

SUMMARY

Key Words: civil law, guardianship, trusteeship, ward, ward.

Subject matter: Legal regulation of guardianship and trusteeship under Russian law

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The supervising organization:

The relevance of the research topic In the Russian Federation, the protection of the rights and interests of minors, incapacitated or not fully capable citizens is one of the priority areas of social policy. Protection of this category of citizens is carried out within the limits of the current legislation, which, unfortunately, does not fully cover cases arising in practice.

One of the forms of social care for citizens in particular need is the establishment of guardianship or trusteeship.

Guardianship (guardianship), on the one hand, makes it possible to arrange the fate of the child in conditions close to living in the family, on the other – is the ability to establish control over the observance of the rights and interests of citizens.

With all the prerequisites for the high social significance of the Institute of guardianship and trusteeship, there is still a debatable question directly about the legal nature of the Institute, namely: it is a civil, family law or a complex institution.

The above, as well as the latest reform of the system of guardianship and trusteeship, which led to changes in civil and family law, only strengthened the relevance of the study of the legal regulation of the Institute

The purpose of the work: research of legal bases of guardianship and trusteeship; identification of specifics of legal regulation of the researched legal relations, and also to open the maintenance of categories of guardianship and guardianship and consideration of the most actual for legal relations of guardianship and trusteeship of problems.

Objective:

Conduct a retrospective analysis of civil and family law;

- To consider the basics of legal regulation of guardianship and trusteeship in Russia at the present stage;
- To study the legal nature and grounds for establishing guardianship and trusteeship;
- - Disclose the grounds for termination of custody and guardianship;
- To analyze the law enforcement practice in the field of guardianship and trusteeship
- to formulate recommendations to improve civil legislation in the field of regulation of the institution of guardianship and trusteeship both in respect of minors and persons over 18 years of age.

The theoretical and practical significance of the research it consists in the fact that the conclusions and recommendations developed as a result of the study contribute to the development of civil law knowledge, job offers can be used as a basis for further development of issues of guardianship and trusteeship over individuals of all age groups. It is possible to use the materials of work in the educational process in the teaching of civil law, family law.

Results of the study:

1. The new legislative regulation introduced in connection with the Resolution of the constitutional Court of the Russian Federation of 27.06.2012 No. 15-P, which introduced changes in the mechanism of protection of the rights of citizens suffering from mental disorders, only slightly provides for the differentiation of ways to protect such citizens, including in the circle of persons under guardianship, abusing gambling and suffering from mental disorders, and allowing the latter to dispose of part of their income for a period of time established by the Trustee, and to make small domestic transactions. , but not giving the possibility of providing a person with the degree of independence that corresponds to the degree of his mental disorder. The presence of a mental disorder, even a serious one, cannot be the only reason for the total deprivation of legal capacity.

From this point of view, the legislation of a number of European countries is interesting, which reflects the fundamental principles that must be observed in the establishment of the protection regime, the most important of which are the principles of complementarity and proportionality: the principle of necessity; the principle of complementarity; the principle of proportionality.

2. Guardianship and trusteeship is perceived as a complex institution of law, which carries the norms not only of private (civil and family), but also of public sectors (primarily administrative) law, due to the need to ensure the citizens in need of all kinds of protection of their rights and legitimate interests (primarily their personal and property rights).

3. With the similarity of guardianship and trusteeship in respect of minors and adults, for each of these categories, a number of important differences are provided: first, minors did not have full legal capacity, and citizens suffering from a mental disorder were endowed with it in full; secondly, the incomplete legal capacity of minors is determined directly by the law and does not need to be established by the courts (except in cases of restriction or deprivation of the right of minors to independently dispose of their income, and only the court can limit the legal capacity of citizens suffering from mental disorder; third, the term of incomplete legal capacity of minors is determined by law, and the restriction of the legal capacity of a citizen suffering from a mental disorder may continue indefinitely, fourth, the legal capacity of a minor arises in full without a special decision (except emancipation) upon reaching the age of 18 years, as well as upon entering into marriage until the age of majority (art. 21 of the civil code), and the full legal capacity of a citizen recognized as incapable or partially capable, is restored only in the case of a court decision, and to achieve such a recovery is often very difficult.

Recommendations:

article 40 of the civil code to state in the following edition:

"Article 40. Termination of guardianship

1. Guardianship of adult citizens is terminated in cases of a court decision on the recognition of the ward as legally capable or partially capable in the manner prescribed by civil procedural law.
2. Guardianship over adult citizens is terminated in cases of a court decision on recognition of the ward as incapable or cancellation of restrictions of its legal capacity in the order established by the civil procedural legislation.
3. On reaching juvenile wards of fourteen years guardianship over it stops, and the citizen, to carry out the duties of the Trustee, becomes the Trustee of the minor without additional decisions on it.
4. Guardianship over a minor is terminated in cases of a court decision on the recognition of the ward as incapable in the manner prescribed by civil procedural law.
5. The guardianship of a minor shall be terminated without a special decision upon the minor's reaching the age of eighteen, as well as upon his entering into marriage and in other cases of acquiring full legal capacity before reaching the age of majority (articles 21 (2) and 27)."