

LEGAL CONSEQUENCES OF INVALIDATION OF THE CONTRACT

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The lawful consequence of the invalidity of the contract is restitution (the main consequence) and damages (additional consequence). Participants in civil relations may not, at the level of a contract (including an amicable agreement), qualify a contract as invalid (void or disputed), determine the legal consequences of the nullity of the transaction, or agree on the application of restitution. By the agreement of the parties, only the legal consequences of the disputed transaction may change. In essence, the application of the design invalidity of restitution, as well as the invalidity of the contract itself is not to protect civil rights and interests unacceptable¹.

Interpretation of Art. 216 CCU (legal consequences of the invalidity of the transaction) shows that it is necessary to distinguish between the legal consequences of the invalidity of the transaction and the legal consequences of the invalid transaction. Thus, the legal consequences of the invalidity of the transaction include the fact that it does not create any legal consequences. In addition, if in connection with the commission of an invalid transaction the other party or a third party has suffered damage and nonpecuniary damage, they are to be compensated by the party at fault.

The legal consequences of the performance of a bilateral invalid transaction (agreement) include bilateral restitution. Restitution is a special obligatory way of protection of the property right which can be applied only in case when the subject of the invalid transaction of the time of the decision of the corresponding question is in that party of the invalid transaction to which it was transferred².

Restitution as a way to protect civil rights is used only if there is an agreement between the parties, which is void or is declared invalid³. The purpose of restitution is to restore the status quo between the parties in the factual and legal situation that existed before the transaction, by, so to speak, the absolute destruction of the legal significance of any actions taken by the subjects –

¹ Resolution of the Supreme Court of 27 October 2021 in case No. 346/6034/13-II. Available at: <https://reyestr.court.gov.ua/Review/100704340> (Accessed: 8 March 2024).

² Resolution of the Supreme Court of 9 September 2021 in case No. 925/1276/19. Available at: <https://reyestr.court.gov.ua/Review/99612754> (Accessed: 8 March 2024).

³ Resolution of the Supreme Court of 11 July 2018 in case No. 910/5221/17. Available at: <https://reyestr.court.gov.ua/Review/75298668> (Accessed: 8 March 2024).

participants in the invalid transaction⁴. Prescriptions of Art. 216(1) CCU are not used as a basis for a claim for the return of property transferred for the execution of an invalid transaction, which was alienated to a third party. Claims of property owners for invalidation of subsequent transactions concerning the alienation of this property, which were made after the invalid transaction, cannot be satisfied. The rights of a person who considers himself the owner of the property are not protected by satisfying the claim against a bona fide purchaser using Articles 215 and 216 CCU. Such protection is possible by satisfying the vindication claim, if there are grounds for this, provided by Art. 388 CCU, which gives the right to claim property from a bona fide purchaser⁵. In this case, the property may be claimed from a person who is not a party to the invalid transaction, in particular from a bona fide purchaser, by filing a vindication claim⁶.

Thus, if the property was purchased under a contract from a person who had no right to alienate it, the owner has the right under Art. 388 CCU to sue to recover property from a bona fide purchaser, not a claim for recognition of the contract of alienation invalid⁷ (Resolution, 2014, 27). Rule of Art. 216 CCU applies only to the parties to the transaction. This concept is operated by Art. 1212(1) CCU, which states that a person who acquired property or kept it at the expense of another person (victim) without sufficient legal basis (unreasonably acquired property), is obliged to return the property to the victim. The person is obliged to return the property even when the basis on which it was acquired, later disappeared. In accordance with paragraph 1 of Art. 1212(3) CCU, the provisions of this chapter also apply to claims for the return of an invalid transaction⁸.

The list of consequences of invalidity of transactions is not exhaustive, and the person concerned has the right to make any claim to apply the consequences of such a transaction, based on the principle of restoration of its violated rights and legally protected interests.

A special legal consequence of certain types of invalid contracts is, for example, the cancellation of the entry from the State Register of real rights to immovable property and their encumbrances⁹. However, the court's decision on the invalidity of the transaction does not entail the obligation to cancel the decision on state registration of ownership of the object. To do this, a person whose rights

⁴ Resolution of the Supreme Court of 9 September 2021 in case No. 925/1276/19. Available at: <https://reyestr.court.gov.ua/Review/99612754> (Accessed: 8 March 2024).

⁵ Resolution of the Supreme Court of 28 November 2018 in case No. 504/2864/13-ii. <https://reyestr.court.gov.ua/Review/81842010>

⁶ Separate opinion of judges of the Grand Chamber of the Supreme Court: Sytnik, O. M., Britanchuk, V. V., Lyashchenko, N. P., Prokopenko, O. B. dated November 28, 2018 in case No. 504/2864/13-ts. <https://reyestr.court.gov.ua/Review/82316149>

⁷ On judicial practice in cases on the protection of property rights and other property rights: Resolution of the Plenum of the Higher Specialized Court on Consideration of Civil and Criminal Cases dated February 7, 2014, No. 5, Business-Accounting-Law, Taxes, Consultations, 2014, No. 35, p. 27.

⁸ Resolution of the Supreme Court of 9 September 2021 in case No. 925/1276/19. <https://reyestr.court.gov.ua/Review/99612754>

⁹ Resolution of the Supreme Court of 24 April 2018 in case No. 910/7606/17. <https://reyestr.court.gov.ua/Review/73793155>

have been violated by such an invalid transaction applies to the court with a request to cancel the decision on state registration of rights¹⁰.

In our opinion, this definition of the Grand Chamber of the Supreme Court is incorrect, because if the root cause is rejected (invalidation of the contract), all its further consequences should be cancelled, including the cancellation of the decision on the registration of property rights, which, in turn, was adopted on the basis of the same invalid contract. In our opinion, taking into account the principle of procedural economy, in case of invalidation of a contract, the court decision should indicate the cancellation of all further consequences related to the subject of such a contract (except for the transition of the subject to a bona fide purchaser).

In such cases, the appropriate defendant will not be the state registrar, but the opposite party to the contract¹¹.⁵⁶ And, given all the procedural possibilities of delaying the case (which, in our opinion, in the study should not be mentioned), a person under such an invalid contract should wait a long time to return to his position in what was before the contract.

So, both in the domestic doctrine of civil law and at the level of the Central Committee of Ukraine, it is traditional to divide invalid transactions into insignificant and disputed, which allows it to be used in the context of invalidity of the contract. The disputed agreement is declared invalid by a court if one of the parties or another interested person denies its validity on the grounds established by law [Art. 215(3) CCU]: error (Art. 229), deception (Art. 230), violence (Art. 231 CCU) and other defects. The Central Committee of Ukraine regulates certain grounds for contesting transactions separately (Art. 222, 223, 225, 227, 229–233, 234, 235 CCU), but does not contain an exhaustive list of grounds. This means that any contract can be challenged if it does not meet the general requirements of the transaction (Art. 203 CCU). The challengeability of the contract is embodied in the so-called ‘virtual’ invalidity, when only the most typical grounds for challenge are listed. In this case, it is allowed to challenge the contract by filing a claim for invalidity and on other grounds. Sometimes they are additionally indicated [for example, Art. 668(3) CCU], but in general, it is allowed in case of violation of mandatory norms enshrined in acts of civil law, the interests of state and society, its moral principles. The decision of the Supreme Court in the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation of June 22, 2020 in case № 177/1942/16-ts states that “the existence of grounds for invalidating the contract must be established by the court at the time of its conclusion. The contract must exist at the time of its conclusion, and not as a result of non-performance or improper performance of obligations arising under the contract”.

¹⁰ Resolution of the Supreme Court 11 September 2018 in case No. 909/968/16. <https://reyestr.court.gov.ua/Review/76860058>

¹¹ Resolution of the Supreme Court of 12 December 2018 in case No. 570/3439/16-ц. <https://reyestr.court.gov.ua/Review/78977528>