

SUMMARY

Key Words: untraceable disappearance, the recognition of the deceased, the court's decision

Subject matter: Unknown disappearance and recognition of a citizen as dead: problems of theory and practice

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The relevance of the research topic: Regulation of civil relations involves the participation of a citizen in legal relations. In the case of a long-term absence of a citizen participating in civil legal relations in the place of his permanent residence and the uncertainty of his place of residence, legal uncertainty arises, the consequence of which may be the infringement of the rights of other participants in legal relations.

Thus, creditors are not able to collect the debt owed to them from a given citizen; disabled persons who are dependent on a citizen no longer receive the maintenance due to them and at the same time cannot apply for a pension, since they are considered to have a breadwinner. The interests of the absent person themselves are not protected; their property may be damaged if left unattended.

Among the many complex social and legal problems, one of the most acute is the widespread unknown absence, or rather, the complete disappearance of Russian citizens and other individuals living on the territory of Russia. This is often associated with the Commission of various types of crimes against them.

In most cases, the measures taken to search for citizens do not bring results, resulting in intolerable legal uncertainty - the lack of information not only about the location of the missing citizen, but even about whether he is alive. This situation is not only the cause of tragedies associated with the loss of loved ones, but also raises a number of issues that urgently need its solution: on the legal regime of property belonging to the disappeared citizen; on the exercise of his economic and moral rights; about the performance of his civil obligations to third parties; about the maintenance of his minor children, disabled needy parents, spouse or other persons entitled to receive maintenance (articles 89, 93-97 of the Family code of the Russian Federation), etc.

The complex legal situation that develops in such cases can be relatively resolved with the help of one of two civil law institutions: recognizing a citizen as missing (article 42 of the civil code) and declaring him dead (article 45 of the civil code).

These institutions, taking into account the specifics of their concepts, procedures and legal consequences, are aimed at protecting the rights of other subjects of civil turnover and at stabilizing civil legal relations. It should also be clarified that the institution of unknown absence is equally intended to protect the rights of a person recognized as missing.

The question of the legal nature of this category of cases remains debatable. The urgent need to develop problems of recognizing a citizen as missing in the modern period is determined by a number of factors: socio-economic, regulatory and theoretical order.

Issues related to the recognition of a citizen as missing and declaring him dead were studied in various branches of law: civil, civil procedure, family law, and others. This is due to the fact that the legal status of subjects of civil legal relations is one of the most important problems of legal science, which predetermined the relevance of the chosen topic of work.

Cases on the recognition of a citizen as missing and on the Declaration of death are an independent institution. The prevalence in practice, the specific substantive and procedural features inherent in these cases, allow us to speak about the existence of an independent intersectoral Institute for recognizing citizens as missing and declaring them dead. Cross-sectoral affiliation of this institution is due to the fact that its norms are located in the material (articles 42 to 46 of the civil code) and procedural law (articles 276-280 of the RF CPC).

Despite the fact that the problem of recognizing a citizen as missing and declaring a citizen dead

is relevant, the institution of judicial recognition of a citizen as missing and declaring a citizen as dead is not given enough attention by the legislator. The civil procedure code of the Russian Federation only specifies certain rules and terms in connection with the provisions of the current material legislation.

The purpose of the work: The purpose of the final qualification work is to analyze the current civil legislation, consider conflict of laws issues about the procedure for recognizing missing or deceased citizens, the legal consequences of these institutions, as well as identify proposals for its improvement and further development.

Objective: 1. study the institution of unknown absence and the institution of declaring a citizen dead;
2. consider the grounds and procedure for recognizing citizens as missing or dead;
3. analyze the legal consequences of recognizing citizens as missing or dead;
4. to investigate the problems related to the application of legislation regulating relations on the institution of unknown absence and the institution of declaring a citizen dead, to make proposals aimed at improving and further development.

The theoretical and practical significance of the research: The theoretical significance of the work is that the conclusions formulated in the final qualification work can be used in the course of further scientific research. The results of the research can be used in the study of civil and civil procedure law.

Results of the study: 1. the Current legislation does not provide a clear definition of the concept of unknown absence, but only contains the grounds for which a citizen can be recognized as missing.

2. In accordance with article 42 of the civil code for recognition of a citizen as missing, a statement of the person concerned, but the article did not clearly define the circle of persons entitled to apply for recognition of a citizen as missing. So, in this norm it is specified that the court can recognize the citizen unknown absent. Therefore, this provision of the law has a dispositive character, in addition, it seems appropriate to Supplement art. 42 of the civil code of the Russian Federation by the provision that the court cannot recognize a citizen as missing if it finds that a person intentionally hides information about himself, even if the unknown absence lasted for the period specified in the law. Also, part 2 of article 42 of the civil code provides for calculating the beginning of the period of unknown absence and does not say anything about its end.

3. the Norms of article 43 of the civil code of the Russian Federation do not specify which division of the local government body should search for a Manager for the property and conclude a trust management agreement with him.

4. the text of article 43 of the civil code of the Russian Federation does not explain in which cases there is a need for permanent property management and what can serve as a criterion for determining this need. The question of the legal regime of property in cases where there is no need for permanent management remains unclear.

Recommendations: article 42 of the civil code of the Russian Federation should be set out in the following wording:

"1. a Citizen may be recognized by the court as missing at the request of interested persons if there is no information about the place of his residence within a year.

If it is impossible to establish the date of receipt of the last information about the missing, the beginning of the calculation term for the recognition of unknown absence is the first day of the month following that in which the last information about the missing, and at impossibility to establish this month the first of January of the following year.

2. Interested parties are the following: spouse, persons who are dependents of the absent; the absent creditors; tax authorities; other persons if it is necessary for them to protect the violated or contested right or interest protected by law, and the Prosecutor, the state bodies, other bodies and individuals, if they are legally entitled to apply to the court for protection of rights and interests of other persons".