

CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

In the name of the Russian Federation

**JUDGMENT
of 27 June 2012 No. 15-P**

IN THE CASE OF THE CONSTITUTIONALITY REVIEW OF CLAUSES 1 AND 2 OF ARTICLE 29, CLAUSE 2 OF ARTICLE 31 AND ARTICLE 32 OF THE CIVIL CODE OF THE RUSSIAN FEDERATION IN CONNECTION WITH THE APPEAL OF I.B. DELOVA

The Constitutional Court of the Russian Federation consisting of the Chairman, V.D. Zorkin; Judges: K.V. Aranovsky, A.I. Boytsov, N.S. Bondar, Yu.M. Danilov, L.M. Zharkov, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, S.D. Knyazev, A.N. Kokotov, L.O. Krasavchikova, S.P. Mavrin, N.V. Melnikov, Yu.D. Rudkin, N.V. Seleznev, O.S. Khokhryakova, V.G. Yaroslavtsev,

With participation of the representatives of I.B. Delova - Lawyers: D.G. Bartenev and O.E. Lavrentieva; Director of the St. Petersburg Psychoneurological Nursing Home No. 3 (State Budgetary Residential Social Service Institution), N.G. Zelinskaya; Plenipotentiary Representative of the State Duma in the Constitutional Court of the Russian Federation, D.F. Vyatkin; Representative of the Federation Council - Doctor of Law, A.S. Salomatkin; Plenipotentiary Representative of the President of the Russian Federation in the Constitutional Court of the Russian Federation, M.V. Krotov,

Guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Clause 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",

Deliberated in public the case of the constitutionality review of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation.

The cause for proceedings in the case was the appeal of I.B. Delova. The ground for proceedings in the case was the discovered uncertainty as to whether the statutory provisions challenged in the appeal comply with the Constitution of the Russian Federation.

Having heard the Judge-Rapporteur, G.A. Zhilin, explanations of the representatives of the parties, presentations of the representatives invited to the hearing: for the Ministry of Justice of the Russian Federation - E.A. Borisenko, for the Prosecutor General of the Russian Federation - T.A. Vasilyeva, for the Commissioner

for Human Rights in the Russian Federation - T.S. Fedotov; having examined the documents and other papers, the Constitutional Court of the Russian Federation

Established:

1. Under the Civil Code of the Russian Federation, a person failing to understand the significance of his acts or to control them because of a mental disorder may be adjudged legally incapable following the procedure established by the civil procedural legislation; such person is placed under guardianship (Clause 1 of Article 29); any transactions on behalf of a person adjudged legally incapable are conducted by his guardian (Clause 2 of Article 29); guardians protect the rights and interests of their wards in their relations with any persons, including in courts, without any special powers (Clause 2 of Article 31); guardianship is established over minors and over those adjudged legally incapable because of a mental disorder; guardians are representatives of their wards by operation of law and conduct all the required transactions on their behalf and for their benefit (Article 32).

1.1. Constitutionality of these statutory provisions is challenged in the appeal of I.B. Delova, who was adjudged legally incapable by the Decision of the Petrodvorets District Court of St. Petersburg dated November 11, 2010, which was upheld by the Decision of the Judicial Board on Civil Cases of the St. Petersburg City Court on March 17, 2011. As stated in the Report of the Forensic Psychiatric Expert Examination instituted by the court to determine the mental state of I.B. Delova, her mental disorder in the form of mild mental retardation precludes her from understanding the significance of her acts and from controlling the same in the sphere of civil legal relations, protection of her housing rights, family and marital relations, and with regard to the issues relating to getting medical assistance.

Upon entry of the judicial decision into legal force, the duties of the guardian over I.B. Delova are discharged by the St. Petersburg Psychoneurological Nursing Home No. 3 (State Budgetary Residential Social Service Institution), where she lives. This Institution, represented by its Director, N.G. Zelinskaya and Lawyer, O.E. Lavrentieva, protects the rights and legal interests of the ward in the constitutional court proceedings, equally as D.G. Bartenev, the lawyer designated earlier by I.B. Delova herself, whose powers at the time of petitioning the Constitutional Court of the Russian Federation were certified by the warrant dated December 05, 2011 and issued by ONEGIN Group Attorneys at Law, and further confirmed by the Power of Attorney issued on April 26, 2012 by the said social service institution.

1.2. By implication of Article 46 (Sections 1 and 2) and Article 125 (Section 4) of the Constitution of the Russian Federation, which are interrelated with Articles 52, 53, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", a person may petition the Constitutional Court of the Russian Federation appealing against violation of his constitutional rights by the statutory provisions which are the basis for the decision made by the court of general jurisdiction

that has adjudged such person legally incapable and thereby, as a matter of fact, has restricted his right guaranteed by Article 60 of the Constitution of the Russian Federation. Otherwise it would be impossible to review whether the application of the relevant statutory provisions has violated the constitutional rights of a person adjudged legally incapable, which, in turn, would be inconsistent with the guarantees established by Articles 19 (Section 1), 46, 55 (Section 3), 60, 118 (Section 2) and 125 (Section 4) of the Constitution of the Russian Federation aimed to protect the constitutional rights and freedoms through the constitutional proceedings, implementation of which is the exclusive prerogative of the Constitutional Court of the Russian Federation.

In view of the above legal position of the Constitutional Court of the Russian Federation stated in its judgment dated February 27, 2009 No. 4-P, there are no grounds for declaring I.B. Delova an improper petitioner, and her personally signed appeal as submitted to the Constitutional Court of the Russian Federation by her lawyer, D.G. Bartenev - failing to meet 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, acting on the basis of the received appeals, examines constitutionality of the law or its individual provisions affecting the constitutional rights and freedoms that are alleged by a petitioner to have been violated, and that have been applied in a particular case which consideration has been finalized by a court; the Constitutional Court of the Russian Federation makes a decision only on the issues raised in the appeal, and only concerning the part of the act the constitutionality of which is challenged, evaluating both the literal meaning of the statutory provisions under consideration and the meaning attributed to them by their official or other interpretation, or by the established practice of their application, and also based on their place in the system of legal norms.

As stated in the appeal of I.B. Delova, in violation of Articles 19, 23, 35 and 55 of the Constitution of the Russian Federation her right to private life and to private property is disproportionately restricted by the provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation as long as they do not imply a possibility of limiting legal capacity of a person, which is necessary to protect such person's rights with regard to the person's mental disorder, proportionate to the extent of disturbance of the ability to understand the significance of his actions or control them, and thereby deprive such person of the right to make his own legally significant acts, including disposal of his pension money to meet her everyday needs.

The papers submitted to the Constitutional Court of the Russian Federation evidence that the court, allowing the application of the St. Petersburg Psychoneurological Nursing Home No. 3 (State Budgetary Residential Social Service Institution) for adjudging I.B. Delova legally incapable, followed directly only the provision contained in Clause 1 of Article 29 of the Civil Code of the Russian Federation that provides for a possibility to adjudge a person failing to understand the significance of his actions or control them due to a mental disorder to be legally incapable under the procedure established by the civil procedural legislation. However,

given that Clause 1 of Article 29 of the Civil Code of the Russian Federation in the part containing the rule on establishing guardianship over a legally incapable person, and the systematically relating thereto provisions contained in Clause 2 of the same Article, Clause 2 of Article 31 and in Article 32 of the Civil Code of the Russian Federation securing powers of the guardians as the representatives of their wards by virtue of law, determine the legal consequences of adjudging a person legally incapable, and thereby the civil status of the persons in this category including also I.B. Delova, her appeal may be deemed admissible in respect of all the disputed legal provisions set forth therein.

Accordingly, exactly these inter-related provisions contained in Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and in Article 32 of the Civil Code of the Russian Federation constitute the matter at issue considered by the Constitutional Court of the Russian Federation in this case.

2. Constitution of the Russian Federation proclaims the man, his rights and freedoms to be the supreme value and, based on the fact that the rights and freedoms of a man and citizen have direct effect, determine the meaning, content and application of laws and are guaranteed by law, vests the state with the function to recognize, respect and protect these rights and freedoms on an equal basis, to ensure them in accordance with the generally accepted 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 allows at the same time restricting the rights and freedoms of a man and citizen only by a federal law and only to the extent as necessary to protect the constitutional system, morality, health, rights and lawful interests of other persons, to ensure national defense and national security (Article 55, Section 3).

Inalienability of the fundamental human rights and freedoms, their natural possession by everyone from birth (Article 17, Section 2, of the Constitution of the Russian Federation) suggest, as indicated by the Constitutional Court of the Russian Federation, the inadmissibility of any belittling of the same, including in respect of the persons with mental disorders (decision dated November 20, 2007 No. 13-P, judgment dated July 03, 2008 No. 612-O-P). With regard to the dignity of a person as the value protected by the state, to the right to privacy, to personal and family secrets, to protection of honor and good name, as well as to the right to own property, possess, use and dispose of the same either alone or jointly with other persons (Article 21, Section 1; Article 23, Section 1; Article 35, Section 2 of the Constitution of the Russian Federation) taken in conjunction with the right of the nationals of the Russian Federation, following from Article 60 of the Constitution of the Russian Federation, to exercise independently and in full their rights and obligations from the age of 18, it means, as it follows from the legal position of the Constitutional Court of the Russian Federation set forth in its decision dated February 27, 2009 No. 4-P and in its judgment dated January 19, 2011 No. 114-O-P, the need for adequate safeguards that would ensure that the people with mental disorders may exercise the said rights and freedoms.

The cited provisions of the Constitution of the Russian Federation relating to the fundamental principles of the legal status of a person (Article 64) correlate with the generally accepted principles and norms of international law and international treaties of the Russian Federation in the sphere of protection of rights and freedoms of a man and

person, which, by virtue of its Article 15 (Section 4), make an integral part of the legal system in the Russian Federation. Thus, 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 people are born free and equal in dignity and rights, wherever they are, have the right to recognition of their legal personality, to equal protection against any discrimination, against arbitrary interference in their private and family life, against arbitrary attacks on their honor and reputation, and against arbitrary deprivation of their property.

Convention on the Rights of Disabled Persons (adopted on December 13, 2006 by Resolution 61/106 of the UN General Assembly), which defines persons with disabilities as people with long-term physical, mental, intellectual or sensory disorders which in interaction with various barriers may hinder their full and effective participation in social life along with others (Article 1), imposes on the member states the obligations to take measures relating to the exercise of legal capacity, which would provide for adequate and effective safeguards to prevent abuse, in accordance with international law, of human rights and respect the rights, will and preferences of such person, which would be free of conflicts of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible, regularly reviewed by a competent, independent and impartial authority or judicial body, and would be ensured by such guarantees in proportion to the extent they affect the rights and interests of such person (Clause 4 of Article 12).

Signatories to the Convention on the Protection of Human Rights and Fundamental Freedoms, member states of the Council of Europe, including Russia, committed themselves to ensure that everyone within their jurisdiction enjoys the rights and freedoms defined in Section I of the Convention, including the right of everyone to respect for his private and family life (Article 8), which the European Court of Human Rights considers in its case law to cover various aspects of physical and social identity, including the right to personal autonomy, personal development, the right to establish and develop relationships with other people or the outside world (judgment of April 29, 2002 in the case of "Pretty v. the United Kingdom").

General approach to the exercise of rights and freedoms by the persons with mental disorders that is formulated in a number of international instruments adopted by the bodies of the Council of Europe - the Parliamentary Assembly of the Council of Europe (Recommendation dated October 8, 1977 No. 818 (1977) "On the Situation of the Mentally Ill ") and the Committee of Ministers of the Council of Europe (Recommendation dated February 22, 1983 No. R (83) 2 "Concerning the Legal Protection of Persons Suffering from Mental Disorders Placed as Involuntary Patients", dated February 23, 1999 No. R (99) 4 "On the Principles of Legal Protection of Incapable Adults", and dated February 24, 2004 No. Rec (2004) 10 "Concerning Protection of Human Rights and Dignity of the Persons with Mental Disorders") implies that such persons should be able to exercise all civil and political rights, while restrictions of these rights are allowed strictly in accordance with the Convention on the Protection of Human Rights and Fundamental Freedoms and cannot be based on a mere fact that a person has a mental disorder.

Recommendation of the Committee of Ministers of the Council of Europe dated February 23, 1999 No. R (99) 4 also formulates the general and procedural principles of legal protection of incapable adults, which are offered as guidance to the member states of the Council of Europe in the relevant legal regulation: the principle of flexibility in the legal response, implying, among other things, the use of legal instruments that would provide for the most complete account of the degree of incapacity of a person in a particular legal situation to protect his personal and property interests; the principle of maximum preservation of capacity, which also means recognition, as much as possible, of the existence of different degrees of incapacity and the possibility of changing the degree of incapacity of a person over time; the principle of proportionality of the measures to protect the degree of a person's capacity, which is based on the account of specific circumstances and needs of such person and allows for interference in his rights and freedoms to the minimum extent necessary to achieve the aim of such interference; the protection measures, according to the principle of proportionality, should not be automatically associated with a complete deprivation of civil capacity, and, where possible, an adult should have the right to make any ordinary legally valid transactions; the proportionality principle, which implies applying protective measures in proportion to the degree of capacity of the person concerned, and adequacy of the protective measures restricting the civil capacity, rights and freedoms of the person concerned to a minimum extent as regards the individual circumstances and needs of the person concerned.

The said international instruments are not binding, but they are based on the generally accepted in modern democracies principles of the supremacy of law, humanism, justice and legal equality, the need to observe which in respect of the persons adjudged legally incapable was stated in the decisions of the European Court of Human Rights (judgment dated March 27, 2008 in the case "Shtukaturov v. Russia"), and of the Constitutional Court of the Russian Federation (judgment dated February 27, 2009 No. 4-P).

Thus, the constitutional obligation imposed on the Russian Federation to recognize, respect and protect rights and freedoms of a man and a citizen and to ensure adequate safeguards for the same, as well as the international obligations assumed by the state in respect of the persons with mental disorders, requires a set of measures aimed at the most efficient protection of the rights and lawful interests of such persons, which would allow taking into account their individual characteristics in each specific case.

3. Detailing the provision of Article 60 of the Constitution of the Russian Federation in relation to the implementation of civil rights, the Civil Code of the Russian Federation defines legal capacity of a person as the ability of such person, acting on his own, to acquire and exercise civil rights, to create civil duties for himself/herself and fulfill the same, which ability accrues in full upon coming of age, that is, upon reaching the age of eighteen (Clause 1 of Article 21).

Based on the need established by the Constitution of the Russian Federation to secure at the legislative level a flexible approach to determining the scope of legal capacity of persons, and providing, among the basic principles of civil law, for a possibility to restrict civil rights under the federal law and only to the extent that it is

necessary for constitutionally significant purposes, the Civil Code of the Russian Federation establishes the scope of legal capacity of a person under age depending on his coming of a certain age, provides for a possibility to restrict partial legal capacity of a person under age and full legal capacity of an adult person, as well as for a possibility to adjudge a person legally incapable (second paragraph of Clause 2 of Article 1, Articles 26 and 28, Clause 1 of Article 29, and Article 30).

As the ground for adjudging a person legally incapable, Clause 1 of Article 29 of the Civil Code of the Russian Federation refers to a mental disorder of such person, due to which such person cannot understand the significance of his acts (an intellectual criterion) or control the same (a volitional criterion), that is, legal incapacity can be established in the presence of both criteria of a mental disorder, or any one of them. The decision on adjudging a person legally incapable is made by a court based on the findings in the relevant case under special proceedings involving mandatory examination and evaluation – in conjunction with other evidence – of the conclusion of the forensic psychiatric examination, which determines the mental state of a person (Clause 4 of Section 1 of Article 262, Chapter 31 of the Code of Civil Procedure of the Russian Federation).

In turn, the court's decision on adjudging a person legally incapable due to a mental disorder serves the ground for assigning a guardian to such person by the guardianship and custody authority (Section 2 of Article 285 of the Code of Civil Procedure of the Russian Federation) or, if such person is placed under supervision to the relevant organization, such as the one providing social services, for vesting such organization with the guardianship function (Clause 4 of Article 35 of the Civil Code of the Russian Federation, Section 5 of Article 11 of the Federal Law dated April 24, 2008 No. 48-FZ "On the Guardianship and Custody"). Guardianship over the persons adjudged legally incapable is established for protection of their rights and interests, so that the guardians, the persons representing their wards by virtue of law, could make on their behalf and for their benefit all the necessary transactions and protect their rights and legitimate interests in any relationships, including in the courts (Clause 2 of Article 29, Clause 1 of Article 31, and Clause 2 of Article 32 of the Civil Code of the Russian Federation, Clause 1 of Article 2 and Section 2 of Article 15 of the Federal law "On the Guardianship and Custody").

Thus, the constitutionally significant goal pursued by the federal legislator providing for a possibility to adjudge legally incapable the persons who, due to a mental disorder, cannot understand the significance of their acts or control them, and determining the legal implications of the relevant court decisions, is to protect the legitimate rights and interests of both such persons, belonging to one of the most socially vulnerable categories, and any third parties involved in the civil relationships with such persons, which allows considering the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31, and Article 32 of the Civil Code of the Russian Federation in the system of the effective legal regulation as not conflicting in this respect with the Constitution of the Russian Federation.

4. According to the legal position repeatedly expressed by the Constitutional Court of the Russian Federation, while admitting restriction of a right in compliance with the

constitutionally approved purposes, the state, securing a balance of the constitutionally protected values and interests, should not use excessive measures but rather only those necessary and strictly stipulated by such purposes; the public interests listed in Article 55 (Section 3) of the Constitution of the Russian Federation can justify legal restrictions on the rights and freedoms only when such restrictions meet the requirements of justice, are adequate, proportional, commensurable and necessary to protect the constitutionally significant values, and yet do not impinge on the very essence of the right and do not lead to the loss of its core content (judgments of October 30, 2003 No. 15-P, of March 22, 2005, No. 4-P, of July 14, 2005 No. 9-P, of June 16, 2009 No. 9-P, etc.).

This approach is consistent with the generally recognized principles and norms of international law, in particular with Article 29 of the Universal Declaration of Human Rights, under which anyone in the exercise of his rights and freedoms may be subjected only to those restrictions that are established by law solely for the purpose of securing due recognition of and respect for human rights and freedoms of others and meeting fair requirements of morality, public order and general welfare in a democratic society.

4.1. Under the Civil Code of the Russian Federation, any transactions on behalf of a person adjudged legally incapable are made by his guardian; guardians are representatives of their wards by operation of law and make all required transactions on their behalf and for their benefit (Clause 2 of Article 29, Clause 2 of Article 32); a transaction made by a person adjudged legally incapable due to a mental disorder is null and void, and each of the parties to such transaction must return to the other party everything received in kind, and when it is not possible to return anything received in kind - to reimburse the monetary cost of the same (Clause 1 of Article 171).

Accordingly, a person adjudged legally incapable cannot independently dispose of his property, including pension, even for petty daily transactions, and is not responsible for his obligations with his property as provided by Article 24 of the Civil Code of the Russian Federation with respect to capable persons - any harm caused by a legally incapable person is compensated for by his guardian, or by the organization that is required to supervise the same, unless they prove that such harm has not been caused through their fault; only in case of death of the guardian or his lack of sufficient funds to compensate for the harm caused to life or health of the injured, the court, taking into account the property status of the victim and the injurer and any other circumstances, may award damages in whole or in part at the expense of the injurer (Clauses 1 and 3 of Article 1076 of the Civil Code of the Russian Federation). Adjudging a person legally incapable applies as well to the procedural capacity: his rights, freedoms and legitimate interests in relations with any persons, including in the courts, are protected without any special authority by his legitimate representatives - guardians (Clause 2 of Article 31 of the Civil Code of the Russian Federation).

The state of legal incapacity entails as well other legal consequences, in particular, it prevents marriage and serves the ground for divorce under a simplified procedure, excludes the possibility of adopting children (Article 14, Clause 2 of Article 19, Clause 1 of Article 127 of the Family Code of the Russian Federation), and the possibility to elect and be elected and to participate in referendum (Article 32, Section 3, of the Constitution of the Russian Federation; Clause 3 of Article 4 of the Federal Law dated

June 12, 2002 No. 67-FZ "On the Basic Guarantees of Electoral Rights and of the Right to Participate in the Referendum of the Nationals of the Russian Federation").

Thus, adjudging a person legally incapable due to a mental disorder means a significant change in its legal status: from the date of the judgment and for a formally unspecified period, such person is deemed to have lost the possibility to make civil transactions and to perform duties and be held responsible for his acts.

Meanwhile, the inability, due to a mental disorder, to fully understand the significance of his acts or to control them in exercising certain rights and obligations does not always mean that a person is unable to make informed independent decisions in all spheres of social life and to commit legally significant acts, specifically, petty daily transactions using his own pension funds (which I.B. Delova, the appellant in this case, was deprived of upon adjudging her legally incapable), aimed at satisfying his own needs and not violating the rights and lawful interests of others.

4.2. The Law of the Russian Federation dated July 2, 1992 No. 3185 "On the Psychiatric Care and Guarantees of the Citizens' Rights in its Provision" recognizes that the persons with mental disorders enjoy all rights and freedoms stipulated by the Constitution of the Russian Federation and by the federal laws, and does not allow restricting the rights and freedoms of such persons associated with a mental disorder based merely on their psychiatric diagnosis, on the fact of them being under medical observation in a psychiatric hospital or in a mental institution for social security or special education (Sections 1 and 3 of Article 5).

With regard to the persons with disabilities, including those caused by a mental disorder, if there are no sufficient grounds to adjudge them legally incapable entailing the establishment of guardianship, the legislation of the Russian Federation provides for special legal mechanisms of social adaptation. More specifically, in addition to the rights stated in Article 5 of the Law of the Russian Federation "On the Psychiatric Care and Citizens' Rights Guarantees in its Provision", in case of the established disability the persons with mental disorders are vested with the rights established by the Federal Laws dated August 2, 1995 No. 122-FZ "On the Social Services to the Elderly and Disabled People" (Chapter II) and dated November 24, 1995 No. 181-FZ "On the Social Protection of Disabled People in the Russian Federation". In accordance with Article 41 of the Civil Code of the Russian Federation, an adult legally capable person failing for any health reasons to independently exercise and protect his rights and fulfill his duties may be placed under patronage with assigning an assistant to the same by the guardianship and custody authority.

Statutory regulation in the sphere of relations connected with the activities in the field of mental health care proceeds on the basis that a person's mental disorder may have a different impact on his intellectual and volitional level, determining the extent of the existing disorders, in particular the ability to adequately perceive environment, to have self-awareness, and to behave adequately. This approach implying a comprehensive assessment of various indicators of persistent human disorders, including mental disorders, allows distinguishing four levels of their severity: level 1 - minor disorders, level 2 - moderate disorders, level 3 - evident disorders, level 4 - most

evident disorders (Order of the Ministry of Health Care and Social Development of the Russian Federation dated December 23, 2009 No. 1013n).

However, civil regulation of the procedure and legal consequences of adjudging a person legally incapable provides for only one of the two possible court decisions - adjudging a mentally disordered person fully incapable or dismissing such judgment, which de facto gives the courts with an insoluble dilemma - without side effects for protection of rights and freedoms - in the cases when even having a mental disorder a person remains able to make some informed independent decisions in certain areas of social life aimed at satisfying his personal needs, meeting his interests, and not violating any rights and legitimate interests of others. In these cases, both alternatives give rise to significant risks, not excluding abuse or a "linear", simplified approach to making a decision, which leads to a violation of the legal equality requirement (Article 19, Sections 1 and 2, of the Constitution of the Russian Federation).

A person in respect of whom the decision is made to dismiss a request to hisadjudge his legally incapable, but who has nevertheless, due to a mental disorder, an actually limited ability to understand the significance of his acts or control them, remains de jure a fully functional participant of relationships, such as in the field of property, which may have negative consequences both for himself/herself and for the rights and legitimate interests of his bona fide contractors. The desire to seek prevention of such situations often encourages the courts to adjudge legally incapable the persons whose mental disorder falls short of the severity level when they are not able to be aware of their acts. Thereby, they are totally deprived of the possibility to exercise their civil rights independently.

The lack of such possibility by the said category of people puts them in a worse position even in comparison with the minors from six to fourteen years of age, who have the right to independently make their petty daily and other transactions referred to in Clause 2 of Article 28 of the Civil Code of the Russian Federation. Restricting the rights of these persons disproportionately to the extent of their mental disorders, including the right to apply to public authorities for protection of their interests in person, apart from their guardians, makes them socially vulnerable and largely dependent on others, including the cases when they live in the psychoneurological nursing homes and, therefore, are outside the family (kinship) relations.

Nor can the model selected by the federal legislator as a means of protection of the rights and lawful interests of the persons with mental disorders for legal regulation of adjudging such persons legally incapable and establishing guardianship over them, which does not imply taking into account the individual characteristics of a specific person and his need for protection, be deemed compliant with the modern standards of human rights. The European Court of Human Rights called attention of the Russian Federation to the fact that in respect of the persons with mental disorders the Russian law distinguishes between legal capacity and legal incapacity without any "borderline" situations and, in contrast to the all-European standards in this area, does not provide for any "differential consequences", which leads to a violation of Article 8 of the Convention on Protection of Human Rights and Fundamental Freedoms (judgment dated March 27, 2008 in the case "Shtukurov v. Russia"). Having considered during

its session on October 28, 2009 of Russia's report on observance of the International Covenant on Civil and Political Rights, the Human Rights Committee also expressed its concern about the large number of those adjudged legally incapable in the Russian Federation, and recommended to review the relevant practice and to supplement it with certain measures, which would meet the requirements of necessity and proportionality, and would take into account the individual characteristics (CCPR/C/RUS/CO/6).

4.3. Thus, the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation do not comply with 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), insofar as the current system of legal regulation does not provide for a possibility to differentiate between the civil consequences of a person's mental disorders when deciding on adjudging him legally incapable that would be commensurate with the extent of the actual impairment of the ability to understand the significance of his acts or control them in various spheres of social life, thereby allowing derogation and restriction of the rights and freedoms of the persons adjudged legally incapable due to a mental disorder disproportionate to the constitutionally significant purposes.

5. Adjudging a person legally incapable - based on the supremacy and direct effect of the Constitution of the Russian Federation, and based on the priority of generally 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) - should take place only in the cases when any other measures to protect his rights and legitimate interests are not sufficient.

Specific ways to protect the rights of the persons with mental disorders, including providing them with the necessary support in the implementation of civil rights and obligations, are determined at discretion of the federal legislator, who, implementing legal regulation in this area on the basis of Articles 2, 17, 18 and 71 (Clause "b") of the Constitution of the Russian Federation, and being bound by the requirements of the Constitution of the Russian Federation and international obligations of the Russian Federation, must develop an optimal mechanism implying the need to take into account the extent of impairment of their ability to understand the significance of their acts or control them in the specific spheres of life activity, and excluding at the same time any derogation of their dignity and disproportionate intrusion into their privacy.

Taking into account the specifics of this legal institution that do not allow applying to the relationships regulated by it the current legislation with regard to restricting civil capacity, using among other things the analogy of statute or law, and based on the fact that by itself the possibility of adjudging a person legally incapable due to a mental disorder does not contradict the Constitution of the Russian Federation as soon as it is aimed above all at protection of his own rights and legitimate interests, the Constitutional Court of the Russian Federation - in order to secure the balance between the constitutionally significant interests and the inadmissibility of violation of the rights and freedoms of others in the exercise of the rights and freedoms of a man and person (Article 17, Section 3, of the Constitution of the Russian Federation) - considers it possible, in accordance with Clause 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 for the execution of this judgment.

The federal legislator should - based on the requirements of the Constitution of the Russian Federation and in view of this judgment - amend before January 1, 2013 the existing mechanism for protecting the rights of the persons with mental disorders, including with regard to providing them with the necessary support in the implementation of their civil rights and obligations, which would allow the court to take into account the extent of impairment of such persons' ability to understand the significance of their acts or control them in the specific spheres of life activity, and would as much as possible guarantee protection of their rights and legitimate interests. Pending the entry into force of the new legal regulation, the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation must be applied in the current wording. Accordingly, the judgments rendered against the appellant in this case, I.B. Delova (taking into consideration that her legal status of a person adjudged legally incapable is formally unlimited in time), must be revised based exactly on the criteria established by the federal legislator in order to determine commensuration of the restrictions caused by this status with the extent of her impaired ability to understand the significance of her acts or control them in the specific spheres of life activity.

Based on the aforementioned and following Section 2 of Article 71, Articles 72, 74, 75, 78, 79 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

Held:

1. To adjudge the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation complying with the Constitution of the Russian Federation insofar as they are aimed at protecting the rights and lawful interests of the persons who, due to a mental disorder, cannot understand the significance of their acts or control them, and at ensuring the rights and freedoms of others and protecting other constitutionally significant values.

2. To adjudge the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation non-complying with 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) insofar as the current system of civil regulation does not provide for a possibility to differentiate between the civil consequences of a person's mental disorders when deciding on adjudging him legally incapable that would commensurate with the extent of the actual impairment of the ability to understand the significance of his acts or control them.

3. The federal legislator must - based on the requirements of the Constitution of the Russian Federation and in view of this judgment - amend before January 1, 2013 the

existing civil regulation with the view of achieving the most comprehensive protection of the rights and interests of the persons with mental disorders.

Pending the entry into force of the new legal regulation, the interrelated provisions of Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and Article 32 of the Civil Code of the Russian Federation must be applied in the current wording.

The judgments rendered against Irina Borisovna Delova must be revised on the basis of the new legal regulation.

4. This judgment is conclusive, may not be appealed, becomes effective immediately upon announcement, has direct effect, and requires no confirmation by any other authorities or officials.

5. This judgment is subject to immediate publication in the Russian Gazette and in the Legislation Bulletin of the Russian Federation. This judgment must also be published in the Gazette of the Constitutional Court of the Russian Federation.

**OPINION
OF THE JUDGE OF THE CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION,
G.A. ZHILIN**

In accordance with Article 76 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", I hereby declare my partial disagreement with the judgment of the Constitutional Court of the Russian Federation dated June 27, 2012 No. 15-P in the case concerning the constitutionality review of Clauses 1 and 2 of Article 29, Clause 2 of Article 31, and Article 32 of the Civil Code of the Russian Federation in connection with the appeal of I.B. Delova on the following grounds.

1. This case was considered by the Constitutional Court of the Russian Federation not following an abstract inquiry but rather under the appeal of I.B. Delova complaining against violation of her constitutional rights by the court applying the challenged statutes (Article 125, Section 4, of the Constitution of the Russian Federation, Chapter XII of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"). Furthermore, the appeal not only challenges the very institution stipulated by these statutes but also directly points to the existence of the constitutionally justified purpose of the legally established possibility to restrict the rights of a person who is unable, due to a mental disorder, to understand the significance of his acts or control them by adjudging such person legally incapable and establishing guardianship over the same. Accordingly, it raises the issue of recognizing the challenged statutes unconstitutional only insofar as they do not provide for any differentiation of the consequences of a person's mental disorder that would be commensurate with the actual extent of the impaired ability to understand the significance of his acts or control them. According to I.B. Delova, given the nature of her mental disorder, this is exactly what has led to the violation of rights, specifically, of the right to dispose of her pension funds for making petty daily transactions.

In such circumstances, the conclusion contained in Clause 1 of the operative part of this judgment on the constitutionality of the challenged statutes insofar as they are aimed at protecting the rights and interests of the persons who, due to a mental disorder, cannot understand the significance of their acts or control them, and at ensuring the rights and freedoms of others and at protecting other constitutionally significant values, which is quite obvious and indisputable in itself, seems to be unreasonably positioned as

an independent final outcome of the case consideration. In the context of the case under consideration, and taking into account the final conclusion on recognizing the statutes challenged under the appeal of I.B. Delova to be inconsistent with the Constitution of the Russian Federation, it is of significance only for the general description in the reasoning of the relevant legal institution, playing in the arguments framework the role of the rationale for the wording by the Constitutional Court of the Russian Federation of Clause 2 of the operative part of the judgment.

This wording contains not only the final conclusion on the unconstitutionality of the statutes reviewed by the Constitutional Court of the Russian Federation but also the implied conclusion on their constitutionality in a certain sense, because they are found to be inconsistent with the Constitution of the Russian Federation only insofar as the existing system of legal regulation does not provide for a possibility to differentiate between the civil consequences of a person's mental disorders when deciding on adjudging him legally incapable that would commensurate with the extent of the actual impairment of the ability to understand the significance of his acts or control them. Accordingly, they are constitutional to the extent that, for ensuring the constitutionally significant values stated in Clause 1 of the operative part of the judgment, they establish a possibility to adjudge legally incapable a person whose extent of mental disorder excludes such differentiation due to the lost ability to understand the significance of such person's acts or control them. A different understanding of Clause 2 of the operative part of the judgment comes into logical contradiction with its content, which is interrelated with the basic provisions of the reasoning part, and is inconsistent with the very essence of the legal system in the Russian Federation where the Constitution of the Russian Federation, which recognizes and guarantees the rights and freedoms of a man and person according to the generally accepted principles and norms of international law, has the supreme legal force and direct effect (Article 2, 15 and 17).

2. Placing an interim in its nature and minor in this legal situation conclusion on the constitutionality of the challenged statutes in the operative part would not cause much objection, if in Clause 5 of the reasoning part of the judgment and in Clause 3 of its operative part this circumstance were not given the determining significance in establishing the procedure for execution of the decision passed by the Constitutional Court. Moreover, contrary to the logic of the rest of the reasoning part and to the content of Clause 2 of the operative part, which imply adjudging legally incapable only a person whose extent of mental disorder excludes a possibility of differentiation due to the lost ability to understand the significance of such person's acts or control them, the Constitutional Court of the Russian Federation, based on the conclusion contained in its Clause 1 on the constitutionality of the challenged statutes, imposed the way of implementation that prolongs effect of the challenged norms in their law-infringing aspect.

Thus, having set for the federal legislator the term for amending before January 1, 2013 the existing mechanism for protecting the rights of the persons with mental disorders, the Constitutional Court of the Russian Federation stated that, pending the entry into force of the new legal regulation, the challenged statutes (in spite of their recognition as being unconstitutional and violating human rights and freedoms) must be

applied in the current wording. In conjunction with the provision according to which the court decisions in the case of I.B. Delova (who, according to the case papers, evidently does not belong to the persons with a mental disorder of such an extent that would not require differentiation of its civil and legal consequences) are subject to revision based exactly on the new legal regulation, it means that until the legislation is amended the interrelated norms contained in Clauses 1 and 2 of Article 29, Clause 2 of Article 31 and in Article 32 of the Civil Code of the Russian Federation must be applied as they were applied in her case.

Regardless of the circumstances of the case of I.B. Delova, it should be noted that the law infringing consequences of such implementation of decisions of the Constitutional Court of the Russian Federation are significantly aggravated by the common practice of late introduction of the necessary amendments to the legislative regulation, including the cases when the legislator is granted additional time compared to the statutory period, as provided by this judgment as well. According to the Ministry of Justice of the Russian Federation, as of June 8, 2012, out of the 121 decision of the Constitutional Court of the Russian Federation that have been passed since 1992 the legislator has implemented only 70 decisions, while 51 decision still require adoption of the legislative instruments.

3. Meanwhile, the established procedure for reviewing the cases in such instances and applying legal views of the Constitutional Court in practice in other similar cases do not imply waiting by the law-implementing bodies for adoption of a new regulation in lieu of the norms disqualified by the judgment of the Constitutional Court of the Russian Federation: it becomes effective immediately upon announcement, has direct effect, and requires no confirmation by any other authorities or officials; when a gap in legal regulation results from the settlement of the case, the Constitution of the Russian Federation is applied directly until the new regulation is passed; the legal view of the Constitutional Court of the Russian Federation expressed in the judgment must be taken into consideration by the law-implementing bodies upon its entry into force (Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"). In the event when, following consideration of the appeal alleging a violation of the citizens' constitutional rights and freedoms, the law or any provision thereof is adjudged inconsistent with the Constitution of the Russian Federation, the applicant's case must be reviewed under the regular procedure (Section 2 of Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation").

Gaps in the law arise not only in the cases when the Constitutional Court of the Russian Federation adjudges certain regulations conflicting with the Constitution of the Russian Federation. Their existence is not unusual for judicial practice, and the lack of the law governing specific public relations does not absolve the courts from making decisions on protection of the violated rights of the relevant parties to the legal proceedings. In such cases, settlement of the case requires not waiting for the gap in the legal regulation to be filled by the legislator but rather additional acts of the court in order to apply the law based on the analogy of statute, subsidiary application of norms or the analogy of law.

Filling the gaps in the legislative regulation of public relations, as well as applying law in general, requires that the courts take into consideration the normative unity of the Russian law, within the framework of which the Constitution of the Russian Federation has supreme legal force and direct action. It is also in this sense the provision contained in Section 4 of Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" should be understood reading the situation when, as a result of adjudging a regulation unconstitutional, there appears a gap in legal regulation, the Constitution of the Russian Federation is applied directly until the new regulation has been passed. At the same time, being a particular case of law application as such, it must be applied by courts in conjunction with the general rules for filling gaps in the law.

In this particular case, direct application of the constitutional norms is facilitated by the fact that their interpretation with regard to the relevant dispute has already been given by the Constitutional Court of the Russian Federation in its decision. However, in the absence of such decision the courts must settle the cases in compliance with the law, applying the constitutional norms directly, as necessary, to protect specific rights (Article 15, Section 1, of the Constitution of the Russian Federation; Section 3 of Article 5 of the Federal Constitutional Law dated December 31, 1996 No. 1-FKZ "On the Judicial System of the Russian Federation"). When overcoming conflicts in the statutory regulation and filling the gaps in law protection of the rights and freedoms of a man and person should be fundamental for the courts, which, being of the supreme value, act directly, determine the sense, content and application of laws, the activities of all branches of public power, and are guaranteed by judicial power (Articles 2 and 18 of the Constitution of the Russian Federation).

While in connection with the factual background of I.B. Delova, who, according to the court decision, cannot due to a mental disorder understand the significance of her acts and control them only in certain areas of social life, there hardly exists a need at all to overcome a gap in legal regulation, if we apply the challenged norms in accordance with the genuine sense of Clause 2 of the operative part of the judgment. As rightly stated by the Constitutional Court of the Russian Federation in the first paragraph of Clause 5 of its reasoning part, adjudging a person legally incapable - based on the supremacy and direct effect of the Constitution of the Russian Federation, on the priority of generally 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) - should take place only in the cases when any other measures to protect his rights and legitimate interests are not sufficient.

4. The provision of Section 2 of Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" on reviewing the case under the regular procedure with respect to the case of I.B. Delova means that the decisions passed on it by the courts of general jurisdiction are subject to revision under the procedure established by the Civil Procedure Code of the Russian Federation. Within three months from the date of entry into force of the judgment of the Constitutional Court of the Russian Federation dated June 27, 2012 No. 15-P (before September 27, 2012), she may apply for review of the decisions on adjudging her legally incapable,

and the courts must reverse their decisions and re-examine her case following the rules established by the procedural legislation (Articles 392-397 of the Code of Civil Procedure of the Russian Federation).

Civil cases for adjudging a person legally incapable are considered under the general rules of action proceedings with the peculiarities established by the Civil Procedure Code of the Russian Federation for the cases of special procedure, and the case must be reviewed and settled before the expiry of two months from the date of receipt of the complaint by the court (Section 1 of Article 154 of the Code of Civil Procedure of the Russian Federation). Procedural legislation does not provide for a possibility to extend or suspend this period in order to wait for a new legal regulation. Anything else is inadmissible, as soon as it would contradict the usual rules of overcoming the gaps in law and, contrary to the purpose of justice, would legalize the court's refusal to protect the violated right on the grounds of lack of a specific regulation governing the respective relationships.

Civil cases must be considered by the courts within the period stipulated by the federal law, its extension is permissible only in the cases and under the procedure established by the Civil Procedure Code of the Russian Federation; but in any case, proceedings must be conducted within a reasonable term, taking into account in its determination the period from the date of receipt of the application by the trial court and to the date of passing the last judgment in the case; the circumstances relating to the arrangement of the court proceedings, and consideration of the case by various juridical instances cannot be taken as the grounds for exceeding a reasonable period of proceedings in the case (Article 6.1 of the Civil Procedure Code of the Russian Federation). These procedural rules specify in more detail the provisions of Clause 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms - which is, according to Article 15 (Section 4) of the Constitution of the Russian Federation, an integral part of the Russian legal system - concerning the right of everyone in the determination of his civil rights to a fair trial of the case by the court within a reasonable period. Vesting the court with the duty to wait for a new legal regulation in order to review the case of I.B. Delova is not consistent with these provisions.