court will not

⁸¹ Civil Code of Ukraine. 2003. Article 216. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁸² Civil Code of Ukraine. 2003. Article 388.

see legal grounds for meeting the legal requirements for declaring the contract invalid. Courts have no right to refuse a person to accept a claim for invalidation of a void transaction because they are not aware of this category of cases, referring to the fact that void transactions are invalid due to the provisions of the law.

It must be understood that the principle of full compensation for damages applies unless otherwise established by contract or law. In its demands, the injured party must first of all pay attention to the normative regulation of the Civil Code of Ukraine⁸³ on the amount of compensation for damages. For the violation of certain types of contractual obligations, damages are provided in a limited amount. In order to determine the amount of damages and moral damage, it may be necessary to make a qualitative analysis of them.

Conclusions

After conducting a study, the purpose of which was to examine the invalidity of transactions, the main grounds and consequences were analyzed in accordance with the current legislation. The problems that are in the application practice of the provisions of the Civil Code were studied and ways of their resolution were proposed.

First, it was revealed that there were two types of invalid transactions, namely, void and voidable. It was noted that the invalidity of transactions was not directly enshrined in legislation, but at the same time, one of the parties had the right to recognize it as such in accordance with the grounds enshrined in the norms. Based on the comparative legal analysis of national and European legislation, it was concluded that imaginary and fictitious transactions were not equated in the norms of the second, while in the legislation of Ukraine, various legal norms were connected with it. One of the important ways to improve the efficiency of law enforcement practice in this area is the use of plenums of higher courts. A very important stage in the work carried out was the study of the consequences of the invalidity of the transaction. It was noted that they could not be changed by agreement of the parties. Also significant is the fact that the invalidity of individual parts of the transaction does not exclude its validity as a

⁸³ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

whole only in cases where it can be assumed that the transaction can be concluded without including its invalid part.

Certain judicial findings regarding the rules to invalidate a transaction have been examined. These rules include the possibility of the court, on its own initiative, to apply restitution in the event of the invalidity of the disputed transaction, non-compliance by the party with those requirements established by law, violation of the requirements of the law on the conclusion of a transaction in writing only when it is expressly provided by law and other rules. Thus, the identified rules for invalidating a transaction, the grounds, and legal consequences in various cases provide an opportunity in the future to increase the effectiveness of law enforcement practice in the area under study. The recommendations identified in the study will also contribute to this.

References

- Bělohávek, A. J. (2021). Partial invalidity of legal acts in czech law. *Pravnik*, 160(4), 233-260.
- Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 182/5322/18. (2019). Available from <http://iplex.com.ua/doc.php?regnum=83775222&red=10000307d807f1df90171064bea7d03e0fa3bb&d=5>.
- Civil Court of Cassation of the Supreme Court of Ukraine Decision No. 387/554/18. (2020). Available from <http://iplex.com.ua/doc.php?regnum=88570594&red=10000386639365b2d660682eb74d211adc2501&d=5>.
- Civil Court of Cassation within the Supreme Court No. 523/16625/14-c. (2020). Available from <http://iplex.com.ua/doc.php?regnum=104392881&red=100003970294588d15954d5d47c06d53ce706d&d=5>.
- Civil Code of Poland. (1964). Available from <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093>.
- Civil Code of the Republic of Lithuania. (2000). Available from <https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf>.
- Civil Code of Ukraine. (2003). Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- Civil Procedure Code of Ukraine. (2004). Available from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.
- Commercial Court of Cassation of the Supreme Court Ruling No. 910/18289/. (2020). Available from https://verdictum.ligazakon.net/document/97350258?utm_source=buh.ligazakon.net&utm_medium=news&utm_content=cons12.
- Darázs, L. (2021). Partial invalidity in German private law legislation in the late modern period before bgb. *Journal on European History of Law*, 12(1), 98-104.

Davydova, I. (2014). Nediysnist' fiktyvnoho pravochynu: zahal'na kharakterystyka [Invalidity of sham transaction: a general overview]. *Juridical Scientific and Electronic Journal*, 3, 47-49.

Dlogush, O. (2013). Nediysnist' pravochyniv z defektamy voli [Invalidity of transactions with defects of the will]. Kyiv: Taras Shevchenko Kyiv National University.

Dzera, I. (2019). Issues in the Legal Framework of Invalidity of Transactions in Ukraine. *Access to Justice in Eastern Europe*, 1(2), 67-81.

European Court of Human Rights. Case of Atima limited v. Ukraine No. 56714/11. (2021). Available from <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-210016%22%5D%7D>.

European Court of Human Rights. Case of Hornsby v. Greece. (1997). Available from https://zakon.rada.gov.ua/laws/show/980_079#Text.

Gerasimovsky, S. (2013). Pravochyny, vchyneni pid vplyvom nasyl'stva yak vyd osporyuvanykh pravochyniv [The transactions committed under the influence of violence as a type of the voidable transactions]. *Legea si Viata*, 5, 41-43.

German Civil Code. (2002). Available from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0348.

Judicial Chamber for Civil Cases of the Supreme Court of Ukraine Decision No. 6-605cs16. (2016). Available from <https://zakononline.com.ua/court-decisions/show/57933051>.

Katz, O., Zamir, E. (2023). Substituting Invalid Contract Terms: Theory and Preliminary Empirical Findings. *Law and Social Inquiry*, 48(3), 780-818.

Klabbers, J. (2020). The Validity and Invalidity of Treaties. In: D. Hollis (Ed.), *The Oxford Guide to Treaties: Second Edition* (pp. 545-567). Oxford: Oxford University Press.

Lavrinenko, I. (2018). Problemy ukladennya pravochyniv iz vadamy voli predstavnykom [Problems of the conclusion deals with defect of volition by a representative]. *Legal Bulletin*, 8, 124-130.

Mirbehbahani, S. M. A., Dancob, A., and Golchin Rad, G. R. (2022). Investigating the status of invalidity and non-influence of government transactions. *Political Sociology of Iran*, 10, 1975-1990.

Romaniuk, Ya. (2010). *Pidstavy i tsyvil'no-pravovi naslidky vyznannya pravochynu nediysnym* [Grounds and civil consequences of invalidation of the transaction]. Lviv: Raystr-7.

Romovska, Z. (2005). *Ukrayins'ke tsyvil'ne pravo. Spadkove pravo: pidruchnyk* [Ukrainian civil law. Inheritance law: Academic course]. Kyiv: Atika.

Skhab, T. (2012). Obmezheniya dohovirnoyi svobody na stadiyi vedennya perehovoriv [Limitation of contractual freedom at the stage of negotiations]. *Scientific Bulletin of the Uzhhorod National University: Law Series*, 20(2), 255-258.

Skidanov, K. (2013). Diysna volya osib u fiktyvnykh ta udavanykh pravochyna [Actual will of persons in fictitious and pretended transactions]. *Theory and Practice of Legal Science*, 14, 1-12.

Supreme Court of Ukraine Decision No. 357/6663/16-c. (2018). Available from <https://verdictum.ligazakon.net/document/75447641>.

Supreme Court of Ukraine Decision No. 556/2085/19. (2021). Available from <https://verdictum.ligazakon.net/document/101955097>.

Supreme Court of Ukraine Decision No. 6-551cs16. (2016). Available from <https://court.gov.ua/sud1590/pravovipoziciivsu/6-551cs16>.

Supreme Court of Ukraine No. 9 “On the judicial practice of consideration of civil cases on the recognition of transactions as invalid”. (2009). Available from <https://zakon.rada.gov.ua/laws/show/v0009700-09#Text>

Supreme Court of Ukraine Ruling No. 6-26869sv09. (2011). Available from <https://zakononline.com.ua/court-decisions/show/4283893>.

Tashian, R. (2021). Classification of invalid transactions in present law doctrine of european countries. *Scientific Journal of Polonia University*, 3, 190-194.

Tsvihun, D. P. (2021). Pravovi naslidky nediysnosti pravochniv [Legal consequences of invalidity of legal acts]. *Carpathian Legal Bulletin*, 38, 40-43.

Umetska, G. (2012). Predmet dokazuvannya v spravakh pro vyznannya pravochniv nediysnymi [The subject of proof in cases of declaration of invalidity of transactions]. *Forum Prava*, 4, 950-958.

Usmonova, M. (2022). Legal consequences of non-authenticity of transactions. *Oriental Renaissance: Innovative, Educational, Natural and Social Sciences*, 5, 1020-1028.

Vienna Convention on the Law of Treaties. (1986). Available from https://zakon.rada.gov.ua/laws/show/995_118#Text.

Wishah, R. A., Agherbawi, Y. A., Jadalhaq, I. M. (2023). TRANSFORMATION OF NULL LEGAL ACTIONS: AN ANALYTICAL STUDY. *Journal of Governance and Regulation*, 12(S1), 272-281.

Yalçintaş, D. (2022). Invoking the Nullity of Non-compete Agreements in Employment Law: A Comparison of Turkish and Belgian Law. *International Journal of Comparative Labour Law and Industrial Relations*, 38(3), 331-358.

Yanovytska, G. (2021). *Tsyvil'no-pravovi zasoby zakhystu prav spozhyvachiv v. Ukrayini* [Civil law remedies for consumer rights protection in Ukraine]. Lviv: Raystr-7.

Zaitsev, O., Koitor, V., Isaiev, A., Bilenko, M., Savchenko, A. (2020). Legal nature of invalid transactions. *Systematic Reviews in Pharmacy*, 11(11), 533-536.

Data de submissão do artigo: 14/03/2023

Data de aprovação do artigo: 19/12/2023

Edição e propriedade:

Universidade Portucalense Cooperativa de Ensino Superior, CRL

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt