FEDERAL STATE BUDGETARY EDUCATIONAL
INSTITUTION OF HIGHER EDUCATION
«RUSSIAN PRESIDENTIAL ACADEMY
OF NATIONAL ECONOMY AND
PUBLIC ADMINISTRATION»

As a Manuscript

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FORMATION OF THE SUBJECTIVE FACTOR CONCEPT IN PRIVATE LAW LEGISLATURE OF RUSSIA AND FOREIGN STATES

Annotation of a Dissertation (abstract)

for the degree of Doctor of Law

Specialization 5.1.3. – private law (civilistic) sciences

Moscow, 2023

Relevance of the research topic. A comprehensive comparative legal study of the concept of the subjective factor in private law relations in Russian and foreign law is a significant and relevant area of modern civil law research, and its results are in demand by both researchers and practitioners alike, which is proven and supported by the following aspects.

Socio-legal aspect. Each subject of civil legal relations is characterized by an active dialectical unity of consciousness, will, intentions and activity. Actions and deeds committed in civil circulation are inseparable from the individual's perception of the surrounding legal reality, from cognitive and psycho-emotional processes in the mind of an individual who has become a participant in one or another civil undertaking. The combination of the subjective factor and the action performed by a person forms the concept of legally significant behavior. Both high-quality regulation of civil legal relations and effective law enforcement are impossible without evaluation and consideration of such behavior.

The subjective factor is of legal interest in the context of an individual's mental and phycological qualities, which predetermine various aspects of one's communication with the outside world, as well as means and methods of influence on other participants in civil circulation. In turn, cognitive processes caused by the subjective interpretation of one's experience determine the presence or absence of such legally significant qualities as reasonableness, prudence, due caution, the ability to assess risk, the ability to foresee and prevent the onset of negative consequences.

Axiological aspect. The absence in the modern doctrine of the subjective factor concept in private law relations, that is, the influence of cognitive and psycho-emotional processes occurring in the minds of subjects of private law relations, on the introduction, development and completion of contractual and non-contractual obligations, as well as on the legal regulation of the relevant aspects, becomes the reason for the low efficiency of accounting for such behavioral components as will, intent, guilt, reasonableness, conscientiousness and prudence, each of which is reflected in one way or another in the norms of civil law.

Legislative aspect. Changes in civil legislature over the past decade reflect the increased attention toward the role of the subjective factor in private law relations, including bad faith of participants, and such an important aspect as inconsistent and contradictory behavior of a party to a transaction, which results in a misinterpretation, i.e. incorrect interpretation, of the legal relationship by the other party. Lawmakers have confirmed their aim to eliminate or at the very least minimize bad faith actions of participants of civil turnover, as well as their inconsistent, contradictory actions that aim to or result in misleading the counterparty, under fear of loss by such participants of their subjective right or the possibility of its legal protection. However, at present, the legislative regulation of various elements of the subjective factor in private law relations does not fully reflect their importance in the fulfillment and protection of private individuals' rights, as well as in ensuring the stability and development of civil circulation in general, which highlights the relevance of a comprehensive scientific research of the identified issues in order to develop proposals aimed at improving the relevant section of the civil legislation of the Russian Federation.

Law enforcement aspect. The legal uncertainty, gaps and inconsistencies in the current legislation regarding the definition of the elements of the subjective component of legal actions of subjects of private law relations cause difficulties in implementation and asessment of such elements, make the participants of civil turnover dependent on judicial discretion, which is not always unambiguous and definite, which leads to judicial errors that violate the rights and legitimate interests of individuals and legal entities.

Case law is rather conservative and superficial in identifying, evaluating and accounting for the subjective behavioral elements of participants in civil disputes that go beyond the boundaries of traditional categories - capacity, will and guilt. Haphazard approach, indicating the absence of a generally recognized understanding of the priority of principles of law, methods of assessment and a mechanism of accounting for subjective elements and forms of their influence on civil legal relations, prevent the formation of uniform judicial practice, which, in turn, significantly reduces the effectiveness of protection of violated and contested rights of individuals and legal entities and negatively affects the stability and development of civil circulation.

Doctrinal aspect. There have been no comprehensive studies either of the concept of the subjective factor of private law relations or of the approach to its identification, evaluation and assessment in modern Russian civil law science. In particular, a number of important topics have not received due scientific recognition and analysis reflective of their significance, namely qualifying features and structural elements of a private law relationship; the concept, legal essence and structure of the subjective factor; the place and role of the subjective factor in the structure of private law relationships; limits of judicial discretion in qualifying the subjective factor; the concept and content of the categories of good faith and reasonableness and their role in filling existing legal gaps; conditions and factors for the formation of behavioral standards in tort obligations and obligations with a high degree of uncertainty; the phenomenon of inconsistent behavior and related problems of implementing protective mechanisms for the party acting in good faith; the concept of the subjective factor flaw in the system of grounds for invalidating transactions, etc.

The absence in modern civil law of doctrinal approaches to the concept of the subjective factor does not allow to form a legal framework for its regulation and legally disclose its material elements, which include intention, will, purpose, good faith, reasonableness, prudence, trust, etc., concepts widely used in legislation of many modern states.

Comparative legal aspect. The presence in domestic and foreign legal frameworks of general approaches related to the phenomenon under consideration greatly expands the possibility of using the comparative method to identify existing differences regarding the definition of such elements of the subjective factor as legal capacity, good faith, reasonableness, prudence, will, intentions, guilt, etc. ., in order to identify the most successful legislative approaches to their regulation and assess the possibility of their adoptive implementation in further improvement of Russian legislature.

The degree of scientific elaboration of the research topic. The main scientific works devoted to the analysis of the concept of the subject of private law relations were carried out by outstanding pre-revolutionary and Soviet scientists, such as S.N. Bratus, S.N. Kravcheno, O.A. Krasavchikov, G.K. Malein, D.I. Meyer,

V.A. Eugenzicht, S.N. Pavlovsky, I.A. Pokrovsky, I.N. Petrova, R.O. Khalfin and others. Foreign authors who form the doctrine on the subjective perception of law and legal relations include: D. Adams, M.F. Atiyah, J. Barous, K. Beal , J. Betson, R. Brownsworth, F. Verdun , E. Mackendrick , T. Mahler , M.F. Furmston , F. Pollock and others.

The study of the subjective factor in civil legal relations was carried out mainly in the context of characterizing the categories of legal capacity, legal ability (competency), fault and will as the basis of private law relations. In this area works and research of such authors as A.M. Agarkov, T.A. Batrova, V.E. Bogdanov, D.V. Bogdanov, O.A. Kuznetsova, I.A. Mikhailova, O.A. Serova, V.L. Slesarev, A.M. Khuzhin, G.F. Shershenevich, Kh.I. Schwartz among others are of note.

Scientific approaches to certain civil law principles in public law and their judicial interpretation were developed by S.M. Amosov, E.V. Vavilin, V.V. Zaytsev, Yu.Kh. Kalmykov, N.I. Klein, N.M. Korshunov, T.N. Neshataeva, F. Pollock, E. Peel, G. Treitel, A.V. Shchennikova , V.F. Yakovlev. Much attention to the good faith principle is devoted in the works of R. Brownsworth , V.A. Volkova, V.G. Golubtsov , R. Zimmerman, L. Iov, I.Yu. Karlyavin , J. Leclerc , P. Mayer, I.A. Mikhailova, K.I. Sklovsky , N. Hurd , J. Hovels, A.M. Shirvind . The concept and meaning of the estoppel principle was researched by A.S. Vlasova, A. Vorozhevich , M.V. Kleponosov , K. Nam, D.V. Fedorov, N.M. Udalova, D. Tuzov and some other authors.

Nevertheless, the degree of scientific development of the concept of the subjective factor in private law relations and its influence on civil law regulation cannot be considered high, because it does not allow us to formulate a definition of this phenomenon and form a comprehensive view regarding its structure and significance.

The object of the dissertation research is social relations associated with the definition, recognition, evaluation and consideration of the subjective factor as an important element of civil law regulation.

The subject of this research are norms of civil law of the Russian Federation, regions of the Russian Federation, selected European states; international treaties affecting private law relations; judicial and other law enforcement practice, as well as the content of

scientific concepts, doctrines, paradigms, theories, judgments and discussions on the issues under consideration.

The purpose of the dissertation research is to form the concept of the subjective factor in private law relations and to develop the conceptual and categorical apparatus corresponding to this concept; identifying the forms and degree of influence of the subjective factor on the legal regulation of contractual and non-contractual relations and the judicial resolution of emerging disputes, as well as in the establishment of the main areas of further improvement of Russian legislation and its application practices.

The set purpose necessitated the consecutive resolution of the following main **research tasks:**

1) characterize the private law relationship and identify its qualifying attributes and features;

2) to compare modern approaches to the subjective factor and its elements in foreign and Russian law;

3) define the concept and elements of the subjective factor and their role in private law relations;

4) to characterize the concept and the relationship between the principles of private law and behavioral standards of parties of obligations;

5) reveal the concept of judicial discretion and its significance in ensuring and evaluating legal effectiveness;

6) demonstrate the importance of the subjective factor as the basis for the emergence of an obligation;

7) identify criteria for qualifying contractual terms through the prism of the subjective factor in foreign legal systems;

8) reveal the concepts of good faith and honest business activity as the main standards of conduct in obligatory legislature of foreign states;

9) show the specific features of the qualification of the subjective factor in the fulfillment of obligations with a high degree of uncertainty;

10) identify the specifics of the subjective perception of circumstances by a tortfeasor in Russian and foreign law and its significance in determining the grounds for holding him accountable/prosecution and exemption from such accountability;

11) evaluate the traits of the subjective factor manifestation in the obligations associated with public law relations;

12) analyze the concept, essence and types of defect of the subjective factor in the system of invalidity of transactions;

13) characterize the phenomenon of contradictory/inconsistent behavior of parties to agreements and develop mechanisms to protect the bona fide party;

14) show the problems associated with identifying and determining the exact will and intentions of the parties as grounds for recognizing the contract as not concluded;

15) develop and substantiate proposals for introducing amendments and additions to the norms of Russian legislation aimed at improving the mechanism of accounting for the subjective factor in private law relations.

The theoretical basis of the study is comprised of works by outstanding representatives of the pre-revolutionary, Soviet and modern domestic doctrine: M.M. Agarkova, S.S. Alekseeva, K.N. Annenkova, S.N. Bratusya , K.M. Varshavsky, V.V. Vitryansky , V.Yu. Wolf, O.S. Ioffe, G.K. Matveeva, V.S. Nersesyants , V.A. Eugenzicht , V.F. Popondopulo , O.N. Sadikova , K.I. Sklovsky , E.A. Sukhanova, V.Ya. Slesareva, R.O. Khalfina , V.F. Yakovlev, as well as foreign experts in the theory of law, such as R. Zimmerman, E. Mackendrick , J. Coleman , J. Treitel , M. Hesselink and others. The most significant theoretical contribution to the study was made by scientific works devoted to the analysis of the principles civil law, the concept and structure of obligations, features of the emergence and fulfillment of contractual and non-contractual obligations, as well as standards of conduct formed within the framework of tort law and some areas of public policy.

The regulatory and empirical basis of the study are: 1) the Constitution of the Russian Federation; 2) civil legislation of the Russian Federation and its regions; 3) legislation and official documents of individual European states and the United States (more than 40 normative legal acts of 7 European states and USA were analyzed);

4) principles and norms of international law, international treaties and documents of international organizations; 5) historical sources of law; 6) acts of the Constitutional Court of the Russian Federation; 7) resolutions, rulings and decisions of the Supreme and Higher Arbitration Courts of the Russian Federation, arbitration courts and courts of general jurisdiction; 8) materials of foreign judicial practice (more than 200 court decisions issued by courts in the USA and European countries have been reviewed).

The methodological basis is comprised of methods traditionally used in jurisprudence: the formal-logical method used to evaluate legal definitions and categories in their relationship with other legal phenomena; comparative legal method, which analyzes and compares similar civil law institutions contained in Russian and foreign legislation; methods of scientific knowledge, allowing to determine the general legal trends in the development of the subject of dissertation research, to identify common features of the principles and categories that are distinctive to most modern legal systems.

As a general method, the method of materialistic dialectics was used, aimed at analyzing various elements in their dialectical interconnection.

General scientific methods used include generalization, abstraction, analysis, synthesis, induction, deduction, analogy, observation, comparison, modeling, as well as idealization, formalization, classification, and extrapolation.

Some special scientific research methods were used in the work, including the normative -dogmatic method.

The scientific novelty of this dissertation research is determined by the specific features of its object and subject, the research goal and specific tasks aimed at achieving it, as well as methodological approaches used by the author, ensuring meaningful scientific results, which made it possible to form the author's concept of the subjective factor in private law relations. The dissertation is the first monographic work in which the definition of the subjective factor is presented in the context of the substantiative relationship of its structural elements between each other and with general legal principles and standards of behavior.

This research introduces a new approach to qualifying the actions of subjects of civil legal relations through the prism of behavioral standards embodying the concept

of “behavior of the proper subject” (“correct behavior”), in which the rule of law, using various methods of legal technique, forms a certain “correct” (“ideal”) model of behavior, deviation from which could be considered potential basis for holding one accountable.

The main findings of the dissertation submitted for defense:

1. It has been revealed that one of the specific signs of private law relations arising between individuals, primarily relations with the participation of citizens, is the presence in them of a pronounced subjective factor (subjective component), which predetermines both the emergence of such legal relations and their further development and termination. The subjective factor in private law relations is a system of inseparable and interdependent cognitive and psycho-emotional processes occurring in the mind of an individual and reflected in his dynamically changeable and legally significant behavior. The subjective factor is of legal interest in the context of the individual mental properties of a person, which determine the characteristics of his communications with the outside world and the means of his influence on other participants in civil circulation. Psychoemotional processes that affect the legal relationship between the subjects of a legal relationship at different stages of its existence are determined by the content, intensity and direction of mental regulators, which are based on the factors of goal-setting, motivation, decision-making, other emotions that form a sense of duty, care and responsibility.

In turn, the cognitive processes caused by the transformation in the mind of the individual of the experience received from the outside world determine such characteristics of individuals as reasonableness, prudence, caution, the ability to assess risk, anticipate and prevent the onset of negative consequences. Cognitive and psycho-emotional elements are independent factors that affect the private law relationship in different legal forms, and their symbiosis forms complex legal phenomena, which include conscientiousness, guilt, reasonable care and other categories, the qualification of which should be carried out taking into account the various processes of mental regulation and reflexive mental abilities.

Differentiation of the concept of the subjective factor can be carried out by dividing it into general legal and social, which makes it possible to determine its general or special influence on a particular private law relationship. The concept is based on two aspects: the relation of the subject to the legal elements of the obligation (general legal

element) and its relation to the counterparty and other participants in civil circulation (social element).

The general legal aspect presupposes the availability of knowledge to adequately determine the content of the obligation and the prospects for its development. This aspect is formed by the following elements: the desire of the subject to achieve a specific goal; correct understanding of the content of their rights and obligations; determination of the result to which the conclusion and execution of the obligation is directed, as well as the consequences of behavior that does not comply with legal standards.

The social aspect of the concept is based on the need to understand the goals pursued by the counterparty, the degree of his understanding of the features of the subject and content of the obligation and the possibility of assisting in the implementation of obligations or in the prevention of a tort.

2. In order to increase the effectiveness of legal regulation and strengthen the guarantees of judicial protection of participants in private law relations, it is proposed to establish proportionate boundaries of judicial discretion, since it is the court that evaluates the subjective component of the private law relationship under consideration, interprets the content of the principles of law and determines the conditions for their application. Excessively wide judicial discretion can lead to an unpredictable resolution of the dispute, and too narrow - to the impossibility of taking into account the real intentions of the parties, as a result of which the judicial decision will be based on a formal approach. The lack of uniformity of judicial practice, different approaches to determining the content of the principles of law and their significance in various categories of civil cases lead to legal uncertainty, which is one of the indicators of the low efficiency of national legal regulation.

The most important judicial discretion is in the following cases: 1) when it becomes necessary for the court to apply the so-called implied terms of the contract, recognized in the common law system, and the analogy of the law - the analogy of law, widely used in the Romano-Germanic legal family; 2) in the process of applying, including at its own discretion, independently or bypassing the will of the subjects of the dispute, the principles of good faith, fairness, reasonableness and prudence, and establishing new aspects of their content; 3) when identifying and evaluating such elements of the subjective

factor as the goals, intentions and will of the parties; their prudence and reasonableness; the presence or absence of trust in each other, determined by qualifying the behavior of the participants in the dispute.

3. It has been established that the intentions and goals of the parties, being elements of the subjective factor, which are the basis for the emergence of an obligation, have different legal content in modern national legal orders. In the case when the principle of freedom of contract prevails in the regulation of obligations, the role of the subjective factor increases significantly at all stages of the development of the obligation, which allows its broad interpretation. Legislative systems influenced by the formal approach identify the intended intentions and purposes of the parties with the terms of the contract, so such elements are only to be interpreted in the absence of relevant contractual provisions. This means that the principle of freedom of contract enshrined in Russian legislation, which prevails in the principles of the common law system, significantly narrows the scope of the principle of formalism, since the purpose of judicial review is to clarify the actual intentions of the parties, which may differ from the contractual terms.

4. The structure of a legal fact, which is a condition for the emergence of an obligation, is disclosed as a set of external and internal characteristics of the behavior of the subject of the obligation, due to the system of cognitive and psycho-emotional processes in the minds of its participants. The interaction and mutual influence of such subjective elements as will, intentions and goals, being necessary prerequisites for performing a certain action, determine the legal orientation of a legal fact. The understanding of obligation as a symbiosis of will and expression of will, which has developed in the domestic doctrine, does not fully correspond to modern realities, since in the event of a dispute, the legal relationship undergoes judicial qualification in various projections: for the existence of an obligation, its legal essence and validity / invalidity. A legal fact as a basis for the emergence of an obligation should be formed taking into account possible, probable and even hypothetical prospects for the development of a legal relationship, therefore, its backbone elements are not only the will, but also the intention of the subject to achieve the desired result with the help of legal tools provided for by the current legislation.

5. It is shown that the subjective perception of the actual and legal aspects of the obligation is the basis for determining the conditions, the violation of which may entail civil liability for breach of contract. The common law system, in contrast to the continental one, is based on a multi-factor classification of contractual terms, the purpose of which is to take into account the subjective element at all stages of the life cycle of the concluded contract. The paradigm of contractual conditions is based on the presumption that the source of any contractual condition is the goals and intentions of the parties, which may have varying degrees of severity and certainty, so the task of the court is not to fill the identified contractual gap with the existing regulatory rule, but to identify these elements based on analysis and evaluation of the behavior of the parties.

The search for legal norms capable of resolving the disputed issue in the absence of the contractual conditions necessary for this led to the introduction of the so-called "regulatory conditions" into the legislation of some states of the continental system, as a result of which law enforcement practice proceeds from the phased qualification of contractual conditions: at the first stage, the definition of the content of the legal ties, the second - assessment of the applicability of the rules of law to the identified contractual gaps.

In addition to contractual and regulatory provisions, the category of "implied terms" is also widely used, which are established in the process of judicial interpretation of the contract and determine the actual agreements of the parties that are not reflected in the contract. Wide judicial discretion regarding the clarification of the actual intentions of the subjects is aimed at ensuring the stability of civil law relations, within which the legal relationship can develop, be supplemented and changed, while remaining valid.

6. It has been proved that the assessment of the subjective factor in obligations relations is carried out by forming legal standards of behavior expected from a conscientious participant in civil transactions, which allows, with the help of presumptions of certain characteristics (reasonableness, discretion, awareness), to significantly simplify the procedure for proving the presence or absence of guilt. The lack of these qualities in the subject was the basis for identifying a special subject of obligations - the so-called weak side, characterized by a decrease in the behavioral standard of reasonableness and due

diligence due to the lack of necessary information. The concept of a weak party is perceived in the domestic legal order in relation to relations with the participation of the consumer, in which the presence of special knowledge from one party and their absence from the other are presumed already at the stage of concluding a contract.

Right the applicable practice of countries belonging to the common law system proceeds from the principle of information imbalance that occurs in cases of special professional characteristics of one of the parties, which, having a large amount of knowledge, is obviously legally stronger than the counterparty. Recognition of this fact makes it possible to use different approaches to behavioral standards by increasing or, conversely, reducing the requirements for the level of awareness of the subjects of a private law relationship.

7. It is substantiated that behavioral standards aimed at specifying the requirements for the behavior of the parties are formed on the basis of the principles of law. The basic principle that makes it possible to assess the behavior of a subject of a private law relationship is the principle of good faith, the application and meaning of which differ significantly in the system of common and continental law.

In the Anglo-American system, contractual obligations are regulated considering the economic efficiency of legal relations, which, firstly, means abandoning the generally binding nature of good faith, and, secondly, gives the category of good faith unique features, such as "commercial expediency", by virtue of which the actions of the subject should be aimed at the optimal resolution of the problem. This means that the common law does not specify the requirements, the fulfillment of which means recognition of the good faith of the parties but presumes that the action of the party will be recognized in good faith if the desired result is successfully achieved.

In the continental system of law, the principle of good faith is of a generally binding nature and applies to all participants in contractual relations, therefore, the judiciary actively participates in the formation of the standard of good faith behavior, giving this principle a sign of “legal empathy” by virtue of which the parties, striving to exercise their own rights and interests, should take care of the interests of the counterparty. In turn, in the Romano-Germanic legal family, the category of conscientiousness is the

main criterion for identifying and taking into account the subjective factor of contractual relations: if the behavior of a participant lies in the legal plane, but contradicts public ideas about justice, the actions of the party are subject to qualification for compliance with conscientious behavior.

8. A conclusion is formulated about the existence of contracts, in the content and execution of which the subjective factor is of particular importance due to the specifics of the legal relationship that arises between the parties. Such agreements include relational agreements characterized by long-term business cooperation and significant novelty (subject, activity, market, etc.) for one or both parties, which does not allow them to detail the subject of the agreement, the terms and amount of remuneration, the grounds for terminating the agreement and its consequences. Such contractual models, as a rule, are accompanied by "hidden" agreements, reflecting the parties' ideas about the goals and prospects for the development of their legal relationship, but not fixed in the agreement they concluded.

The uncertainty of the conditions and the asymmetry of information, which manifest itself in the process of execution of a relational contract, determine the objective need to identify and consider its inherent subjective factors that are traditionally unusual for discrete transactions: increased confidence in the counterparty, honesty, openness of the parties, their desire to cooperate and the level of involvement in the common cause. The emergence, development, and widespread use of the concept of relational contracts in foreign legal orders were due to the need to resolve or minimize the uncertainty that arises in such specific contractual models, as a result of which states with effective legal regulation gradually formed legal approaches to resolving disputes arising between their subjects.

The implementation of the concept of relational contracts in Russian civil law will not require the implementation of new special rules, since the legal basis for their distribution was created with the introduction of a framework agreement model in the Civil Code of the Russian Federation, which has similarities with relational contracts. The use by Russian courts of various methods and techniques of judicial interpretation and the rejection of an exclusively formal approach to the content of the contract will make it

possible to adequately determine the goals and intentions of the parties and the conditions they propose. The resulting problems with the qualification of the quality of performance can be leveled by the application of legal principles and the universally binding prohibition of abuse of the right.

9. It is proved that in the obligations arising from the infliction of harm, the legal emphasis of the qualification of the subjective factor "shifts" from the analysis of the subject's good faith to the identification of the presence or absence of guilt in his actions. In common law countries, standards of conduct have been developed and enshrined, compliance or non-compliance with which are grounds for liability for harm or for release from her.

The key category used in deciding the issue of compensation for the harm caused is the reasonableness of the offender, that is, the degree of awareness by the person of the risks of causing harm and the expediency of the actions taken by him to prevent it, which indicates the formation in tort obligations of an independent understanding of the category of reasonableness based on rational prudence, and not on the economic soundness characteristic of contract law. In countries belonging to the Romano-Germanic legal system, when identifying and accounting for guilt, it qualifies, among other things, the presence or absence of due diligence. To simplify the process of proof, the legislator resorts to the presumption of due diligence for the owners of a source of increased danger, which means a direct connection between the ideas about the features of the named object and the obligation of the subject to exercise due diligence when using it.

The need to take into account guilt in tort obligations leads to the borrowing of legal mechanisms from public branches of law, in which, to assess the degree of reasonableness of the behavior of the tortfeasor, they use a mathematical calculation of the possibility of causing harm in the conditions of an existing risk or the formation of a standard of knowledge necessary and sufficient to prevent harm from the activity of "usual » a participant in civil legal relations who does not have special competence, and a “professional standard” that differs significantly from it, within which the presence of knowledge necessary for representatives of a particular profession is presumed.

Causing harm to an individual in content has similar features with causing harm to a public good subject to protection in public law branches of law, which leads to the application of the standard of knowledge and due diligence mainly to the tortfeasor when recognizing the victim as a "weak party", whose actions should not contribute to causing harm or increase its consequences. In the interests of the weak party, the procedure for proving the main subjective component of a non-contractual obligation, the guilt of the person who caused the harm, is significantly simplified, in relation to which it is necessary to prove that he had the ability to foresee the development of events and prevent harm with the help of due diligence.

10. It is substantiated that the protection of the public good in obligations related to public law relations shifts the focus of legal regulation in the structure of the subjective factor from the will, intentions and goals of the participants in such obligations to their guilt, as a result of which the criterion of awareness of a causal relationship becomes a key factor between the action taken and the harm done to the public good. Understanding the social significance of the public good increases the requirements for such elements of the subjective component as reasonableness and due diligence, and predetermines a significant increase in the obligations imposed on the subject by the norms of public law branches, as a result of which the same legal relationship passes a double qualification: through the prism of private law and public law. legal regulation. The dualism of legal assessment leads to a differentiated approach to the basic concepts of civil law and expands the range of requirements for basic behavioral standards, within which subjective elements are filled with new content.

The prioritization of a public law or private law approach plays a significant role in determining the correct model of behavior of economic entities and the qualification of subjective elements. The domestic doctrine does not consider the legal relationship in the context of the simultaneous use of two differently directed approaches, therefore, the elements of the subjective factor are the subject of an independent study of civil lawyers and representatives of public sector science. In practice, the mixing of approaches is obvious: the application of increased requirements for due diligence, reasonableness and good faith of the subject of such obligations can lead to negative legal consequences,

including the recognition of the transaction as void as contrary to the law, which destabilizes civil law circulation, and therefore it seems most appropriate legal borrowing of methods for qualifying subjective factors inherent in private law relations in the regulation of public law relations.

11. It is proved that the defect of the subjective component, which is the basis for the recognition of transactions as invalid, has a high degree of differentiation, which makes it possible to distinguish the following types: a defect of the volitional component (the conclusion of a transaction by an incompetent person); defect of the purpose set by the parties; defect of awareness (the person was mistaken about the essential characteristics of the contract); deliberate mismatch of will and will (imaginary and feigned transactions). The analysis of these varieties leads to the conclusion about the direct correlation of the real the value of the transaction and the subjective factor in the form of a set of cognitive and psycho-emotional processes in the minds of the participants in the transaction, the incorrect qualification of which entails a violation of the principles of justice and legal certainty.

The grounds for invalidity associated with a defect of awareness have not become widespread in Russian law enforcement practice due to the absence of such elements of the subjective factor as the real intentions of the parties, personal delusion, etc. in the perimeter of judicial analysis and interpretation. Russian law partially borrowed the institution of assurances and guarantees from of the common law system, however, the implementation of mechanisms for assessing delusion as a subjective component of private law relations did not occur, which is an obstacle to the use of delusion as a basis for declaring a transaction invalid.

In the Anglo-American system of law, to qualify delusion as a basis for the invalidity of a transaction, the principle of “predetermined impartiality” is used, which compares the amount of information received by the party, the presence or absence of special knowledge and the behavior of the counterparty. This principle has been developed in the context of the need to evaluate the assurances of the parties and the information they provide to each other when concluding a contract, which subsequently makes it possible to determine the degree of delusion and its impact on the intentions of the parties.

12. The specificity of the influence of the subjective factor on certain legal principles and institutions is revealed, the qualification of which is based on an assessment of the behavior of the parties in the absence of an obvious contractual source. Such principles and mechanisms include estoppel, waiver of rights, the principle of protecting legitimate expectations and the mechanism for confirming a transaction, the content of which is based on the principle of justice and the basic principles of international law that operate independently of contractual terms and establish a preferential treatment in relation to the contract. Despite the various circumstances that have become the basis for the waiver of the right, from the protection of the violated right or from the requirements for the enforcement of the contract, the following key prerequisites for their application can be distinguished: 1) the legal relationship is valid); 2) the parties have knowledge of its content; 3) the corresponding intention of the person (to waive the right, change the terms of the contract, etc.) is directly evident from his behavior; 4) the law establishes the grounds for being guided by the behavior of the other party or the information provided by it.

These mechanisms and principles constitute a specific legal cohort aimed at protecting the bona fide party from abuse by the counterparty while maintaining the validity of the transaction. In such cases, the qualification of the subjective factor, which reveals the discrepancy between the intentions of a person and his behavior (a defect in the expression of will), is an additional way to protect the rights and interests of a bona fide party.

13. The necessity of analyzing the behavior of the subjects of the obligation, which is a set of actual actions of a legal nature and aimed at achieving a certain legal result, is proved. The contractual terms, being a fixed mutual expression of the will of the parties, reflect their intentions at the stage of concluding a transaction, however, the fulfillment of contractual obligations is often associated with the commission of actions not provided for in the contract. In such situations, it is the behavior of the subject that becomes the determining factor that makes it possible to reveal his will and fill the identified contractual gap. Legal regulation is based on the presumption that the behavior of the subject is consistent with its goals, which allows the counterparty to build a model of behavior aimed at the proper performance of the contract. For this reason, contradictory

(inconsistent) behavior neutralizes the legal effect of contractual terms, misleads the counterparty and, as a result, prevents the proper execution of the contract.

Most modern national legal systems exist in the paradigm of the prohibition of controversial behavior, which may result in harm to another person, but the mechanisms for protection against such behavior can lead to its qualification as an element of abuse of right, recognition of the participant in bad faith or application of the principle of estoppel, depriving the party of the right to protection. The tasks of high-quality legal regulation are as follows: 1) to prevent contradictory behavior of participants in private law relations; 2) create effective mechanisms to protect the bona fide party, whose actions were due to the behavior of the counterparty; 3) minimize the negative impact of the conflicting behavior of one of the parties on the development of the contractual relationship.

14. It has been established that the widespread practice of cases of the absence of an explicit will of the parties regarding the essential terms of the contract led to the formation in the Russian legal system of a unique way of excluding obligations and from commercial turnover in the form of recognition of the contract as not concluded. The statement of the fact that it is impossible to reveal the real intention of the parties, which entails the qualification of the contract as not concluded, is a continuation of the concept of the invalidity of transactions, however, the doctrine and judicial practice evaluate these concepts depending on the presence or absence of a defect of the subjective component. The presence of a defect of the subjective factor leads to restitution - the restoration of the state that existed before the conclusion of the invalid transaction. If the contract is recognized as not concluded, its execution is not possible due to abstractness, ambiguity, inaccuracy, or lack of essential conditions, while the return of partial performance is carried out according to the rules for the return of unjust enrichment. This approach simplifies the procedure of proof, since it does not consider the subjective component of the behavior of the parties, however, because of its application, the legal ties established between them can be excluded from civil law circulation, which violates the principle of balancing the rights and interests of subjects of private legal relations.

In the common law system, the possibility of recognizing the contract as not concluded is not provided, since the court establishes both the true intentions of the parties

and the conditions implied by them that have not been properly documented. From the standpoint of legal consequences, it is important for the parties to the transaction to understand the binding nature of the agreements they have reached, including those of an oral nature, therefore, when considering a dispute, it is important to establish how adequately the parties are aware of the legal status of their obligations. At this stage, obligations arising from misunderstanding or lack of minimum legal knowledge of one or both parties are excluded from civil circulation, however, if their mutual will to conclude a transaction is established, its conditions can be determined using various procedural mechanisms.

The theoretical significance of the dissertation research is due to the substance of the conclusions made in this work, which facilitate expanding the established scientific knowledge base in the theory of law, in civil law, as well as in legal disciplines affecting the methods of public law regulation. The provisions of the dissertation research, which are of scientific novelty, can influence further development of the law of obligations and tort law, as well as advance the development of general legal concepts.

The practical significance of the dissertation research is determined by the prospects of using the scientific conclusions and provisions formed herein to create effective mechanisms to account for the subjective will of the parties and qualifying their behavior, which will create conditions for in-depth interpretation and adequate definition of contractual conditions. The results of the study can be used in applied scientific work aimed at studying individual elements of the structure of civil law relations, the principles of civil law and behavioral standards, as well as in judicial activities and in the educational process when teaching such disciplines as “Private International Law”, “Civil Law of the Russian Federation”, “Law of Obligations” and “Comparative Law”.

The validity and reliability of the results of the dissertation research is confirmed by the information base of the study. The foundations for the research were laid back in 2013 and data collected until 2023. Analysis of extensive scientific and methodological sources of foreign and domestic legal scholars, law enforcement practice of Russian and foreign courts confirms the reliability of the results. For an objective and comprehensive study of the subjective factor, the obtained results were compared with

other, including related, scientific developments in the field of civil law, which allows us to qualify the material as reliable and justified.

Approbation and implementation of research results. The dissertation was completed, discussed and approved at the Department of Legal Support of the Market Economy of the Institute of Public Service and Management of the Federal State Budgetary Educational Institution of Higher Education "Russian Academy of National Economy and Public Administration under the President of the Russian Federation". The main provisions and conclusions of the dissertation research were reflected in the reports presented as part of the author's participation in a few international and all-Russian scientific and practical conferences.

The total number of publications on the research topic amounts to 21 works with a total volume more than of 380 printed sheets. The main scientific results of the dissertation were published in 18 peer-reviewed scientific publications included in the List of peer-reviewed scientific publications in which the main scientific results of the dissertation for the degree of Doctor of Science should be published, of which 2 articles were published in publications indexed by the Web of Science database, as well as 3 monographs. The materials of the dissertation research were used in conducting classes on the course "Private International Law: Actual Problems and Practice" for masters' degree post-graduate students at the Russian Academy of National Economy and Public Administration under the President of the Russian Federation.

The structure of the dissertation work is determined by the goal and objectives of the study, its object and subject. The work consists of an introduction, four chapters, a conclusion and a bibliography.