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FEATURES OF THE ESTABLISHMENT OF THE VICE OF THE EMPLOYEE'S WILL IN LABOR RELATIONS

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The subject of the article. Traditionally, it is used to assess the legality of actions taken by participants in civil matters. Nevertheless, although the concept of "vice of will" is deeply developed in civil law, its application to labour relations remains ambiguous due to the specific socio-economic nature of labour and the special legal mechanisms designed to protect the interests of employees.
The purpose of the study. Development of a special approach to the use in labor law of categories borrowed from civil law related to the vice of the will, as well as special rules for identifying defects in the will of the employee.
Methods. Empirical methods of comparison, description, interpretation as well as formal legal method.
Conclusions. The admissibility of applying analogies and uncontrolled use of terms from civil law in labour dispute judicial practice are refuted, and a set of special rules is proposed for consideration in cases where it is necessary to establish defects in the will of an employee. Among these rules is the need to maintain a balance of interests between the parties to labour relations as a defining principle in adjudication on the matter of establishing the will of the parties. The freedom of defining the legal terms of any agreement between an employee and an employer, in the absence of legal restrictions, should in any case be limited by the inadmissibility of attributing objective risks associated with the employer's business activities to the employee. At the same time, the application of "contra proferentem" interpretation to disputed terms, with the burden of proof placed on the employer to demonstrate the employee's voluntary consent to such terms, is permissible only if the employee provides evidence of the clearly and obviously onerous nature of these conditions. The priority of the actual will of the parties and the refusal to recognize the legal significance of the expression of will is possible in any case in the absence of signs of bad faith referring to the depravity of the party, declared within the time limits prescribed by law to appeal to the court, provided that such a decision will not entail violations of the requirements of the law or other legal act or infringe on public interests. If circumstances of vice of will are identified, arising from lawful managerial decisions of the employer or the likelihood of such decisions being made regarding the employee, the legal consequences are inapplicable. The assessment of the appropriateness of the employer's lawful managerial decisions should not be subject to judicial review

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1. Introduction.

The application of civil law terminology to labor relations is by no means an exceptional phenomenon and is one that frequently encounters criticism in legal scholarship. For instance, L. A. Chikanova notes that the use of civil law terms "as having universal significance in the consideration of labor disputes" cannot be accepted, "for civil and labor legislation are based on different principles" [1, page 16]. A significant number of scientific works have been devoted to the study of the civil law concept of the vitiation of will [2; 3; 4; 5; 6; 7]. This concept is foreign to labor legislation. In the science of labor law, however, there is an extensive discussion regarding the possibility of the legislative consolidation of grounds for recognizing an employment contract as invalid. The views of scholars on this issue vary: from the impermissibility of the very concept of the invalidity of an employment contract to the necessity of mandatory supplementation of the Labor Code of the Russian Federation with a corresponding article or, at the very least, the legal consolidation of the possibility of applying an analogy with the corresponding institute of civil law. Thus, S. Yu. Golovina notes that "to resolve the issue of the consequences of violating the rules for concluding an employment contract, Paragraph 11 of Article 77 of the Labor Code of the Russian Federation, which provides for the corresponding ground for the termination of an employment contract, is sufficient; and for neutralizing the terms of an employment contract that worsen the position of the employee, there is Part 2 of Article 9 of the Labor Code of the Russian Federation" [8, page 13]. Other authors note that the concept of the invalidity of an employment contract, provided there is legal regulation of the order, procedures, and consequences, has sufficient grounds for consolidation in the Labor Code of the Russian Federation [9, page 98]. N. N. Tarusina, drawing an analogy with family law relations, in a number of which restitution of legal relations is likewise impossible, does not see any obstacles to repeating this experience in labor legislation [10, page 50]. D. V. Agashev proposes to supplement the Labor Code of the Russian Federation with the concept of the nullity of an employment contract, fixing the corresponding grounds and legal consequences in Article 9 [11, page 257]. Finally, some scholars do not exclude the possibility of the subsidiary application of the provisions of the Civil Code of the Russian Federation on the invalidity of transactions [12, page 47; 13, page 519].

Despite the fact that in some countries of the Eurasian Economic Union such constructs exist in labor codes and, moreover, the grounds for recognizing a contract as invalid due to a vitiation of the employee's will are specified, it must be recognized that the application of the consequences of the invalidity of a transaction, characteristic of civil law, is impermissible for labor relations. The identification of a vitiation of will or expression of will in labor relations should entail consequences that take into account the specifics of the branch of law [14, page 408].

However, the discussion on the invalidity of the employment contract as a legal consequence of establishing a vitiation of will brings other controversial issues to the discussion, the relevance of which is confirmed by extensive and inconsistent judicial practice. One such issue is the application of the concept of the vitiation of will in labor relations, the procedure for its establishment in court, and its special labor-law characteristics. On this question, the views of scholars also diverge. Thus, M. V. Lushnikova notes that "the purpose of concluding a labor contract, and even more so the motives, have no legal significance. In other words, the vitiation of will as such has no significant meaning in labor relations." This is explained by the fact that the employee is free to terminate labor relations at any time; the same opportunity, but on grounds provided by law, is also available to the employer [15, page 29]. Other authors, having different ideas about the consequences of establishing a vitiation of will, on the contrary, find that defects of will and expression of will have legal significance and require the

attention of the legislator [16, page 45; 17, page 111; 18].

We note that the issue of defects in the formation of will goes beyond the boundaries of the provisions of the employment contract and concerns almost any situation in which the employee and the employer must reach an agreement; the study of will in the context of the concept of "initiative" in labor legal relations also deserves separate attention. While the question of the existence of and the need to fill the gap regarding the invalidity of employment contracts in the Labor Code of the Russian Federation has not received its resolution, the problem of overcoming defects in the formation of will and expression of will by legal means remains quite acute.

In the following parts of this article, an analysis of judicial practice will be provided regarding the use of certain civil law terms related to the vitiation of will as applied to the interpretation of the will and expression of will of the employee. We note that the analogies with civil legislation provided in this article are theoretical constructs aimed at developing an approach to determining will and the expression of will, as well as their vitiation in labor relations.

2. Error in Essentia in Labor Legal Relations Using the Example of Disputes on the Recognition of Relations as Labor Relations.

One of the most common cases of recourse to this term in labor disputes is in cases of establishing the fact of labor relations or recognizing them as such in the event of the conclusion of a civil law contract. In such disputes, the presumed employees often stereotypically apply the construct: "did not understand the meaning of the contract being signed," "did not realize that I was signing an employment contract," "did not understand the difference between the civil law contract being signed and an employment contract," "thought that an employment contract had been concluded with him." In fact, in the examples given above, we are talking about a misconception regarding the nature of the transaction.

At the same time, in connection with the active reception of this category, a number of questions arise. In a case where signs of labor legal relations are established by the court, but an error in essentia is not established – for example, if the possession of a higher legal education gives reason to believe that the plaintiff understood the nature of the contract being concluded and its legal consequences – should the court refuse to reclassify the contract, and what would be the prospects of this dispute if the plaintiff pointed to the forced nature of signing the civil law contract in connection with difficult life circumstances (prolonged job search, debt obligations, dependents, and so on)? In view of the impermissibility of the direct application of the norms of civil legislation to labor legal relations, how should the court resolve the dispute if it establishes a misconception regarding the motives of the transaction or its legal consequences? In accordance with the Civil Code of the Russian Federation and the legal positions of the higher courts, the indicated cases are not exampling of error in essentia and do not entail consequences in the form of recognizing the transaction as invalid.

Since Part 2 of Article 15 of the Labor Code of the Russian Federation expressly prohibits the conclusion of civil law contracts that actually regulate labor relations between an employee and an employer, then in the terminology of civil legislation, such transactions would be transactions that violate the requirements of a law or other legal act. Taking into account the public interest characteristic of labor relations, they would probably be qualified as void ab initio. This thesis also finds its confirmation in judicial practice. The following argument is often encountered in decisions: "the fact of the voluntary signing by the plaintiff of contracts for the performance of work by a physical person does not testify to the absence of labor relations, since the employee is the economically weaker party in the labor legal relation, and all doubts must be interpreted in favor of the existence of labor relations"[1].

[1] Appellate Ruling of the Judicial Chamber for Civil Cases of the Sverdlovsk Regional Court dated May 8, 2018,

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It is noteworthy that despite the unambiguous and specific legislative prohibition on concluding a civil law contract instead of an employment contract, in the event of an employer's appeal to the court with a claim to recognize as illegal an instruction from the state labor inspectorate obligating the plaintiff to conclude an employment contract, courts often proceed from the presence of will or the absence thereof in the employees themselves, noting that to resolve the issue of reclassification "it is first of all necessary to take into account the opinion of the performer (employee)"[2]. At the same time, practice does not provide an unambiguous answer as to whether the state inspector himself must inquire about the will of the employee. However, in some decisions, courts note that from the content of Part 1 of Article 19.1 of the Labor Code of the Russian Federation, it follows that "the consent of the performer is not required," since the state labor inspectorate is endowed with the authority to independently send inspection materials to the court for the purpose of recognizing the contract as a labor contract. If we again resort to analogy and assume such a substitution of a contract with a transaction that encroaches on the public interest, then this issue, in view of the nullity of such a transaction, should be resolved unambiguously not in favor of the free choice of the employee.

It seems expedient to clarify the questions posed above, maintaining priority for the establishment of signs of labor relations which, in their totality, sufficiently testify to the existence of labor relations. Upon discovery of these signs, the insufficiency of evidence testifying to a vitiation of will – in particular, evidence of error in essentia, fraud, or a difficult combination of circumstances – will not have significant meaning.

3. Unconscionable Terms in Labor Relations.

The question of the possibility of applying the category of unconscionability to employment contracts or their individual terms in the event of establishing the fact of consent to impermissible conditions due to the desperate situation of the employee is not new and has been discussed by labor law science repeatedly [19, page 224; 20, page 69; 21, page 76]. It should be noted that the construct of unconscionable transactions was used previously in legislation as applied to labor relations, for example, in Circular of the People's Commissariat of Justice Number 106 dated August 7, 1928.

The concept of the unconscionability of the terms of an employment contract, additional agreements to it, or termination agreements is also frequently used in court decisions. Moreover, this term is used in different ways. In some cases, it is used in its common lexical meaning without establishing the signs of unconscionability. Thus, in one of the court decisions, the court found justified the employee's refusal to sign an employment contract proposed by the employer in execution of a court decision recognizing the relations as labor relations, on the grounds of the unconscionability of the term on labor remuneration[3]. It appears that in the absence of a legal possibility to apply an analogy of the law and independent branch regulation of this issue, it would be more justified to use other terms: "unfavorable terms," "uncoordinated terms," or "imposed terms."

In another case, in refusing to satisfy the employee's claim to recognize as invalid an agreement on the termination of an employment contract due to the absence of consideration therein

in case Number 33-8242/2018. Decision of the October District Court of Yekaterinburg, Sverdlovsk Region, dated May 24, 2017, in case Number 2-1975/2017.

[2] Decision of the October District Court of Krasnodar, Krasnodar Territory, dated March 5, 2024, in case Number 2a-1146/2024. Decision of the Nizhny Novgorod District Court of Nizhny Novgorod, Nizhny Novgorod Region, dated November 17, 2016, in case Number 2-11348/2016. Appellate Ruling of the Judicial Chamber for Civil Cases of the Court of the Jewish Autonomous Region dated June 26, 2015, in case Number 33-307/2015.

[3] Ruling of the Judicial Chamber for Civil Cases of the First Court of Cassation of General Jurisdiction dated December 9, 2019, in case Number 8G-1595/2019.

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– which, in the employee's opinion, made such an agreement unconscionable – the court investigated the traditional signs of unconscionability with reference to Article 179 of the Civil Code of the Russian Federation and refused to satisfy the claims due to the insufficiency of the signs of an unconscionable transaction[4]. If we assume the very possibility of extending these signs to the practice of resolving labor disputes, then, probably, proving the fact of concluding a transaction on extremely, and not just unfavorable, terms, as well as the actions of the other party testifying to the fact that it deliberately took advantage of such difficult circumstances, turns out to be practically impossible.

Finally, in a third group of judicial acts, on the contrary, the impermissibility of applying provisions on "unconscionability" to labor legal relations is pointed out due to the absence of corresponding norms in the Labor Code of the Russian Federation[5].

The practice of concluding employment contracts without real coordination of its terms is by no means an exception. The employee often finds himself before a choice: to conclude a contract that does not satisfy him in some points or to return to the job search stage, which may drag on for an unpredictably long period. This argument rarely serves as a basis for the court to take the side of the employee. Thus, in disputes over the recognition of fixed-term employment contracts as concluded for an indefinite period in cases where the parties determined their fixed-term nature on one of the grounds of Part 2 of Article 59 of the Labor Code of the Russian Federation, courts often refuse to satisfy the employee's claims, finding no evidence of compulsion. Arguments about the need for employment as soon as possible, the presence of dependents, and credit obligations are also not convincing[6]. The application of the clarifications of the Plenum of the Supreme Court dated March 17, 2004, Number 2, according to which for the transformation of a contract in the specified case it is necessary to establish forced consent regarding the fixed-term nature, remains conditioned exclusively by the discretion of the court.

Almost a "kindred" branch to labor law is another construct provided by the Civil Code: the contract of adhesion. The idea of this comparison is far from new [22, page 86; 23, page 83; 24, page 408]. In the version of Federal Law dated March 8, 2015, Number 42-FZ, Paragraph 3 of Article 428 extends its effect also to legal relations that arose although not as a result of a contract of adhesion, but in conditions of a clear inequality of bargaining power, in view of which it is difficult for one of the parties to influence the content of the terms of the contract. The specified construct is aimed at the fair implementation of the principle of freedom of contract, in which the legislator is not limited to recognizing the legal equality of the parties, but uses legal means to level the position of the parties, one of which is economically weak and dependent.

Is there a general need for the legislative legalization of these categories as independent categories of labor law? It appears that there is no such need. The essentially unequal position of the parties predetermines the public-law principles of the branch of labor law. As a general rule, the law also provides the employee with the right to influence contractual terms. And the law enforcement officer, in the event of discovering a clear imbalance in the interests of the parties, is obliged to make a decision that corresponds to the goals and objectives of labor legislation.

4. Forced Consent of the Employee.

Indisputably, one of the most frequently encountered examples of the mention of a vitiation

[4] Decision of the Surgut City Court of the Khanty-Mansiysk Autonomous Okrug-Yugra dated October 24, 2024, in case Number 2-10358/2024.

[5] Appellate Ruling of the Judicial Chamber for Civil Cases of the Pskov Regional Court dated March 24, 2015, in case Number 33-411/2015.

[6] Ruling of the Smolensk Regional Court dated June 6, 2012, in case Number 33-1748. Ruling of the Saint Petersburg City Court dated May 24, 2012, in case Number 6649. Decision of the Ust-Kan District Court of the Republic of Altai dated June 20, 2022, in case Number 2-137/2022.

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of will in judicial acts is the category of cases related to challenging the termination of labor relations in connection with the involuntary nature of writing a letter of resignation or signing an agreement to terminate the employment contract. Furthermore, in judicial practice, there are many examples where employees apply with a demand to stop the employer's actions compelling dismissal preventively. However, statistically, courts are significantly less likely to take the side of the employee, motivating this by the absence of sufficient evidence of inducing the employee to such a decision. In the reasoning part, courts limit themselves to very formal explanations, according to which the fact of the absence of compulsion is confirmed by the absence of actions to withdraw the letter of resignation of one's own free will, familiarization with the order without remarks, the receipt of final payment, failure to report to work, as well as the absence of appeals to law enforcement and supervisory authorities regarding the fact of compulsion [7]. Evidence confirming the conflictual nature of relations between the employee and the employer is also often not a sufficient argument in such disputes.

At the same time, there are few examples in which courts, in satisfying the claims of the employee, justify the involuntary nature of signing the above-mentioned documents by the special psychological state of the employee associated with the proposal to sign an agreement on the termination of the employment contract, as well as the employer's failure to explain the consequences of signing such an agreement. In the case of recognizing as illegal the actions of the employer in compelling dismissal of one's own free will, in some decisions, one can encounter arguments that the work is the main one, other sources of income are absent, offers of new work have not been received, and even an indication of the presence of credit obligations[8]. The defendant's arguments about familiarization with the order and the absence of withdrawal in such cases are recognized as groundless.

Separate attention should be paid to cases of forced consent of the employee dictated not by a real threat of job loss, nor by the forced position of the employee associated with special difficult life circumstances, but by conditions directly related to labor management. Forced consent can be dictated by a wide variety of reasons: from corporate culture, inducing the employee to act as the majority of other employees do, to fears of encountering employer disloyalty when resolving issues related to the assessment of labor results, career growth prospects, or the satisfaction of the employee's personal requests. It should be noted that such reasons are specific to labor relations. In a similar case, when assessing the validity of a civil law transaction, it is unlikely that such circumstances would be interpreted by the court as sufficient to state a vitiation of will.

It should be noted that the examples of court decisions analyzed above do not reflect the entire picture of the true state of affairs regarding the relationship between the will and the expression of will of employees. Innumerable is the number of cases of conditionally voluntary involvement in work on weekends or overtime work, in which employees, at best, forcedly agree while receiving legal compensation, and at worst are involved in work beyond the normal duration of working time without proper documentation and payment. Furthermore, the Labor Code provides for some cases of alternative ways of implementing a right, assuming at the employee's choice the receipt of the guarantee due to him in one way or another. In practice, the making of this choice occurs by no means independently – the employee turns out to be compelled to choose the form that will be indicated to him by the employer. Thus, at the request of the employee, overtime work can be compensated either by increased payment or by the provision of additional rest time, not less than the time worked overtime. A similar choice is provided by law when involving an employee in work on non-working days and holidays.

[7] Decision of the Tushino District Court of Moscow dated September 12, 2023, in case Number 02-4966/2023.

[8] Decision of the Chulym District Court of the Novosibirsk Region dated September 18, 2024, in case Number 2-565/2024. Decision of the Salavat City Court of the Republic of Bashkortostan dated June 21, 2024, in case Number 2-1773/2024.

In addition, the Code also contains examples of the provision of certain types of guarantees at the request of the employee. And again, despite the right of the employee expressly indicated in the law, in practice, the decision remains with the employer. All the examples given above represent cases of violation of the law that are of a mass nature, and at the same time belong to that category of violations with the existence of which employees most often agree, without trying to defend their rights in court.

5. Conclusion.

The fundamental differences that do not allow the extension of the civil law approach to the vitiation of will to labor legal relations lie in a whole series of factors. These include, in particular, specific motives influencing the formation of the employee's will, which can be conditioned not only by subjective factors but also by objective ones – for example, the ratio of supply and demand for a specific profession in a specific period of time, the stability of the labor market as a whole, the specifics of the organization (say, planned career growth in a closed system of organizations of the same type, where in the event of uncooperative behavior of the employee at a previous place of work, the probability of employment in other organizations of this sector significantly decreases). Another important feature is the predominantly desired long-term nature of the legal bond. In comparison with some civil law relations that are also characterized by the inequality of participants – for example, relations with a consumer – the employee, who more often gravitates towards stability in labor relations, finds himself in a position of "Hobson's choice" even in the absence of any external influence on free expression of will from the employer. The third feature is the specifics of the managerial authority of the employer. This cannot but presuppose both the legal possibility of the employer to exercise management of non-independent labor, determining by his own choice the most effective lawful ways of influencing the employee's behavior, and the influence of "organizational dependence" on the employee's free decision. Finally, there is the procedural feature of labor disputes – the advantage of the employer in terms of presenting evidence.

Undoubtedly, the gap in legal regulation in the legislation in this part presupposes the simultaneous resolution of a whole range of issues. In particular, the resolution of the issue of the consequences of identifying such a vitiation, the role of motives for the formation of a vitiated will, cases in which the establishment of the will of the parties will have no legal significance, and finally, the definition of terms doctrinally related to the vitiation of will and expression of will. Each of these issues deserves independent research.

However, in resolving the issue of the process of identifying will in labor legal relations, taking into account the above, it appears important to make several clarifications at the legislative level.

1. According to the fair remark of M. A. Drachuk, "competition in the labor market without the relative freedom of the employment contract is impossible, and the opposite situation will restrain the development of productive forces" [25, page 386]; therefore, any identification of the will of the parties for the purpose of changing legal relations must be carried out in no other way than from the position of the balance of interests of the parties to labor legal relations.
2. The freedom to determine the legal terms of agreements of any kind between the employee and the employer, in the absence of legal restrictions, is in any case limited by the impermissibility of allocating objective risks associated with the economic activity of the employer to the employee's side.
3. The application of the contra proferentem interpretation in relation to disputed terms with the imposition on the employer of the burden of proving the circumstances of the employee's voluntary consent to such terms is permissible only upon the presentation by the employee's side of evidence of the clear, absolutely obvious burdensome nature of these terms.
4. Priority of the actual will of the parties and refusal to recognize the legal significance of the expression of will is possible in any case in the absence of signs of bad faith behavior of the party referring to the vitiation, declared within the time

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limits provided by law for appealing to the court, provided that such a decision will not entail a violation of the requirements of the law or another legal act or encroach on public interests.

5. In the event of clarifying the circumstances of a vitiation of will formed under the influence of the employer's management decisions that do not contradict the law or the probability of such decisions being made in relation to the employee, legal consequences shall not apply. The assessment of the expediency of the employer's lawful management decisions should not be the subject of judicial review.

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