

IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 27 June 2012 No. 15-II

In the case concerning the review of constitutionality of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation in connection with the complaint of I.B.Delovaya

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

in the attendance of representatives of I.B.Delovaya – lawyers D.G.Bartenev and O.Ye.Lavrentyeva, Director of the Saint-Petersburg State Budgetary Stationary Agency of Social Service “Psycho-Neurological Boarding House No. 3” N.G.Zelinskaya, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.V'atkin, Representative of the Council of Federation, PhD in Law A.S.Solomatkin, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing examined constitutionality of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation.

The reason for the consideration of the case was the complaint of I.B.Delovaya. The ground for the consideration of the case was the discovered

uncertainty of whether the legal provisions contested in the complaint are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur G.A.Zhilin, statements by parties' representatives, interventions by the representatives invited to the hearing: Ye.A.Borisenko for the Ministry of Justice of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, T.S.Fedotov for the Commissioner for Human Rights in the Russian Federation, having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. According to the Civil Code of the Russian Federation, a citizen who owing to mental disorder can not understand the significance of his/her actions or to direct them may be recognized as incapable by court in the procedure established by the civil procedure legislation; guardianship is established over him/her (Item 1 of Article 29); on behalf of the citizen recognized as incapable deals are made by his/her guardian (Item 2 of Article 29); guardians appear for the defence of the rights and interests of the persons under wardship in relations with any persons, including in courts, without special power (Item 2 of Article 31); guardianship is established over minors, as well as citizens recognized as incapable by court due to mental disorder; guardians are the representatives of persons under wardship by virtue of the law and make all necessary deals on their behalf and in their interests (Article 32).

1.1. Constitutionality of the abovementioned legislative provisions is contested in the complaint of I.B.Delovaya, who was recognized as incapable by the decision of Petrodvortsovy District Court of the City of Saint-Petersburg of 11 November 2010, left unchanged by ruling of the Civil board of Saint-Petersburg City Court of 17 March 2011. As is pointed out in the conclusion of forensic psychiatric examination prescribed by the court in order to diagnose the mental condition of I.B.Delovaya, her mental disorder in the form of slight intellectual retardation does not allow her to understand the significance of her actions and to

direct them in the sphere of civil law relations, protection of her housing rights, family and matrimonial relations, in the sphere of resolution of questions related to getting medical aid.

After entering of court decision into legal force, the fulfillment of duties of guardian of I.B.Delovaya is carried out by the Saint-Petersburg State Budgetary Stationary Agency of Social Service “Psycho-Neurological Boarding House No. 3”, where she lives, which in the persons of its director N.G.Zelinskaya and lawyer O.Ye.Lavrentyeva come out for the defence of the interests of the person under wardship in constitutional judicial proceedings, as well as lawyer D.G.Bartenev, chosen by herself, whose powers on the moment of appeal to the Constitutional Court of the Russian Federation were certified by an order of 5 December 2011, issued by Lawyers Bureau “Lawyer’s Group ONEGIN” and later confirmed by a warrant issued on 26 April 2012 by the aforementioned agency of social service.

1.2. Within the meaning of Articles 46 (Sections 1 and 2) and 125 (Section 4) of the Constitution of the Russian Federation in the inter-connection with Articles 52, 53, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, a citizen is entitled to appeal to the Constitutional Court of the Russian Federation with a complaint against violation of his/her constitutional rights by legislative provisions, on the basis of which a court decision was passed on his/her recognition as incapable and thus, in essence, on restriction of the right guaranteed by Article 60 of the Constitution of the Russian Federation. Other would mean impossibility to check whether the constitutional rights of the citizen recognized as incapable were violated as a result of application of respective legislative provisions which, in its turn, would not be in conformity with guarantees of protection of constitutional rights and freedoms fixed by Articles 19 (Section 1), 46, 55 (Section 3), 60, 118 (Section 2) and 125 (Section 4) of the Constitution of the Russian Federation through constitutional judicial proceedings, the exercise of which is an exclusive prerogative of the Constitutional Court of the Russian Federation.

By virtue of the adduced legal position of the Constitutional Court of the Russian Federation, expressed in the Judgment of 27 February 2009 No. 4-II, there are no grounds for recognition of I.B.Delovaya as inappropriate petitioner, and of the complaint signed personally by her, which was lodged with the Constitutional Court of the Russian Federation by lawyer D.G.Bartenev, as not answering the criterion of admissibility.

1.3. In accordance with Articles 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation on complaints of citizens reviews constitutionality of a law or its individual provisions, broaching constitutional rights and freedoms violation of which the petitioner refers to, and applied in a concrete case, the consideration of which has been completed in court; the Constitutional Court of the Russian Federation passes a judgment solely on the subject stated in the complaint and only in relation to the part of an act, the constitutionality of which has been called in question, assessing both the literal meaning of the legislative provisions under consideration and the meaning attributed to them by an official and other interpretations or the prevailing law-applying practices, as well as proceeding from their place in the system of legal acts.

As is asserted in the complaint of I.B.Delovaya, her right to inviolability of private life and right of private property, in violation of Articles 19, 23, 35 and 55 of the Constitution of the Russian Federation, are being disproportionately restricted by the provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation, because they do not contemplate the possibility of restriction of capability of a citizen which is necessary for the protection of his/her rights in connection with his mental disorder, is proportionate to the degree of impairment of the ability to understand the significance of his/her actions or direct them and thus deprive such citizen of the right to independently carry out legally-significant actions, including the right to dispose of pension in order to satisfy everyday needs.

Materials submitted to the Constitutional Court of the Russian Federation show that the court, satisfying the application of the Saint-Petersburg State Budgetary Stationary Agency of Social Service “Psycho-Neurological Boarding House No. 3” on recognition I.B.Delovaya as incapable, was guided only by the provision of Item 1 of Article 29 of the Civil Code of the Russian Federation which envisages the possibility of recognition of a citizen, who owing to mental disorder can not understand the significance of his/her acts or direct them, as incapable in the procedure established by the civil procedure legislation. At the same time, bearing in mind that Item 1 of Article 29 of the Civil Code of the Russian Federation in the part, containing the rule on establishing guardianship over incapable citizen, as well as the provisions of Item 2 of the same Article, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation being in a system connection with it and fixing the powers of guardians as representatives of persons under wardship by virtue of the law, determine legal consequences of the recognition of a citizen as incapable and thus the civil law status of persons of this category, to whom I.B.Delovaya belongs, her complaint can be recognized as admissible in respect of all legislative provisions contested in it.

Accordingly, exactly these interconnected provisions, contained in Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation are the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case.

2. The Constitution of the Russian Federation declares human being, his/her rights and freedoms the supreme value and, proceeding from the notion that rights and freedoms have direct force, determine the meaning, content and implementation of laws and are guaranteed by justice, places an obligation on the State to recognize, observe and protect these rights and freedoms on the basis of the principle of equality, to guarantee them according to universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Article 2; Article 17, Section 1; Article 18; Article 19, Sections 1 and 2), but at the same time admit restriction of human and civil rights

and freedoms only by federal law and only to the extent necessary for the protection of the basis of constitutional order, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the State (Article 55, Section 3).

Inalienability of basic human rights and freedoms, their belonging to everyone from birth (Article 17, Section 2, of the Constitution of the Russian Federation) contemplate, as the Constitutional Court of the Russian Federation has pointed out, inadmissibility of any disparagement of them, including in respect of persons suffering from mental disorders (Judgment of 20 November 2007 No. 13-II, Ruling of 3 July 2008 No. 612-O-II). As applied to personal dignity as a value guarded by the State, to the right to inviolability of private life, personal and family privacy, protection of his/her honour and good name, as well as to the right to have property, to possess, use and dispose of it both individually and jointly with other persons (Article 21, Section 1; Article 23, Section 1; Article 35, Section 2, of the Constitution of the Russian Federation) in the inter-connection with the right of citizens of the Russian Federation to exercise all of his/her rights and duties independently from the age of 18 years, following from Article 60 of the Constitution of the Russian Federation, this means, as follows from the legal position of the Constitutional Court of the Russian Federation expounded in the Judgment of 27 February 2009 No. 4-II and the Ruling of 19 January 2011 No. 114-O-II, the need of adequate guarantees which would provide to persons suffering from mental disorders the possibility of realization of the indicated rights and freedoms.

The adduced provisions of the Constitution of the Russian Federation, related to the fundamentals of the legal status of person (Article 64), correspond to the universally recognized principles and norms of international law and international treaties of the Russian Federation in the field of human and civil rights protection, being, by virtue of its Article 15 (Section 4), an integral part of the legal system of the Russian Federation. In accordance with the Universal Declaration of Human Rights (Articles 1, 6, 7, 12 and 17) and the International Covenant on Civil and

Political Rights (Articles 16, 17 and 26) all human beings, born free and equal in dignity and rights, have the right to recognition everywhere as persons before the law, to equal protection against any discrimination, against arbitrary interference with privacy and family life, against arbitrary attacks upon honour and reputation and arbitrary deprivation of one's property.

The Convention on the Rights of Persons with Disabilities (adopted on 12 December 2006 by the UN General Assembly Resolution 61/106), defining disabled persons as those with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Article 1), imposes on the States-Participants obligations to ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law, are oriented at respect of the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests (Paragraph 4 of Article 12).

The States-Signatories of the Convention for the Protection of Human Rights and Fundamental Freedoms – members of the Council of Europe, including Russia, have undertaken an obligation to secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention, including the right of everyone to respect of his/her private and family life (Article 8), which in the practice of the European Court of Human Rights is regarded as embracing various aspects of physical and social identity, including the right to personal autonomy, personal development, the right to maintain and develop relations with other people and outside world (Judgment of 29 April 2002 on the case "Pretty vs the United Kingdom").

General approach to the realization of rights and freedoms by persons suffering from mental disorders, formulated in a number of international documents adopted by the bodies of the Council of Europe – the Parliamentary Assembly of the Council of Europe (Recommendation of 8 October 1977 818 (1977) “On the Situation of the Mentally Ill”) and the Committee of Ministers of the Council of Europe (Recommendations of 22 February 1983 R(83)2 “Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Unvoluntary Patients”, of 23 February 1999 R(99)4 “On Principles Concerning the Legal Protection of Incapable Adults” and of 22 September 2004 Rec(2004)10 “Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder”), contemplates that such persons must have the possibility to realize all civil and political rights and the restrictions of these rights may be admitted strictly in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and may not be based solely on the fact of a person’s mental illness.

In the Recommendation of the Committee of Ministers of the Council of Europe of 23 February 1999 R(99)4 general and procedural principles of legal protection of incapable adults are also formulated, which the States-members of the Council of Europe are offered to be guided by: the principle of flexibility of legal regulation contemplating, apart from anything else, the use of legal instruments which would ensure the most full regard to of the extent of person’s incapability in a concrete legal situation for the protection of his/her personal and property interests; the principle of maximum preservation of capability, meaning, among others, recognition, as possible, of existence of different extents of incapability and the possibility to change the extents of incapability in the course of time; the principle of proportionality of the measure of protection of the extent of personal incapability which is based on account of concrete circumstances and needs of this person and admits interference with his/her rights and freedoms to the minimum extent necessary to achieve the aim of such interference; the measures of protection, according to the principle of proportionality, must not be automatically

linked to full deprivation of civil capability and, where it is possible, the person of age must have the right to make legally valid deals of everyday nature; the principle of proportionality contemplating application of a protection measure proportionally to the extent of capability of interested person and conformity of the protection measure, restricting civil capability, rights and freedoms of interested person to the minimum extent, to individual circumstances and needs of the interested person.

The indicated international acts have recommendation nature, but universally recognized in modern democratic States principles of the supremacy of the law, humanism, justice and legal equality were laid in their base, and the European Court of Human Rights (Judgment of 27 March 2008 on the case “Shtukaturov vs Russia”) and the Constitutional Court of the Russian Federation (Judgment of 27 February 2009 No. 4-II) in their decisions pointed at the need to observe them in respect of persons recognized as incapable.

Thus, the constitutional obligation to recognize, observe and protect human and civil rights and freedoms and ensure their adequate guarantees, placed on the Russian Federation, as well as undertaken by it international obligations in respect of persons suffering from mental disorders, require adoption of a complex of measures aimed at utmost effective protection of the rights and lawful interests of such persons, which would allow to take into account their individual peculiarities in every individual case.

3. Rendering concrete the provision of Article 60 of the Constitution of the Russian Federation as applied to the exercise of civil rights, the Civil Code of the Russian Federation defines capability of a citizen as ability to acquire and realize civil rights, create civil duties for him/herself and to fulfill them, which appears in full capacity with the coming of age, i.e. with the attainment of the age of 18 years (Item 1 of Article 21).

Proceeding from the need to fix on the legislative level flexible approach to the determination of the volume of citizens' capability, accounted for by the Constitution of the Russian Federation, and envisaging the possibility of civil

rights restriction on the basis of a federal law and only to the extent necessary for constitutionally-significant goals among basic elements of the civil legislation, the Civil Code of the Russian Federation establishes the volume of capability of a person under age depending on his attainment of a certain age, envisages the possibility to restrict partial capability of a person under age and of full capability of a person of age, as well as the possibility of recognition a citizen as incapable (Paragraph 2 of Item 2 of Article 1, Articles 26 and 28, Item 1 of Article 29 and Article 30).

As a ground for recognition of a citizen as incapable, Item 1 of Article 29 names the presence his/her mental disorder, in a consequence of which such citizen can not understand significance of his/her actions (intellectual sign) or to direct them (will sign), i.e. establishment of incapability is possible both in the presence of both signs of mental disorder and in the presence of one of them. The decision on recognition of a citizen as incapable is taken by a court on the outcome of consideration of a respective case in the procedure of special proceeding with obligatory analysis and assessment, together with other evidences, of the conclusion of the forensic psychiatric examination, which defines the mental condition of a person (Item 4 of Section 1 of Article 262, Chapter 31 of the Civil Procedure Code of the Russian Federation).

In its turn, court's decision on recognition of a citizen as incapable owing to mental disorder serves as a ground for appointment of a guardian by a body of guardianship and trusteeship (Section 2 of Article 285 of the Civil Procedure Code of the Russian Federation) or, if such citizen has been placed in a respective organization under surveillance, for instance, rendering social services, for placement guardianship duties on this organization (Item 4 of Article 35 of the Civil Code of the Russian Federation, Section 5 of Article 11 of the Federal Law of 24 April 2008 No. 48-Φ3 "On Guardianship and Trusteeship"). Guardianship over citizens recognized as incapable by a court is established for the protection of their rights and interests, so that guardians representing persons under wardship by virtue of the law had the possibility to make on their behalf and in their interests all

necessary deals and to appear for the defence of their rights and lawful interests in any relations, including in courts (Item 2 of Article 32 of the Civil Code of the Russian Federation, Item 1 of Article 2 and Section 2 of Article 15 of the Federal Law “On Guardianship and Trusteeship”).

Thus, the constitutionally-significant end pursued by the federal legislator, envisaging the possibility of recognition as incapable of citizens who owing to mental disorder can not understand significance of their actions or direct them, and determining legal consequences of a respective court decision, consists in protection of rights and lawful interests both of the indicated persons themselves, pertaining to one of the most socially vulnerable categories and any third persons, entering in civil-law relations with them, which allows to regard the interconnected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation as non-contradictory in this aspect to the Constitution of the Russian Federation.

4. In accordance with legal position repeatedly expressed by the Constitutional Court of the Russian Federation, with admissibility of restriction of some right or other in conformity with constitutionally-approved goals the State, ensuring the balance of constitutionally-protected values and interests, must use not excessive measures, but only the measures necessary and strictly determined by these goals; public interests enumerated in Article 55 (Section 3) of the Constitution of the Russian Federation may justify legal restrictions of rights and freedoms only if such restrictions meet the requirements of justice, are adequate, proportional and necessary for the protection of constitutionally-significant values and at the same time do not attack upon the very essence of a right and do not lead to the loss of its main content (judgments of 30 October 2003 No. 15-II, of 22 March 2005 No. 4-II, of 14 July 2005 No. 9-II, of 16 June 2009 No. 9-II and others).

This approach conforms to the universally recognized principles and norms of international law, in particular to Article 29 of the Universal Declaration of Human Rights, according to which in the exercise of his/her rights and freedoms, everyone

shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

4.1. According to the Civil Code of the Russian Federation, a guardian makes deals on behalf of the citizen recognized as incapable; guardians are the representatives of persons under wardship by virtue of the law and make on their behalf and in their interests all necessary deals (Item 2 of Article 29, Item 2 of Article 32); a deal made by a citizen recognized as incapable owing to mental disorder is null and void, and every party of such deal must return everything received in kind to the other party, and if it is impossible to return in kind – to compensate its cost in monetary form (Item 1 of Article 171).

Accordingly, the citizen recognized as incapable can not independently dispose of his/her property, including pension, even for making small everyday deals and does not answer with his/her property on his/her obligations, as is envisaged by Article 24 of the Civil Code of the Russian Federation in respect of capable citizens; the damage caused by the incapable is compensated by his/her guardian or the organization, obliged to carry out supervision over him/her, if they do not prove that the damage appeared through no fault of theirs; in the case of guardian's death or absence of sufficient means for compensation of a damage caused to the life or health of a victim the court, with regard to the property state of the victim and the trespasser, as well as other circumstances, is entitled to take decision on compensation of the damage in full or partly at the expense of the trespasser him/herself (Items 1 and 3 of Article 1076 of the Civil Code of the Russian Federation). The recognition of a citizen as incapable extends to the procedural capability as well: his/her rights, freedoms and lawful interests in relations with any persons, including in courts, are protected by legal representatives-guardians without special powers (Item 2 of Article 31 of the Civil Code of the Russian Federation).

The state of incapability also entails other legal consequences, in particular, hinders marriage and is a ground for dissolution of a marriage in a simplified order, excludes possibility of adoption (Article 14, Item 2 of Article 19, Item 1 of Article 127 of the Family Code of the Russian Federation), as well as the possibility to elect, be elected and participate in a referendum (Article 32, Section 3, of the Constitution of the Russian Federation; Item 3 of Article 4 of the Federal Law of 12 June 2002 No. 67-ФЗ “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”).

Thus, recognition of a citizen as incapable owing to mental disorder means substantial change of his/her legal status: from the moment of passing a court decision, he/she is considered, for formally uncertain period of time, as having lost possibility to make civil-law deals, as well as fulfill duties and bear responsibility for one’s actions.

Meanwhile, inability when exercising certain rights and duties to fully understand the significance of one’s actions or to direct them, determined by some or other mental impairment, far from always means that a citizen is not able to take realized and independent decisions in all spheres of social life and commit legally-significant actions, in particular small everyday deals at the expense of one’s own pension (which the petitioner in the present case, I.B.Delovaya, was deprived of after her recognition as incapable), aimed at satisfaction of own reasonable needs and not violating rights and lawful interests of other persons.

4.2. The Law of the Russian Federation “On Psychiatric Assistance and Guarantees of Citizens’ Rights in Its Course” recognizes after persons suffering from mental disorders all rights and freedoms of citizens, stipulated for by the Constitution of the Russian Federation and federal laws, and does not admit restrictions of rights and freedoms with respect to such persons, linked to mental disorder, on the ground solely of psychiatric diagnosis, of the fact of staying in a psychiatric hospital under clinical surveillance or in a psycho-neurological establishment for social maintenance or special education (Sections 1 and 3 of Article 5).

There are special legal mechanisms of social adaptation in the legislation of the Russian Federation in respect of citizens with limited capabilities, including those determined by the presence of mental disorder, if there are no sufficient grounds to recognize them as incapable which entails establishment of guardianship. In particular, persons with impairment of psychic functions, if their disablement is established, are, apart from the rights enumerated in Article 5 of the Law of the Russian Federation “On Psychiatric Assistance and Guarantees of Citizens’ Rights in Its Course”, invested with rights fixed by the federal laws of 2 August 1995 No. 122-ФЗ “On Social Services of Aged Citizens and Disabled Persons” (Chapter II) and of 24 November 1995 No. 181-ФЗ “On Social Protection of Disabled Persons in the Russian Federation”. In accordance with Article 41 of the Civil Code of the Russian Federation, a patronage may be established over capable person of age with appointment for such person an assistant by organs of guardianship and trusteeship, if he/she due to the state of health is unable to independently exercise and protect his/her rights and fulfill duties.

Normative-legal regulation in the field of relations connected with the activity in the field of rendering psychiatric assistance proceeds from the idea that the presence of mental disorder of a person can reflect itself differently on his/her intellectual and volitional level, determining the degree of existing impairments, in particular, the ability of adequate perception of the surrounding environment, self-realization and adequate behavior. Such an approach, implying complex assessment of various circumstances, characterizing long-term impairments of the functions of human organism, including impairments of mental functions, allows to single out 4 degrees of their pronouncement: 1st degree – insignificant impairments; 2nd degree – moderate impairments; 3rd degree – expressed impairments; 4th degree – significantly expressed impairments (Order of the Ministry of Health and Social Development of the Russian Federation of 23 December 2009 No. 1013Н).

Meanwhile, in the civil-law regulation of the procedure and legal consequences of the recognition of a citizen as incapable a possibility is envisaged of passing only two decisions by a court: either recognition of a citizen suffering from mental disorder as incapable in full, or refusal of such a recognition, which actually puts courts before an insoluble – without expenses for the field of rights and freedoms protection – dilemma in the cases when even with the presence of mental disorder the person keeps ability to adopt certain reasonable independent decisions in some spheres of social life, aimed at satisfaction of personal needs, answering his/her interests and infringing upon nobody's rights and lawful interests in its course. In such cases both variants engender substantial risks, do not exclude abuses and “linear”, simplified approach to adoption of a decision which leads to violation of legal equality (Article 19, Sections 1 and 2, of the Constitution of the Russian Federation).

A citizen, in respect of whom the decision has been taken on refusal to recognize him/her as incapable, but who, due to mental disorder is nevertheless limited in ability to understand the significance of his/her actions or direct them, *de jure* remains participant of legal relations of full value, for instance, in property sphere which can have negative consequences both for him/herself and for rights and lawful interests of his/her conscientious contractors. And the aspiration to prevent similar situation often urges the courts on recognition of incapability of citizens whose mental disorder does not reach the degree of heaviness with which they can not be aware of own actions. Thus, the possibility of independent exercise of civil rights is fully excluded for them.

The absence of this possibility with this category of citizens puts them in a position worse than even that of minors of 6 to 14 years of age, who have the right to independently make small everyday and other deals, indicated in Item 2 of Article 28 of the Civil Code of the Russian Federation. Restriction of the rights of such persons, disproportional to the degree of impairment of their psychic functions, including the right to personally, apart from the guardian, address to the bodies of public authority in order to protect their interests, makes them socially

vulnerable and to a significant degree dependable on other persons, including if they live in psycho-neurological boarding houses and, consequently, stay out of the system of family (blood) relations.

The model of legal regulation of the recognition of a citizen as incapable and establishment of guardianship over him/her, not contemplating consideration of individual peculiarities of concrete person and his/her need of protection, selected by the federal legislator as a measure of protection of rights and lawful interests of persons suffering from mental disorders, can not be regarded as answering modern standards of human rights. The European Court of Human Rights drew attention of the Russian Federation to the fact that the Russian legislation distinguishes capability and incapability in respect of persons suffering from mental disorders without taking into account “boundary” situations and, in contradistinction to European standards in this field, does not envisage “differentiated consequences”, which leads to violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Judgment of 27 March 2008 on the case “Shtukaturov vs Russia”). The Human Rights Committee, having considered at the meeting of 28 October 2009 Russia’s report on observance of International Covenant on Civil and Political Rights, also expressed concern in connection with significant number of persons in Russia, recognized as incapable, recommended to review corresponding practice and introduce measures in it which would meet the requirements of necessity and proportionality and would consider individual peculiarities (CCPR/C/RUS/CO/6).

4.3. Thus, the inter-connected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation do not conform to the Constitution of the Russian Federation, its Articles 15 (Section 4), 19 (Sections 1 and 2), 23 (Section 1), 35 (Section 2) and 55 (Section 3) to the extent to which in the operating system of legal regulation the possibility of differentiation of civil-law consequences of impairment of a person’s psychic functions in the course of resolving the question of the recognition of him/her as incapable, proportionate to the degree of actual decrease of the ability to

understand the significance of one's acts or direct them in some or other fields of social life is not envisaged, and thus disparagement and restriction of rights and freedoms, disproportional to constitutionally significant values, of citizens recognized by court as incapable owing to mental disorder, is admitted.

5. Recognition of a citizen as incapable – proceeding from the supremacy and direct effect of the Constitution of the Russian Federation, the priority of universally recognized principles and norms of international law and international treaties of the Russian Federation (Article 15, Sections 1 and 4, of the Constitution of the Russian Federation) – must take place only in cases when other measures of protection of his/her rights and lawful interests prove to be insufficient.

Determination of concrete means of protection of the rights of persons suffering from mental disorders, including in the part of rendering them necessary support in realization of civil rights and duties, pertains to the discretion of the legislator which, carrying out on the basis of Articles 2, 17, 18 and 71 (Item “B”) of the Constitution of the Russian Federation legal regulation in this field, being bound by the requirements of the Constitution of the Russian Federation and international obligations of the Russian Federation, must work out optimal mechanism contemplating the need to take into account the degree of impairment of their ability to understand the significance of their acts or to direct them in concrete spheres of vital activity and at the same time not admitting disparagement of their dignity and disproportionate interference into private life.

Taking into consideration the specific nature of this legal institution, not allowing to extend to the relations regulated by it the legislation in force in the part envisaging restriction of civil capability using, among others, analogy of a legislative act or the law, and proceeding from the notion that the possibility of recognition of a person as incapable due to mental disorder in itself does not contradict the Constitution of the Russian Federation, since is aimed first of all at the protection of his/her own rights and lawful interests, the Constitutional Court of the Russian Federation – in order to secure balance of constitutionally-significant interests and not to admit violation of the rights and freedoms of other

people in the course of exercise of human and civil rights and freedoms (Article 17, Section 3, of the Constitution of the Russian Federation) – considers possible, guided by Item 12 of Section 1 of Article 75 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, to determine the following procedure of execution of the present Judgment.

The federal legislator must – proceeding from the requirements of the Constitution of the Russian Federation and with regard to the present Judgment – till 1 January 2013 make amendments to the operating mechanism of the protection of the rights of citizens suffering from mental disorders, including in the part of rendering them the necessary support in realization of civil rights and duties, which would allow the courts to take into account the degree of impairment of the ability of such citizens to understand the significance of their actions or to direct them in concrete fields of vital activity and to the maximum extent guarantee the protection of their rights and lawful interests. Until entry into force of the new legal regulation, the inter-connected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation are subject to application in the present wording. Accordingly, court judgments passed in respect of the petitioner in the present case, I.B.Delovaya, bearing in mind that her legal status as a person recognized as incapable is formally not limited in time, must be reconsidered exactly on the basis of the criteria established by the federal legislator in order to determine the proportionality of restrictions of the degree of her impairment of the ability to understand the significance of her actions or to direct them in concrete spheres of life, determined by this status.

Concluding from the above and pursuant to Section 2 of Article 71, Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d:

1. To recognize the inter-connected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation as

conforming to the Constitution of the Russian Federation to the extent to which they are aimed at the protection of the rights and lawful interests of citizens who owing to mental disorder can not understand the significance of their actions or to direct them, as well as at securing rights and freedoms of other persons and guarding of other constitutionally significant values.

2. To recognize the inter-connected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation as not conforming to the Constitution of the Russian Federation, its Articles 15 (Section 4), 19 (Sections 1 and 2), 23 (Section 1), 35 (Section 2) and 55 (Section 3) to the extent to which in the operating system of civil-law regulation the possibility is not envisaged to differentiate the civil-law consequences of the presence of impairment of a person's psychic functions in the course of his/her recognition as incapable, proportionate to the degree of actual decrease of the ability to understand the significance of one's actions or to direct them.

3. The federal legislator must – in accordance with the requirements of the Constitution of the Russian Federation and with regard to the present Judgment – till 1 January 2013 make necessary amendments to the operating legal regulation with the aim of the most full protection of the rights and interests of citizens suffering from mental disorders.

Until entry into force of the new legal regulation, the inter-connected provisions of Items 1 and 2 of Article 29, Item 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation are subject to application in the present wording.

Court judgments passed in respect of I.B.Delovaya must be reconsidered on the basis of the new legal regulation.

4. The present Judgment shall be final, not subject to any appeal, it shall come into force immediately upon pronouncement, it shall be directly applicable and shall not require confirmation by other bodies and officials.

5. The present Judgment shall be subject to immediate publication in Rossiyskaya Gazeta and the Collection of Laws of the Russian Federation. The

Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation.

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