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## **THE CONTENT AND ESSENCE OF THE FOUNDATIONS OF MORALITY IN CIVIL LAW**

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*Abstract: In this research work, the legal concept of the foundations of morality, the history of its development, a comparative analysis with foreign countries were studied scientifically-theoretically. Opinions were also expressed by the author, paying special attention to the issues of Roman law, scientific opinions of scientists from Europe and the CIS, the legal consequences of the foundations of morality on this studied issue.*

*Keywords: ethics, fundamentals of morality, transaction, invalidity of the transaction, court decisions, civil law.*

Morality is the most important social institution and is one of the forms of public consciousness. It is a historical set of historically developed and developing principles of life, views, assessments, beliefs and norms of behavior based on them that determine and regulate the relationship of people to each other, society, state, family, community, the surrounding world [1].

Morality is an idea of justice, good and evil, formed on the basis of assessing the behavior of people in certain conditions of society [2].

Morality is a historically established system of unwritten laws, the main value form of public consciousness, which reflects the generally accepted standards and values of human actions.

Yu.A. Shrader states that morality is universal norms and patterns of behavior accepted in a certain society [3].

According to O. B. Drobnitsky, morality is one of the main methods of normative regulation of human actions in society, a special form of social consciousness and a type of social relations [4].

According to A.S. Gritsenko, morality is the basis of the legal system, which serves as the rights and freedoms of the individual, constitutional values and does not contradict their essence [5].

In our opinion, morality has a certain continuity and relative independence in historical development, and each new generation does not create all behavioral norms anew, but absorbs the moral values of past times, changes and develops them.

Legal norms that strengthen and protect the foundations of morality are also present in the civil legislation of foreign countries.

It is known that in the civil legislation of a number of countries, immoral transactions are considered invalid.

By its nature, "morality" is an analogue of the Greek word "ethics". For the first time in the 4th century BC, Aristotle used the term "Ethics" in the names of his three works ("ethics of Nikomakhova", "ethics of Evdemos", "ethics of big ethics"), as well as from the ancient Greek word *ethos*, which meant the habitual human place of residence in the time of Homer.

Modern civil law developed under the influence of Roman law and was taken as a basis as an example of the unity of law and morality.

In Ancient Rome, relationships had to be built on the basis of honesty. Roman law strictly defended the honor of citizens, including *tabula XII* according to the laws, where

the death penalty was applied [6].

In Roman law, such amoral principle as Justice *aequitas* played an important role. For Ancient Rome, *aequitas* was an expression of natural-legal justice, defining and evaluating the existing law for compliance with the requirements of morality, Justice, used in the interpretation and application of law, which was a kind of guide, moral (ethical) code in the legislature of Praetors, Senate and lawyers.

Moral requirements are found in Roman contractual law. In the Treaty of debt in Roman law (*commodatum*), the free use of something is based on friendly relations (*amicitia*) in its moral principles [7].

In Roman law, the honor and dignity of citizens were strictly protected. The laws of the XII tables singled out such a form of personal insult as *iniuria*.

If the transaction does not comply with the principles of morality, then this fact alone is not enough to find it invalid. Otherwise, the general idea of the right, which is only a "moral minimum", would be violated. Consequently, many things that are highly unethical are legitimate actions.

The Anglo-American legal system (common law) has some differences in the reflection of moral principles in legislation. In addition to the common law, the law of justice is distinguished, its distinctive feature is that, unlike the common law, the judge followed the moral norms based on justice and conscience in the process of considering and deciding certain cases.

European continental law distinguishes the criterion that the transaction is invalid as the contradiction of its purpose to the moral foundations. Actions that contradict the principles of morality should be considered contrary to morality.

Japanese civilists S. Wagatsuma and T. Argidzumi analyze the invalidity of transactions and state as follows: The specific content of the concept of public order and morality cannot be systematically enumerated. It should be considered from the point of view of constantly changing social ideology and value system, starting with judicial practice and scientific teachings [8].

In judicial practice, there are many cases of invalidating transaction that is deliberately against the principles of law and order and morality. According to Article 116 of the Civil Code of the Republic of Uzbekistan, courts find it difficult to invalidate transactions in judicial practice. These difficulties are related to the lack of established court practice in such cases, relatively few satisfied claims.

In our opinion, society is the source of formation of ideas about morality. In order for a moral standard to have the right to exist, it does not need to be approved by the state, it is enough for the participants of society to recognize it.

Commenting on Article 138 of the German Civil Code, the German jurist J. Schapp defines the minimum requirements of morality in society as the truly dominant moral ideals. It also introduces the moral minimum formula and cites court rulings that a transaction must be fair and not inconsistent with the moral sense of right-thinking people [9].

If English law refers to moral norms and defines a list of their violations, continental law defines morality with complete uncertainty of its normative content.

According to E.V. Zolotukhina-Abolina, morality is a set of norms, values, ideals, attitudes that regulate human behavior and are the most important components of culture [10].

In the legal literature, the basis for applying the consequences of the invalidity of a transaction that contradicts the principles of morality is its violation of moral requirements, which, unlike the law, is not defined in a system of written norms.

According to L. Ennexerus, taking into account the absence of universally recognized

moral norms by all layers of society, he suggested to calculate with the views that exist among people [11].

In our opinion, with all the ambiguity of the content of ethics, there should be clear guidelines to help law enforcement officials fill them with real content.

Moral relations are expressed as a special type of social relations that arise in the process of moral activity of people. Moral relations can only be conditionally considered as the relationship of the subject of action to the object, in fact, this is an intersubjective relationship.

Distinguishing and using the legal values of morality in the practice of law creation and law enforcement makes it possible to more effectively influence public relations, to solve legal disputes objectively and rationally, to achieve and maintain a balance of legal interests of the individual, society and the state.

In our opinion, along with the formal formation of moral foundations in civil law and the practice of applying them in court, the connection of moral and legal consciousness "casual case" led to the formation of such a legal construction, which, in our opinion, can be called "moral foundations".

The concept of moral principles is partially expressed in the text of Article 116 of the Civil Code of the Republic of Uzbekistan and strengthened by the decision of the Plenum in order to apply the law equally.

In particular, according to paragraph 12 of the decision of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan dated November 28, 2014 №269 "On some issues of application of the norms of civil legislation on declaring transactions invalid by economic courts", according to Article 116 of the Civil Code an invalid transaction: content that does not comply with the requirements of legal documents; against law enforcement; It is considered transaction made deliberately against the principles of morality.

In this case, the courts should consider that if one or more terms of the transaction contradict the provisions of the law, the content of the transaction is considered invalid because it does not comply with these requirements.

Since there is no legal definition of moral grounds in the current legislation of the Republic of Uzbekistan, we follow the rule of literal interpretation of the legal term in the most common sense, taking into account that the law does not provide otherwise. Moral is determined by the moral category and the rules for following the principle of selfishness in relationships: being moral is doing good, treating yourself the same as you do to another, recognizing and respecting the dignity of another, not undermining his interests.

Therefore, the semantic content of the term "moral principles" has a generalized-summary tone, which includes both honesty and other aspects of the moral principle of mutual relations, which have been mentioned and discussed many times above. As a legal construction, "the foundations of morality" provide a stable systematic connection between common sense and different legal means of justice at the level of civil law and the jurisprudence of its application.

Taking into account the above provisions, we believe that the legal construction of "moral principles" in its ideally expressed technical function is the most important component of civilized matter, which binds the whole set of separate legal norms and the practice of their application in court. As for their fundamental function, this construction is the "causal work" of correcting moral and legal consciousness, which allows us to find a form that leaves no basis for evil and injustice in Kant's sense.

**References:**

- 1.Theory of State and Law: A Course of Lectures / Ed. N.I. Matuzova, A.V. Malko. M.: Jurist. 2000, p. 327.
- 2.Commentary to the Civil Code of the Russian Federation, Part One / Rev. O.N.Sadikov. M.: Yurinformcenter, 1995. p. 215.
- 3.Schrader Yu.A. Lectures on ethics: studies. manual.-M.: Publishing house "Miros", 1994. p. 129.
- 4.Drobnitsky O.G. Morality.//The Great Soviet Encyclopedia. 3rd edition. Vol. 1
- 5.Gritsenko A.S. Ethical and moral argumentation and its application by the constitutional control body in the light of the question of the grounds and limits of the restriction of constitutional rights and freedoms // Bulletin of the Voronezh State University. Series: Law. 2016. № 4.
- 6.Monuments of Roman law. Laws of the XII tables, Institutions of Gaius, Digests of Justinian. Table VIII. 1a. 16. Textbook. - M. :Zertsalo, 1997. - p. 245
- 7.Dozhdev D.V. Roman private law: textbook/D.V.Dozhdev; under the general Ed. B.C.Nersesyants. - 3rd ed., ispr. and add. - M.: Norma, 2008. - p. 157.
- 8.Kushneruk E.S. Invalidity of transactions under Article 169 of the Civil Code of the Russian Federation: the composition of invalid transactions and their legal consequences. Dis.... cand. jurid. sciences'. - Volgograd, 2002. p. 121.
- 9.Schapp Ya. Fundamentals of German civil law. Textbook, M., 1996, p.229
- 10.Zolotukhina-Abolina E.V. Course of lectures on ethics-Rostov-n/A:Phoenix,1999. p.5.
- 11.Ennekcerus L. Course of German Civil Law: Introduction and general part : trans. from German -M.: Foreign lit., 1950. Vol. 1, half. 2. p. 269.