

Research Article

**Concerning Invalidation in a Court Of Law of Certain Types of Contracts
Concluded in Connection with the Provision of Medical Services**

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ABSTRACT

The article considers current academic opinions on the methods of protecting civil rights that arise in connection with conclusion, performance, and termination of contracts for the provision of medical services. The article analyses the issues of civil procedural legal relations arising during the consideration of cases involving invalidation of the said contracts. Based on the best practices of France and Germany, it has been established that the effective method of protecting rights in connection with the provision of medical services includes, in addition to invalidation of the contract, compensation for material and moral damage which requires extension of procedural periods for consideration of cases. Prospective directions of further research concerning the object and subjects of civil procedural legal relations are outlined.

Keywords: contract for the provision of medical services; contract for the provision of surgical services; civil procedural legal relation; health care agreement; consumer loan agreement; agreement concerning reproductive rights of individuals.

[I] NTRODUCTION

Effective protection of rights through invalidation of the contract requires conceptual definition of the object of civil procedural legal relation as a major category while applying such a method of protecting rights. It is widely accepted that legal relations arising in connection with the provision of medical services must be governed by consumer protection legislation, such as Law of Ukraine "On Protection of Consumer Rights" No. 1023-XII dated 12 May 1991 [1], Fundamentals of Health Care Law of Ukraine No. 2801-XII dated 19 November 1992 [2], Civil Procedural Code of Ukraine (as amended by Law No. 2147-VIII dated 03 October 2017, as updated by Law No.

2581-VIII dated 02 October 2018) [3]. Today, such contracts as consumer loan agreements, contracts for the provision of medical services or health care agreements are widely applied in the field of medical services. These contracts are concluded in the form of a standard civil contract, a public contract, or an adhesion contract [4-7].

As of today, protection of rights of participants in medical relations is underexamined, despite the fact that the first researchers started to investigate these issues in the early 2000s, and general civil law categories (contract, civil relations, civil liability, etc.) are historically contingent. However, the problem of

invalidation of contracts for the provision of medical services in a court of law has not been given due consideration by legal scholars.

To resolve this problem, it is necessary to refer to the doctrine of civil law regarding the definition of an object of civil procedural legal relations.

For example, V.V. Komarov identifies general and special objects of civil procedural legal relations. A general object is related to the protection of rights, freedoms, legitimate interests, a special object is related to particular relations (legal relations) between the trial participants in the broad sense (the court - the plaintiff, the court – the witness, etc.). It has been argued that a special object may exist in each procedural legal relation [8, p. 407-408]. According to I.M. Evkhutych, a general object implies a substantive dispute, and a special object is related to the specific result of legal proceedings in particular relations (receipt by the court of the plaintiff's explanations, testimony of witnesses, etc.). At the same time, the researcher states that definitions of two objects of procedural legal relations are contradictory, as the only purpose of these legal relations is the protection of rights. The researcher concludes that all legal relations have their own object, but fails to specify this concept [9, p. 77-78].

The above opinions reflect different academic approaches to the object of civil procedural legal relations. At the same time, a single interpretation of this category is determined by its basic meaning, first of all by ensuring proper interpretation of civil procedural legal relations; underlying principles for further academic research in this direction. The said theoretical problems result in controversial judicial practice in applying procedural rules, in particular, in considering cases involving invalidation of consumer loan agreements.

Contractual practice of settling private legal relations arising in connection with the provision of medical services is widespread abroad, in particular in developed countries, such as France, Germany, Poland, the United States and Great Britain. Good judicial practice of the said countries may be useful in solving

relevant problems in domestic legislation and judicial practice. Invalidation of such contracts in a court of law in the CIS countries, such as Belarus, Moldova, Kazakhstan, etc., may be of interest for this research. However, good judicial practice of foreign countries has not been paid much academic attention.

[II] MATERIALS AND METHODS

The researchers of contractual regulation of private medical relations, such as S.B. Bulletsa, A. Hertz, P.A. Maidanik, O.V. Temchenko should be mentioned among others. A significant number of researchers, such as Yu. V. Belousov, O. B. Bobrovnik, O. V. Hetmantsev, K. V. Gusarov, I.O. Zhurba, V.V. Komarov, V.A. Croitor, I. M. Lukina, M. M. Yasynok were involved in the problem of procedural mechanisms for the protection of private rights, including those arising from contracts. Researches specifically devoted to the definition of the object of civil procedural legal relations have almost never been conducted lately. Particular attention was given to this issue within the framework of studies devoted to related subjects: systematization of civil procedural legal relations (O. S. Zakharova), preconditions for the emergence of civil procedural legal relations (O. M. Efimov), certain types of civil procedural legal relations (Ya.Ya.Melnik) and others. The research by L.V. Didenko directly devoted to the study of the object of civil procedural legal relations is worth special attention [10]. However, her preliminary studies can be substantially complemented. The issue of invalidation of consumer loan agreements has always been paid considerable attention both by legal scholars and legal practitioners. In particular, it is necessary to mention not only researches concerning invalidation of consumer loan agreements (O.D. Vovchak, G.E. Perig and others), but also the studies concerning generic categories: invalidation of contracts (R.B. Prylutskyi, B.A. Budnik and others), as well as researches in the field of consumer protection in general. However, improvement of judicial procedure while dealing with such cases has not been paid enough attention. In addition to the above-

mentioned studies, general principles of civil regulation of medical relations, in particular with regard to contracts for the provision of medical services, were studied by I. Ya. Senyuta [11 - 13], S.B. Bulletsa [14], B.O. Logvinenko [15] and others.

The purpose of the article is to further develop current academic approaches to the methods of protection of civil rights arising in connection with the conclusion, performance, termination of contracts for the provision of medical services, taking into account best practices of European countries and the USA. Achievement of the objective involves the need to study the object of civil procedural legal relations arising during the consideration of cases involving invalidation of the said contracts.

[III] RESULTS

L.V. Didenko conducts research based on academic approaches of representatives of both monistic and pluralist theories of the object of civil procedural legal relations [10, p. 36]. Based on the research results, she comes to the conclusion that it is necessary to specify general and special objects of the said legal relations. Moreover, according to this approach, a general object is related to the whole civil proceedings (safeguard and protection of rights), a special one is related to certain types of proceedings in the court of first instance, as well as the groups of legal relations (the court – the plaintiff, the court – the witness, etc). Thus, an object of legal relations arising in litigation involves the protection of rights, and in separate proceeding – safeguard of rights. A special object of legal relations that arise between the court and the plaintiff, involves the protection of law, between the court and the witness – specific information [10, p. 38-39].

Recognizing theoretical justification, consistency of this approach in relation to the study of various types of legal relations that arise in the course of administration of justice, it should be pointed out that other procedural legal relations arising during consideration of the case have not been paid much attention.

For example, filing of a claim results in a legal relation according to which the plaintiff has the

right to consideration by the court of the issue regarding the commencement of proceedings, and the court has a corresponding duty, in which case the object of such relations is not the protection of substantive rights, since it is necessary to solve a case in a whole, and not only a specific procedural issue. While making an application during the consideration of a case, the person concerned initiates the relevant legal relations, the object of which is not the protection of rights (final outcome of the case), but a certain intermediate procedural outcome (action, decision).

The case below provides an example of the said relations. PERSON_1 filed a claim with the Obolonsky District Court in Kyiv against UkrSibbank Public Joint-Stock Company for invalidation of the consumer loan agreement. On 22 September 2017, the judge, having considered the statement of claim filed by PERSON_1, held: to commence the proceedings on the case; to institute legal proceedings, to appoint its time and place; to send a copy of the statement of claim to the defendant with copies of the documents attached thereto and to propose him/her to submit a statement of defence; to send a copy of the ruling to the parties to the case [16].

As can be seen from the above, the court has the duty to take a number of procedural actions, each of which is interim in relation to a court decision (protection of the plaintiff's rights) and, at the same time, relatively independent. Taking into account the above, academic achievements of L.V. Didenko can be complemented.

In accordance with Article 258, Part 2 of the CPC of Ukraine, a ruling made on specific procedural issues is one of the types of court decisions [3].

We fully agree with the above legal definition of the legal nature of the ruling. In fact, the party claiming recourse raises a certain procedural issue before the court, which must be resolved through proper procedure. Therefore, realization of specific procedural rights by passing a specific court ruling constitutes a special object of civil procedural legal relations. On the other hand, in the event of making an ungrounded motion, the court can pass a ruling to dismiss a

motion. In this case, civil procedural relations will be objectless, which is impossible.

In order to solve this problem, it is worthwhile to fully support the approach described in the foreign legal literature, according to which the object of an action of a particular participant in legal relation should be distinguished from the object of the legal relation itself. The object of an action of a particular participant is the result at which the corresponding action is aimed (in this case realization of a particular procedural right is the object of the movant's action). The object of legal relation should reflect the result of the interaction of the parties to legal relation, that is, the result at which their joint actions are aimed [17, p. 171]. We fully agree that the court ruling that responds to the procedural question posed by the party should be considered as the object of legal relation [17, p. 171].

Hence, it is necessary to identify formal and substantive sides of a special object of civil procedural legal relation. The substantive side of such an object includes resolution of a particular procedural issue, making it clear and certain. The formal side is based on procedural requirements to pass the court ruling: execution in accordance with legal requirements (in the form of a separate document or in oral form); compliance with the law when solving the issue. In particular, the above example describing commencement of legal proceedings on the case involving invalidation of a consumer loan agreement makes it clear and certain that there must be an existence of a claim itself and, accordingly, grounds for commencement of legal proceedings on the case. From the formal side, the court made a ruling which was passed in compliance with the term required by law; executed in accordance with legal requirements (a ruling that meets legal requirements in form and substance).

Considering "protection of rights" as a dialectical category (that is, understanding "protection" as consistent implementation of measures aimed at enforcing a specific right, but not as an enforcing decision which determines the rights and obligations of the parties) allows for the conclusion that the specific procedural decision of the court rendered during

consideration of the case and ultimately aimed at its resolution is nothing more than a specific measure in the system of such procedural decisions leading to the proper resolution of the case on the merits, that is, protection of substantive right, freedom and resolution of the dispute. The above also applies to cases involving invalidation of contracts for the provision of surgical services, health care agreements, consumer loan agreements.

Protection of rights, freedoms, legitimate interests is the purpose of justice [18, p. 721]. In this regard, justice in general, and the civil process in particular, can be considered as a way to exercise the constitutional right to judicial protection, provided for in Article 55, Part 1 of the Constitution of Ukraine [19].

Given the above, the object of civil procedural legal relations can be defined in a narrow and broad sense.

In a narrow sense, the object of civil procedural legal relations is based on the understanding of the civil process as consideration and resolution of civil cases to effectively protect rights, freedoms or interests (Article 2, Part 1 of the CPC of Ukraine [3]), that is, judicial proceedings. Consideration of a civil case involves relevant procedural actions. Resolution of a civil case implies, in fact, assessment of evidence collected in the case. However, resolution of the case is, in fact, an objective of the judicial process, and therefore, goes beyond its content. Therefore, in this way, legal relations within which a person has the right to demand from the court to protect his/her rights, and the court has an appropriate duty, can not be fully covered by civil procedural legal relations. Hence, in a narrow sense the above court ruling is an object of civil procedural legal relation that resolves a specific procedural issue (that is, the consideration of the case, but not its final resolution).

However, such a narrow view does not take into account the final task of civil justice. In a broad sense, the object of civil procedural legal relations is based on the understanding of the civil process as a way to enforce the constitutional right of a person to judicial

protection and as a form of administration of justice.

In this context, it is necessary to distinguish between general and special objects of civil procedural legal relations. A special object is a court ruling on a specific procedural issue. A general object of civil procedural legal relations should be determined in the light of the above essence of the civil process, namely, as a way of enforcement of corresponding constitutional right of a person.

In practice, the court considering civil cases involving invalidation (in whole or in part) of consumer loan agreements in most cases upholds the plaintiff's claims. At the same time, there is a considerable number of cases when the court dismisses the claim, and such a decision is not appealed. In this case, it is possible to state that despite the fact that the protection of rights, freedoms, legitimate interests failed to occur, but justice took place. We agree with the widespread belief that when a person goes to the law, he/she seeks justice (and not only satisfaction of the claim in full). Otherwise, one would have to admit attempts to persuade the court to take an illegal decision, that is, to affect its independence.

Given the above, a general object of civil procedural legal relations includes protection of private rights, freedoms, legitimate interests through the administration of justice. In this case, the above has a purposeful influence on the existence (occurrence, development, termination) of each particular civil procedural legal relation. Thus, we can say about the existence of a general object of all civil procedural legal relations along with a special object of each such relation.

The specified concept of the object of civil procedural legal relations is inherent in the legal relations that arise between the court and the persons involved in the case. In the same time, legal scholars also refer to official civil procedural legal relations arising between the court and other participants in the process [9, p. 66]. An example of such relations includes relations between a court and a witness, where the witness has the duty to testify, and the court has the right to receive testimonies.

We agree with the generally accepted position on constitutional nature of the witness's duty to testify in a case, thus assisting the court in the administration of justice. The above can also apply to other participants in the civil process: an expert, a specialist, an interpreter, a person who provides legal assistance. At the same time, fulfilment of the above duty and realization of the above right should be in the procedural form established by law.

In particular, the requirements for interrogation of witnesses are established by Article 230 of the CPC of Ukraine [3]. For example: interrogation of each witness separately (part 1), non-admission to the courtroom of witnesses who have not been interrogated (part 2), explanation to witnesses of their procedural rights (part 3), etc.

Fulfilment of each requirement involves emergence, change, termination of the relevant civil procedural legal relations. In particular, the witness has the right to explanation by court of his/her procedural rights, and the court has a relevant duty. As a result of implementation of such legal relations, the witness becomes aware of his/her procedural rights. This can be considered as an object of the above procedural legal relation. On the other hand, this is a narrow understanding of the object of the above witness-court relation. As in the previous case, its disadvantage consists in ignorance of the purpose of the witness interrogation, and the purpose of the legal proceedings as a whole. The above is also applicable to the expert's conclusion as a means of proof when filing a claim for compensation for damage caused by poor quality of medical services as another way of protecting rights in the context of legal relations in question.

On 1 March 2017, the panel of judges of the Civil Division of Kyiv Court of Appeal considered in an open hearing a civil case involving the claim filed by PERSON_5 against Borys Limited Liability Company for compensation for damage to health. At the same time, based on the expert's conclusion, critical facts for the case were established: poor-quality medical services, provision of services by a particular person, damage to health, causal link

between provision of services and damage to health. [20]

Proper fulfilment of all legal requirements for other participants involved in civil proceedings is essential for achieving the ultimate goal: to establish factual background and protect rights, freedoms and legitimate interests. Procedural acts of the court and other participants in the civil process should be aimed at achieving the above goals in the course of civil proceedings. Therefore, court-witness legal relations imply not only special, but also a general object. This can be also applied to relations with other trial participants (besides witnesses) (experts, interpreters, specialists, etc.).

Thus, one of the urgent problems in cases involving invalidation of contracts in question is to establish factual background. The above is connected with certain unwritten rules in the relations between doctors which complicate their interrogation as witnesses. In addition, rapid changes in the human body make it difficult to detect and establish a medical error, in particular by conducting relevant examinations. As shown by this analysis, domestic legislation, judicial practice, scientific researches have not developed well-established approaches to elimination of these problems. In this regard, it is advisable to refer to the best practices of foreign countries.

Given the results of the analysis, it is advisable to refer to the best practices of France relating to the contractual settlement of payment for medical services. In particular, minimum tariffs for medical services have been fixed [21; 22], so, the parties to the contract are limited to a certain extent while fixing the price. In case of failure to comply with this condition, the contract may be declared invalid. Such a system also operates in Germany [23, p. 122] and the United States of America [24, pp. 38-39].

Consideration of cases arising out of contracts for the provision of medical services in the above countries is usually time-consuming. For example, in its judgment the European Court of Human Rights in the case *Bendersky v. Ukraine* initiated due to the applicant's appeal against judgments of the national courts on the case involving compensation for damage caused by

improper performance of doctors' duties (leaving a napkin in the patient's bladder) took into account all circumstances of the case, such as the complexity of the case from the medical point of view, the course of the medical examination, the parties' claims, etc., and found that neither the length of the proceedings before the court of first instance nor the total duration of the proceedings, in particular two years and five months in the Ukrainian courts of three instances, exceeded a reasonable period within the meaning of Article 6, para. 1 of the Convention [25] and taking into consideration the criteria established by the Court's standard practice. In this case, the Court referred to its previous practice, in particular the case *Pelisse and Sassi v. France*, No. 25444/94, para. 67, CEDH 1999-1, and *Weseringer v. Austria*, No. 213 dated 30 October 1991, section 22, para. 60 [26]. In this regard, the point to note is estimative nature of the grounds for invalidation of the contract that apply in legislation of France: time circumstances, the will of the parties, the intentions of the parties and their composition, legal consequences of the contract, etc. [27].

Although the cases involving invalidation of the contract in most cases do not require the use of special knowledge for thorough examination of factual background, this often happens in this case, too.

Therefore, an extended period of consideration of a case can pass for normal.

However, certain problems may arise. Firstly, the above requires the development of an appropriate legislative framework, in particular, improvement of the Civil Procedure Code of Ukraine in terms of the procedural periods for consideration of such cases. Secondly, some courts are overloaded today, and the resolution of such cases requires their careful consideration, given the large number of facts to be established, as well as the importance of the case for the protection of individual rights. In addition, participation in the case of specialists, experts, witnesses must be guaranteed, and this requires in-depth study of the object of civil procedural legal relations.

CONCLUSIONS

The research conducted allows for the following **conclusions**:

1. It is necessary to support the current concept of general and special objects of civil procedural legal relations, as well as to identify official civil procedural legal relations. In considering cases involving invalidation of consumer loan agreements a general object of civil procedural legal relations is reached when making a final decision in cases, and a special one - when making a specific procedural decision (ruling). The same can be said about contracts for the provision of medical services, in particular, surgical services, health care agreements, agreements concerning reproductive rights of individuals.

2. It is possible to define a narrow and broad understanding of the object of civil procedural legal relations. In the narrow sense, the object of civil procedural legal relations implies resolution by the court of a particular procedural issue (substantive aspect) documented by a court ruling which must be passed in compliance with legal requirements (formal aspect). In the broad sense, each civil procedural legal relation, in addition to the above special object, implies a general object: protection of rights, freedoms, legitimate interests through the administration of justice. It is guiding in each civil procedural legal relation.

3. Such an approach can also be applied to the object of official civil procedural legal relations. A special object of these relations implies implementation of legal safeguards provided by law. For example, when interrogating a witness, such legal safeguards may include: impartiality of the witness, knowledge by the witness of his/her procedural rights, etc. Like in other civil procedural legal relations, a general object implies protection of rights, freedoms, legitimate interests through the administration of justice.

4. Best practices of other states, especially France and Germany, in applying the methods of protection of rights in connection with the provision of medical services demonstrate that in addition to invalidation of the contract, compensation for material and moral damage is considered to be an effective method. However,

effective procedural form for consideration of such cases implies an extension of procedural periods, a clear description of these cases in the CPC of Ukraine.

Promising directions for further research are as follows.

Firstly, clarification of specifics of the object of civil procedural legal relation in a separate civil proceeding, during consideration of certain categories of cases, in particular, the cases initiated by a public officer (administrative legal proceedings).

Secondly, determination of specifics of the object of civil procedural legal relation arising in connection with the participation in civil proceeding of special participants, such as persons specified in Article 57, Part 6 of the CPC of Ukraine who participate in the case with the purpose of providing conclusions; judge assistant (Article 66); legal expert (Article 73 of the CPC of Ukraine).

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