



## **ACTUAL PROBLEMS IN THE EXPERT COMPETENCE OF A PSYCHOLOGIST IN CIVIL PROCEEDINGS OF THE REPUBLIC OF UZBEKISTAN (on the example of psychological and psychiatric examinations)**

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### **Abstract:**

This article discusses the criteria of expert competence in conducting forensic psychological and forensic psychiatric research. The author pays special attention to the trends in the objective interpretation of expert opinions in the aspect of legal law.

### **Keywords:**

Transaction, forensic psychological examination, forensic psychological and psychiatric examination, mental state, will, expression of will, delusion, deception.

### **Introduction**

Currently, the probability of solving problems related to forensic psychological research is particularly ripe, which requires explanations and provisions necessary for the qualitative interpretation of research findings in the work of judicial and investigative authorities. This statement is related to the fact that many mistakes and incidents were made, both in the parameters of law and in the parameters of the competence of conducting forensic psychological research with a biased interpretation of conclusions that sometimes have a fateful significance in making decisions and sentences.

The decree of the President of the Republic of Uzbekistan "On measures for further improvement of forensic expert activity" dated 17.01.2019 places great responsibility on experts [1]. Despite the increasing demand for forensic psychological research and the increasing number of its appointments, the qualitative aspects of forensic psychological examinations expect much to be desired.

### **The main part**

The history of our long-term 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 questions 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 in the framework of criminal and civil processes, which determine the questions about the abilities of the subject of the study: 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 claim. Since the dominant motivation of human behavior is related to the state of the affective sphere, the parameters of the "emotional response" in the context of the deficit of the volitional complex are included in the basis of our research direction.

Our observations show that all forensic psychological studies related to civil proceedings are focused on identifying certain parameters and levels of emotional response of the 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 a particular 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 our interest. Thus, L. V. Alekseeva (1996), considering the phenomenology of legally significant emotional states, made an attempt to explain the causal relationships between emotional states and the understanding of the subject of the study of the surrounding reality [2].

S. S. Shipshin in his scientific research on "Forensic psychological examination of the mental state of a driver in cases of road accidents" (1998) paid special attention to the complex of emotions, experiences and states that make up the "emotional spectrum" of extreme states and its parameters [3]. L. N. Yablokova (2005) in her research considers the features of assessing the emotional states of juvenile defendants during complex forensic psychological and psychiatric examinations [4]. Oselkov (2011), studying the psychological features of the influence of extremist materials on students of higher educational institutions, notes the role of emotions that are actualized in a negative way, disorienting the positive orientation in the youth environment [5].

In our experimental studies related to forensic psychological practice, professional inconsistencies are often identified due to the lack of complementarity (complementarity) research versions for a specific legal subject of the study. This position 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.

## Material method

In the last decade, as part of the socio-economic changes in the life of society, the development of market relations that affect the activity of citizens to dispose of their property rights, the number of civil law transactions has increased. Invalidation of a transaction is one of the ways to protect civil rights. As our forensic psychological practice shows, more than 90% of all civil cases considered per year by one judge in the court of first instance are initiated on claims for invalidation of transactions.

Unfortunately, the insufficient development of the theoretical and methodological basis for the subject types of forensic psychological examinations in the Republic leads to numerous disagreements among psychiatrists and psychologists, which causes the errors of the legislator. As T. V. Sakhnova rightly notes, "The subject of psychiatry is the human psyche in pathology, the subject of psychology is the healthy psyche" [6]. This explanation is sufficient to distinguish the subject of psychological expert research from the subject of psychiatric examination.

The behavioral characteristics of a pathological person (mentally deficient) differ from the behavior of a normal person (mentally full), who can get into unfavorable circumstances and react to them in an uncharacteristic way.

Considering the incidents of the psychological-psychiatric and purely psychological significance of the conclusions presented in civil proceedings, we note some examples that are relevant to this problem. So, in one example from our practical experience, there is a tendency to inconsistency in the interpretation of the behavior of the subject K. E. in the circumstances of a civil claim. According to the circumstances of the case, it is known that K. E., made a deal to buy and sell her apartment under the influence of unscrupulous buyers for a minimum amount that does not correspond to the real value of the disputed housing. According to the court definition, a forensic psychological examination was conducted, for the resolution of which questions were raised regarding the ability of K. E. to make the

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

As a result of the forensic psychological study on the subject K. E., conclusions were drawn due to the fact that at the time of signing the contract of purchase and sale of the apartment K. E. was in a state of behavioral disorganization that 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 super-valuable experiences of ideas of inferiority and feelings of guilt that arose on mentally defective grounds.

The violations revealed as a result of experimental psychological examination in the cognitive and personal spheres of the subject indicate: non-purposeful thinking, the tendency of the subject to symbolism and resonant constructions, against the background of defectiveness of volitional regulation with progressive autism and maladaptation in the social environment. These circumstances caused 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 circumstances of the period of interest to the court.

The plot of mental disorders found in K. E. was determined by a direct connection with psychotraumatic circumstances, which was the reason for the sharp restriction of critical capabilities in the subject who was not able to see the situation as a whole at the time of the period of interest to the court, 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 everyday plan, K. E. again found herself in an expert situation on the passage of a psychological and psychiatric examination with the decision of the question of her legal capacity (incapacity). The clinical history of the life of the subject, including clinical observation and psychological examination, leads experts to the conclusion that K. E. reveals signs of disorders related to the nosology of the schizophrenic symptom complex. But at the same time, the subject K. E. is defined by experts-psychiatrists as "capable", i.e. "capable". able to make the right decisions and be aware of their actions in the circumstances of a civil claim. The expert conclusions of the forensic psychological study were ignored by both psychiatrists and the court, which made a decision according to the conclusions of the psychiatric report.

This fact indicates the lack of information of the bailiff, on the one hand, in terms of psychological parameters that are equivalent to legal meaning (Article 122,123 of the Civil Code of the Russian Federation), which explains the cause-and-effect relationships of behavior (normative or non-normative) of a person in legally significant circumstances, and on the other hand, ignoring the significance of psychological knowledge, taking into account the authoritarianism of the 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 judicial and investigative practice of the Republic of Uzbekistan, to which our research interests are directed.

According to the statistical indicators of our forensic psychological research experience-70% of the research is related to the 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 committing a disputed act are deceased and the court has questions that require psychological knowledge for their explanation.

It should be noted that in the Republic of Uzbekistan, until recently, only a forensic psychiatric examination was appointed in respect of disputed transactions (for "purchase and sale", "wills", "gift"), since the court usually had doubts about the mental worthiness of the testator or another person

The experience of our practical activity (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: the mental state, the psychological characteristics of the individual, and the emotional manifestations of the subject of the study at the time of actions related to the legal period. In this case, it is necessary to consider:

a) the nature of the stimulus affecting the personality, deforming the behavioral structure of a person who is not a mentally defective subject;

b) various psychological reasons (loneliness, stress, death of loved ones) that cause mental states, the impact of which cannot be overestimated during the registration of legally significant acts.

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" for the recognition of a transaction as invalid 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 the conscious regulation of a person's behavior and activities related to the ability to overcome internal and external obstacles in the circumstances of achieving the goals set. When the marked abilities are violated, then the question arises about violations of volitional qualities, i.e., about the "vice of the will". Reasoning within 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 a legally significant transaction.

By implying a certain psychological regularity under the "vice of the will", we assume that in the above sense, the causes of the "vice of the will" (volitional deformation of behavior) are individual in each case, and this is due to different mechanisms for the formation of a particular error in the circumstances of the need to make a decision [7].

In our opinion, the psychological parameters of the deformed will include: the syndrome of emotional tension; the syndrome of volitional frustration (in a hysterically accentuated person); the syndrome of personal asthenization (mental weakness) as a result of a somatic disease that weakens the 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 (non-curable).

In our opinion, the statement of the "vice of the will" is impossible without substantiating the mechanisms of the formation of this state. There are internal mechanisms that are related to the "emotional stress" syndrome. External reasons concerning the legal interpretation of events are also important. These reasons are due to the material and legal significance that differentiates the error as an essential element of the transaction declared invalid. In this case, the legal connotation is the careless fault of the counterparty. And here it is necessary to qualify the transaction as made under the influence of deception. It is necessary to take into account additional significant criteria due to the probability of the subject of the transaction being deceived.

One of the means of proving the "vice of the will" is the examination of the inability of a mentally capable subject to control his actions in the circumstances of a temporary period. A post-mortem forensic psychological examination of a person who has committed a legally significant act in the period preceding the death is appointed in absentia. In the last decade, in the Republic of Uzbekistan, a purely "psychiatric trend" is expressed in the fundamental disregard of the forensic psychological direction in the aspect of post-mortem forensic psychological examinations. This circumstance creates a scientific need in terms of introducing specifics and clarity on the competence of the psychologist (as an expert) in civil proceedings, in connection with the giving of an opinion that may have evidentiary value.

## Conclusion

Thus, according to the above, an objective study of the parameters of the "emotional response" in the aspects of the civil investigation of the Republic of Uzbekistan is of fundamental importance in the circumstances of both psychiatric and psychological examinations. Moreover, the research context in the diagnosis of the "human factor" for the types of forensic examinations under consideration is determined by the difference in the platforms of competence, the complementarity of which is not intended to introduce disagreements in situations of judicial decision-making, but to represent the scientifically based clarity of expert research, the conclusions from which can be fateful.

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