The Ratio of Three Means of Protecting the Interest of the Owner

Ibrokhimov Azimjon Abdumomin ogli,

The Lecturer at Civil Law Department of Tashkent State University of Law
e-mail: yurist.0990@gmail.com

ABSTRACT

In civil law, a few means of protecting the rights of the owner have been formed. Among them, the methods of vindication, restitution and condiction are widely applicable and have been known since the time of Roman private law. However, although general ideas about them have been formed, specific criteria for their application have not been developed, what remedies should be applied in what situation – the rules regulating this issue in detail have not been formed either in legislation or in judicial practice.

This article reveals the essence of restitution, vindication and condiction, as well as issues related to their ratio, as ways to protect the rights of the owner.

Keywords: property, owner, means of protecting property rights, restitution, condiction, vindication, ratio.

Introduction.

The legal consequences of the invalidity of transactions are the element without which the very institution of the invalidity of transactions would not be logically complete. The main legal consequence of the invalidity of transactions is bilateral restitution. This term is not used in the legislation: clause 2 of article 114 of the Civil Code of Uzbekistan (hereinafter referred to as the Civil Code) only says that if the transaction is invalid, each of the parties is obliged to return to the other everything received under it. Nevertheless, the civilistic doctrine widely operates with this concept, understanding by restitution the return by the parties of an invalid transaction to each other of the property received by them under such a transaction or compensation for the value of the property received if it is impossible to return it in kind [1].

Materials

A distinguishing feature of restitution, which is not characteristic of either vindication or condiction, is considered to be its bilateral nature [2]. It is usually understood as the reciprocity, interdependence of the obligations of the parties to an invalid transaction to return to each other everything received under it, in the sense in which it is typical for obligations from synnalagmatic contracts. However, if we look at the restitution obligation in a little more detail, we will see that no two-sidedness is actually inherent in it.

Indeed, in mutual (synlagmatic) legal relations, “the parties directly pursue each of their economic goals, which consists in obtaining what the other party must fulfill; ... two obligations that are different in their content mutually determine each other so that ... the execution of one of them must be carried out only in the case and to the extent of fulfilling the other” [3]. It is quite obvious that

this is not at all characteristic of restorative legal relations.

The obligations of the parties to return everything received under an invalid transaction arise independently of each other, each at the moment when the actual composition, consisting of the conclusion of an invalid transaction and the subsequent execution of it, is completed for it. Some authors tend to believe that the obligation in question arises only by virtue of an invalid transaction [4], forgetting that the obligation to return everything received under the transaction may arise no earlier than anything received from such a transaction, i.e. . not earlier than it will be provided. Similarly, D.O. Tuzov who connects the emergence of such an obligation with the mere fact of property provision under an invalid transaction [5] is wrong, since only the obligation to return unjustly received (conditional obligation), but not restitution, can arise from the provision alone. Some authors generally consider the moment when the obligation under consideration arises when the court decision on the application of the consequences of the invalidity of the transaction comes into force [6]. However, such a position does not seem to be based on the law, since the imposition of any obligation (including the return of everything received under an invalid transaction) implies the possibility of its voluntary fulfillment. Moreover, if we accept the point of view of these authors, then we will have to admit that before the court decision comes into force, the property is held by the parties on some legal basis, which, obviously, is not true.

Moreover, if only one party fulfills the invalid transaction, only the other party will have a restitution obligation, and in this case it is customary to speak of unilateral restitution. Moreover, at the time of execution of an invalid transaction by one party, it is not known whether execution will occur on the other side. All of the above circumstances show that the obligations of the parties to an invalid transaction to return what was performed under it are absolutely autonomous and independent of each other, and therefore a truly bilateral nature of restitution is not actually inherent.

Despite this, judicial practice for some reason stubbornly proceeds from the fact that a court decision on a claim for the return of what has been executed under an invalid transaction must necessarily resolve the issue of the obligation of each party to return everything received under it [7].

Not only does this approach not at all follow from the norms of the law, it also contradicts the fundamental principles of civil procedure. This approach forces the court to make a decision simultaneously, both against the defendant and against the plaintiff [8]. Obviously, such a court decision will force the latter to enforce the obligation in favor of the defendant, who, quite possibly, is not interested in this at all, since he himself did not file a corresponding claim in a separate proceeding and did not file a counterclaim in the same process.

In principle, the relations that arise in connection with the return of the executed under an invalid transaction may well be regulated by the rules of vindication or condiction.

The rules on vindication can be applied when it comes to the return of individually defined things, and the rules on condiction can be used for all other cases, and the return of individually defined things by condiction of possession is also possible [9].

In this regard, the literature often raises the question of the relationship between the above institutions and restitution, while the independence of the latter is often called into question.

On the one hand, Art. 1024 of the Civil Code quite clearly points to the independence of restitution, citing restitution claims on a par with claims for vindication, compensation for harm and return of what was performed in connection with an obligation, and at the same time establishing the subsidiary application of the rules on unjust enrichment to these claims. Therefore, de lege lata, the independence of restitution cannot be in doubt. However, are there any specific features in restitution that fundamentally distinguish it from related

institutions, not only from a formal, but also from an essential point of view?

Speaking about the relationship between restitution and vindication, it should be noted that the latter is a means of protecting only owners and other title holders. It is obvious that the title to a thing is necessarily included in the subject of proof in a vindication suit. With regard to restitution, there is some uncertainty about whether it is necessary to prove the title to an individually defined thing transferred under an invalid transaction in order to claim it, and, accordingly, whether a person who has no rights to it at all can claim the thing.

Some scientists tend to answer this question in the affirmative [9]. The same opinion up to a certain point was held by judicial practice [10]. The main argument was that protection should not be granted to persons who are unable to prove any title to the transferred thing, otherwise a completely unauthorized person, for example, a thief, will be able to use such protection.

However, neither the general norms on restitution nor the subsidiarily applied norms of Chapter 58 of the Civil Code say anything about the need to prove the title during restitution. Therefore, the point of view of civilists [11], who do not connect the satisfaction of a restitution claim with the presence of a real title, seems to be correct. The advantage of this position can be clearly demonstrated by the following example. Let's say "A" transferred the thing to "B" under a lease agreement. The agreement was subsequently declared invalid. However, for some reason, "A" cannot prove any title to the transferred thing. If we consider restitution as a means of protecting only the title owners, then "A" will not be able to reclaim his thing from "B", and it will remain with the latter. It is unlikely that such a decision will be justified from the point of view of the politics of law: if "A" may have no rights to a thing, then "B" has absolutely no rights to it. In this dispute, position "A" is stronger than position "B", therefore it is unreasonable to leave the thing with the latter.

Thus, restitution cannot be identified with vindication, since it does not require proof of the title to the thing.

As regards the relationship between restitution and condiction, the following must be kept in mind. It is generally accepted that in order for an obligation to arise from unjust enrichment, it is necessary that this same unjust enrichment be present from one party at the expense of the other [12], while counterparties who mutually performed an invalid transaction, since their provision is assumed to be equivalent [13], cannot enrich themselves simultaneously. This consideration justifies the essential independence of restitution. However, how true is it?

Above, we have already substantiated that the obligation of a party to return what was received under an invalid transaction in no way depends on a similar obligation of the other party. Therefore, at the very moment when the party to an invalid transaction receives execution from its counterparty, it unjustly enriches itself at his expense. The reciprocal execution of an invalid transaction by the enriched party does not eliminate the enrichment available on its side and does not make it solid, but only leads to unjust enrichment of the other party too. To connect two property grants with each other and thereby eliminate their groundlessness can only be some legal basis (for example, a contract); an invalid transaction, not being a legal fact, cannot be such a legal basis. Therefore, the enrichment of each of the parties to the invalid transaction should be considered separately. If we argue in the spirit of those authors who speak of the impossibility of simultaneous enrichment of both parties to an invalid transaction, one will have to come to the conclusion that the parties to an unconcluded contract cannot enrich themselves simultaneously, and, accordingly, the conditional claims are not due to any of them. In this case, it remains a mystery on the basis of what norms of the Civil Code they will be able to claim the property transferred under an unconcluded contract.

Thus, if the execution of an invalid transaction was expressed in the transfer of

money or other things defined by generic characteristics, the restitution obligation is no different from the conditional one. And given the fact that condiction, contrary to popular belief [14], can also be used to claim voluntarily transferred individually defined things, and proof of title is not required (the so-called condiction of possession) [15], the essential differences between it and restitution not available. And if there were no special rules on the return of what was transferred under invalid transactions in the legislation, this return would be carried out in the same way according to the rules on unjust enrichment.

Moreover, the return of such property in accordance with the rules on unjust enrichment is in some cases more justified from the point of view of the policy of law.

Let's say "A" sold an individually defined item to "B". Subsequently, "B" presented this item to "C". The contract of sale is void. Obviously, “B” cannot be considered unjustly enriched at the expense of “A”, since he did not have any rights to the thing either before or after the donation. Therefore, the conditional claims of “A” to “B” do not arise here, and restitution relations arise by virtue of a direct indication of the law (Article 114 of the Civil Code of Uzbekistan) - say supporters of the independence of restitution.

Let's consider the situation in more detail. Indeed, "A" may well recover from "B" the value of his thing, just as "B" may recover from "A" the purchase price paid. After that, nothing prevents "A" from vindicating his thing from "C", since, due to the invalidity of the sale and purchase, he remained its owner. It is unlikely that such a legal result, when "A" returned both the money and the thing, can be called fair, but the literal interpretation of the law does not allow us to come to a different conclusion. The use of condiction instead of restitution would avoid such undesirable results. Interestingly, § 185 GCC (German Civil Code - Bürgerlices Gesetzbuchvom 18.August 1896 // RGBl.S. 195; BGBl.IS. 1206; BGBl. IS. 1542; BGBl. IS. 1658; BGBl. IS. 2376; BGBl .I S. 3138) contains a special prescription for such a situation, according to which, in the situation under consideration, “A”, recovering the value of his thing from “B”, thereby approves the unauthorized disposal of the last thing and loses the right of ownership to it, losing, accordingly , and vindication claim to "C". The Supreme Arbitration Court of the Russian Federation approached this problem in a similar way, resolving it, however, only with respect to the application of the consequences of the invalidity of transactions in bankruptcy [16].

Based on the foregoing, the author comes to the following conclusions.

Restitution is commonly understood as a special protective measure aimed at returning the parties to an invalid transaction to their original position. De lege lata restitution has an independent character, since it is delimited by the legislator (Article 1024 of the Civil Code) from related civil law institutions (vindication and condiction).

Domestic legislation in its judicial interpretation provides for only three fundamental differences in restitution:

bilateral character;

the possibility of application by the court on its own initiative;

it does not matter the presence / absence of enrichment on the side of the acquirer.

These signs distinguish restitution from condiction far from the best. Thus, the bilateral nature of restitution suggests that, when claiming a thing transferred under an invalid transaction through the court, the plaintiff does not demand the actual transfer of this thing, but claims to establish such a heavy structure as “the application of the consequences of the invalidity of the transaction”. The court decision should resolve the issue of the obligation of each of the parties to an invalid transaction to return everything received under it. Thus, the judgment will be issued simultaneously against both the defendant and the plaintiff. As part of the proceedings, the court will also resolve the issue of the plaintiff's obligation to return everything received under the transaction, although the defendant may not have been interested in this at all, since he did not go to court with a corresponding demand and did

not file a counterclaim in the same process. This is an unjustified exception to the fundamental principle on which all civil law is built - the principle of autonomy of will, according to which subjects are free to decide how to use their rights.

The same should be said about the possibility of applying restitution by the court on its own initiative - it also represents an exception to the principle of autonomy of will, the political and legal validity of which is very doubtful. Moreover, in a number of cases, such a legislative decision actually encourages the inaction of the public authorities of the state by shifting their direct duties to recover property to the court.

The fact that the presence of enrichment on the side of the acquirer does not matter for the emergence of a restitution obligation, in a number of cases, examples of which are given in the article, also leads to unsatisfactory political and legal results.

As it was established, the first two shortcomings of restitution do not follow from the text of the law, but arose as a result of its misinterpretation by the courts, that is, in fact:

the obligation of each party to an invalid transaction to return everything received under it is absolutely autonomous in relation to the similar obligation of the other party, and the use of the term “bilateral” by the legislator in relation to restitution should not be misleading;

affecting by its application only the interests of the parties to an invalid transaction, restitution is not among those legal consequences of the invalidity of transactions that the court has the right to apply on its own initiative (article 114 of the Civil Code).

Based on this, the first two shortcomings of restitution can be eliminated by issuing the relevant Decree of the Plenum of The Prime Court of Uzbekistan.

However, the third shortcoming of restitution can be eliminated only by excluding any rules about it from the Civil Code. In this case, the parties to the invalid transaction that transferred property under it will be able to use the conditional requirement to return it. In the case of the transfer of an individually defined thing by a transaction by its title owner, the latter, in addition to the condiction of possession, is also entitled to a vindication requirement, and in this case, he will be able to choose the way to protect his right.

In addition, we believe that such a legislative decision will eliminate the currently existing, but completely unjustified, differences in the legal consequences of invalid and failed transactions.

The practical implementation of the submitted proposals regarding restitution as the main legal consequence of the invalidity of transactions will undoubtedly contribute to increasing the efficiency of civil circulation and protecting the rights of its participants.

References:

1. Скловский К. Защита владения, полученного по недействительной сделке // Хозяйство и право. -1998. - № 12. С.34-38.
2. Тузов Д.О. Иски, связанные с недействительностью сделок-. Теоретический очерк. Томск: Пеленг, 1998. - 72 с.
3. Иброҳимов, А. А. Ў. (2021). КОРПОРАЦИЯНИ БОШҚАРИШДА ФИДУЦИАР МАЖБУРИЯТЛАР ВА УЛАРНИ ЎЗБЕКИСТОНДА ҚЎЛЛАШ ИМКОНИЯТЛАРИ. *Oriental renaissance: Innovative, educational, natural and social sciences*, *1*(10), 841-853.
4. Гражданское право: Учебник. В 4 т. Т. 4 / Витрянский В.В., Зенин И.А., Ем В.С. и др.; Отв. ред. Суханов Е.А. - 3-е изд., перераб. и доп. — М.: Волтерс Клувер, 2006. 776, 1. с.
5. Тузов Д.О. Реституция в гражданском праве: Дисс. . канд. юрид. наук / Юрид. ин-т Томского гос. ун-та Томск, 1999. 211 с.
6. O‘G‘Li, A. A. M. (2022). KORPORATSIYA USTAV KAPITALI FUNKSIYALARI VA UNGA OID MILLIY QONUNCHILIK NORMALARINI TAKOMILLASHTIRISH MASALALARI. *Academic research in educational sciences*, *3*(8), 109-113.

7. Azimjon, I. (2022). ZARAR–YURIDIK SHAXS ISHTIROKCHILARI VA BOSHQARUV ORGANLARI FUQAROLIK-HUQUQIY JAVOBGARLIGINING ZARURIY SHARTI SIFATIDA.
8. Тузов Д.О. Общие учения теории недействительных сделок и проблемы их восприятия в российской доктрине, законодательстве и судебной практике: Дисс. . докт. юрид. наук / Юрид. ин-т Томского гос. унта. Томск, 2006. 365 с.
9. Azimjon Abdumo'min o'g, I. (2022). XO'JALIK JAMIYATINI QAYTA TASHKIL ETISHDA KREDITORLAR MANFAATLARI KAFOLATINI OSHIRISH MASALALARI.
10. Ahrorqulov, A. (2021). Legal status of non-governmental non-profit organizations. *Science of the 21st century: society and digitalization*, *1*(02), 62-63.
11. Мындря Д.И. Недействительность сделки, не соответствующей закону или иным правовым актам: Дис. . канд. юрид. паук: г. Екатеринбург, 2003. С. 94.
12. Утехина Е.С. Недействительность сделок и их последствия: Гражданско-правовые и налоговые аспекты. Дис. . канд. юридических наук. М. 2005. С. 6.
13. Матвеев И.В. Правовая природа недействительных сделок: Дис. канд. юрид наук. М., 2002.
14. Семенов М.И. Действительность сделок: Актуальные вопросы теории и практики // Юрист. 2001. - № 4.
15. Садиков О.Н. Недействительные и несостоявшиеся сделки // Юридический мир. 2000. - № 6.
16. Кресс В.В., Тузов Д.О. Некоторые проблемы практики применения статьи 168 Гражданского кодекса Российской Федерации арбитражными судами // Вестник ВАС РФ. 2001. - №10.
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