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Law Against Rhetoric: Establishing the Truth in Legal Disputes when Using Argumentation Tricks

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Abstract: The desire to achieve truth is an important feature of the civilization that developed in the territories of the far and near Mediterranean in the 8th-2nd centuries BC and exists nowadays. Law, considered as a description of the essential properties of social reality, has been formed as a system of means that makes it possible to establish in a conflict situation the truth regarding the facts that are subject to assessment by the law enforcer (usually the court). Recently, however, the law's focus on truth has been questioned as its achievability has been contested in philosophy and rhetoric. The lack of demand for true knowledge, its historicity, difficult achievability, fundamental nature of lies, and the dominance of pseudo-true knowledge are pointed out. It is noted that similar processes are reflected in the legal understanding of truth, which does not negate its fundamental significance for law. At the same time, statements about the impossibility of achieving truth in a dispute are often based on seemingly true, but in fact incorrect statements (so-called argumentative tricks); those can be overcome with the use of rhetoric. A typology of such tricks is given. It is pointed out that classifying tricks as acceptable is incorrect, since they constitute deception, although not prohibited by law. Tricks that go beyond the

scope of discussion (tricks of appeal) are considered. Methods are proposed to counter them with rhetoric, which makes it possible to clearly demonstrate the fallacy of the relevant statements and maintain confidence in the possibility of establishing truth in the legal process, which, in turn, ensures the preservation of social justice.

***Keywords**:* truth; lies; rhetoric; law; dispute; tricks

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Contents

I. Introduction

The beginning of many modern civilizations is traditionally considered the period of the "Axial Time" (Jaspers, 1991, pp. 32–50), which falls on the 8th-2nd centuries BC. At this time, in the long-populated territories of the far and near Mediterranean, complex state formations were taking shape, social-class inequality with the exploitation of man by man appeared. Some people who had free time to understand reality created the first philosophical systems and demonstrative scientific knowledge; these were Thales, Pythagoras, Plato and Aristotle. Religious cults became more complex: the activities of Homer, biblical prophets, Buddha and others led to the creation of the Olympic religion, Judaism, Buddhism, and other religions.

Important features of Mediterranean civilizations in understanding the essence of the universe, the ways and directions of its development were the idea of truth and legal systems, in particular, legal proceedings

that implement social justice in an inherently unjust class society. At the same time, law considered as a description of the essential properties of social reality, was formed as a system of means that makes it possible to establish in a conflict situation the truth regarding the facts that are subject to assessment by the law enforcer (usually the court). It should also be noted that without truth it is impossible to achieve justice (Voplenko, 2013).

The presented civilization, both in general and in its specific manifestations, had a powerful impetus for development: periods of evolution were replaced by revolutions, the collapse of some civilizational formations and the emergence of others, ups and downs. Societies and States that emerged later copied these features with a certain degree of diversity. At the same time, some well-known and ancient civilizations, for example, ancient Egypt, Assyria-Babylon, were unable to survive the "Axial Age" in their former capacity as "leaders"; they became outsiders of the historical process for a long time. Accordingly, we can consider that the desire to achieve truth, including through the formation of powerful philosophical and legal systems, obviously acts as an advantage fundamentally important for the existence and development of civilization.

II. The Relationship between Truth and Non-Truth

In the classical philosophical systems of antiquity, Plato and Aristotle created the first concept of truth in history, according to which truth is the correspondence of thoughts to reality. The understanding accessible from the point of view of common sense, however, soon gave rise to paradoxes, such as the "liar paradox", which philosophy, logic and mathematics tried to understand until the middle of the twentieth century. Against the backdrop of the problems of the correspondent concept, alternative points of view have emerged — a pragmatic and coherent concept of truth, which should be perceived not as independent positions, but as complementary to the main point of view.

Why did the idea of truth seem so significant to people? Apparently because true or adequate knowledge of the world seemed to be a guarantee of a correct understanding of existence, its successful

functioning and its successful transformation in the course of human activity. However, everything turned out to be not as simple as it seems from the standpoint of the so-called common sense.

Firstly, truth in any of its incarnations turned out to be a weak fighter in the field of knowledge of reality and its functioning. Entire bodies of well-reasoned, proven, justified (all these are characteristics of truth) knowledge are not in demand by humanity and are not used in any way. For example, many are still convinced of the priority of induction over deduction, sensory knowledge over rational knowledge. Traditional logic, with its scant set of four laws of supposed thinking, still defeats modern symbolic logic with its fundamentally different set of laws and other cognitive means. Marxist-Leninist philosophy still looks like an attractive social ideal, despite the proven contradictory nature of its foundations.

Secondly, each era formed its own idea of true knowledge, and it worked well. Based on such an understanding (micro and macrocosm in antiquity, theocentrism in the Middle Ages, classical mechanics in modern times), States were built, economic transformations took place, an education system was created and goals for the future were set. Subsequently, the knowledge on which all these factors were based turned out to be either false or insufficient. The universe itself was much more complex than it was thought to be. However, practices based on false or inaccurate grounds have more often than not been successful or effective. The crusaders were sure that wealth awaited them in the Holy Land with its milk rivers and jelly banks, and they were not deceived in their expectations, although they did not find milk rivers. Christopher Columbus sailed to discover India, and discovered America because he was sure that there could be no land in the eastern hemisphere.

Thirdly, since the truth turned out to be difficult to achieve, humanity had to be content with what was easier to achieve. Moreover, this is not-truth, sub-truth, post-truth and a lie. Imagine a parabola that tries endlessly to get closer to the coordinate axes, but never touches them, or the fleet-footed Achilles who will never catches up with the slowly crawling turtle, or the limit of a convergent sequence. All these are examples of unattainable and completely incomprehensible truth.

In these conditions, the main attention should be paid to the knowledge and use of various options for pseudo-true knowledge.

Fourthly, in the process of development of modern predicate logic it turned out (this is a recent result obtained by A.M. Anisov (Anisov, 2019) that it is lies, and not truth, that are fundamentally present in our world. "It is the lie that is ontologically rooted, and the truth does not receive an adequate universal interpretation at the level of denotational meanings" (Anisov, 2019, p. 184). The meaning of falsehood as a universal object is the empty set that is present in every possible world, while truth is local and partial.

Fifthly, pseudo-true knowledge (users and creators of this knowledge) is successfully presented as true. For many centuries, alchemy and astrology were considered sciences, and with a good reason. The twentieth century gave birth to new pseudo sciences — Michurin biology, ufology, numerous parapsychologies, etc. Various technologies have emerged for presenting false and advantageous knowledge (in the form of judgments or statements) as true knowledge. In addition to pseudo-true knowledge presented as true, there also appeared incorrect reasoning that successfully imitates the correct one. Similar processes are reflected in the legal understanding of truth, although its research is not as large-scale as in philosophy.

They are limited primarily to vibrant and lengthy discussions in procedural science (Proving and decision-making in adversarial criminal proceedings, 2022). For example, researchers note, "the concept of truth as a basic requirement for the judicial consideration of criminal cases was contained in all major criminal procedural acts during the period of developed Russian criminal proceedings in the 19th–20th centuries" (Khalikov, 2014, p. 1416). However, the current Code of Criminal Procedure of the Russian Federation does not contain a direct obligation to establish the truth. The same situation applies to civil procedural law. In Para. 1 Art. 14 of the Code of Civil Procedure of the RSFSR, a provision was established according to which the court was obliged, not limited to the presented materials and explanations, to take all measures provided by law for a comprehensive, complete and objective clarification of the actual circumstances of the case, the rights and obligations of the parties. This rule was defined in science as

the principle of objective truth of Soviet civil procedural law, supported by the provisions also contained in Chapter 6 "Evidence", as well as in Chapters 14–16 of the Civil Procedure Code "Preparation of civil cases for trial", "Court proceedings", "Court decision" (Bonner, 2009, p. 55). At the same time, scholars discussed whether the truth in procedural law is absolute or relative (Soviet civil procedural law, 1965, p. 47), objective or formal, and which of them should be established by the court (Kurylev, 1966, p. 14). Some of them generally denied the possibility of using the categories of absolute and relative truth in legal proceedings (Rivlin, 1951, p. 42; Ivanov, 1964, p. 9).

Most researchers and law enforcers adhered to the approach according to which the law enshrines the establishment of objective truth in a case, i.e., truth that corresponds to the actual circumstances of the case (Shakiryanov and Shakiryanova, 2021). The justification was based on the statement that "material truth is objective, not subjective, i.e., it is such a representation of reality, the content of which depends not on the subject, but on reality itself, because otherwise this "truth" is not the truth at all" (Kurylev, 1952, p. 37).

Para. 2 Art. 12 of the current Civil Procedure Code of the Russian Federation stipulates that the court creates conditions for a comprehensive and complete examination of evidence, establishment of factual circumstances and correct application of the law when considering and resolving civil cases. Despite the similarity of the wording with the previously existing rule, modern scientists do not believe that the principle of establishing objective truth continues to apply in civil proceedings (Muradyan, 2002, pp. 93–99; Samsonov, 2019, pp. 26–29), although some works continue to advocate the existence of such a rule (Gromov and Nikolaichenko, 1997, p. 33; Zazhitsky, 1996, p. 93).

It seems that the category of truth really has a meaning too broad for law and, in particular, for legal proceedings. Not every truth can be established in the legal process, since law is applicable only to social relations. From the legal point of view, it makes no sense to evaluate, for example, the true causes of such natural disasters as a drought, a flood or a volcanic eruption. Although the court can establish the fact and causes of a particular fire, flooding or other natural disaster if it is of a relative nature, i.e., is a consequence of specific actions or

inactions of people. Therefore, the truth that is established through legal proceedings refers to a limited volume of ideas related, to one degree or another, to social relations.

In addition, the court is limited in its ability to establish the truth by those methods established by law, which also excludes the achievement of the truth of part of the representations. For example, a fact cannot be established by a court if it is confirmed only by a copy, and the original document is lost or not submitted to the court (Part 6 Art. 71 of the Arbitration Procedure Code of the Russian Federation).

From the above it follows that ideas about the facts established by the court may be the truth, but not every truth represents such ideas about the facts. That is why we think that in the above articles of procedural codes it is reasonable to use not the expression "establishment of objective truth", but "a comprehensive and complete study of evidence", which emphasizes the specificity of judicial truth. At the same time, it is obvious that neither scholars nor the legislator deny truth as the goal of legal procedural proof. In legal proceedings, "the process of learning the truth" and a "procedural proof" correlate as a part and the whole (Ponomarenko, 2021; Mezinov, 2013).

It is correctly noted by representatives of criminal procedural science that "the goal of criminal proceedings is truth, the content of which is accurate, irrefutable knowledge about each circumstance of the crime committed, subject to proof in a criminal case according to the law, reflecting the essence of a specific crime and being the basis for the correct sentencing" (Ponomarenko, 2021). In general, it can be considered that judicial truth, as comprehensively and fully examined evidence, represents the presence of such knowledge and conclusions about the circumstances of the case that correctly reflect the reality existing outside of human consciousness, which allows them to be given a correct legal assessment. Therefore, despite various doubts about the possibility of establishing the truth in the legal process, it continues to be its important element.

As researchers rightly note, "the rejection of the concept of truth, although it does not deprive us of the ability to reason, however... legal proceedings lose their meaning: the speeches of prosecutors and defenders become empty chatter, and the jury's verdict "guilty" or

"innocent" is no longer based on their conviction that the defendant actually committed or did not commit the crime charged to him, but is due only to the momentary impression that the accused makes on them" (Nikiforov, 2008, p. 11).

The study of judgments and reasoning is the sphere of rhetoric, and then logic. Unlike logic, rhetoric deals with the study and use of judgments and reasoning in a natural language and is very interested in the problems associated with the practical use of false judgments and incorrect reasoning, presented as true and correct.

III. Law, Rhetoric and Tricks in Dispute

Rhetoric is one of the most ancient sciences; it is the same age as ancient Greek mathematics represented by Pythagoras and his school. However, if ancient Greek mathematics stumbled over the problem of the incommensurability of segments and the root of two, then rhetoric found its place precisely in the field of incorrect but convincing reasoning. It should be noted that it is quite difficult to distinguish between correct and incorrect reasoning: it requires knowledge of logic, a complex and non-obvious science, as well as a good level of empirical knowledge about the arguments of reasoning; they are often false, but few people know about it. In addition, the persuasiveness of an argument depends not only on its correctness (correctness is an analogue of the truth of an argument), but also on ethos and pathos, techniques that often turn out to be more convincing than neutral correctness.

So, rhetoric can be defined as the science of the effectiveness of various types of reasoning in natural language. Moreover, incorrect reasoning turns out to be more interesting than correct reasoning in many respects. These relations can be understood as political practice, judicial practice, as well as the theory of knowledge in general. Many tricks of incorrect reasoning gave rise to new branches of logic and mathematics.

Incorrect reasoning is usually called "tricks in discussion or argumentative tricks". A trick is one of the many types of deception. In the most general form, according to D.I. Dubrovsky, the author of the corresponding study, "deception is disinformation, a false message

conveyed to a specific subject. Being deceived, the subject accepts as true, genuine, fair, correct, beautiful (and vice versa) something that is not. The concept of deception is logically opposed to the concept of truth. The truth cannot be identical to the concept of truth, nor can it be reduced to a purely epistemological content. Truth means not only what is true, but also what is right, true, genuine, due, fair, and consistent with the highest values and goals, the ideals of humanity. Untruth is an intentional lie, but at the same time it can also be an unintentional delusion, and cunning falsification, and sophisticated hypocrisy, and the hypocrisy of a cultured man in the street, and the "truth" of the previous historical stage" (Dubrovsky, 2010, p. 14).

A dispute in its various variants is the main testing ground for the use of deceptive tricks. It represents a special case of argumentation. With all the variety of types of disputes, it can be defined as a confrontation in the opinions between the proponent and the opponent. A difference of opinion or a controversy arises over a certain position or a thesis. In addition to the thesis, in a dispute there are arguments and demonstration, as well as, if there is an audience, certain methods of influencing it, i.e., ethos and pathos.

A legal dispute has all the characteristics mentioned above. It is noted that "a legal dispute requires specific means of resolution, because a true legal judgment cannot be established with the help of physical pressure and coercion; it is approved only by relying on the power of logical arguments" (Zherebin, 2001, p. 19). "A legal dispute is a special form of ideological, psychological, verbal competition between opposing parties regarding the creation of law, its interpretation, application, expressed in the categories of legal consciousness" (Zherebin, 2001, p. 47). However, in legal science the term has not received an unambiguous definition (Shakhanov, 2017), since it covers heterogeneous social relations (Kunitsyna, 2014, p. 12).

From the standpoint of substantive law, a dispute is a statement of claim by a person who believes that his interests have been infringed by the violator. In a procedural sense, it is interaction aimed at resolving a conflict of interestsstthat has arisen. In the most general sense, a dispute in law can be defined as "a trial proceeding set in the prescribed manner by an authorized body of a case about which there are disagreements and contradictions" (Theory of State and Law, 2023, p. 470).

No matter how a legal dispute is defined, when conducting it, like in any other dispute, incorrect reasoning (including argumentation tricks) is actively used. Meanwhile, the use of tricks in legal disputes can lead to serious negative consequences. Decisions made in resolving disputes by various law enforcement agencies serve as grounds for the use of legalized violence, which can lead to a violation of justice.

IV. Typology of Argumentative Tricks

The number of argumentative tricks is difficult to determine. Firstly, their number is constantly increasing. Secondly, each participant in the argumentation process tries to create his own trick, and even give it a name. A whole layer of spiritual culture is devoted to lies, deception, and various tricks of the mind. Let us give just two examples. In the middle of the 12th century, one of the first vagants, Primate Hugo of Orleans, wrote the following poem,

> "Lies and malice rule the world.
> Conscience is strangled, truth is poisoned,
> The law is dead, honor is killed,
> Indecent deeds are countless.
> Locked, doors closed
> Kindness, love and faith.
> Wisdom teaches today: steal and deceive!
> A friend in need abandons a friend,
> The spouse lies to the spouse,
> And brother trades with the brother.
> This is what debauchery reigns!
> 'Come out, little one, onto the path,
> I'll give you a leg', —
> The prude grins,
> Holding a knife in his bosom.
> What a time! No order, no peace,
> And the Lord's son is with us
> Crucified again — for the umpteenth time!"
> (Primate Hugo of Orleans).

In the twentieth century, the famous Russian writer, satirist and playwright Arkady Averchenko (he lived in 1880–1925 and was the editor of the magazines "Satyricon" and "New Satyricon") in the story "Lies" creates a comic classification of lies, which can be male and female. "A woman's lie", he wrote, "often reminds me of a Chinese ship the size of a nut — a lot of patience, cunning — and all of this is completely aimless, to no avail, everything perishes from a simple touch". A woman's lie is many dubious details, while a man's lie is to say as little as possible.

A significant number of tricks necessarily require, if not classification, then at least typology. The factor of acceptability or permissibility of tricks in a certain discourse is traditionally used as the first basis for division. Therefore, tricks can be divided into acceptable and unacceptable. Inadmissible tricks include, for example, unacceptable psychological tricks that violate the rules of correct behavior. This is boorish behavior, relying on false shame, buttering up arguments, suggestion, repetition, irony, demonstrating resentment, frank statements, etc. Unacceptable tricks also include tricks based on the violation of the logical rules of argumentation. However, the term "acceptable tricks" raises doubts, because it is a typical oxymoron, i.e., a combination of the incompatible things or phenomena synonymous with "acceptable deception". Much has been written about the admissibility of deception, about lying in the name of truth (Dubrovsky, 2010),[1] but this does not stop deception from being a deception that violates the ethical principles of communication. By the way, law prohibits truly unacceptable tricks.

For example, deceiving consumers, as well as misleading them,[2] entails administrative liability (Art. 14.7, 14.8 of the Code of the Russian Federation on Administrative Offenses of 2002).[3] In addition, a trans-

[1] The monograph contains the whole "The Problem of Virtuous Deception" chapter, pp. 51–90.

[2] A misconception is a wrong, erroneous opinion, idea about something; deception — words, deeds, actions, etc., intentionally misleading others; to deceive — to deliberately mislead someone (Big Explanatory Dictionary of the Russian Language / Ed. by S.A. Kuznetsov. St. Petersburg: Norint Publ., 2008. P. 310, 673 (In Russ.)).

[3] Code of the Russian Federation on Administrative Offenses dated 30 December 2001 No. 195-FZ. *Collection of Legislation of the Russian Federation*. 2002. No. 1 (Part 1). Art. 1. (In Russ.)

action made under the influence of deception may be declared invalid by the court at the request of the victim (Clause 2 Art. 179 of the Civil Code of the Russian Federation).

At the same time, in judicial practice, deception is considered not only the reporting of information that does not correspond to reality, but also the deliberate silence about circumstances that a person should have reported with the conscientiousness that was required of him under the terms of circulation (Clause 99 of the RF Supreme Court Resolution of the Plenum "On the application by courts of certain provisions of the Section I, Part One of the Civil Code of the Russian Federation" dated 23 June 2015 No. 25).[4] In addition, delusion is defined as "an incorrect, perverted reflection of objects, phenomena in the human mind, a false thought or a set of thoughts that the subject accepts as true. Misconception is essentially always based on the incorrectness of the premises themselves... The source of misconception is rooted in the nature of the human mind itself, capable of raising questions, but unable to resolve them due to the limitations of its nature" (Khilyuta, 2009). Thus, misleading is broader than deception, but if it is intentional, it is defined as deception.

The next basis of division for creating a typology of tricks will be demagoguery, understood as a set of methods that create a sense of truth without being so. The methods of demagoguery are between truth and lies, between correct and incorrect reasoning, between true and false statements, for a lie deserves not only condemnation, but also analysis and typology. Demagogic tricks can be divided into the following types.

1. *Tricks without violating the laws of logic.* For this purpose, you can skip some facts that change the basis of the conclusion or make it incorrect. For example, at a department meeting the issue of teachers being late to classes was discussed. It turned out that no one was late. The decision was made to actively combat delays. The first and last phrases were included in the report. You can change the modality of the statement: "The event happened", "I believe that the event happened",

[4] Resolution of the Plenum of the Supreme Court of the Russian Federation "On the application by courts of certain provisions of Section I of Part One of the Civil Code of the Russian Federation" dated 23 June 2015 No. 25. *Bulletin of the Supreme Court of the Russian Federation*. 2015. No. 8. (In Russ.)

"I am convinced that the event happened", etc. As a result, the listener has doubts or mistrust about what is happening.

2. *Tricks with non-obvious violation of the laws of logic*. This is an over-reliance on inductive methods or the use of incorrect modes of syllogism with which modern writers are not very familiar. For example, all demagogues are excellent speakers, N.N. — an excellent speaker, which means he is a demagogue.

3. *Tricks not related to logic*. Such tricks prevail in oratorical activity, which, in addition to logos, relies significantly on extra-rational arguments — ethos and pathos.

4. *Tricks that are not relevant to the essence of the matter,* i.e., *practically false*. These include various methods of disrupting the discussion, turning it into a scandal, hysteria, insults and accusing the opponent of various unprovable sins.

This typology is based on the use or non-use of logic in various types of a dispute. However, most of the tricks lie outside the boundaries of logical knowledge; linking them to logic is not the best basis for a typology, making it primitive. A more acceptable basis for division can be considered the division of tricks into those that are relevant to the essence of the matter and into tricks that go beyond the scope of discussion.

Tricks related to the essence of the matter coincide with the main elements of argumentation, i.e., with thesis, argument and demonstration.

A thesis is a state of affairs that requires justification, expressed in verbal or other materialized form, for example, a picture of a crime scene. The thesis must be unambiguous and unchanging. Tricks would include ambiguous description, incomplete description, and over-description, lost description as well as using a similar description. Often this includes the so-called "logical diversions" and "personal arguments", which can be applied outside the field of direct description.

Arguments represent various factors that support a thesis. Often they are in a cause-and-effect relationship with it or precede it. These are the motives for generating the thesis, reasons and simply accompanying factors that are similar or passed off as reasons. These factors may exist, may not exist, or may be made up. In real life, these factors can form

a complex structure in which some corresponded to what happened, and some, on the contrary, contradicted this picture. The multiplicity of factors supposedly related to the event masks the cause-and-effect relationship, because whoever proves a lot proves nothing.

The demonstration must show the connection between the arguments and the thesis, i.e., the following of what happened from some previous one. What if there is no follow-up? Then it can be represented using violated rules of inference. For example, if it rains, then the roads are wet, and if it does not rain, then the roads are dry. This is a violation of the use of conditional categorical reasoning of the modus ponens and modus tollens type. You can use the so-called "imaginary implication", few people know the strict laws of logical implication (Malyukova, 2023a), but they are perfectly replaced by the repeated and persistent use of the terms "therefore", "on this basis", "thus", etc. In addition, people tend to exaggerate the significance of inductive inferences, to do the so-called "hasty generalizations" or reasoning like "after this, therefore, a consequence of this". Once a person, who is late, is recognized as always late, and a witness to a crime or a person with a motive for a crime often becomes a suspect. This also includes "imaginary analogy". Overall, this is an incorrect use of valid inferences.

Specific tricks of this type are as follows.

— Tricks to evade the "burden of proof" of the thesis — "If you think that this is not so, convince us of this", "It is absolutely obvious that", "I am absolutely convinced that", etc.

— Incorrect presentation of the thesis — taking it out of context, simplifying, exaggerating, distorting, inventing/attributing ("fictitious opponent", "straw man").

— Irrelevant arguments and irrelevant argumentation — a trick of an unexpressed premise, i.e., argument in evidence, or the attribution of an unexpressed premise.

— Trick of presenting an argument in an implicit form (for example, as a presupposition of a question), using an argument that coincides with the thesis, an opportunistic trick (doubting already proven or generally accepted statements).

— Incorrect argumentative schemes — justifying one's own point of view by referring to the opinion of the majority ("appeal to the people" —

argumentum ad populum) — "Everyone thinks so"; substituting value judgments for factual statements ("It's not true because I don't want it to be true").

— A trick of incorrectly explicating arguments into a more precise form — errors of dividing the whole into parts and combining the whole from parts.

— A trick for ending a discussion — exaggerating one's success, "still I disagree", the error of the "argument to ignorance" when there are several possibilities (and only one was refuted).

— Tricks of ambiguity at the sentence or text level.

Persons committing offenses designated as circumvention of the law actively use the tricks of obscurity (ambiguity). Thus, in Para. 9 of the Review on certain issues of judicial practice related to the adoption by courts of measures to counter illegal financial transactions (approved by the Presidium of the Supreme Court of the Russian Federation on 8 July 2020), a number of court decisions are given, from which it follows that "a bypass by participants in civil transactions of the provisions of the law for illegal purposes related to the commission of illegal financial transactions, may be the basis for concluding that the transaction is invalid and refusing to satisfy claims brought to court for these purposes". As one example, a set of actions taken by former managers of the bank is given, formalized by them as transactions, but aimed in reality at the withdrawal of the bank's assets outside the Russian Federation in the conditions of the bank's unfavorable financial position, bypassing banking rules and control procedures. The essence of the dispute was as follows. The bank's managers, knowing about its financial instability, created two companies abroad through front men, which entered into a loan agreement with each other. The execution of this agreement was secured by a guarantee signed on behalf of the bank by one of the managers.

In accordance with the guarantee, the bank (guarantor), in the event of non-repayment of the loan amount or part thereof by the borrower (principal), was obliged to pay the lender (beneficiary) an amount of 5 million euros. At the same time, the bank refused the possibility of subsequent reimbursement of this amount from the debtor (principal).

The managers terminated their employment relationship with the bank, and "the funds received under the loan agreement from the plaintiff to the account of the foreign company — the borrower, were subsequently transferred to the personal accounts of the bank managers and related persons opened in various credit institutions". After this, a foreign organization controlled by one of them, acting as a lender (beneficiary), presented a demand to the bank (guarantor) to pay them a guarantee for 5 million euros, declaring that the debt was overdue by the borrower (principal). Having received a refusal, it filed a lawsuit in court, which did not satisfy its demands.

The court drew attention to the fact that the condition on the guarantor's refusal to reimburse the amounts paid in accordance with the guarantee does not formally contradict Clause 1 Art. 379 of the Civil Code of the Russian Federation. It states that "the principal is obliged to reimburse the guarantor for the amounts paid in accordance with the terms of the independent guarantee, unless otherwise provided by the agreement on the issuance of the guarantee". However, this provision of the law, as follows from the court decision, does not mean securing the possibility of a bank issuing a guarantee "...on obviously unfavorable conditions in order to ensure the personal financial interest of individuals who were members of the bank's management bodies, to the detriment of the interests of the bank". The legislator refers, for example, to cases of issuance of an independent guarantee by an insurance organization, when "...the inclusion of a condition on the release of the principal from reimbursement to the guarantor of the amounts paid is justified based on the essence of the insurance relationship".[5] Therefore, in accordance with Para. 4 Art. 1, Clause 3, Art. 10, Para. 2, Art. 168 of the Civil Code of the Russian Federation, the court recognized the bank guarantee as an invalid transaction and refused to satisfy the unscrupulous plaintiff's demands.

Thus, offenders formally complied with the law, using the possibilities provided by the legislator for certain cases, but formulated briefly, with the expectation that the codified text of the law would

[5] Civil Code of the Russian Federation. Article-by-article commentary to Section III "General part of compulsory law" / A.V. Barkov, A.V. Gabov, M.N. Ilyushina and others; ed. by L.V. Sannikova. Moscow: Statute Publ., 2016.

be applied systematically, in conjunction with its general provisions. However, while performing seemingly lawful actions, they pursued the goal of violating the law, since they intended to cause harm to the bank, while counting on the fact that the court would accept their obviously incorrect reasoning as true.

V. Tricks that Go Beyond the Scope of Discussion and Ways to Stop Them

Such tricks are the second type and are often called appeal ploys or appellate ploys. The terms that gave the trick its name, "appeal" and "appealing", themselves turned out to be vague and ambiguous. Firstly, they come from the French verb "appeller" — "to call" and usually have an addressee), for example, appeal to the people, appeal to common sense, etc. Secondly, an appeal in jurisprudence is a procedure for checking court decisions by a higher judicial body, but checking not on individual points, but as a whole, as a completed subject. Likewise, the tricks of appeal do not examine the essence of the matter, but turn to a third party for support, for example, an appeal to God, an appeal to the Pope, etc. Common appeal tricks include the stick argument, the argument to the policeman, reading in the hearts, insinuation, the appearance of the victim, the argument to pity, the argument to the public, the argument to consequences, the slippery slope, the argument to modesty or to authority, the denial of authority, the argument to ignorance, a sacred point of view, as well as various options for argument to a person.

It makes sense to examine some of these tricks on the merits of the matter. You can start the analysis with a "stick argument".

A "stick argument" in rhetoric (in Latin *argumentum ad baculum*) is considered the threat of reprisals against an unwanted enemy. The use of this technique is justified if they want to disrupt the discussion, if all other types of tricks have been exhausted, if you are losing in an argument and do not want to show your inconsistency in it. However, the argument (stick argument) must be strong and convincing. The argument (the threat of a stick argument) does not have to take the form of physical violence. Argumentum ad baculum occurs when someone is

promised adverse consequences if they do not agree with the wishes of the speaker.

The "stick argument" is similar to blackmail, but unlike blackmail, the threat itself is not directly named; it is usually formulated vaguely and vaguely, but quite understandably. It is difficult to write a statement to law enforcement agencies regarding such a threat.

A good way to counter a stick argument is to reveal the purpose of the ploy. Often simple questions: "Why are you telling me all this?", "What do you want to achieve with your words?", "Are you saying that there will be some serious consequences? Are you threatening me with this?", "I am a lawyer, so the consequences will be not only for me, but also for you, and more tangible and visible" instantly complete the use of the trick.

The "stick argument" trick has other names, which indicates its prevalence and effectiveness. For example, the "argument to a policeman" is aimed at putting an end to an unprofitable dispute. Imagine a situation where there is no opportunity to defend one's position, then the polemicist, using this trick, declares the opponent's thesis dangerous for the State or society. As a result, victory goes to the side that used the trick, the dispute essentially ends, the social significance of the thesis comes to the fore, and its truth fades into the shadows. Moreover, the reaction of the authorities required by the polemicist leads to "clamping of the mouth" of the opponent, another type of "stick argument". Thus, the "argument to a policeman" is the impossibility of coming to a reasonable mutual understanding and reasoned compromise.

If the "stick argument" is a weaker version of blackmail, then the next trick to be discussed, which is "insinuation", is a weaker case of defamation. Insinuation in the Russian language is false information with a negative connotation, which is presented to others with the intention of defaming someone on the sly, given by hint or secretly. Insinuation is similar in meaning to manipulation (Kara-Murza, 2005). This is a softer and more traditional form of managing the opinions of others: a person tries to influence the consciousness of the interlocutor with the help of unobtrusive formulations, which are then tightly

immersed in his consciousness. Using this method, you can harm or embellish your professional qualities by reducing the merits of others.

The purpose of insinuation is to create a negative attitude towards a specific subject, putting him in a bad light, denigrating his reputation and turning others against him. In this case, direct criticism is not used; they resort to various speech techniques, made so that the interlocutor himself draws conclusions that are beneficial for the speaker. For example, they speak with sympathy or even with ostentatious respect for the victim, (they say that the person has suffered so much, and how well he holds up). Naturally, his interlocutor is imbued with this sympathy, willingly believes everything that is said and draws the necessary conclusions.

Let us give an example of insinuation in personal life: "Look how many male acquaintances this lady has. She must be very sociable" — it sounds like a compliment, but in fact it is a hint at debauchery. Here is another example of insinuation in politics: "You are an excellent deputy; you have achieved the creation of children's playgrounds throughout the region — now young people have a place to smoke and drink beer".

Insinuations are often used in trials with the aim, for example, of removing a judge who makes a decision undesirable for a party. In one of the court hearings, a participant in the process stated the following6 "As for the points related to the fact that there is an interest in making a decision in favor of a participant in the company — this is precisely procedural behavior, the methodology of conducting the process, which Judge Belyakova took as a basis, they come to the conclusion that Judge Belyakova is interested in resolving the dispute, disputes about challenging transactions in favor of the defendants. In this case, the interest, apparently, goes back directly to the debtor's participant, to his group of companies, to his family. These people still have some money. We believe that the interest has a specific economic reason".[6]

The effectiveness of insinuations can be explained by the fact that the insinuator does not make direct accusations, but only hints; listeners draw their own conclusions, and most people rarely doubt the

[6] Resolution of the Second Arbitration Court of Appeal dated 12 February 2020 No. 02AP-1170/2020 in case No. A82-10109/2017. (In Russ.).

correctness of their conclusions. Thus, insinuation is the creation of a negative opinion about an opponent among others using invisible levers of influence. To use insinuation, the following techniques are used: "We know what you did with her", "We need to figure out where you got the funds for this", "It's clear how you did it", etc.

The term "insinuation" itself is derived from the Latin word *insinuatio*, which can be translated as "ingratiation". Insinuation refers to the category of tricks based on the violation of the communicative rules of discussion. Unfortunately, this trick is still actively used. A very common example of using innuendo in speech is the use of quotation marks. In a live conversation, you can often see people making the "quotation marks" gesture with their hands when pronouncing the desired word. Thus, the meaning of the phrase may completely contradict what was stated and it will be nothing more than an insinuation.

Usually, insinuation is possible when there is a lack of information about what is happening. Hence, the main method of combating insinuation is to check the quality of information using the questions "How do you know this?", or "Where is the source of information?", or "Who was an eyewitness to the events?" etc. Showing the invalidity of hostile rumors, spreading rumors in response, and using opinion leaders with positive reviews can stop the spread of innuendo.

On a par with insinuation (Malyukova, 2023b) and manipulation are libel and defamation, which are easier to combat at the legislative level. Criminal liability for libel is established in Art. 128.1 of the Criminal Code of the Russian Federation, for defamation understood as the dissemination of information discrediting honor, dignity or business reputation, civil liability arises in accordance with Art. 152 of the Civil Code of the Russian Federation.

The argument to consequences is a convincing method of argumentation based on the well-known conditional categorical inference (Malyukova, 2022). An argument to consequences (in Latin *argumentum ad consequentiam*) is a logical trick that uses the consequences of a statement to conclude its truth. Defending his own thesis, the disputant declares that the point of view of the opposing side will inevitably lead to catastrophic consequences, and therefore in no case can be accepted. Most often, the argument takes one of the

following forms, either positive or negative. Here is an example of the positive form: if P then Q. Q is desirable or true. Therefore, P is true. This reasoning is made according to the incorrect mode of conditional categorical inference, although it is often used in reasoning. Here is another example of the negative form: if P then Q. Q is undesirable or false. Therefore, P is false. There is no logical error in this reasoning.

However, the assessment of the consequences obtained because of declaring the truth of a certain statement is not related to the truth of the statement itself. Such thinking is, in essence, a variant of the error when a person takes wishful thinking. Most actions have both good and bad consequences, many of which are unintended and unintended. Using argumentation to consequences when making decisions can lead to incorrect conclusions. For example, small negative consequences become a compelling reason to refuse a certain action, despite significantly more important positive effects.

A lover of argument to consequence should ask the following questions:

1. What is the likelihood that these consequences will occur?

2. What is the basis for the statement that if you do A, then B will happen?

3. Are there other consequences that should also be considered?

If convincing answers are received, then you can use the following tactics: tell that the consequences are not at all inevitable, list the positive consequences of choosing this decision, and look for a compromise.

The slippery slope is a special case of the consequence argument. The point of the argument is that a relatively small first step leads to a chain of related events that culminate in some significant (usually negative) effect. The contingency factor and fear mongering make the argument quite effective. However, and this is the main argument against this approach: both in science and in law it is customary to talk about events of the past and present, but future events do not yet exist, and it is unknown whether they will exist.

In legal activity, not and only in it, the argument to ignorance (in Latin *argumentum ad ignorantiam*) is actively used, reasoning designed for the lack of knowledge/ignorance of the person being convinced of a certain issue. As a result, the conclusion is drawn that

a certain statement is true because no one has proven that it is false, or, conversely, that the statement is false because no one has proven its truth. This type of argument is compelling, but fallacious, since our ignorance cannot be the sole basis for deciding the truth or falsity of a statement. The absence of proof or refutation of something in itself is not evidence of its truth or falsity. The trick does not always work, but only in cases where the opponent is poorly informed about the issues in dispute, when facts and provisions are mentioned that are little known and poorly verified, etc.

Proof *ad ignorantiam* in its positive form states that anything that has not been refuted is true. In its negative form, it states that anything that has not been proven is false. In both versions, the speaker appeals to ignorance. It is supposed to provide support for a proposition, even though our knowledge or ignorance cannot normally influence the truth or falsity of the proposition.

It is notoriously difficult to prove the existence of anything. To do this, you need to meet the object/subject, but even then, to convince others, you will need a lot of certified evidence. Establishing the non-existence of something is even more difficult. To do this, you will have to instantly look around the entire universe to make sure that the item you are looking for is not located somewhere in particular. In reality, such searches rarely lead to success, so the products of our imagination continue to exist. Imagine the problem of finding a black cat in a dark room — most likely, the problem will be solved. What if there are two rooms, or two to the power of 80 (2^{80}), or 10^{80}? The problem becomes unsolvable, since 10^{80} is a finite number, but it is equal to the number of elementary particles in the Universe. The argument to ignorance turns out to be a powerful tool in reasoning; it is no coincidence that many presumptions are built on it, in particular, the presumption of innocence and the presumption of death (Lisanyuk and Khamidov, 2021).

The "reading in the hearts" argument is quite common in discussion practice. The essence of the argument is to shift the audience's attention from the content of the opponent's arguments to his alleged reasons and hidden motives for saying exactly what he says and defending a certain point of view, rather than agreeing with the arguments of the opposite side. It is used in two main versions — positive and negative. In the

positive, it takes the form of such examples, “You say this in defense of corporate interests” or “Your integrity does not allow you to admit the obvious and support this progressive initiative”, etc. In a negative form, it takes another form: it looks for a reason why a person does not say something or does not write, the interlocutor tries to prove that the person undoubtedly does not do this for one or another reason. Thus, a specialist in “reading hearts” can find some secret motive everywhere. This trick is not aimed at the opponent, but at observers; with its help, they try to undermine the trust of a third party in the speaker, citing some base motives behind his words or his position.

The name of the trick is due to the fact that the manipulator (lawyer or prosecutor in legal proceedings, political figure) knows how to read the secret thoughts of an opponent, plays the role of a seer or psychic, an insightful and observant connoisseur of the secret thoughts and guesses of jurors, listeners or patients. Since this is usually not the case (the possibility of reading other people’s thoughts has never been proven), then this is the basis for refuting the trick, or catching its user in slander.

If the considered rhetorical tricks mislead the court regarding facts of substantive and procedural significance and create obstacles to making a decision or delay its adoption, then the person using them may be subject to criminal liability. Responsibility for deceiving the court (deliberate misrepresentation) is provided for in the Criminal Code of the Russian Federation: Art. 303 (for falsification of evidence in a civil, administrative case by a person participating in the case, or his representative, as well as evidence in a case of an administrative offense by a participant in the proceedings on an administrative offense or his representative), Art. 307 (for knowingly false testimony, expert opinion, specialist or incorrect translation), Art. 308 (for refusal of a witness to testify). The applicant’s conscientious misconception regarding factual circumstances does not entail criminal liability (Bortnikova, 2023).

VI. Conclusion

Despite the ups and downs, the civilizations that emerged in the territories of the far and near Mediterranean in the 8th-2nd centuries BC have a powerful impetus for development. This impetus, among

other things, is due to the fact that the idea of truth is an essential tool in understanding the essence of the universe, the paths and directions of its development. The latter is unattainable without specific means, including philosophy, rhetoric and law.

The above means that doubts about the significance of truth, no matter what arguments they supported, devalue the driving force of civilization in the modern world. Accordingly, the law is also deprived of meaning.

At the same time, statements (tricks) designed to confirm doubts about the unattainability of truth, including in a legal dispute, can be refuted from the position of rhetoric. Their typology makes it possible to clearly demonstrate the fallacy of tricks, identify ways to refute them and, ultimately, maintain confidence in the possibility of establishing truth in the legal process, which, in turn, ensures movement towards social justice.

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