



Grounds for establishing the fact of the unknown absence of an individual under the civil law of the Republic of Uzbekistan

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ABSTRACT

In the context of work on the draft of a new edition of the Civil Code of the Republic of Uzbekistan, the relevance and scientific novelty of legal regulation and the grounds for establishing the fact of an unknown absence are determined. The role and significance of the institute of unknown absence are argued in the consideration of some specific situations. The unknown absence of a person is considered as a certain legal phenomenon, which can give rise to certain problems of a legal nature. Various grounds for signs of the legal state of the unknown absence of a person are analyzed. Considered are not only the grounds for recognizing a person as missing, but also the circumstances that are subject to proof in this category of civil cases. The conclusion is formulated about the loss by the missing person of subjective personal and property rights to the extent that other persons participating in the legal relationship show interest. Proposals have been formulated regarding the legal consequences for a person recognized as missing, to improve civil, family and civil procedural legislation.

Keywords:

Unknown absence of a person, the fact of an unknown absence, property and personal rights, place of residence, residence, duration of absence, uncertainty.

I. Introduction

The implementation of civil law relations implies that an individual participates in it. But, there may be cases in which for a long time there is no information about the person in the place of his permanent residence. Long-term absence of a person at his place of residence, when the place where he is located is unknown, is important both for legal entities and individuals with whom such a person is in relations regulated by law. An example would be a situation where an individual was a debtor, and his creditor cannot require him to pay the debt. With a long absence of an individual, damage to

property that is left unattended in the place of residence of the person is possible.

Attempts to search for such a person may not bring any result. In view of this, an ambiguous position arises - there is uncertainty regarding the subject as a participant, including civil legal relations, and from this side such a subject is specifically designated, and if we approach such a situation from the other side, then the person who is absent, respectively, cannot be detected. To avoid such uncertainty, which is undesirable for all participants in the relationship, the law provides for special provisions that form the civil law institution of an unknown absence. By applying the rules that

are part of this institution, persons who are interested in resolving the situation have the opportunity to apply to the relevant state bodies, and thus eliminate the uncertainty of legal relations in which the absent person is a participant, and thereby minimize the undesirable consequences of this uncertainty. . In extreme situations, the significance of the institution of unknown absence increases. This is how things stand during military conflicts, man-made and natural disasters that arise on interethnic and ethnic conflicts. To eliminate such uncertainty, which may arise, including in civil relations, it is necessary to use the legal constructions of the institution of the unknown absence of a person. The significance and role of the institution of the unknown absence are of great importance and relevance in periods in which social turmoil also arises. In the event of such everyday situations involving the departure of individual citizens for rest or treatment, work or study abroad, that is, leaving their permanent place of residence on legal grounds, a situation may arise when such persons do not return for one reason or another, and, respectively, there is no information about their new place of stay, and about these persons.

In the Republic of Uzbekistan, much attention is paid to the legal regulation of the institute of unknown absence. First of all, these are the norms of the Civil Code of the Republic of Uzbekistan, which was adopted on December 21, 1995 No. 163-1 as amended. dated May 24, 2019 No. 03/19/542/317/, in Chapter 3 "Citizens (Individuals)", which defines the legal status of recognition, as well as the consequences of recognizing a citizen as missing (Articles 33,34). In order to eliminate the legal uncertainty of the situation, which is caused by the absence of a person for a long period of time, and in order to eliminate the possible adverse consequences of both property and personal nature, the law provided for the application of a special legal status for such persons - recognition its obscure missing.

The unknown absence of a citizen is a legal phenomenon that, referring to the fate of a missing citizen, gives rise to certain legal problems, the solution of which determines the solution of relations that arise in many areas of

life, such as: marriage, family, civil, labor, social, pension, in which the missing citizen was a participant. An example would be the case when a disabled person who was dependent on a citizen does not receive maintenance from him, but they may not have the right to receive a pension, due to the fact that they are considered to have a breadwinner.

The fact of the unknown absence of a person is important both theoretically and practically, since both civil law ties cease to exist, but also human rights, which are regulated by other branches of law. For example, for a financial legal relationship, a taxpayer ceases to exist; for an administrative legal relationship, a resident of a certain territorial unit ceases to exist.

Thus, consideration of the legal regulation of recognizing a person as missing is intended to play a certain role in the regulation of civil legal relations, which determines the relevance of this study.

The purpose of the study is to consider the features of the legal regulation of recognizing a citizen as missing according to the civil law of the Republic of Uzbekistan, to consider the legal consequences that may arise as a result of this in various branches of law.

To achieve the goal of the study, the following tasks are identified:

- study of the legal characteristics of the unknown absence of a person;
- determination of the legal consequences of declaring a person as missing, and the grounds for reversing the court decision that may arise in the event of the appearance of a person recognized as missing.

The scientific novelty of the study is determined by the fact that a comprehensive study of issues related to the concept, as well as the legal consequences of recognizing a person as missing on the basis of the civil legislation of the Republic of Uzbekistan, has been carried out, as well as the prospects for the development and improvement of this institution.

II. Research Methodology

The study used the general scientific method of cognition, a number of private

scientific methods of research, such as logical, systemic, comparative law.

III. Literature Review

In the Republic of Uzbekistan, some provisions of the Commentary to the Civil Code of the Republic of Uzbekistan are devoted to the issues of legal regulation of recognizing a person as missing, in which it is determined that the main purpose of recognizing a person as missing is to protect his legal rights and interests, problems of preserving his property. This is explained by the fact that if a person is absent for a long time and his whereabouts are unknown, such rights are threatened. The other side of the problem is that the uncertainty in determining the location of a person, as well as the lack of information about him, also concern the interests of individuals, such as creditors, dependents, the spouse of an absent citizen, to whom such a person had an obligation to pay a debt or money for maintenance, and therefore, the legal basis for the emergence of their own rights is the recognition of a person as missing [1,2,3].

The material presented in the educational literature is of a general nature. This topic is covered in the works of domestic scientists, such as Karakhodzhaeva D.M. [4-14], Burkhanova L.M. [1- 3, 14-42], Sharakhmetova U.Sh. [43-50], Egamberdiev E.Kh. [51-65], Yeschanova D.A. [66-69], Mekhmonov K. [70-84] and others. These studies are more concerned with the legal consequences of recognizing a person as missing.

In the monographs devoted to the topic under consideration, only some issues related to this problem are covered. Therefore, special sources were also used to solve the problems under consideration.

The legal basis for the study, in addition to the norms of the Civil Code of the Republic of Uzbekistan, was the following regulatory legal acts of the Republic of Uzbekistan - the Constitution of the Republic of Uzbekistan dated 09.02.2021, No. 03/21/671/0093, the Family Code of the Republic of Uzbekistan dated 04.12.2020, No. 03 /20/653/1592, Civil Procedure Code of the Republic of Uzbekistan dated January 13, 2021, No. 03/21/661/0011,

Labor Code of the Republic of Uzbekistan dated August 3, 2021, No. 03/21/705/0742, and a number of laws - the Law of the Republic of Uzbekistan "On the execution of judicial acts and acts of other bodies" dated 04.12.2019, No. 03/19/586/4106, the Law of the Republic of Uzbekistan "On state pension provision" dated 09.11.2020, No. 03 / 20/646/1488.

IV. Discussion And Analysis

To consider the legal regulation of the unknown absence of individuals, it is necessary to determine the essence and grounds for establishing the fact of the unknown absence.

Unknown absence - the fact of a long absence of a citizen in the place of his residence, satisfied in court, if it was not possible to establish the place of his stay. The institution of an unknown absence is a set of norms by which interested parties seek to eliminate the uncertainty of legal relations with an absent participant in order to minimize the negative consequences of such uncertainty. The term "unknown absence" is used in two senses, firstly, it refers to the phenomenon of reality, when a person disappears without a trace, and secondly, this is the name of a legal institution created to resolve the uncertainty that arose due to the disappearance of the subject of some legal relations. As a phenomenon of the objective world, the essence of the first does not depend on place or time, and the legal institution as an element of the superstructure is different both historically and depending on the state in which it exists.

From the moment of birth, each person becomes a subject of law and enters into numerous relationships with other people. In childhood, these are mainly ties with relatives, but with age, the circle of ties expands. Relationships of a legal nature are legal relations. If one of the subjects of such relations disappears, then the situation becomes uncertain: legal relations have not ended, as in the case of the death of their subject, but they are not carried out either. The fact of the unknown absence lies precisely in the loss of feedback. With an unknown absence, all connections of the subject are lost. If only part of

the connections is lost, then there is no unknown absence.

In the science of civil law, different points of view have developed; according to one of them, the basis of the institute of unknown absence is the presumption of the death of a citizen, according to the other, the presumption of life. This relates to the question of the grounds for recognition as missing. As for the very institution of the unknown absence and its definition, opinions are also divided. Some believe that the norms of the institute of missing persons regulate the consequences arising from the long-term uncertainty of the place of residence of persons who are in certain legal relations with citizens and organizations, as well as the procedure for recognizing such persons as missing.

A sign of the duration of the absence is an element of the institution, and not the fact of an unknown absence. The significance of time for the institution of the unknown absence shows that the author does not distinguish between the institution and the fact of the unknown absence. It is possible to be absent from the place of residence, but not to be missing if a person maintains his ties with other people. In essence, one sign remains - the unknown location of a person, which cannot be eliminated. But this is nothing more than a loss of feedback due to the absence of any information about a person.

The reasons for the loss of feedback may be different, but the most probable is the death of a person - it is for her that the complete loss of all connections is typical. What other reasons could there be for such a loss? First of all, when a loss occurs without the consciousness of the subject himself, does not depend on his consciousness. Such are cases of complete or partial amnesia, i.e. loss of memory of the past. Amnesia can be associated with both mental and physical illness. But amnesia alone is not enough for disappearing without a trace: it must occur when a person is outside the usual situation, that is, outside the family, work, circle of people close to him, so that he ceases to be aware of himself at a time when there is no one near him. there was no one who knew him.

There are also cases when a person deliberately breaks off completely his connections. This may be due to the desire to hide from responsibility for the crime, but there may be other motives, for example, not wanting to pay alimony.

Although an unknown absence is an institution of civil law, the very fact of an unknown absence has a broader meaning, because it interrupts not only civil law ties, but also human ties regulated by other branches of law - family, tax, electoral and others. But all these branches of law did without the institution of an unknown absence, and only for civil law and such branches as civil procedure, family law, labor law, this institution turned out to be necessary in order to take certain measures on the basis of such a legal fact as the unknown absence of a person.

Legal relations and connections make necessary the civil law institution of the unknown absence. First of all, these are personal non-property rights that are not destroyed with the death of a person, are not lost even in the absence of a person, and can only need protection by other persons, since the person who owns them does not exist and it is not known where he is. The main purpose of recognizing a citizen as missing is to protect his rights and preserve property, since the long absence of a person and the lack of knowledge of his place of residence pose a threat to these rights. But permission is also required for the property rights of persons who were with the missing person, for example, in family relationships.

The long-term absence of a citizen at the place of residence, if the place of his stay is not known, is not indifferent to legal entities and individuals with whom he was in legal relations. For example, if a citizen was a debtor, then creditors do not have the opportunity to demand payment of the debt. In the event of a long absence of a citizen, damage may be caused to his property left at the place of residence without supervision. Prolonged absence of a person may lead to infringement of the rights and interests of citizens associated with the absence of other relative legal relations. So a long absence of a citizen leads to the fact that

persons registered with him in the same residential premises cannot exercise their rights to privatize this premises, exchange or sell it, because when performing any legal actions related to this residential premises, it is required participation of the absentee (or his written refusal to participate).

In order to eliminate legal uncertainty caused by a long-term absence of a citizen and prevent adverse consequences for his property, the law provides for the creation of a special legal status for such a citizen, namely, recognition of him as missing.

The institution of recognizing a citizen as missing is enshrined in Article 33 of the Civil Code of the Republic of Uzbekistan. A citizen may be declared missing by a court at the request of interested persons if during the year there is no information about his place of residence at his place of residence. The concept of "interested persons" is not given in the law. According to the law, these include the spouse, since he may be interested in dissolving the marriage in a simplified manner; persons who are dependents of an absent person, insofar as they, in the event of recognizing him as missing, acquire, in accordance with the pension legislation, the right to a survivor's pension. Other persons may also be interested in recognizing a citizen as missing if it is necessary for them to protect a violated or disputed right or interest protected by law (for example, creditors of the missing person), as well as a prosecutor, state administration bodies, other bodies and individual citizens, if they the law has the right to apply to the court for the protection of the rights and interests of other persons. Whether the person who applied to the court with an application to recognize a citizen as missing belongs to the number of interested persons, the court will decide based on the materials of a particular case.

The subject of proof in this category of civil case includes the following circumstances:

1) the missing person is a material and legal basis established by the Civil Code of the Republic of Uzbekistan for recognizing a person as missing, which consists of a group of facts:

- establishment of a citizen's place of residence;

- absence of a citizen in this place of residence;

- the absence at the place of residence of a citizen of information about the place of his stay for one year - in this case, the period established for recognizing a citizen as missing begins to run from the date of receipt of the latest information about him, and if it is impossible to establish

the day of receipt of the latest information about the missing person, the beginning of the missing person is considered the first day of the month following the one in which the last information about the missing person was received, and if it is impossible to establish this month, January 1 of the next year;

2) facts of active and passive legitimation: the existence of a legal interest of the person submitting an application for recognizing a citizen as missing, and the existence of substantive legal relations between the applicant and the citizen in respect of whom the question of recognizing him as missing is raised - the application must indicate the purpose of recognizing the person missing, which should be of a legal nature, i.e. have a connection with the legal consequences of recognizing a person as missing: dissolution of marriage in a simplified manner, adoption of a child, receiving a pension in case of loss of a breadwinner, etc.;

3) the applicant takes measures to search for the person;

4) the impossibility of establishing the location of this person;

5) the existence of circumstances that give reason to believe that the person may intentionally hide: is on the wanted list, does not want to pay alimony or execute other decisions of the court, other bodies, etc.;

6) the absence of a dispute about the law - but if, during the consideration of a case of special proceedings, a dispute arises about the law, which is within the jurisdiction of the courts, then the court leaves the application without consideration and explains to the interested persons that they have the right to bring a claim on general grounds.

In one process, it is impossible to consider the recognition of a citizen as missing

and the dispute about the right. In any case, it is first required to recognize a citizen as missing, and then consider a dispute about the right.

The decision of the court to recognize a citizen as missing is not an answer to the question of whether this citizen is alive or not. The decision on the unknown absence is based not on the presumption of the death of a citizen, but on the actual composition of the unknown absence.

The decision to recognize a citizen as missing is made by the court in a special proceeding. When making a decision, the court evaluates all the facts that may affect the decision. Thus, civil relations are designed for their normal development and do not imply that anyone can specifically hide, evade the discovery of his whereabouts. Therefore, if the court becomes aware of facts that may indicate a citizen's desire to hide, for example, for fear of being subjected to criminal punishment for a crime committed, the court must refrain from making a decision on recognizing the citizen as missing, because the obscurity of the absence can be eliminated by his search.

In accordance with Article 287 of the Civil Procedure Code of the Republic of Uzbekistan, the judge, in the course of preparing the case for trial, finds out which persons (relatives, colleagues and others) can provide information about the absent, and also requests the relevant organizations (internal affairs bodies, self-government bodies of citizens) according to the last known place of residence and place of work of the missing person about the information available about him. Until the judge receives answers to all his requests to the relevant authorities, the case should not be scheduled for hearing in a court session.

A case on recognizing a citizen as missing is considered in an open court session with the obligatory participation of a prosecutor. In the process of consideration by the court of cases on declaring a citizen missing, evidence is required confirming that the citizen is not living in the permanent place of residence of the citizen (certificate from the mahalla committee, certificate from the place of work about not going to work, certificate from the address bureau, documents on the completion of the

search, if a search is declared and other documents).

The possibility of recognizing a citizen as missing is not an end in itself. It is necessary in order to ensure the stability of civil legal relations and protect the rights and legitimate interests of their participants.

These provisions allow us to conclude that a missing citizen loses his subjective personal and property rights to the extent that other subjects of legal relations who are aware of the decision and who implement this decision will be interested in this.

The above arguments do not allow us to recognize as successful the judgment that when a person is recognized as missing, the legal relationship is suspended. It can be changed, terminated depending on the nature of this legal relationship, the intention of the person concerned and the relevant provisions of the law.

It follows from the analysis of the legislation that the main purpose of the institution of the missing person is to introduce certainty into those legal relations, one of the subjects of which is the missing person. This certainty primarily meets the interests of other participants in these legal relations and allows them to dispose of their property and personal rights.

V. Conclusion

Based on the results of the study, a number of issues were identified that require improvement in the legislative order. With this in mind, proposals have been formulated to introduce additions to the legislation that relate to the property and parental rights of a missing person, as well as the process of proving a missing person in court.

First. In the legal literature, almost no attention was paid to the issue of the subjective right of inheritance of a citizen who is missing, the law regulates only the regime of his own property. The property of a missing citizen legally continues to belong to him, and the inheritance opened in his favor temporarily has no subject. The "destiny" of the missing property is determined by law. At the same time, other persons can also claim the opened

inheritance - for example, the heirs of the next stage. It seems that the issue of the right of inheritance of a person recognized as missing should be regulated by law. At the same time, it is necessary to oblige the person who applied with the application to pay off the debts of the testator at the expense of the asset of the inheritance.

Second. In accordance with paragraph 3 of part 1 of article 160 of the Family Code of the Republic of Uzbekistan, the adoption of children whose parents are recognized as missing or declared dead is carried out without the consent of the latter. In this case, in essence, there is a loss of parental rights for a missing person or declared dead. It is essential that the possibility of their restoration in the event of an appearance or discovery of a missing person is not provided for in the law. When recognized as missing, there is a presumption of life, therefore we consider it impossible to adopt children of a missing person. In this regard, from paragraph 3 of part 1 of article 160 of the Family Code of the Republic of Uzbekistan, we propose to exclude an unknown absence and state this paragraph as follows: "the adoption of children whose parents are declared dead is carried out without the consent of the latter. Over the children of a missing person, only the appointment of guardianship is possible. And in the event of the appearance of a person declared missing, restore his parental rights in court, only if it is proved that this person was not able to report his location, or if any of the adoptive parents knew about the location child's parents."

Third. To resolve issues of recognizing a citizen as missing or declaring him dead, the court must exclude (at the time of the case) the possibility of establishing the location of a particular subject, which requires undeniable and sufficient evidence. Article 287 of the Civil Procedure Code of the Republic of Uzbekistan defines the range of actions of a judge in preparing a case for trial. In the absence of a legally regulated list of necessary evidence for recognizing a citizen as missing or declaring dead, judges are guided by this article as the minimum necessary for them. For this, we consider it possible to fix in Article 287 of the

Civil Procedure Code of the Republic of Uzbekistan a list of evidence necessary for declaring him missing or declaring him dead, namely: testimony of witnesses (relatives, neighbors), a certificate from the place of work, an act from neighbors and self-government bodies (mahalas), a certificate from the internal affairs bodies and other documents.

The court should pay special attention to the quality of evidence, namely, testimonies: it is characteristic that neighbors, acquaintances, colleagues, due to the narrow nature of ties with the missing person, can provide information only about the absence of a citizen at the place of residence or at the place work. The relatives of the missing citizen should have constant contact with him. Their testimonies are exhaustive.

The existing trend in civil and civil procedural law, aimed at protecting the property of a citizen, should also be reflected in proving the fact of the absence of a citizen at the place of residence. With this in mind, it is necessary to differentiate the totality of evidence presented, depending on the nature of the consequences for the missing person. In the event that a court recognizes a person as missing or declares him dead, in the event of the occurrence (indirectly or directly) of property consequences for a person, meaning, among other things, the alienation of a citizen's property, the evidence cited during the meeting about the disappearance of a person should be qualitatively more high level. In this case, in our opinion, the court should exclude the possibility of establishing the location of the person, therefore, during the meeting, evidence is presented in an expanded form.

It is a different matter if, as a result of a court decision, only personal non-property relations of a citizen are affected: divorce, adoption by a new spouse, receiving compensation payments in connection with the loss of a breadwinner, paperwork for children traveling abroad, and others.

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