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Title: **POSSIBILITIES OF EXPERT PSYCHOLOGIST IN CIVIL LEGAL PROCEEDINGS IN CONSIDERATION OF CASES RELATED TO TRANSACTIONABILITY**

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Possibilities Of Expert Psychologist In Civil Legal Proceedings In Consideration Of Cases Related To Transactionability

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Annotation : The article discusses the criteria for the expert competence of a psychologist when conducting forensic psychological and complex forensic psychological and psychiatric research. The mechanisms of defective expression of will are revealed, the tendencies characteristic of psychological research in this direction are explained. Particular attention is paid to the trend towards an objective interpretation of expert opinions in the aspect of legal law.

Keywords: expertise, court, psychology, psychiatry, will, maladjustment, vice of will, bargaining power, expression of will, delusion, deceit, violence.

INTRODUCTION

Despite the growing need for forensic psychological research and the increase in the number of their assignments, the qualitative aspects of forensic psychological examinations are much to be desired. The history of our many years of practical activity in the field of forensic psychology reveals many prospects for a critical analysis of the provisions, which allows us to move “from the point of stagnation” and clarify objective directions, taking into account the methodological positions adopted

both in the CIS countries and in foreign countries. The aspects of our review include issues related to the influence of emotional states on the behavior of a person in a legal status. The legal status of a person is considered by us within the framework of criminal and civil processes that determine questions about the abilities of the subject of research: either to control and predict their actions in a criminal incident, or to make the right decisions, taking into account all the necessary conditions in the circumstances of a civil lawsuit. Since the dominant

motivation of human behavior is associated with the state of the affective sphere, the parameters of “emotional response” under conditions of a deficit of the volitional complex are put in the basis of the direction of our research.

Our observations show that all forensic psychological studies related to civil proceedings are focused on identifying the parameters and levels of emotional response of a legal entity. In this regard, it should be noted that, regardless of the subject type of forensic psychological examination, all issues related to the factor of human nature are directly related to the diagnosis of one or another emotional state in which the subject was from the point of view of legal law. In the dissertation research of scientists of the Russian Federation, some provisions are presented that are relevant to the subject of interest to us. So, L.V. Alekseeva (1996), considering the

phenomenology of legally significant emotional states, made an attempt to explain the causal relationships between emotional states and understanding the subject of study of the surrounding reality¹.

S. S. Shipshin in his scientific study "Forensic psychological examination of the driver's mental state in traffic accidents" (1998) paid special attention to the complex of emotions, experiences and states that make up the "emotional spectrum" of extreme states and its parameters².

L.N. Yablokova (2005) in her research considers the features of assessing the emotional states of juvenile defendants during complex forensic psychological and psychiatric examination³. A.A. Oselkov (2011), studying the psychological characteristics of the impact of materials of an extremist orientation on students of higher

¹ Алексеева Л.В. Судебно-психологическая экспертиза эмоциональных состояний. Дис... канд.психол.н. - М.,1996. – Р.279.

² Шипшин С.С. Судебно-психологическая экспертиза психического состояния водителя по делам о дорожно-транспортных происшествиях. Дис.. канд.психол.н. - М., 1998. – Р. 236.

³ Яблокова Л.Н. Особенности оценки эмоциональных состояний несовершеннолетних обвиняемых при проведении комплексных судебных психолого-психиатрических экспертиз. Дис...канд.психол.н. - СПб., 2005. – Р. 197.

educational institutions, notes the role of emotions that are actualized in a negative way, disorienting a positive orientation in the youth environment⁴.

In our experimental studies related to forensic psychological practice, professional contradictions are often revealed due to the lack of complementarity (complementarity) of research versions for a particular legal subject of research. This provision is determined by the fact that the version of the psychiatric report often contradicts the version of the psychological report, which is associated with a contradictory interpretation of the subject of the study, which has a specific affiliation.

In the last decade, as part of socio-economic changes in the life of society, the development of market relations that affect the activity of citizens in disposing of their property rights, the number of civil law transactions has increased. Recognition of the transaction as invalid is one of the ways to protect civil rights.

As our forensic psychological practice testifies, more than 90% of all civil cases considered per year by one judge in the court of first instance are initiated on claims to invalidate transactions.

Considering cases of psychological, psychiatric and purely psychological significance of the conclusions presented in civil proceedings, we note some examples related to this problem. So, in one example from our practical experience, there is a tendency to inconsistent interpretation of the behavior of the subject K.E. in a civil lawsuit. According to the circumstances of the case, it is known that K.E. made a sale and purchase transaction of her apartment under the influence of unscrupulous buyers for a minimum amount that does not correspond to the real value of the disputed housing. By decision of the court, a forensic psychological examination was carried out, for the resolution of which questions were raised

⁴ Оселков А.А. Психологические особенности влияния на студентов высших учебных заведений материалов эскремистской направленности. Автореферат диссертации

на соискание ученой степени канд.психол.н. – Ростов-на-Дону. 2011. – Р. 26.

about K.E. make the right decisions, taking into account her emotional state and the ability to comprehend all the necessary conditions for the circumstances of the transaction.

As a result of a forensic psychological study on this issue, K.E. the conclusions are drawn due to the fact that at the time of the conclusion of the contract for the sale of the apartment K.E. was in a state of behavioral disorganization, which arose under the influence of a number of psychotraumatic circumstances. A comparative analysis of medical documentation, civil case materials, and a clinical conversation with the subject showed that the requirements of the legal situation exceeded the psychophysical capabilities of K.E., who, in the period of interest to the court, perceived reality through the prism of overvalued experiences of the idea of inferiority and guilt that arose on mentally defective soil.

Violations in the cognitive and personal spheres of the subject, identified as a result of an experimental psychological examination, indicate: non-

purposeful thinking, the subject's tendency to symbolism and resonant constructions against the background of defective volitional regulation in progressive autism and maladjustment in the social environment. These circumstances determined the increased suggestibility of K.E. and her pathological dependence on external influences, which sharply reduced her intellectual potential in a mentally tense situation of the circumstances of the period of interest to the court. The story about mental disorders found in K.E. was determined by a direct connection with psychotraumatic circumstances, which caused a sharp limitation of the critical capabilities of the subject, who was not able at the time of the period of interest to the court to see the situation as a whole, make the right decisions and predict the consequences of her behavior, taking into account all the necessary conditions.

For a number of reasons of the mundane plan, K.E. again found herself in an expert situation for the passage of a psychological and psychiatric examination with the decision of the issue

of her legal capacity (incapacity). The clinical history of the subject's life, including clinical observation and psychological examination, allows specialists to conclude that K.E. reveals signs of disorders associated with the nosology of the schizophrenic symptom complex. But at the same time, subject K.E. is defined by expert psychiatrists as "capable", i.e. able to make the right decisions and understand their actions in a civil suit. The expert opinions of the forensic psychological study were ignored by both the psychiatrists and the court, which decides on the conclusion of the psychiatric report.

The noted fact testifies to the ignorance of the bailiff, on the one hand, about psychological parameters equated to legal significance (Articles 122, 123 of the Civil Code of the Republic of Uzbekistan), which explains the causal relationships of behavior (normative or non-normative) of a person in legally

significant circumstances, and with on the other hand, ignoring the significance of psychological knowledge, taking into account the authoritarian psychiatric position. This circumstance is explained by the insufficient development of the methodological base in the field of the use of forensic psychological knowledge in the forensic and investigative practice of the Republic of Uzbekistan, to which our research interests are directed.

According to the statistical indicators of our experience in forensic psychological research, 70% of the studies are related to circumstances in which it is necessary to conduct post-mortem forensic psychological examinations. A post-mortem forensic psychological examination in civil cases is appointed by the court in cases where the persons who committed one or another contested act are no longer alive and the court has questions that require psychological knowledge to clarify⁵.

⁵ Енгальчев В.Ф., Махмудова Х.Т. Суд-психологик экспертизанинг замонавий турлари ва ривожланиш имкониятлари. – Тошкент: Ўзбекистон Республикаси ИИВ Академияси. 2020. – 288 Р.; Махмудова Х.Т. Юридическое значение эмоциональных

состояний в уголовных и гражданских процессах (на примере судебно-психологической экспертизы). Монография. – Ташкент: Академия МВД Республики Узбекистан. 2020. – 172 Р.

It should be noted that in the Republic of Uzbekistan, until recently, only a forensic psychiatric examination was appointed for disputed transactions (for "purchase and sale", "wills", "donations"). The court usually had doubts about the mental usefulness of the testator or another person. The experience of our practical activities (on the example of the analysis of materials of civil cases on judicial investigations in the Republic of Uzbekistan) allows us to assert that the adoption of a decision by a deceased person can be influenced by: how the mental state, and the psychological characteristics of the individual, and the emotional manifestations of the subject of the study at the time of action relating to the legal period. In this case, we must consider:

- a) the nature of the stimulus affecting the personality, deforming the structure of the behavior of a person who is not a mentally disabled subject;
- b) various psychological causes (loneliness, stress, death of loved ones) that cause mental states, the impact of

which cannot be overestimated during the period of legally significant actions.

There are civil law circumstances that do not allow a person to correctly assess and perform actions that at first glance seem to be a true manifestation of the will of a legal entity. In the presence of these circumstances, this will is vicious in its content. Since the "defects of will" to invalidate the transaction are of a material nature, procedural actions are necessary to establish the presence of a "defect of will" in the transaction.

Will as a psychological reality is a person's conscious regulation of his behavior and activities, associated with the ability to overcome internal and external obstacles in the circumstances of achieving goals. When the noted abilities are violated, then the question arises of violations of volitional qualities, i.e. about the "vice of the will." Arguing in the framework of psychological terminology, we mean both violations of the intellectual capabilities of a person, and violations of the volitional regulation of behavior at the time of making one or another legally significant transaction.

Meaning by “guilty of the will” a certain psychological pattern, we assume that in the noted sense, the causes of “guilt of the will” (volitional deformation of behavior) are individual in each case, and this is due to various mechanisms for the formation of one or another delirium in the circumstances of the need to make a decision^{6,7}.

In our opinion, the psychological parameters of the deformed will include: emotional stress syndrome; volitional frustration syndrome (in a hysterically accentuated personality); syndrome of personal asthenia (mental weakness) as a result of a somatic disease that weakens psychological compensatory mechanisms that affect adequate adaptation in the social environment. The concept of psychological "vice of the will" - as the basis for the invalidity of the transaction - also includes intellectual (cognitive) personality disorders, which can be caused by various reasons, both

situational and chronic (incurable) in nature.

In our opinion, it is impossible to ascertain the "vice of the will" without substantiating the mechanisms for the formation of this state. There are internal mechanisms associated with the "emotional tension" syndrome. There are also external reasons concerning the legal interpretation of events. These reasons are due to the substantive legal significance that distinguishes delusion as an essential feature of a transaction declared invalid. In this case, the negligent fault of the counterparty has a legal connotation. And here it is necessary to qualify the transaction as made under the influence of deception. Additional significant criteria should be taken into account, due to the likelihood of deception of the subject of the transaction.

One of the means of proving the "viciousness of the will" is the study of the inability of a mentally capable subject to

⁶ Сахнова Т.В. Зачем суду психолог? (О психологической экспертизе в гражданском процессе). - М., 1990. – Р.76.

⁷ Секераж Т.Н. Теоретические и методологические основы диагностики

«порока воли» в судебно-психологической экспертизе. – М.: Автореферат на соискание канд.юрид.н. 2004. – Р. 26.

control his actions in a time period. A post-mortem forensic psychological examination in respect of a person who has committed a legally significant act in the period preceding death is appointed in absentia. In the last decade in the Republic of Uzbekistan, a purely "psychiatric trend" is expressed in the fundamental disregard for the forensic psychological direction in the aspect of post-mortem forensic psychological examinations. This circumstance creates a scientific need in terms of introducing specificity and clarity into the competence of a psychologist (as an expert) in a civil process in connection with giving an opinion that may have probative value.

Thus, according to the foregoing, an objective study of the parameters of "emotional response" in the aspects of the civil investigation of the Republic of Uzbekistan is of fundamental importance under the circumstances of both psychiatric and psychological examination. From the point of view of psychology (when using legal parameters), the concept of "divisibility" (a vice of will) includes a person's

misunderstanding of the purpose of their actions in legally significant circumstances, which is due to violations, which are defined as disorganized behavior. These circumstances are clarified during the conduct of forensic psychological examinations in the course of the study based on a comparative analysis of the materials of the civil case and the person who is the subject of a specific claim.

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