



Civil-Legal Status Of Persons Incapable Of Actual Treatment

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ABSTRACT

This article analyzes who should be understood as those who do not understand the importance of their actions or cannot control them, and the issues, grounds and consequences of invalidating the agreements made by them, the appointment of forensic psychiatric examination in court and various approaches of scholars.

KEYWORDS

Disputed Agreements, Invalidation Of Agreements Concluded By Persons Who Do Not Understand Or Manage The Significance Of Their Actions, Persons Who Do Not Understand Or Manage The Significance Of Their Actions, Forensic Psychological Examination, Forensic Psychiatric Examination.

INTRODUCTION

This article discusses the issues of civil law regulation of transactions concluded by persons incapacitated. In this case, we need to understand who is an incapable person, whether they can conclude an agreement, if so, the legal consequences of these agreements and the existing gaps in the legislation governing the legal relationship.

Article 30 of the Civil Code of the Republic of Uzbekistan stipulates that a citizen who is unable to understand or control the significance of his actions due to mental illness or mental retardation may be declared incompetent by a court in accordance with the procedure established by law, and such a citizen shall be granted guardianship. Hence,

for a person to be found incapable of treatment, his inability to understand and control the importance of his own actions must be related to mental illness or mental weakness.

However, it should be borne in mind that the very fact of mental illness or mental retardation, even if these circumstances are known to others or confirmed by a medical certificate, is not a sufficient ground to consider a citizen incapacitated. He can only be declared incompetent by a court.

Also, according to Article 310 of the Civil Procedure Code of the Republic of Uzbekistan, an application for declaring a person incapable can be filed in court by his family members, guardianship and trusteeship authorities, prosecutors, medical institutions and other state bodies, citizens' self-government bodies and public associations. In this case, the application is submitted to the court of the place of residence of the citizen, if the person is placed in a medical institution, in the territory of the institution.

In order to consider such a case, a conclusion issued by a forensic psychiatric examination at the request of the court on the mental state of the citizen is required. The participation of the prosecutor and the representative of the guardianship authority is mandatory (Article 313 of the Civil Procedure Code of the Republic of Uzbekistan). The application of these measures is a guarantee of protection of the rights and interests of the citizen established by law. A citizen is considered incompetent only after the court has made an appropriate decision. In this case, guardianship is established on the basis of a court decision.

If the mental health of a citizen found incapacitated has improved, he may be found competent by a court decision. Such a decision

must be based on the relevant conclusion of a forensic psychiatric examination. Recognition of a citizen as capable of treatment shall entail the revocation of the guardianship imposed on him.

If we look at the American legal system, this situation is called "mental incapacity"[1]. The opinions of scientists in this regard are as follows: The mental state of the individual is crucial to making a deal[2]. Every action of a mentally healthy person can be seen as a product of thinking. Minors under the age of 6 are not deemed to have de facto legal capacity[3].

We know that juveniles between the ages of 6 and 14 and between the ages of 14 and 18 are considered partially capable. If a person is 15 years old and mentally ill, in which case will his or her close relatives go to court and declare him or her incompetent, or will they restrict the implementation of the statutory agreements? Scholars differ on this point: In order for individuals to be fully capable of communication, they must be mature and mentally healthy. If a person is an adult, but still mentally ill and does not understand the essence of his actions, only in this case the person can be found incompetent[4].

The Russian literature states that children under the age of 14 are considered completely incapable of treatment. Basically, juveniles at this age argue that they do not have the ability to delict while they have the ability to make narrow-minded deals[5]. Children between the ages of 6 and 14 are also able to independently perform a limited range of transactions independently, so we can say that they are individuals with incomplete legal capacity[6].

In order to limit the ability to behave, a person must have abused alcohol, drugs or other psychotropic substances and as a result put his

family in a difficult financial situation. According to Sukhanov, other abuses and voluntary actions (gambling, gambling and other pawn games) are not grounds for limiting a person's ability to behave[7]. According to the German Civil Code, if a person becomes financially burdened by his family as a result of alcohol or drug use, he will be deprived of his legal capacity.

When he recovers, his ability to behave is restored (§ 6). Although the waster is not deprived of his capacity under the French Civil Code, transactions and other legal actions are carried out with the consent of the appointed tribunal counsel (art. 513).

The incapacitated are unable to enter into any transactions independently, even small household transactions. Transactions on behalf of a citizen deemed incompetent shall be executed by his guardian[8].

Article 29 of the RF Civil Code provides for the civil status of incapacitated persons, which states that persons who are unable to understand or control the significance of their actions due to mental disorders may be declared incapacitated by a court. Based on this norm, some civilist scientists have also included drug use as a cause of mental disorder[9]. We think this is a mistake. The reason is that such persons should be considered to have limited legal capacity.

As mentioned, a person can only be declared incompetent by a court. In this case, a psychiatric diagnosis based on the conclusion of a psychiatric examination is the basis for finding a person incapacitated, while observations in a psychiatric dispensary do not serve as a basis for treatment of a person in socially supported psychoneurological institutions.

In order to declare a person incapacitated, legal and medical criteria must be created together: the person's ability to understand the significance of their actions and manage them (legal criterion) as a result of mental illness or mental retardation (medical criterion)[10].

If the grounds on which the citizen was declared incapable are invalid, the court shall declare him incapable and revoke the guardianship imposed on him. In order to make a decision in this context, of course, there must be a positive conclusion of a forensic psychiatric examination.

Finding incapacitated is different from limiting incapacitating. Any citizen, regardless of his age, may be declared incompetent. In order to find this, the citizen's specific illness and, consequently, the opportunities available to him to exercise his rights and obligations are taken into account. What is meant by a restriction of legal capacity is that a citizen actually has legal capacity, but he is partially or completely deprived of it for certain reasons specified by law. Such restrictions relate to whether or not a citizen is an adult and, in part, to his or her ability to control his or her own behavior.

A citizen's incapacity for treatment is related to his or her mental illness or mental weakness. Such an illness or weakness may also be congenital or acquired later. Regardless of when it appears, a citizen may be declared incompetent by a court in the manner prescribed by law. In this case, the court does not have to declare the citizen incompetent, but provides a rule of "possibility".

The court may also consider the citizen fit for treatment. To solve this problem, it is necessary to thoroughly study all the evidence and pay special attention to it. Because the

recognition of a citizen as incompetent by a court leads, firstly, to a serious change in his legal status, and secondly, to the deprivation of the right to personally protect his property, personal rights and other legitimate interests.

Finding a citizen incompetent cannot be equated with restricting his legal capacity. In this case, although the citizen is a subject of civil law, he does not have the opportunity to directly participate in property and personal relations as a subjective right holder[11].

If we look at the world experience, we can see the guarantees of the rights and legitimate interests of persons with disabilities in the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on December 13, 2006[12]. Significantly, Article 1 of the Convention states that persons with disabilities include persons with persistent physical, mental, intellectual or sensory impairments that prevent them from participating fully and effectively on an equal footing with others in public life. This means that the rules set out in the Convention apply not only to persons with physical disabilities but also to persons with mental health problems.

However, the European Union Agency for Fundamental Rights (FRA) has taken a critical approach to the issue, meaning that the term “disabled” can only be applied to people with physical disabilities and to people with mental or intellectual disabilities. a person with a weakness and mental health problem ”should be used[13].

Because the essence of the term "disabled" in the normative legal acts of the EU member states does not include the laws on the participation of persons with mental

disabilities in international legal or civil law relations and their role in society. That is why the Agency also stressed the need to establish the legal status of people with mental disabilities and mental health problems as a guarantee of equality for all people, and recognized that their rights are equal to others. It is known that today the number of EU member states is 28[14]. In each of them, in order to find a person incapacitated, of course, the fact of mental illness or mental retardation must be confirmed, and the practice of appointing a guardian in respect of persons incapacitated is almost the same.

In foreign countries, Bulgaria, France, Germany, Greece, Hungary, Latvia, Romania, Sweden and the United Kingdom have studied the lives, lifestyles, families and caregivers of the mentally ill and mentally ill, as well as health services. the treatment was found to be unfit. In some people, mental disorders are not permanent but occur from time to time, while in others, people with mental health problems and mental retardation have also witnessed cases of exercise of their rights.

In Sweden, there is a Personal Ombudsman who has the authority to declare the mentally ill and mentally ill as incompetent. In everyday life, it is common for adults to fail to understand and comprehend the importance of their actions as a result of various mental disorders. The law provides that these persons may be found incompetent or with limited legal capacity.

The essence of the concept of incapacity is that individuals have lost the right to exercise their civil rights and obligations completely independently. Under Uzbek law, individuals may be declared incapacitated as a result of mental or physical illness or age-related changes. According to Article 30 § 1 of the Civil Code of the Republic of Uzbekistan, a court

may declare a citizen incompetent due to mental illness or mental incapacity who is unable to understand or control the significance of his actions in accordance with the procedure established by law.

Incompetence is the finding by a court that a person does not understand the significance of their actions or is unable to control them as a result of a mental disorder. Inability to behave also denies these individuals the ability to make independent decisions and perform certain actions. Legislation classifies incapacity as follows:

- Age-related;
- As a result of mental disorders;
- Partial.

In the first case, from birth to adulthood and at the beginning of old age, that is, there are significant and obvious changes in the behavior of the elderly. At any age, a person may become incapacitated due to loss of mental health. In this case, the right to perform important legal actions, transactions, including the right to conduct real estate and monetary transactions is completely lost. Guardians are responsible for enforcing these rights in practice. A guardian is a trustee appointed by a court.

The following can be called the legal sources regulating the legal relationship of incapacity:

- Articles 30 and 32 of the Civil Code of the Republic of Uzbekistan set out the grounds for declaring persons incapacitated and their legal consequences, the organization of guardianship;
- Chapter 31 of the CPC of the Republic of Uzbekistan deals with the procedural issues of finding a citizen incapacitated;
- Legal regulation of incapacity criteria in the Law of the Republic of Uzbekistan "On

Psychiatric Care", adopted in the new edition on 12.05.2021. The increase in the number of cases involving the recognition of citizens as incompetent will increase the demand for laws and other normative legal acts regulating it.

In studying the essence of the concept of "incapacity" it is necessary to pay attention to two criteria: medical and legal. Today, there are several types of incapacity:

- 1) Age-related disability - the loss of the ability to understand the meaning of their actions and manage them as a result of age-related changes before the age of 18 and after the onset of old age;
- 2) Inability to behave due to mental disorder - is the inability of a citizen to understand the nature of their actions and control them due to mental disorder and (or) mental illness;
- 3) Partial incapacity - restriction of the rights and duties of a citizen

We then consider individuals who are incapacitated as a result of a mental disorder. In the legal literature, an incapacitated citizen is traditionally defined as the inability to acquire and exercise civil rights by his or her own actions, to create and perform civic duties for himself or herself. In our view, the institution of recognizing a citizen as incompetent is nothing more than a measure to protect the civil rights and legally established interests of a person with a mental disorder.

However, such measures are not considered effective until the end. For example, persons declared incompetent by a court cannot independently appeal to courts of general jurisdiction, arbitration courts and other state bodies without the intervention of a guardian. It should be noted that the problem of theory

and practice related to the "border situation (border situation)" between the ability to act and incapacity has been resolved. Thus, on this issue, T.V. Shepen in his works emphasizes that in the current civil legislation there is no intermediate legal status in the mental disorder between legal capacity and incapacity.

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