THE ROLE OF THE CONSULAR INSTITUTIONS OF UKRAINE IN ISSUES OF PROVIDING THE RIGHTS OF INCAPACITATED PERSONS AND PERSONS WHOSE LEGAL CAPACITY IS LIMITED

Abstract. Among the subjects of legal relations in the field of guardianship and care of adults are adults who suffer from mental disorders that significantly affect their ability to understand the meaning of their actions and (or) manage them; adult persons who abuse alcoholic beverages, narcotic drugs, toxic substances, gambling, etc. and thereby put themselves or their family, as well as other persons whom they are legally obliged to support, in a difficult financial situation; persons who, due to chronic, stable mental disorders, are unable to realize the meaning of their actions and (or) manage them; adult incapacitated persons; adults whose legal capacity is limited; potential and designated guardians and custodians; special institutions; bodies of guardianship and care; bodies of executive, judicial and legislative power.

The important role of bodies entrusted with the authority to ensure, protect and defend the rights of adults who need guardianship and care, in particular consular institutions, was noted. A list of tasks of the appropriate content, which are performed by consuls, is given, namely: taking measures necessary for citizens of Ukraine to enjoy all the rights granted to them and restoring violated rights; informing citizens of Ukraine who are temporarily staying in the respective consular district about the legislation and customs of the host country; under certain circumstances, representation of citizens of Ukraine in institutions of the host state; consideration of written and oral appeals; keeping records of citizens of Ukraine who permanently reside or temporarily stay in their consular districts; taking measures to
establish guardianship or care for incapacitated or disabled citizens of Ukraine; providing objections to the establishment of guardianship or guardianship of a citizen of Ukraine living outside Ukraine, or its recognition, etc.

The provisions of consular conventions with a number of European states are cited in support of the separate powers, which to a certain extent regulate the procedure for the exercise of powers by consular institutions to exercise guardianship and care over adult incapacitated persons and persons whose legal capacity is limited.

It is summarized that consular institutions of Ukraine carry out a number of functions of guardianship and guardianship in relation to adult Ukrainians who need guardianship and guardianship, their guardians and custodians in the case of their residence outside Ukraine. In the end, a conclusion was formulated about the need to improve the legislative regulation of the exercise of powers by consular institutions of Ukraine in the field of guardianship and care of adults.

**Keywords:** consul, consular institution, custody, guardianship, adult, incapacitated person, person whose legal capacity is limited, body of guardianship and guardianship, control.

**Formulation of the problem.** Adult incapacitated persons and persons whose legal capacity is limited are one of those categories of the population whose rights are violated or are violated little or not most often, because the registration of such legal status for people in court in a significant number of cases is initiated with the aim of further disposal of their property rights.

Therefore, the bodies entrusted with the authority to ensure, protect and protect the rights of adults who need guardianship and care play a particularly important role in the researched area, since the level and quality of life, social and legal protection of adults with disabilities largely depend on them and persons whose legal capacity is limited.

The circle of such bodies is quite wide: from higher to local authorities. In this context, we consider consular institutions to be special subjects, which carry out the task of ensuring the guardianship and care of adults living outside of Ukraine, in a rather specific way, different from those used by individual guardianship and guardianship bodies, because the territory of their jurisdiction is many times wider and covers the scale of entire states. And the specifics of their powers are also somewhat different from those that are entrusted to guardianship and guardianship bodies in Ukraine, because they derive from the specifics of their legal status. This is the subject of the article.

**The state of development of this problem.** During the preparation of this article, the scientific work of G. Galushchenko and V. Kalakurs was used, who in their writings to one degree or another touched on the issue of powers of consular
The purpose of the article. In connection with the mentioned article, the article was written with the aim of researching and analyzing the role of consular institutions of Ukraine in matters of ensuring the rights of adults who need guardianship and care, and formulating proposals for possible solutions to the identified problems.

Presenting main material. Subjects of legal relations in the field of guardianship and care of adults are a large number of categories of individuals and legal entities. In particular, they potentially and/or actually include:

- adults suffering from mental disorders that significantly affect their ability to understand the meaning of their actions and (or) manage them;
- adults who abuse alcoholic beverages, narcotic drugs, toxic substances, gambling, etc. and thereby put themselves or their family, as well as other persons whom they are legally obliged to support, in a difficult financial situation;
- persons who, due to chronic, persistent mental disorders, are unable to realize the meaning of their actions and (or) manage them;
- adult incapacitated persons;
- adults whose legal capacity is limited.

We would like to note that theoretically, according to national legislation, a minor may also have the legal status of an incapacitated person or a person whose legal capacity is limited. Thus, according to the content of Article 35 of the Civil Code of Ukraine [14], full civil legal capacity can be granted to: a person who has reached the age of sixteen and works under an employment contract; to a minor (aged fourteen to eighteen), who is registered by the child's mother or father; a person who has reached the age of sixteen and wishes to engage in entrepreneurial activity from the moment of his state registration as an entrepreneur. It is important that in the event of termination of the grounds that contributed to the acquisition of full legal capacity (for example, termination of an employment contract), full civil legal capacity is preserved. In such a case, it can be assumed that a person over the age of 14 with full civil legal capacity may be deprived or limited in legal capacity under the conditions defined by the law;

- potential and appointed guardians and custodians of adults who need guardianship and care;
- special institutions (health care institutions, institutions of social protection of the population);
- bodies of guardianship and guardianship (district, district in the cities of Kyiv and Sevastopol state administrations, executive bodies of city, district in cities, village, settlement councils);
- the Cabinet of Ministers of Ukraine, central and local bodies of executive power (for example, the National Social Service Service of Ukraine);
judicial authorities;
- Parliament of Ukraine and Commissioner of the Verkhovna Rada of Ukraine for human rights.

This list is not exhaustive, because in the framework of guardianship and care of adults, various issues may arise, the solution of which belongs to the sphere of responsibility of various bodies, institutions, enterprises and organizations.

This article focuses on the activities of consular institutions of Ukraine in the researched area, which is characterized by special specificity, taking into account the powers of these institutions, as well as the conditions of residence (stay) of Ukrainians deprived of or limited in legal capacity.

As of August 2014, there were 96 incapacitated citizens of Ukraine and 200 citizens of Ukraine with limited legal capacity, 52 of whom were cared for by foreigners [8]. Although these data are outdated, they are quite indicative and testify to the small number of adults in need of guardianship and care among Ukrainians living abroad. Today, in the conditions of the war, it is obvious that the situation is radically different and consular institutions of Ukraine are burdened with solving issues related to the rights of disabled and partially capable Ukrainians abroad. However, at the time of writing the relevant statistical information is not publicly available.

National legislation [11; 12; 13] in the context of the issue of ensuring the rights of adult incapacitated persons and persons whose legal capacity is limited, consuls are assigned a function related to the establishment of guardianship and care over incapacitated or incapacitated citizens of Ukraine who are in their consular district. Consuls within the scope of their powers:
- take measures necessary for citizens of Ukraine to use all the rights granted to them to the full extent;
- measures are taken to restore the violated rights of Ukrainian citizens;
- inform citizens of Ukraine, who are temporarily staying in their consular district, about the legislation of the host country, as well as about local customs;
- in certain cases, citizens of Ukraine are represented in the institutions of the state of residence without a separate mandate, in particular due to the impossibility of the latter to defend their interests on their own;
- accept written and oral appeals from citizens of Ukraine. It is worth noting that there are no restrictions in the Consular Statute of Ukraine regarding the possibility of applying to the consul of an adult incompetent person or a person whose legal capacity is limited;
- keep records of permanently resident citizens of Ukraine or are temporarily in their consular districts. It is important that an application for permanent or temporary consular registration of a person who has been recognized by the court as having limited legal capacity or incapacity is submitted by one of the guardians or custodians [3].
That is, on the basis of Article 242 of the CCU [14] in the sense of the Procedure for keeping records of citizens of Ukraine living outside Ukraine, approved by the resolution of the Cabinet of Ministers of Ukraine dated January 29, 2020 No. 85 [3], the guardian is the legal representative of an adult whose legal capacity is limited;
- take measures to establish guardianship or guardianship over incapacitated or limited citizens of Ukraine who are in its consular district and have been left without guardianship (guardianship);
- accept for safekeeping money, jewels, securities and documents belonging to citizens of Ukraine;
- may submit objections to the establishment of guardianship or guardianship of a citizen of Ukraine living outside Ukraine, or its recognition, for further determination regarding the recognition of the validity of relevant decisions in Ukraine (without reference). Performing this function, the consular official draws a conclusion on the expediency of establishing guardianship or custody.

At the same time, the analysis of Appendix 2 to the Regulations on Consular Fees of Ukraine «Consular Fee Tariffs in US Dollars and Euros Charged for Consular Actions by Foreign Diplomatic Institutions of Ukraine» [10] and the Instructions on the Procedure for Registration of Civil Status Acts in Diplomatic Missions and Consular Institutions of Ukraine, approved by the order of the Ministry of Justice of Ukraine, the Ministry of Foreign Affairs of Ukraine dated May 23, 2001 No. 32/5/101 [9], gives grounds for the conclusion about such specific functions performed by consuls in the researched area, as registration of the acquisition of Ukrainian citizenship as a result of the establishment of a person, recognized by the court as incompetent, guardianship, as well as state registration of divorce with persons recognized as incompetent in accordance with the established procedure.

The listed powers of consuls, as V. Kalakura and G. Galushchenko rightly note, find their development in the consular conventions of Ukraine with other countries. So, for example, Article 50 of the Consular Convention between Ukraine and the Republic of Italy provides that the competent authorities of the receiving state immediately inform the consular officials of the accrediting state about any situation surrounding incapacitated or disabled citizens of the accrediting state and may request the appointment of a guardian for such persons or guardian. Consular officials have the right to accept any application for the protection of the rights and interests of incapacitated citizens of the accrediting state and, for this purpose, if necessary, in accordance with the legislation of the receiving state and international treaties in force for the Contracting Parties to this Convention, they may take measures to appoint guardians or guardians for such persons and supervise the execution of their powers. Consular officials may also request the assistance of the competent authorities of the receiving state in order to return such persons to the accrediting state [4; 2; 7].
Another example is the Consular Convention between Ukraine and the Republic of Poland, Article 31 of which stipulates that a consular official has the right to protect, within the framework established by the laws and regulations of the accrediting state and the host state, the interests of persons who do not have full legal capacity and are citizens of the accrediting state, especially when it is necessary to establish any guardianship or guardianship over such persons [6].

As for the relations between Ukraine and Georgia, the Consular Convention between the two states enshrines Article 14, according to which the competent authorities of the host state immediately notify the consular institution of the need to establish guardianship or guardianship over a citizen of the accrediting state, who has been recognized as incapacitated or with limited legal capacity in accordance with the established procedure. A consular official has the right to protect, in accordance with the laws and regulations of the receiving state, the rights and interests of a citizen of the accrediting state, who is recognized in the prescribed manner as incompetent or with limited legal capacity, and when necessary, to recommend or appoint a guardian or custodian of such a person and monitor the actions, relating to custody and care [5].

These and other valid consular conventions to a certain extent regulate the procedure for the exercise of powers by consular institutions to exercise guardianship and care over adult incapacitated persons and persons whose legal capacity is limited. For example, the submission of applications, recommendations regarding the appointment of guardians and custodians, control over the implementation of guardianship and guardianship, the return of adults in need of guardianship and guardianship to Ukraine, etc. are defined.

That is, the consular offices of Ukraine at the national and international legislative levels are defined as one of the key subjects of ensuring the guardianship and care of adult incapacitated persons and persons whose legal capacity is limited abroad in the territories of their jurisdiction.

Another important document in the field of research is the Vienna Convention on Consular Relations, which refers to consular functions to protect, within the limits established by the laws and regulations of the receiving state, the interests of persons who do not have full legal capacity, who are citizens of the represented state, especially when it is necessary to establish over by such persons of any guardianship or care. Also, Article 37 of this Convention provides for consular institutions to receive information from the authorities of the host state regarding cases where the appointment of a guardian or custodian meets the interests of a person who does not have full legal capacity and is a citizen of the presenting state.

Taking into account the above, we consider it logical for consular institutions of Ukraine to carry out a number of functions of guardianship and guardianship bodies in relation to adult Ukrainians who need guardianship and guardianship, their guardians and custodians in the case of residence of the listed categories of persons.
outside Ukraine. For example, guardians and custodians should be obliged to submit annual reports on their activities to the relevant consular office.

This is our view of the situation due to the provisions of Articles 18 and 24 of the Law of Ukraine «On Private International Law» [13], according to which the grounds and legal consequences of recognizing a natural person as incapacitated or limiting the civil capacity of a natural person are regulated by the personal law of that person – for Ukrainians, we are talking about legislation of Ukraine; establishment and cancellation of guardianship and care over incapacitated persons, persons whose civil capacity is limited, are regulated by the personal law of the ward; relations between the guardian (guardian) and the person who is under guardianship (guardianship) are determined by the law of the state whose body appointed the guardian (guardian) - if the guardian or trustee is not a citizen of Ukraine, it refers to the law of the state of which he is a citizen.

Conclusions. Summing up, the nature of the powers of the consular institutions of Ukraine in the field of guardianship and care of adults is reduced to their performance of a wide range of tasks related to the provision, protection and protection of the rights of the specified category of population in the event that representatives of the latter reside outside of Ukraine. However, despite this, the legislative regulation of the procedure for the implementation of the relevant competence by consular institutions remains at an extremely insufficient level, which does not contribute to the proper protection of the rights and legitimate interests of adults who need guardianship and care. In this regard, the national legislation in the field of diplomatic relations needs to be improved, taking into account the powers of consular institutions related to the issue of guardianship and care over adult incapacitated persons and persons whose legal capacity is limited.

Reference:


