

Legal Analysis Of Termination Of Legal Capacity Of A Citizen

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Annotation: This article provides a legal analysis of the concept of termination of legal capacity of a citizen. The question of the legal status of a person who is in a long time in an unconscious state (coma or lethargic sleep) is being studied. Issues related to the use of ephthanasia (“easy death”) in some countries are also being investigated.

Key words: Legal capacity. Termination of legal capacity. The moment of death. Coma (lethargic dream). Ephthanasia. The right to die. The right to live.

In modern domestic science, a unified scientific approach has not yet been formed with respect to the main categories that characterizes the civil status of citizens, the main and most important of which is the civil legal capacity of citizens, with its historical root in domestic law.

This category, which is an integral element of a private-law institution, received fundamental development in connection with the ongoing economic and legal reforms that have objectively expanded the content of the legal capacity of civil law entities, including citizens (individuals).

Legal capacity, as an integral quality of a person, arises at the time of birth. Article 17 of the Civil Code of the Republic of Uzbekistan (hereinafter - the Civil Code of the Republic of Uzbekistan) states that a citizen's legal capacity arises at the time of birth and ceases to die.

In this paper, we will try to analyze some issues related to the termination of legal capacity of a citizen.

The end of life is also far from being one with death. There are several definitions of death. Death is the cessation of the existence of the individual as a separate living system, the cessation of the body's vital functions, its death, etc. A person's death should be considered the complete and irreversible cessation of the cerebral cortex due to the death of its cells and ascertained by the complex of means and methods developed by modern medicine, with obviousness and certainty proving its onset.¹

¹ Kovalev M., Vermel I. Legal definition of death // World Health. 1982. No. 11C. 5.

It is from this moment that all legal consequences associated with the death of a person begin to act: criminal, civil, family, etc.

In modern conditions, science distinguishes several types of death, such as social death, brain death, physiological death,² natural, premature (pathological). At the same time, death can be partial - when not the whole organism dies, but a group of cells or an organ (tissue necrosis).

Specialists traditionally distinguish two types of death, clinical and biological. At the time of the cessation of the activity of the heart and respiration, a state of clinical death occurs. In a state of clinical death, a person is a subject of law, and this means that medical personnel retain the obligation to provide him with medical care. Currently, modern medicine through resuscitation can bring a person back to life. Thus, clinical death may not become irreversible.

After the death of the brain, the organ most sensitive to circulatory arrest, biological death of other organs and tissues gradually occurs. In a number of countries — Russia, Italy, France, Finland, and others — special legislative acts have been issued that confirm that a person should be considered dead from the moment death of the brain was established. So, for example, in the Russian Federation (hereinafter referred to as the Russian Federation), several documents are currently in force that determine the time of death. In 1992 The Law of the Russian Federation “On transplantation of organs and (or) human tissues” was adopted and is still in force, which considers the time of death to be the irreversible death of the entire brain. In accordance with this law, the Order of the Ministry of Health of the Russian Federation “On the procedure for establishing a diagnosis of human brain death” No. 908n dated December 25, 2014 (registered by the Ministry of Justice of the Russian Federation dated May 12, 2015 No. 37230) was issued. According to this order: the death of the human brain occurs with the complete and irreversible cessation of all functions of the brain, recorded with a working heart and mechanical ventilation. The moment of death of the human brain is the moment of death of a person.

Coma (lethargic dream). A citizen for a long time in an unconscious state (coma or lethargic sleep) does not lose legal personality, until the fact of his death by experts is ascertained.

In connection with a person in a coma or lethargic sleep (for a long time in an unconscious state), in practice there are some ambiguities in the regulation of the

² The extinction of the last functions of the body, providing the activity of its vital organs / In the book: Godfroix J. What is psychology? In 2 T. T. 2. –M.: 1992. P.46-47.

rights and interests of these people, as well as the protection of their subjective rights.

The application in this case of the design of the institution of incapacitation of citizens is unacceptable. Since in this case we are dealing with an unconscious state, with a long lasting character, and not a mental disorder. In addition, the consequences of a mental disorder may be reversed, i.e. recovery of the patient and, accordingly, the removal of "deprivation". Also, the unconscious state can be transient (over time) because it depends not on a mental disorder, but rather on a physical one. In this provision, in order to protect the subjective rights and interests of citizens in a coma or lethargic sleep, the introduction of the concepts of "suspension of a citizen's legal capacity" is introduced. This conclusion allows us to solve theoretical and practical problems associated with the implementation and determination of the legal personality of citizens who do not have the ability to independently acquire and exercise their rights.

In this case, the only way to exercise and protect the subjective rights and legitimate interests of these citizens is not in violation of the law is the institution of guardianship.

The use of the institute of action in someone else's interest without instructions to protect the interests of a citizen in a coma or lethargic sleep has no basis, since the law requires mandatory notification of acts committed in his interests at the earliest possible opportunity (part 1 of article 827 of the Civil Code of the Republic of Uzbekistan). Moreover, after this communication, it is necessary to wait a reasonable time in order to get the decision of the person concerned to approve or disapprove of such actions and, accordingly, continue or terminate them (unless the wait causes him serious damage, bearing in mind, first of all, the urgent need, committing the indicated actions).

Biological gender correction. In practice, there is a case when a person undergoes surgery to correct the biological sex, transplantation of animal organs and tissues, and the use of artificial organs and tissues. In this case, the correction of the biological sex can lead to a change in its individual qualities. Name, social status, without changing its legal capacity.

Euthanasia. Euthanasia ("easy death") contradicts the right to life and the voluntary consent of a seriously ill person with severe suffering to their killing and rendering medical assistance to him. Such behavior on the part of medical workers in a number of countries is expressed either in active actions (for example,

administering a certain dose of sleeping pills or another drug to the patient) or in passive ones (for example, not connecting it to the heart-lung device).³

In the 60s of the last century, the problem of euthanasia was again raised before society in a completely different aspect. It must be said that the term “euthanasia” itself is extremely contradictory, which complicates an unambiguous interpretation and causes terminological confusion. Depending on the definition of the term, the approach to the problem of euthanasia also changes.⁴

Contradictory views on euthanasia from a medical, moral and ethical point of view gave rise to a contradictory legal assessment of this phenomenon, which was reflected in the legislation of several countries. For example, in Holland, after a long discussion, the law officially allowed the resolution of passive euthanasia, of course, with certain reservations that exclude any abuse. In England, on the contrary, after long discussions, a law was passed on the unconditional prohibition of any euthanasia in medical practice.

But in July 2018, the Supreme Court of England and Wales ruled that from now on comatose patients can be disconnected from the life support system without going to court, as it was until now in each specific case, but on condition that both doctors and relatives come to consensus (<https://angliya.com>).

At the same time, under the pretext of ensuring human rights in many countries, euthanasia is freely applied to one degree or another, even contrary to the existing norms of the law.

³ The problem of euthanasia did not arise today, and not suddenly. It begins its chronology in ancient times. And even then it caused numerous disputes among doctors, lawyers, sociologists, psychologists and so on. The attitude toward the deliberate acceleration of the onset of death of a terminally ill patient, even with the goal of ending his suffering, has never been unambiguous. The English philosopher Francis Bacon (1561-1626) coined the term “euthanasia” to mean mild, painless death “(from the Greek euthanasia, eu - well, thanatos - death), that is, a good, calm and easy death, without torment and suffering. In modern publications in Russian, two terms are used: “euthanasia” and “euthanasia”. At the beginning of our century, lawyer Binding and the psychiatrist Gohe proposed calling euthanasia the destruction of so-called “inferior” lives. Such a monstrous interpretation of the concept of “euthanasia” later became widespread in fascist Germany and in the countries it captured. They killed newborns with “improper development”, mentally ill, patients with tuberculosis or malignant neoplasms, disabled people, the elderly, etc. A special industry was created to kill in the form of gas chambers, gas chamber, crematoria, etc. An international military tribunal in Nuremberg qualified these acts as crimes against humanity.

⁴ Distinguish between passive and active euthanasia. Passive euthanasia (or as it is also called the “delayed syringe method”) is expressed in the fact that the provision of medical assistance aimed at prolonging life is stopped, which accelerates the onset of natural death - which in practice is quite common in our country. Most often, when they talk about euthanasia, they mean active euthanasia. Active euthanasia (or as it is also called the “method of a filled syringe”) means the introduction of a dying drug or other means or other actions that entail a quick and painless onset of death. Active euthanasia can be expressed in the following forms: First, “killing out of mercy” - occurs in cases when the doctor, seeing the painful suffering of a hopelessly sick person and not being able to eliminate them, for example, inject him with an overdose of anesthetic drug, as a result of which any death. The second, “suicide assisted by a doctor”, occurs when a doctor only helps a terminally ill person to end his life See: B.I. Ismailov. International standards of personal human rights and the national legislation of the Republic of Uzbekistan (problems of interaction and implementation) - Tashkent: 2000. - P. 63-65.

All this creates great difficulties in the legal assessment of the human rights to a decent death, although in some countries this right has received legislative registration.⁵

Many scholars believe that the wording “the right to death” as formulated in the laws of foreign countries is unsuccessful, since a person who has the right to die will have the right to insist on the fulfillment of his desire by third parties, which in fact legalizes murder out of mercy, and this in his the queue can lead to certain abuses. It is proposed to use the expression "human right to die with dignity." It's hard to disagree.

Despite the contradictory opinions in many countries, passive euthanasia is gradually legalized by moral public opinion, and in some countries by law.⁶

It is no coincidence that in 1978 the “Declaration of Euthanasia” was adopted at the 39th World Medical Assembly, where, in particular, it was said: “Euthanasia as an act of intentionally killing a patient’s life, even at the request of the patient himself or on the basis of a request from his relatives not ethical. This does not exclude the need for a respectful attitude of the doctor to the patient’s desire not to impede the course of the natural process of dying in the terminal phase of the disease.”⁷

Naturally, this issue should be resolved not only from a moral and ethical standpoint, but also receive a legal assessment, since abuse and even crime in such cases are not excluded.

Foreign literature offers many options for the moral assessment of euthanasia. Most authors support methods of passive euthanasia and reject any possibility of using active euthanasia. However, there are directly opposite opinions. For example, the most famous spokesman is the prominent American philosopher J. Reigels, who sharply criticized the American Medical Association Decree of December 4, 1973, which says: “the intentional cessation of the life of one human

⁵ For example, in accordance with the laws of Indiana (USA), there is a so-called lifetime testament, in which the patient officially confirms his will so that his life is not prolonged artificially in certain circumstances. In 1977, in the state of California (USA), after many years of discussions in referenda, the world's first law on the right to death was adopted, according to which terminally ill people can draw up a document expressing a desire to turn off resuscitation equipment. However, so far no one has been able to officially use this law, since one of the conditions for euthanasia must be a psychiatrist’s opinion on the sanity of the patient (and the American Psychiatric Association forbids its members from participating in such procedures), and another prerequisite is that a doctor must euthanize, which is also impossible, because the American Medical Association has decided to ban its members from participating in euthanasia by putting forward the slogan: "Doctors should not be executioners." See: American Bill of Rights: A Reliable Guarantee of Freedom.// America-1990. –N 6.-s. 2.

⁶ So, in Sweden and Finland passive euthanasia by stopping the useless maintenance of life is not considered illegal. However, the basis for a doctor's decision to discontinue treatment is the patient’s free and informed expression of will. Similar requests from the immediate family of an unconscious patient are legally invalid.

⁷ Ardasheva N. The concept of experiment in medicine and the protection of human rights // State and human rights.-1995, N12.-s. 104-106.

being by another merciful murder contradicts the very purpose of the medical profession and politics American Medical Association. ”⁸

In medical practice of Uzbekistan, euthanasia is not allowed. It seems that a person cannot himself dispose of what belongs to him - his life. Since, the content of any law should include only those possibilities whose existence is inconceivable without fixing this right in the national legislative acts of the given state.

Based on the foregoing, we believe that the right to life does not mean that a person, along with the right to a decent life, has the right to lay hands on himself and himself. The norms of article 24 of the Constitution of the Republic of Uzbekistan disclose the concept of the right to life, the right to live, and not the right to life, which pushes thought and the arbitrariness of a person with their own lives at their own discretion.

⁸ American Bill of Rights: A Reliable Guarantee of Freedom. // America-1990-N6.-p.2.