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СА ПРИВРЕМЕНИМ СЕДИШТЕМ У КОСОВСКОЈ МИТРОВИЦИ
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NULLITY OF LEGAL TRANSACTIONS

Summary: The paper analyses the types of nullity and reasons for nullity of legal transaction in the legal system of the Republic of Macedonia and comparative law. Contemporary civil law recognizes two types of nullity of legal transaction (absolute and relative). Some civil codes and laws clearly state the difference between absolutely null and relatively null legal transaction such as: the Italian Civil Code, Macedonian Law of Obligations, Serbian Law of Obligations, Croatian Law of Obligations and the Law of Obligations of Montenegro. Other civil codes and laws like the German Civil Code, French Civil Code, Spanish Civil Code, and the Swiss Law of Obligations, make no clear distinction between absolute and relative nullity, but attribute different consequences to nullity depending on the reasons for nullity. Civil doctrine on the other hand, depending on the reasons for nullity, places null transaction into three categories: Non-existent legal transaction, absolutely null legal transactions (void transactions) and relatively null legal transactions (voidable transactions).

Key words: *contracts, legal transactions, nullity, voidable transactions, civil law.*

Civil law relations are voluntary relations enacted under the principle of free initiative. This means that persons (natural and juridical) are granted the opportunity to freely create, change or terminate civil law relations in the boundaries that the law determines. One of the instruments they use to enact their free initiative is the legal transaction.

The term “legal transaction” is an abstraction created by pandect legal theory in Germany and continued to develop in contemporary civil law.

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Modern civil doctrine defines legal transaction as "expression of will of a person directed towards creation, change or termination of civil law relations"¹. It includes unilateral legal transactions (where the will of one party operates)² and contracts (legal transaction created by consent of will of both parties).

Macedonian law recognizes the abstract term of legal transaction, however there are no precise provisions that define its scope and meaning. Different laws attribute different meanings to it, but we can still derive that unilateral legal transactions and contract all fall under the term legal transaction if we consider the provision of the Macedonian Law of Obligations (article 76 (1)3. In European comparative law the term "legal transaction" is found in the German Civil Code (Bürgerliches Gesetzbuch - BGB) in a separate Division 3 - Legal Transactions (§ 104-185). The Swiss Law of Obligations (Obligationenrecht), and the French Civil Code (Code Civil) have no general provisions for legal transactions but they use the terms agreement, contract or transaction. The Italian Civil Code (Codice Civile), also lacks general provisions for legal transactions, however part IX of the Code contains provisions that define contracts, torts and other legal acts and actions as sources of obligations (art. 1173). Similar, the Spanish Civil Code (Código Civil) defines contracts, quasi - contracts and torts as sources of obligations (art. 1089). Serbian Law of Obligations (Zakon o obligacionim odnosima), Croatian Law of Obligation (Zakon o obveznim odnosima⁴) and The Law of Obligations of Montenegro (Zakon o obligacionim odnosima⁵) also recognize the term legal transaction.

Legal transactions when concluded produce certain legal effect for the parties in civil law relations, and sometimes for third parties as well. However, for a legal transaction to produce the intended legal effect, all legal conditions must be met. Different types of legal transactions require different legal conditions for their conclusion, but as most important we single out: capacity to contract; consent; permitted, possible and determined subject; permitted cause; form and other conditions prescribed by law (consent from the legal representative, permit and etc.). When the concluded

¹ See: О. Станковић, В.В. Водичевић, *Увод у грађанско право*, Номос, Београд, 2004, p. 160; П. Ковачевић - Куштрамовић, *Грађанско право*, Нипш, 1996, p. 144; М. Ведрић, Р. Кларич, *Грађанско право, 8. издање*, Народне новине, Загреб, 2004, p. 101; Д. Попов, *Грађанско право (општи део)*, *Пето измењено и допуњено издање*, Нови Сад, 2007, p. 183.

² We use the term unilateral legal transaction for all legal transactions created by the expressed will of one person, and under that term we include unilateral contracts and wills.

³ Official Gazette of the Republic of Macedonia, number 18/2001.

⁴ Official Gazette of the Republic of Croatia, number 35/2005.

⁵ Official Gazette of the Republic of Montenegro, number 47/2008.

legal transaction fails to meet the legal requirements it is considered to be null and void. Depending on the reasons for nullity the legal theory places null legal transactions in to three categories: non-existing legal transactions, absolutely null legal transactions (void) and relatively null legal transactions (voidable).

The Macedonian Law of obligations recognizes only two types of nullity of legal transaction: absolutely null legal transaction and relatively null legal transaction. The main consequence in both cases is annulment of the transaction. However there are differences between absolute and relative nullity with respect to the persons who are authorized to submit a claim for nullity, the deadlines for submitting the claim for nullity, and differences concerning restitution, liability for damages, convalidation (affording legal effect to a null legal transaction) and conversion (transformation of a null into a valid legal transaction).

With respect to comparative law, we note that the French Civil Code doesn't make a strict differentiation between absolute and relative nullity. It refers to nullity in general and it considers nullity as one of the reasons for termination of agreements. The general deadline for claiming nullity is five years, unless the law stipulates otherwise (art. 1304).

The Spanish Civil Code also makes no strict division between absolute and relative nullity of agreements. However, it does state that agreement may be annulled if it is contrary to the interest of the contracting parties, or if it has deficiencies that are considered by law as reasons for nullity (art. 1300). Annulment may be claimed in a period of four years (art. 1301). With the respect to the persons who may claim nullity, according to the Spanish Civil Code any person that is bound by the agreement directly or indirectly may file a claim for nullity. If the reason for nullity is the legal incapacity of the contracting party, in that case the contractor with full legal capacity has no right to claim nullity. Also person responsible for causing duress or fraud are not afforded the right to claim nullity of the agreement (art. 1302).

The German Civil Code regulates nullity in the scope of provisions which regulate the conditions for validity of legal transactions. Regarding to the reasons for nullity, the German Civil Code recognizes various reasons for nullity. Some have no deadlines for nullity such as mental reservation, lack of form, lack of seriousness of intent, usurious contracts. Others have different deadlines depending on the particular reason for nullity. When the reason for nullity is mistake or incorrect transmission, the party may claim nullity without delay, right after he or she became aware for the reason for nullity, but no later than 10 years from the day the declaration of intent was

given (§ 121). If the reason for nullity is fraud or duress the deadline is one year from the moment the person became aware of the fraud, or one year from the moment the duress had stopped, but no later than 10 years (§ 124).

Much like the German Civil Code, the Swiss Law of Obligations regulates nullity in the scope of the provisions regulating the validity of agreements. The Swiss Law of Obligations states that an agreement is null if it is impossible, contrary to the law or immoral (art. 20).

Italian Civil Code makes clear difference between absolutely null legal transaction and relatively null legal transaction. According to its provisions, absolutely null legal transactions are contrary to mandatory regulations, unless the law stipulates otherwise. Also included in the list of reasons for absolute nullity are failure to meet legal requirements, illegality or deficiencies in the subject and illegitimacy of motive (art.1418). The Code states that reasons for relative nullity are lack of capacity to contract (art. 1425) and legal transaction concluded under duress, fraud or mistake (art. 1427).

Serbian Law of Obligations defines absolutely null legal transactions as transactions contrary to the mandatory regulations or morals of society, if the nature of the regulation doesn't require different sanction, or if the law doesn't stipulate otherwise (art. 103). The reasons for relative nullity of legal transactions are: lack of capacity to contract, fraud, duress and mistake, and other cases when the law deems a contract as null and void (art. 111).

The Croatian Law of Obligations considers legal transactions to be absolutely null if they are contrary to the Constitution, mandatory regulations or morals of the society, unless the nature of the regulation doesn't require different sanction, or the law doesn't stipulate otherwise (art. 322). Same as the Serbian Law of Obligations, the Croatian Law of Obligations also states that reasons for relative nullity are: lack of capacity to contract, fraud, duress and mistake, and other cases when the law deems a contract as null and void (art. 330).

Law of Obligations of Montenegro determines legal transactions as absolutely null if they are contrary to mandatory regulations or morals of society, if the nature of the regulation doesn't require different sanction, or the law doesn't stipulate otherwise (art. 101). With respect to the reasons for relative nullity the Law of Obligations of Montenegro doesn't differ from the Croatian and the Serbian laws. It states that reasons for relative nullity are: lack of capacity to contract, fraud, duress and mistake and also when the law deems a contract as null and void (art. 109)

1. NON-EXISTING LEGAL TRANSACTIONS

As non-existing legal transactions are deemed those who lack in content to the extent that it can't be said that a legal transaction has been successfully concluded⁶. Such are the legal transactions where there is no expression of legally binding will, who have undetermined subject, non-existing cause or who lack in form. In legal sense non-existing legal transactions are not considered as legal transactions at all⁷.

Some scholars note that non-existing legal transactions are actually incomplete transactions because they can't produce legal effect until their imperfection is removed⁸. As example they state the lack of form of the legal transactions as an imperfection that can be removed providing that the parties have voluntarily fulfilled their rights and duties from the transaction and if it is not contrary to the intended purpose of the prescribed form. Consequently, by removing its imperfection the legal transaction becomes perfect and valid.

As for the legal consequences, non-existing legal transactions carry the same consequences as absolutely null legal transactions. Their annulment has retroactive effect, and it is presumed that the legal transaction never occurred. There is an opinion among scholars that annulment of non-existing transactions is not necessary, since they never existed in the legal sense of the word. In the occasion that the courts deem such legal transactions as null and void, the court's decision will be a mere declaration that no legally binding transaction exists⁹.

2. ABSOLUTELY NULL LEGAL TRANSACTIONS (VOID TRANSACTIONS)

Absolutely null legal transactions are those who have deficiencies that prevent for the transaction to take legal effect. They are considered harmful not only to private interest, but also contrary to public interest.

⁶ Non-existent legal transactions are also defined as legal transaction that lack crucial elements for their conclusions, or transaction who don't comply with the basic legal requirements. See: С. Петровић, *Облигационо право*, Београд 1980, p. 449; Милош Паровић, *Закључене улоге*, Београд 1993, p. 142; L. Nadeau, *Void Agreements and Voidable Contracts: The Need to Educate Ambiguities of Their effects*, *Mizan Law Review*, Vol. 2, No 1, Jan 2008, p.92

⁷ See: Д. Поповић, *op. cit.*, p. 246; P. Ковачевић - Куштримовић, *op. cit.*, p. 195.

⁸ See: А. Грулић, *op. cit.*, p. 255.

⁹ See: P. Ковачевић - Куштримовић, *op. cit.*, p. 195.

1. Macedonian Law of Obligations defines absolutely null legal transactions in article 95 (1), where it stated that “*Contract contrary to the Constitution, laws and good customs is null unless the breached rule prescribes different sanction or if the law in the particular case doesn’t stipulate otherwise*”. According to the cited provision, we derive that absolutely null legal transaction are transactions contrary to: a) constitutional and legal norms and b) the so called “good customs”.

a) Legal transactions are null if they are contrary to prohibitive norms of the Constitution and the laws. Prohibitive norms limit the freedom of action and they have imperative effect for all parties. Therefore any legal transaction that contains provision contrary to a prohibitive norm is declared to be null and void.

In Macedonian legal system general laws regulating civil law relations contain several provisions that unequivocally state the types of legal transactions that are null and void¹⁰. For example, the Law of Obligations declares as null contracts with impossible, forbidden or undetermined subject (art. 39), contract with forbidden cause (art. 43), contract concluded with a person with no active legal capacity (art. 47-a), contract with impossible or forbidden conditions (art. 67), usurious contracts (art. 129) and others. The Law of Ownership and Other Real Rights declares nullity of a contract where the co-owner permanently renounces his/her right of division (art. 88). The Inheritance Law declares as null the contact for inheritance (art. 7), the contract for future inheritance or legacy (art. 8), the contract for the content of a will (art. 10) and the will that isn’t written in the proper form (art. 65).

Alongside general laws, special laws also contain provisions that determine nullity of legal transactions. For example: the Law of Construction Grounds¹¹ states that the contract for transfer of the right of long-term lease must also include the transfer of the structure build under that right, if not, the contract is null and void (art. 31); the Law of Agricultural Land¹² states that the contract for sale of agricultural land concluded with a third party for a price lower than the one offered to the persons with the right of pre-emption is null and void (art. 15 (8)); the Law

¹⁰ The type of nullity that is expressed directly in legal norms is also known as expressed nullity. When legislation doesn’t express directly the nullity of a legal transaction, the nullity is tacit. See: R. Scalise, *Rethinking the Doctrine of Nullity*, Louisiana Law Review, Vol. 74, No 3, Spring 2014, p. 674

¹¹ Official Gazette of the Republic of Macedonia, number 15/2015.

¹² Official Gazette of the Republic of Macedonia, number 13/5/2007.

for Privatization and Lease of Construction Grounds Owned by the State¹³ declares the contract for privatization of construction grounds owned by the state as null and void if that construction ground has been intended for public use (art. 6 (5)) and etc.

Prohibitive norms leading to nullity of legal transaction are not necessarily found only in civil law, but also in other areas of the law such as family law, company law, administrative law, penal codes and other.

We must note however, that the laws sometimes do not determine precisely what type of nullity the legal transactions falls under, whether is absolute or relative. In such occasions the type of nullity is determined by interpretation of the legal norm, taking into account the legal consequences deriving from the nullity. For example: the Inheritance Law states that a will written by a person under the age of 15, and a will written under duress, fraud or mistake is null and void (art. 63). In this particular case, the nullity is relative, and not absolute. We derive this conclusion assessing the legal consequences that the law has attributed to it. According to article 64 of the Inheritance Law nullity of the will written by a person under the age of 15, or written under duress, fraud or mistake may be claimed solely by the person with legal interest and in the period of one year from the day that the person became aware of the reason for nullity, but no later than ten years from the proclamation of the will. If the nullity is claimed against an unconscious person, then the deadline is 20 years from the proclamation of the will. The above stated consequences are related to relative and not absolute nullity.

b) Absolutely null legal transactions are also those contrary to the so called “good customs”. Legal scholars are not united in the opinion of what the term “good custom” is supposed to mean. Most consider that the term “good customs” includes customs and morals since customs are not valued whether they are good or bad, but morals on the other hand are considered as good behavior.

The legislation prescribes different causes for absolute nullity of legal transaction, which is why civil doctrine classifies such transactions into several categories: forbidden legal transactions, immoral legal transactions, simulated legal transactions, fictitious legal transactions, usurious contracts, legal transactions concluded with persons who have no active legal capacity, legal transactions concluded beyond the legal capacity of juridical persons and legal transaction who lack in form.

¹³ Official Gazette of the Republic of Macedonia, number 04/2005.

2. What all types of absolutely null legal transactions have in common are the legal consequences of nullity. Absolutely null legal transactions produce no legal effect from the moment of their conclusion. The absolute nullity may engulf the entire contract (nullity in full), or some of its content (partial nullity). In cases of partial nullity the legal transaction as such may produce legal effect after the null provisions are removed from its content. However, for partial nullity to be declared, the null provisions in question should not be the determining factor or prevailing motive of the parties to enter into the legal transaction, as it is stated in the Law of Obligations (art. 97 (1)). The courts, however, are not strictly bound by this condition when they are called to decide for the partial nullity of a legal transaction. Law of Obligations gives leeway to judges by stating that: "A contract may stay in effect even if the null provision is a determining factor or a prevailing motive for conclusion of the contract if partial nullity is declared so that the contract is freed from such provision in order to be able to take an effect" (art. 97(2)). What this basically means is that courts will decide on partial nullity of a legal transaction considering the facts and circumstances in every particular case, rather than following the one fits all rule.

Annulment of an absolutely null legal transaction in the legal system of the Republic of Macedonia is not enforced directly by law. It needs to be determined in court proceedings. Right to claim absolute nullity of a legal transaction is afforded to any person who will prove to have personal stake in the matter (not necessarily as a party in that legal transaction). The public prosecutor also has the right to claim absolute nullity of any legal transaction concluded between parties. It usually occurs when the validity of the legal transaction is questioned during a criminal proceeding, or emerges as a prejudicial question in such proceedings. Claiming absolute nullity of a legal transaction is not bound by deadlines, since the Law of Obligations unequivocally states that "The right to claim absolute nullity can't be terminated" (art. 102).

When a legal transaction is deemed as absolutely null by the court, the court's decision will have declarative nature. This is because the legal consequences of annulment are considered to take effect from the moment that the transaction was concluded.

If the law hasn't prescribed any other sanction, than the basic sanction for conclusion of absolutely null legal transaction is the annulment of set transaction. Annulment can also bring forth other legal consequences such as: a) restitution, b) liability for damages, c) convalidation and d) conversion.

a) Restitution follows the annulment of the legal transaction, and it means that the parties must return to the state they were in before the transaction was concluded. When the legal transaction was annulled in full, restitution always follows, and the parties are obligated to return everything they have received from that transaction because the transfer becomes baseless. Restitution may also follow the partial annulment of the legal transaction if one or both parties received something on the bases of the annulled provision. By rule, restitution means natural return of all that is received, but if such restitution is not possible, then monetary compensation is given in the amount of the value of what was received. Monetary compensation is estimated taking into account the value of the thing received in the moment when the court's decision was rendered (unless the law had stipulated otherwise).

The Law of Obligation demands mutual restitution in cases of annulment of the legal transaction (art. 95). In civil doctrine however, opinions differ with respect to the question of restitution. According to one group of scholars, the restitution is, and must be, mutual because neither of the parties can keep what was received on the bases of annulled legal transaction – that would be baseless acquisition. Other scholars think that restitution could be one-sided when one of the parties is unconscientious, meaning that the party was aware of the reason for nullity but concluded the transaction anyway. In such cases, according to their opinion, the unconscientious party has no right to demand restitution. They also add that the conscientious party in such cases will receive restitution, but instead of giving restitution in return to the unconscientious party it will transfer the benefits to the State or the municipality. There is also a third opinion stating that neither of the parties should be granted restitution and all the benefits should be transferred to the State¹⁴. Some scholars point out that restitution should depend on the specific reason for nullity¹⁵.

b) Annulment may also give rise to liability for damages¹⁶. The culprit party is liable to recompense the damages that the conscientious party had suffered due to the annulment of the legal transaction¹⁷. There are some dilemmas among scholars about the bases for such liability. Most

¹⁴ See: A. Пунте, *op. cit.*, p. 266-268; P. Ковачевић - Кумризовић, *op. cit.*, p. 244-247

¹⁵ See: C. P. Thorpe, J. C. L. Bailey, *Commercial Contracts: A Practical Guide to Deals, Contracts, Agreements and Promises*, Revised Edition, Kogan Page Limited, 1999, p. 207.

¹⁶ Art. 96, Law of Obligations...

¹⁷ By law, the party is considered as conscientious if he or she had not know, or could have known that there are reasons for absolute nullity of the legal transaction. See: art. 96, Law of Obligations...

scholars agree that it is non-contractual liability since the legal transaction is null and void, so in legal sense it has no legal effect, and therefore can't produce contractual liability. Smaller group of scholars think that in these cases the liability is contractual (*culpa in contrahendo*) because the damages arise from the legal transaction deemed null and void.

c) Convalidation in civil law means to afford legal effect to an absolutely null legal transaction if specific conditions determined by law are met. In principle, absolutely null legal transaction should not have any legal effect because it violates prohibitive norms, and puts in danger private and public interest. However, in isolated cases the law may afford legal effect to such transactions if strict legal conditions are fulfilled. In the Law of Obligations it is stated that an absolutely null legal transaction may be subject to convalidation if the violated prohibitive norm had lesser meaning and has been derogated with time, and the parties have voluntarily fulfilled the rights and duties from the transaction (art. 99 (2)). In this case the Law of Obligation doesn't state that the legal transaction will become valid, instead it states that a claim for nullity can't be submitted. Due to the way the provision is formulated in the Law of Obligations a question arises whether the parties who concluded the legal transaction may ask the court to declare that their legal transaction is valid, and as such produces legal effect. The parties have a vested interest to submit such a claim if they need to prove the validity of their legal transaction. For example if they want to register a right of ownership in the real estate cadastre on the bases of such transaction.

Legal transaction lacking in form can also be subject to convalidation according to the Law of Obligations if the parties have fulfilled their rights and duties in full or for the most part, unless it is contrary to the purpose for which the form has been prescribed (art. 65). The purpose for prescribing certain form for legal transactions may vary from case to case. Usually the purpose of the form is to provide legal protection, security and control over transactions, protection of public interest and etc. If the purpose of the prescribed form is directed towards protection of private interest, then the legal transaction lacking in form may be subject to convalidation, since it is in the interest of the parties for the legal transaction to have full legal effect. On the other hand, if the form is prescribed in order to protect public interest or to impose control over commerce (tax control, financial control, etc.), then the legal transaction lacking in form can't be subject of convalidation. It is important to note that convalidation of legal transaction lacking in form is possible only if a certain form has been imposed by law, if the form has been imposed by the parties as a condition for conclusion of the legal transaction, then the transaction can't be subject to convalidation.

d) Absolutely null legal transactions can be converted into a different valid legal transaction. Conversion in civil law is possible under two conditions. First – the absolutely null legal transaction needs to fulfill the conditions for validity of another type of legal transaction, and second – the conversion must be in accordance to the goal that the parties had in mind when concluding the legal transaction (willingness for conversion)¹⁸. For example: the contract for transfer of estate during lifetime is null and void if there is no consent for its conclusion by all the descendants and the spouse of the person transferring his or her estate¹⁹. By conversion this otherwise null contract may be transformed into a gift contract (if that is what the contracting parties want)²⁰.

3. RELATIVELY NULL LEGAL TRANSACTIONS (VOIDABLE TRANSACTIONS)

The relatively null legal transactions are such transactions that fulfill the legal requirements for their conclusion, but have deficiencies concerning the expressed will of the parties or they are contrary to the principle of contractual equilibrium.

1. In the Macedonian Law of Obligations relatively null legal transaction are: legal transactions concluded with person who has partial legal capacity to act, legal transactions concluded under duress, fraud or mistake and legal transactions declared by law as relatively null. The civil doctrine in relatively null legal transactions also includes contracts with gross disparity (*laesio enormis*).

Relatively null legal transactions violate the personal interest of the parties, which is why the law leaves the future of such transactions in the hands of the parties who had concluded it. The law affords the injured party the right to submit a claim for nullity of the legal transaction²¹. Such a claim may be submitted in a period of one year from the day when the injured party found out about the reason for relative nullity of the legal transaction, or in the case of duress one year from the day when the duress had stopped. In any occasion, the right to submit a claim for nullity of a relatively null transaction is extinguished after three years upon conclusion of the contract²². The Inheritance Law also prescribes one year period for submitting a claim for

¹⁸ Art. 98, Law of Obligations...

¹⁹ Art. 1023, Law of Obligations...

²⁰ Art. 1025, Law of Obligations...

²¹ Art. 104 (1), Law of Obligations...

²² Art. 109, Law of Obligations...

nullity of a relatively null will from the day the person became aware of the reason for nullity. However, the deadline for submitting a claim of nullity of the will is much longer than the one prescribed for contracts, and it is 10 years upon proclamation of the will, and if the claim for nullity is submitted against an unconsentient person, the deadline is 20 years upon the proclamation of the will²³.

Concerning contracts, Law of Obligations permits for the contractor of the injured party to ask of set party to declare in a given period of time if he or she is willing for the contract to stay in effect. The given period of time may not be shorter than 30 days²⁴. If during that period of time the injured party gives no response, or states that is not willing for the contract to stay in force, then the contract immediately becomes null and void.

2. The existence of the relatively null legal transaction is dependent of the will of the parties. Right up to the moment when the injured party submits a claim for nullity, the legal transaction is in full legal effect. But if the legal transaction is deemed null and void, than follow the same consequences as the annulment of an absolutely null legal transaction. Nullity takes effect from the moment that the transaction was concluded (ex tunc). Besides the annulment, the additional consequences follow as well, such as: a) restitution, b) liability for damages and c) convalidation.

a) Restitution (return to the condition before the conclusion of the legal transaction) in case of annulment of relatively null transaction is in principle mutual. Every party has the right to demand from the other return of what was given on the bases of annulled legal transaction. If natural restitution is not possible, than a monetary compensation needs to be paid in the amount of the value of what was given, estimated in the time of the rendering of the court's decision for annulment²⁵. When the legal transaction has been annulled due to the fact that one of the parties didn't have full legal capacity to act, then the other party can only claim restitution of the goods that are still found in the estate of the person lacking full legal capacity. Also, the contractor of a party lacking the legal capacity to act may demand monetary compensation for the goods used in favor of that person, or were deliberately destroyed or transferred²⁶.

b) Liability for damages is also one of the consequences from annulment of relatively null legal transaction. The right to claim damages belongs to the conscientious party, meaning the party not responsible for the

²³ Art. 64 (1, 2), Inheritance Law...

²⁴ Art. 104 (2), Law of Obligations...

²⁵ Art. 105, Law of Obligations...

²⁶ Art. 106, Law of Obligations...

relative nullity of the contract²⁷. The contracting party is conscientious if he or she wasn't aware of the reason for nullity, or was forced into the contract by duress. Liability for damages even fall on the party who concluded the relatively null legal transaction lacking full legal capacity to act, if he or she deceived the other party regarding the capacity to act, or that he or she acquired permission from the legal representative²⁸. Compensation for damages is due to the contractor of the party who concluded a legal transaction by mistake regardless of the fact whether the party was culpable for his or her mistake²⁹. When the legal transaction has been annulled due to fraud, the defrauded party has the right to demand from the contractor compensation of damages resulting from the annulment of the transaction³⁰.

c) Convalidation (giving full legal effect) of relatively null legal transaction is possible under conditions determined by law. Unlike the convalidation of absolutely null legal transaction which is permitted only in exceptional situations, the convalidation of relatively null legal transaction depends on the will of the parties. The will for convalidation may be expressed verbally or non-verbally. We have verbally expressed will for convalidation when: the party declares that he or she is willing for the legal transaction to remain in effect³¹, the legal representative of the person lacking full legal capacity approves the transaction³², when the contractor of the party who concluded the transaction by mistake declares that he or she is prepared to fulfil the transaction as if no mistake is present³³, and when the contractor offers the injured party to fulfil the transaction to the extent that there will be no gross disparity (in case of laesio enormis)³⁴. Non-verbal convalidation occurs when the injured party allows the deadline for submitting a claim for nullity to lapse. When the deadline for annulment lapses the legal transaction is considered to be completely valid.

²⁷ Art. 107, Law of Obligations...

²⁸ Art. 108, Law of Obligations...

²⁹ Art. 53(3), Law of Obligations...

³⁰ Art. 57 (3), Law of Obligations...

³¹ Art. 104 (2), Law of Obligations...

³² Art. 48 (3), Law of Obligations...

³³ Art. 53 (4), Law of Obligations...

³⁴ Art. 128 (4), Law of Obligations...

Summary

Legal transactions are expression of will that lead to creation, change or termination of civil law relations. In order for a legal transaction to have a legal effect certain conditions must be met. As it is shown in the paper, different types of legal transactions require different legal conditions, but among the most relevant are: capacity to contract; consent; permitted, possible and determined subject; permitted cause; form and other conditions prescribed by law (consent from the legal representative, permit and etc.).

When a legal transaction fails to meet the legal requirements for validity it is considered to be null and void. Depending on the reasons for nullity the paper analyses three categories of null legal transactions: non-existing legal transactions, absolutely null legal transactions (void transactions) and relatively null legal transactions (voidable transactions). Non-existing legal transactions are those who lack in content to the extent that it can't be said that a legal transaction has been successfully concluded. Such as: legal transactions where there is no expression of legally binding will, legal transaction with undetermined subject, legal transaction with non-existing cause or who lack in form.

Absolutely null legal transactions have deficiencies that prevent for the transaction to take legal effect. They are considered harmful not only to private interest, but also contrary to public interest. In the group of absolutely null legal transaction are listed: forbidden legal transactions, immoral legal transactions, simulated legal transactions, fictitious legal transactions, usurious contracts, legal transactions concluded with persons who have no active legal capacity, legal transactions concluded beyond the legal capacity of juridical persons and legal transaction that lack in form. Sanction for conclusion of absolutely null legal transaction is the annulment of set transaction. Other legal consequences that follow are: restitution, liability for damages, convalidation and conversion.

Relatively null legal transactions fulfill the legal requirements for their conclusion, but have deficiencies concerning the expressed will of the parties or they are contrary to the principle of contractual equilibrium. According to Macedonian Law of Obligations relatively null legal transaction are: legal transactions concluded with person who has partial legal capacity to act, legal transactions concluded under duress, fraud or mistake and legal transactions declared by law as relatively null. The civil doctrine in relatively null legal transaction also includes contracts with gross disparity (*laesio enormis*).

Relatively null legal transaction can also be annulled much like absolutely null legal transaction. Nullity takes effect from the moment that the

transaction was concluded (ex tunc), and it is accompanied by additional consequences like: restitution, liability for damages and convalidation.

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НЕВАЖНОСТ ПРАВНИХ ПОСЛОВА

Анстракт: Овај рад анализира врсте пониптења и разлоге пониптења правних послова у правном систему Републике Македоније и у упоредном праву. Савремено граѓанско правно законодавство познаје две врсте неважности правних послова (апсолутну и релативну). Неки граѓански кодекси и закони јасно укажују на разлику измеѓу апсолутне и релативне ништавости правних послова као што су: Граѓански законик Италије, Македонски Закон о облигационим односима, Закон о облигационим односима Републике Србије, Хрватски Закон о обвезним односима и Закон о облигационим односима Црне Горе. Остали граѓански кодекси и закони као што су Немачки граѓански законик, Француски граѓански законик, Шпански граѓански закон и Швајцарски закон о облигационим односима не чине јасну разлику измеѓу апсолутно и релативно ништавих правних послова, али прописују различите последице за ништавост у зависности од разлога ништавости. Цивилна доктрина, с друге стране, у зависности од разлога неважности, сврстава неважеће правне послове у три категорије: непостојећи правни послови, апсолутно ништави правни послови и релативно ништави правни послови.

Кључне реч: *уговори, правни послови, неважност правних послова, рурливост правних послова, граѓанско право.*

Рад је предаг 17. марта 2018. године, а након мишљења рецензента одлуком одговорног уредника одобрен за штампу.