

The procedural problems of the legal capability determining of a person who is in clouded consciousness, into stupor, in coma or vegetative state

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Abstract. The article is devoted to the problematic aspects of recognizing a person as having limited legal capacity. The authors consider the cases, which deal with people who are in clouded consciousness, into stupor, in coma or vegetative state. Depending on the degree of depth of lowering the clarity of consciousness the following stages of switching off consciousness are distinguished: clouded consciousness, stupor, coma and vegetative state. These stages successively replace each other when the condition worsens. The authors conduct a legal analysis of various degrees of disturbance of consciousness, project the results onto the institution of recognizing a person as incompetent and, taking into account international experience, suggest the most relevant ways to improve the Russian legislation. Also it has been determined the significant element of the psycho-physical state of a person, which is the basis for limiting the rights and obligations in accordance with his health.

1 Introduction

The state of a person's health has many aspects that determine the need for legal regulation of the circumstances that arise during changes in the stability of the state of body. One of the circumstances is the establishment of the legal capacity's fact, which affects the scope of rights and obligations. At the same time, the state of coma, the vegetative state is represented by such a position that determines the change in legal relations for a certain category of legal subjects. However, it is insufficiently developed the mechanism for establishing the legality of a certain type of legal relationship, expressed in the designation of the scope of a person rights, who is in a state where the functions of his body are able to support only minimal aspects of life. It creates the legal gaps. Due to these reasons it is necessary to develop a mechanism for detailing the norms of law on establishing the fact of a person's legal capacity.

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2 Theoretical bases. Methods

The study of the questions of the presence of full legal capacity in relation to person who is in conditions when the normal provision of the vital activity in the physiological aspect is difficult is the main goal of this scientific work. The achievement of the scientific results on this topic is impossible without a structural approach, expressed in the definition of the specific research methods. In order to achieve objective knowledge on the goal put forward by us the defining theoretical method when writing this article was the method of abstraction, with the help of which two components of the state of legal capacity dictated by mental and somatic diseases were identified. The study of the previously mentioned elements of the legal capacity was carried out using a comparative analysis and subsequent synthesis and generalization of the results obtained by us. It is also necessary to mention the practical methods of empirical research that allow us to obtain knowledge based on objective reality.

3 The results of study

Within the framework of the conducted research it was found that the possibility of recognizing a person as incapacitated due to a coma, stupor, clouded consciousness and vegetative state is very difficult because of the lack of the legal regulation of such a process from the point of view of the substantive and procedural law. This reason was the basis for the development of provisions detailing the process of recognizing a person as incapacitated due to the psychosomatic reasons from the point of view of material and procedural legislation.

4 Discussion

4.1. Problems of Substantive and Procedural Law in the Framework of the Recognition of a Person who is in Clouded Consciousness, into Stupor, in Coma as Incapacitated

The legal regulation is determined by the level of consciousness that determines the scope of rights and obligations of such a person. This is explained by the social nature of consciousness, characterized by the ability to set goals and express will, which, in turn, are factors that determine the essence of an individual's conscious activity. It also seems appropriate to attribute the ability of subjective reflection of objective reality to the consciousness of a person. The studies of A.N. Konovalova and T.A. Dobrokhotova define 7 levels of the consciousness states: clear consciousness, clouded consciousness and its types, coma and its classifications, a stupor. At the same time the vegetative consciousness and the state of small consciousness also affect the degree of awareness of the current phenomena of life by a person.

The comatose state is classified according to various degrees, each of which has its own characteristics [1]. The general clinical picture of coma is more endowed with loss of consciousness with the preservation of the basic elements of the body's functioning [2]. It is established that a coma is characterized by a complete loss of consciousness, an unconscious state [3] and the inability to perceive the surrounding world [4]. The consciousness of an individual in a comatose state is characterized by an inability to analyze the elements of the external environment and the world with their further processing in the cerebral cortex. The consequence of such state in legal reality is its actual reduction in the scope of the rights of a person with the peculiarities of the legal regulation of this process.

The state of stupor is characterized by a decrease in the level of consciousness or its complete loss, while the ability to respond to external rough influence through a change in facial expressions remains. With stupor the level of loss of consciousness is lighter than in a coma, but more severe than with clouded consciousness. The clouded consciousness and its species diversity imply a violation of consciousness with the preservation of the analysis of objective reality, as well as the ability to correctly answer questions with inhibition. In other words, despite the change in the level of awareness of the elements of the external world, the person is able to give correct answers to the questions posed by the doctor, which indicates his slow functioning of consciousness.

These diseases, manifested by syndromes of impaired consciousness, are the result of the acute brain pathology and are characterized as mental disorders [5]. Moreover, it has been established that the states of clouded consciousness, stupor and coma are a consequence of each other in the severe course of facial diseases [6]. The researchers determine that during the forensic psychiatric examination, when the fact of a person's incapacity is establishing, such changes in consciousness are unproductive syndromes of disturbed consciousness [7]. In other words, the legal nature of recognizing a person suffering from the disorders of consciousness in the form of the clouded consciousness, stupor and coma as incapacitated is very multifaceted. The article 29 of the Civil Code of the Russian Federation [8] establishes the possibility of recognizing a person as incapacitated due to mental disorder. Considering incapacity through the prism of civil legislation, it seems reasonable to define it by the impossibility of realizing the reality caused by the mental disorder, by analogy with the doctrinal provisions of criminal legal relations, where a mental disorder that determines the state of insanity is established by not being able to realize the actual consequences of the act, as well as not understanding the actual danger of the action [9].

In this regard, the essence of the legal phenomenon of incapacity is determined by the impossibility of consciousness of certain life circumstances. At the same time, the attribution of the inability to realize reality to a mental disorder in legal reality is quite difficult, not because of the legal impossibility of such a classification, but because of the difficulties of actually attributing a number of diseases to the understanding of a mental disorder.

4.2. The Legal Status of a Person who is in a Vegetative State and Determining his Legal Capacity

The vegetative state, being a consequence of the severe course of the disease, appears in a stable pathological state of a person [10], whose body passes into a state of sleep and wakefulness without displaying elements of its consciousness by speech. The solution of many legal problems related to the treatment of a vegetative state creates difficulties [11] due to the heterogeneity of the legal definition of the presence of consciousness in a person.

In 1993, the House of Lords decided to disconnect a citizen who is in a vegetative state because of the injury from devices that support his vital activity [12]. At the same time, it was found that death occurs not due to the disconnection of the devices, but due to the inability of the body to independently maintain vital activity. It was also determined that such actions won't be actual euthanasia, when the manipulations of doctors are aimed at causing death to a person, but will become a consequence of the refusal of doctors from the procedures that support the life of a person. At the same time, the question of the refusal to maintain a person's further life in a vegetative state was raised within the framework of the actual inability of the functioning of his organs and tissues, while the question of the possibility of such a person having consciousness was determined by solving the problem of the possibility of termination of the individual's vital activity, unable to consent to such actions.

Despite a number of questions about the possibility of a person in a vegetative state of consciousness [13], as well as the provision that in the presence of external questions to a person in a vegetative state, there is no activation of the analyzer cortex [14], the presence of a certain degree of consciousness is determined through functional magnetic resonance imaging (fMRT), through communication by neurodynamic connections of the brain. In 2006, M. Owen conducted a study on the possibility of answering the questions of a person in a vegetative state through the study of his brain activity using fMRT, where it was found that persons in this state are able to realize reality, while the activity in the upper and middle temporal gyri is the same as in healthy people. Moreover, it is determined that the presence of consciousness in a vegetative state is expressed through the reflection of will by activating the brain, which is due to the preservation of the structure of motor representation.

The essence of a person's consciousness in the legal nature is determined by the presence of will to create some kind of legal facts, which are an integral element of legal relations in general, as also evidenced by paragraph 2 of Article 1 of the Civil Code of the Russian Federation [15]. The question of the correlation of the will and consciousness of a person is determined by the possibility of reflecting aspects of objective reality in a subjective understanding with further regulation of behavior in legal relations by using the will, which determines the legitimate, from the point of view of the law, and the correct, from the point of view of generalized social reality, the way of objective expression of subjective consciousness. The combined analysis of paragraph 1 of Article 29 of the Civil Code of the Russian Federation and paragraph 2 of Article 30 of the Civil Code of the Russian Federation allows us to determine that the content of consciousness in the legal nature is reduced to the ability to understand the meaning of one's actions, while the volitional component is expressed through the ability to guide one's actions. At the same time, it is important the root cause that determines such a state of a person. Such reason is a mental disorder.

In this regard, the possibility of attributing a vegetative state to a mental disorder is not entirely correct, due to the fact that the first is a pathological loss of consciousness, while the second disease is characterized by a violation of consciousness [16], the exception is mental disorders that have entailed somatic changes that have caused the development of a vegetative state [17]. Violations of the conscious and volitional components in the aggregate due to a mental disorder are the basis for recognizing a person as incapacitated. However, the possibility of recognizing a person who is in a vegetative state as incapacitated is not possible due to the lack of grounds determining such a change in the scope of rights and obligations of a person. Some researchers consider it necessary to introduce amendments to paragraph 1 of Article 29 of the Civil Code of the Russian Federation, establishing the possibility of recognizing a person as incompetent not only due to a mental disorder that does not allow understanding the meaning of their actions and directing them, but also due to "another state accompanied by a disorder of consciousness" [18].

In the literature on psychiatry, it is indicated that a disorder of consciousness is expressed, for example, in clouded consciousness, into stupor, in coma and other diseases that exclude the vegetative state. The content of the legal capacity of a person who is in a vegetative state in the doctrine of law is most correlated with the possibility of limiting the legal capacity, but not because of a mental disorder, but because of another condition that pathologically affects the functioning of the person's consciousness. This statement is based on correlating the possibility of a person having consciousness, which in the theory of law comes into dissonance with the provision on recognizing a person as incapacitated due to a serious violation of the functioning of consciousness. However, from the point of view of actual validity the enforcement of such provision will be incorrect due to its inexpediency. The issue of recognizing a person who is in a vegetative state as incompetent, from the point of view of moral and ethical norms, is also controversial, due to the presence of consciousness in the individual, which means the ability to process information and the ability to create a

subjective position. In this regard, it seems necessary to apply the presumption that the opinion of a representative of an incapacitated person is the true opinion of a sick individual. At the same time, it seems appropriate to supplement the wording given earlier, indicating the presence of another condition accompanied by a disorder or violation of consciousness in paragraph 1 of Article 29 of the Civil Code of the Russian Federation. This clarification is required due to the unification of the elements of the theory of medicine and law, which is necessary for the holistic and systematic development of all branches of life.

Despite the possibility of assigning a person in a vegetative state to the category of incapacitated persons, after making the previously cited changes in the legislation, from the point of view of substantive law, the legal admissibility of the process of recognizing such a person as incapacitated from the point of view of procedural law is ambiguous. Firstly, it would be advisable to provide for the possibility of submitting an application for the deprivation of the legal capacity of a person in a vegetative state by a doctor who directly works with such a person. Thus, it seems appropriate in part 2 of Article 281 of the Civil Procedure Code of the Russian Federation [19] to fix the provision on the possibility of submitting an application for recognition of a sick person as incompetent by the chief doctor of the hospital in which the patient is treated in vegetative, comatose states, states of clouded consciousness or stupor. A similar provision on filing an application, but on the issue of recognizing a person as legally capable, should be introduced in part 1 of Article 286 of the Civil Procedure Code of the Russian Federation.

Secondly, it seems necessary to consider the issue of deprivation of legal capacity of persons who are in a state of disorder or impaired consciousness in the hospital where such a person is located, which should be fixed in paragraph 2 of part 1 of Article 284 of the Civil Procedure Code of the Russian Federation. This statement is determined by the content of the norm of the Civil Procedure Code of the Russian Federation on the consideration of an issue affecting a change in the scope of a person's legal capacity with his personal participation, which is based on the provision on the possibility of empirical interaction of the court with the person in respect of whom the issue of his incapacity is being resolved.

5 Conclusion

To sum up, it should be determined that some changes in the essence of a person's consciousness, combined with his volitional component of regulating his behavior, cause the possibility of changes in the scope of rights and obligations of such a person, expressed in the deprivation of his legal capacity. At the same time, the issues of recognizing a person as legally incompetent due to a change in his somatic state in a negative direction are not very developed in the texts of normative legal acts, in the case of applying a literal interpretation of the rule of law. If the recognition of a person, who is in coma, stupor or clouded consciousness, incapacitated is possible in the case of considering the state of legal capacity, depending on the presence of the level of consciousness necessary for a full assessment of objective reality, then the recognition of a person who is in a vegetative state, incapacitated is very difficult. Such a situation becomes burdensome due to the presence of a possible consciousness in such a person, which is combined with the lack of legal mechanisms in the norms of law when recognizing such a person as incompetent.

For these reasons, it seems expedient to introduce changes to the norms of substantive and procedural civil law that eliminate the legal gap in the area we mentioned earlier. So, it is necessary to make changes to paragraph 1 of Article 29 of the Civil Code of the Russian Federation concerning the clarification in the wording of the rule of law regarding the violated consciousness, which is the basis for recognizing a person as incapacitated.

It should be noted that changes to the norms of law should be made both to the norms of substantive and procedural law, which is necessary to comply with the principle of systematic law. As a result, it is appropriate to amend part 2 of Article 281, part 1 of Article 286, paragraph 2 of part 1 of Article 284 of the Civil Procedure Code of the Russian Federation in the field of clarifying persons who have the right to file an application for changing the scope of human rights in the form of limiting his legal capacity or recognizing him as incapacitated.

Thus, the lack of detail in the norms of law in the field of changing the scope of rights and obligations of a person is the basis for making changes to the legislation of the Russian Federation in compliance with the principles of consistency and unification of law.

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