

PROBLEMS AND PERSPECTIVES OF THE ADMINISTRATION OF THE ACTIVITIES OF GUARDIANSHIP AND CARE BODIES REGARDING RESOLVING ISSUES OF GUARDIANSHIP AND CARE OF ADULTS IN UKRAINE

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Annotation. *The article examines in detail the issues of gaps and problems in Ukrainian state policy and the practice of its implementation in the area of activities of guardianship and care bodies in the field of guardianship and guardianship of adults.*

On the basis of the analysis of national experience, legislation on the relevant issue and the development prospects of the researched area determined by it, proposals were formulated regarding the likely way of establishing the activities of guardianship and guardianship bodies regarding the provision, protection and protection of the rights and legitimate interests of adults who need guardianship and guardianship. In particular, the author's considerations regarding the likely content of the government decision on the procedure for conducting activities related to the protection of the rights of adults in need of guardianship and care by guardianship authorities are outlined. It is proposed to regulate this document, among others, the following issues: 1) determine the authorities that are the bodies of guardianship and guardianship in matters related to adults who need guardianship and guardianship, and units or specific persons who will directly coordinate the activities of the relevant direction; 2) determine the legal status of the boards of trustees; 3) to detail the tasks and specific duties and rights of guardianship and guardianship bodies according to the relevant field of activity; 4) determine the mechanisms for establishing, implementing and terminating guardianship over property and detail the features of property management of the person over whom guardianship has been established; 5) to determine the conditions for granting permits to guardians and custodians of adults for their execution of transactions with respect to the property of incapacitated and limited wards; 6) to regulate the powers of guardianship and guardianship bodies related to their exercise of guardianship and care over adults who have not been assigned guardians and custodians, as well as who are not in special institutions; 7) to regulate the procedure for the interaction of guardianship and guardianship bodies with consular institutions; 8) determine the requirements for registration of personal files of incapacitated persons and persons whose legal capacity is limited; 9) to regulate issues of control over guardianship and care of adult incapacitated persons and persons whose legal capacity is limited, etc.

Key words: *body of guardianship and guardianship, incapacitated person, person whose legal capacity is limited, control, report, property rights, custody of property.*

1. Formulation of the problem.

Today, the activities of guardianship and guardianship bodies in Ukraine are mostly regulated by several normative legal acts: the Civil Code of Ukraine [6], the Civil Procedural Code of Ukraine [7], the Rules of Guardianship and Guardianship, approved by the order of the State Committee of Ukraine for Family and Youth Affairs, the Ministry of Education of Ukraine, the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine from May 26. 1999 No. 34/166/131/88 [3] (hereinafter – Guardianship and Care Rules), the Law of Ukraine «On Psychiatric Care» [5], etc.

However, the norms of the mentioned codes relate to the activities of the relevant bodies only fragmentarily, and the Guardianship and Care Rules are outdated and need to be repealed with the subsequent adoption of a government decision that would regulate the activities of the guardianship and guardianship bodies in the direction of ensuring the rights of adults who need guardianship and care.

Therefore, in fact, there is no systematized legislation, the use of which would ensure the proper activity of the guardianship and care authorities in the relevant direction. However, today such bodies have to make decisions on many issues at their own discretion, using the analogy of the law or the analogy of the law, or practical experience.

2. The state of development of this problem.

It is worth saying that the topic of guardianship and care of adults is not sufficiently researched. A small circle of scientists paid attention to its individual aspects, including N.A. Ablyatipova, N.S. Adakhovska, H.M. Boychenko, G.V. Galushchenko, N.A. Dyachkova, V.Ya. Kalakura, O.V. Kiriak, M.V. Matiyko, D.S. Prutyanyan, S.S. Shum, O.S. Yunin et al. However, the topic declared in the article has not yet been investigated by anyone due to the fact that the relevant issue appeared on the agenda with the adoption of the order of the Cabinet of Ministers of Ukraine dated April 7, 2021 No. 285-r «On the approval of the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the period until 2025» [2].

3. The purpose of the article is an analysis of the problems and possible ways of improving the administration of the activities of guardianship and guardianship bodies in the field of guardianship and guardianship of adult incapacitated persons and persons whose legal capacity is limited in Ukraine.

4. Presenting main material.

Due to insufficient legislative regulation, lack of generalized practice, as well as due to non-compliance with current legal acts, there are many violations in the activities of guardianship and guardianship bodies. Confirmation of the above is, for example, the results of the monitoring of the observance of the rights of incapacitated persons and persons whose civil capacity is limited, in the conditions of martial law in the territory of the Irpin urban territorial community, carried out by the Department of Monitoring of the Observance of Social and Economic Rights of the Secretariat of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights during 18 - April 19, 2023. Thus, many shortcomings were discovered in the activities of the body of guardianship and guardianship of the Irpin City Council, which, among other things, does not exercise proper control over the activities of guardians and custodians; does not make scheduled visits to persons under care (care) according to pre-set schedules; does not monitor the whereabouts of incapacitated and partially capacitated persons registered with him during the wartime period; did not take appropriate preventive measures to protect the property rights of incapacitated persons and persons whose civil capacity is limited. Also, 3 cases were found where the validity period of the court's decision to recognize an individual as incompetent and to appoint a guardian has expired, but the guardians continue to receive payments from the incapacitated person and dispose of his property. It was established that there is no interaction between the body of guardianship and guardianship, the Center for the provision of administrative services, the Department of Labor and Social Protection of the Population, the territorial center of social services (provision of social services), the Irpin city polyclinic in order to control the observance of the rights of persons who need guardianship (care) in various areas [1].

Taking into account the outlined situation with problematic issues in the administration of the activities of guardianship and care bodies for adults in Chapter VI «Equality before the law (Article 12 of the Convention on the Rights of Persons with Disabilities)» of the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the Period Until 2025 year, approved by the order of the Cabinet of Ministers of Ukraine dated April 7, 2021 No. 285-r, as part of the task of strengthening the level of protection of the rights of incapacitated persons and persons whose civil capacity is limited,

a measure is provided for the development and submission to the Cabinet of Ministers of Ukraine for consideration by December 2022 of the procedure for the activities of guardianship and guardianship bodies regarding the resolution of issues of guardianship and guardianship over adults [2].

So, what should be the content of the procedure for conducting activities related to the protection of the rights of adults who need guardianship and care by guardianship authorities?

First of all, this document should define, taking into account Article 56 of the Civil Code of Ukraine, the authorities that are the bodies of guardianship and guardianship in matters concerning adults who need guardianship and guardianship. In particular, the specified article includes district, district in the cities of Kyiv and Sevastopol state administrations, executive bodies of city, district in cities, village, village councils.

It is mandatory to identify units or specific persons (depending on the number of disabled and limitedly capable persons in the territory under the responsibility of a particular body of guardianship and guardianship) who will directly coordinate activities related to the guardianship and care of adults, conduct cases of such persons and cases related to the custody of property, will supervise the implementation of guardianship and care over the specified persons and ensure the fulfillment of other tasks of the relevant guardianship and guardianship authorities.

We also consider it expedient to determine the legal status of the guardianship councils provided for by the Rules of guardianship and care in force today. They should continue to be created at guardianship and guardianship bodies for the purpose of performing advisory functions.

An integral part of the government's decision on the activities of guardianship and guardianship bodies should be provisions detailing the generalized tasks of these bodies, which include: 1) ensuring and protecting the rights, in particular property, and legal interests of persons who need guardianship and care; 2) guardianship and guardianship of adults who have not been appointed guardians and custodians and whose guardianship is not carried out by special institutions; 3) control over the activities of guardians and custodians of adults, special institutions regarding their guardianship and care over incapacitated persons and persons whose civil capacity is limited; 4) interaction with local authorities on issues related to ensuring the rights of adults in need of guardianship and care.

For the proper performance of the listed tasks, a number of responsibilities must be assigned to guardianship and guardianship bodies, in particular, those related to:

- identification of adults who need guardianship or care;
- taking measures to establish guardianship or guardianship over adults who need it, ensuring implementation and termination of guardianship and guardianship;
- solving the issue of placement of persons who need guardianship or care, in particular when solving questions about their incapacity or limitation of their capacity, to a special institution;
- informing adult incapacitated persons and persons whose civil capacity is limited about their rights and obligations;
- keeping records and personal files of adult incapacitated persons and persons whose civil capacity is limited;
- establishing, during registration of an incapacitated person or a person whose civil capacity is limited, the presence of property, drawing up its description and taking measures to preserve such property;
- ensuring the selection of potential guardians and custodians for adult incapacitated persons and persons whose legal capacity is limited;
- taking measures to protect and restore violated non-property and property rights and interests of adults who are under guardianship and care;
- participation in court consideration of disputes related to the protection of the rights of adults who are under guardianship or guardianship;

- providing guardians and custodians with permits to commit transactions in the cases established by law;
- representing the legal interests of adult incapacitated persons and persons whose legal capacity is limited, in accordance with the procedure established by law;
- guardianship and care of adults until the appointment of a guardian or custodian for such persons or before their placement in a special institution;
- provision of informational support for the activities of guardians, custodians, special institutions regarding the implementation of guardianship and care over the fullelderly persons;
- taking measures to evacuate incapacitated and partially capable persons, for whom no guardian/guardian has been appointed, and adults who have lost contact with guardians/guardians during the state of emergency or martial law in Ukraine;
- consideration of appeals on matters of guardianship and care, in particular those received from adult incapacitated persons and persons whose legal capacity is limited, and other persons;
- monitoring the activities of guardians, custodians and special institutions regarding the guardianship and care of adult incapacitated persons and persons whose legal capacity is limited;
- checking the living conditions of adults who are under guardianship and care;
- keeping records of assistants of persons who cannot independently exercise their rights and fulfill their duties due to their health condition;
- exercise of other powers provided for by law.

In the context of the authority to protect the property rights of incapacitated persons and persons whose legal capacity is limited, and taking into account Article 72 of the Civil Code of Ukraine, according to which the guardian is obliged to take care of the preservation and use of the ward's property in his interests; he independently carries out the expenses necessary to meet the needs of the ward, at the expense of income from the property of the ward, etc.; if the ward is the owner of immovable property or property that requires permanent management, the guardian may, with the permission of the guardianship authority, manage this property or transfer it to the management of another person under a contract [6], as well as Article 74 of the specified code, which provides, among other things, that if the person over whom guardianship or guardianship is established has property located in another area, guardianship over this property is established by the body of guardianship and guardianship according to the location of the property [6], we believe that the mechanisms of establishment should be written out in separate points in the order, implementation and termination of guardianship over property and to detail the norms defined in the Civil Code of Ukraine regarding the management of the property of the person over whom guardianship has been established. Among other things, it should be about the procedure for determining the subjects of such guardianship and management, exercising their respective powers, describing the relevant property, monitoring their activities, etc.

Definitions and conditions for granting permits to guardians and custodians of adult persons for their execution of transactions regarding the property of incapacitated and limited wards are required.

It is necessary to separately detail and regulate the powers of guardianship and guardianship authorities, related to their implementation of guardianship and care over adults who have not been assigned guardians and custodians, as well as who are not in special institutions. Among them, it is necessary to include the decision in accordance with the legislation on the issue of the appointment of social benefits, the provision of such persons with social services; expenditure necessary to meet the needs of adult incapacitated persons and persons whose legal capacity is limited; taking measures to protect and preserve the property of adult incapacitated persons and persons whose legal capacity is limited, in particular by establishing guardianship over the property of such persons in cases established by law, etc. The receipt and disposal of funds can be carried out, as an option, by an authorized person of the body of guardianship and guardianship on the basis of a power of attorney issued by the head of such body.

In the event that more than one guardian or custodian is appointed for an adult and disputes arise between the guardians, the duty to provide assistance in solving them must be assigned to the body of

guardianship and guardianship. It is also appropriate to entrust these bodies with the task of distributing responsibilities between guardians or custodians of an adult, if there is no agreement between them or they have requested such distribution.

The specification of their rights is important in determining the competence of guardianship and guardianship bodies. They should consist in the possibility of involving specialists of government bodies, enterprises, institutions and organizations in consideration of issues related to guardianship and care of adults; with the possibility of obtaining from the listed entities free of charge the information necessary for the performance of tasks assigned to them in the field of guardianship and care of adults, as well as with the exchange of information between the specified entities, when it is also provided by guardianship and guardianship authorities, etc.

Speaking about bodies and institutions other than guardianship and guardianship bodies, it is necessary to note the importance of regulation in the proposed order of the issue of interaction of guardianship and guardianship bodies with consular institutions, either directly or through the Ministry of Foreign Affairs of Ukraine, because in accordance with Article 32 of the Consular Statute of Ukraine, the consul takes measures to establish guardianship (guardianship) over incapacitated or disabled citizens of Ukraine who are in its consular district and have been left without guardianship (guardianship). At the same time, guardianship (guardianship) established over citizens of Ukraine living outside Ukraine is recognized as valid in Ukraine, if there are no objections to the establishment of guardianship (guardianship) or its recognition by the consular institution in whose consular district such citizens live [4].

Also, the order must specify the requirements for the registration of personal files of incapacitated persons and persons whose legal capacity is limited, indicating an exhaustive list of documents (their copies) that are kept in such files.

In the order, the focus of attention should be on the detailed regulation of the issue of control over guardianship and care of adult incapacitated persons and persons whose legal capacity is limited. The bodies of guardianship and guardianship must carry it out by receiving and analyzing the reports of guardians or custodians, verifying the authenticity of the information specified in the reports, planned visits to persons under guardianship and guardianship, at their place of residence/stay, etc.

It is also worth emphasizing that Article 78 of the Civil Code of Ukraine stipulates that an able-bodied individual who, due to his health, cannot independently exercise his rights and fulfill his duties, has the right to choose an assistant. At the same time, it was established that upon the application of a person who needs help, the name of his assistant is registered by the body of guardianship and guardianship, which is confirmed by the relevant document [6]. Without resorting to the analysis of the assistant institute, which needs to be reformed so that it works as an alternative to the guardianship of incapacitated persons, we believe that the order should also contain provisions that would regulate the activities of guardianship and guardianship bodies related to the functioning of the indicated institute of able-bodied assistants persons. In particular, it is necessary to determine the provisions on their accounting, to detail their powers and, possibly, to provide for a certain control by guardianship and guardianship bodies over their activities, if such bodies are already determined by acts of higher legal force to be relevant to the activities of adult assistants.

5. Conclusions.

All of the above provides grounds for the conclusion about the overriding role of guardianship and guardianship bodies in ensuring, protecting and protecting the rights of adult incapacitated persons and persons whose legal capacity is limited. Their powers begin with the identification of adults who need care and support and accompany the latter in all aspects of their life until they have the appropriate status. The level and quality of life of adult persons who are under guardianship and care, as well as the effectiveness and appropriateness of guardianship and care over them by the relevant entities (guardians, custodians, special institutions) largely depend on the effectiveness of the activities of guardianship and guardianship bodies.

That is why the legislative regulation of the activities of guardianship and guardianship bodies in the direction of ensuring the rights and legitimate interests of adult incapacitated persons and persons whose legal capacity is limited should be complete and correspond to the interests of the listed categories of the population.

The future order of activities of guardianship and guardianship bodies in relation to the resolution of issues of guardianship and guardianship of adults should become a panacea in solving a large part of problematic issues related to the implementation of guardianship and guardianship over incapacitated and limited persons.

It is worth noting its significance not only for guardianship and guardianship authorities, who will receive a kind of detailed instruction on how to act while exercising the relevant powers, but also for all other bodies related to the topic of guardianship and guardianship of adults, who will receive a clear picture of legal relations in the researched field. It should become clear who and what powers are exercised, what can be demanded from whom, and who has legal status.

Considering the above, the analyzed order should be prepared with the most professional and in-depth approach, and also adopted in the near future.

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