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The Problem of Defining the Scope of Support on the Example of Minor Everyday Transactions

Legal Capacity reform has laid the foundation for discussion on interesting, complex and important issues at both the international and national levels. This article is devoted to the issue of appointing support for a person with psychosocial needs, using the example of minor everyday transactions. The regulations in the Civil Code of Georgia and the Procedural Code, as well as court practice, have been evaluated in accordance with international norms and the decision of the Constitutional Court of Georgia. As a conclusion, the author's vision is proposed in relation to the above-mentioned issues.

Keywords: *person with psychosocial needs, private autonomy, legal capacity, mental health, beneficiary of support, minor everyday transactions.*

1. Introduction

Legal capacity reform is rightly regarded as “the most important issue facing the international legal community at the moment”.¹ Legal capacity is a part of private autonomy, which falls under the right of personal self-determination,² it is given to a person not by the state or law, but by nature.³ Within the framework of private autonomy, an important and key prerequisite is the aspect that the expression of will, which has legal force, should be based on the possibility of making decisions freely.⁴ One of the most fundamental constitutional characteristics inherent to a subject is precisely the capacity for will, which gives rise to legal consequences.⁵

The main basis for the reform of legal capacity and the introduction of a support system in Georgia was the decision made by the Constitutional Court of Georgia and the United Nations Convention on the Rights of Persons with Disabilities (hereinafter: the Convention).⁶

The Convention is undoubtedly a landmark and significant occurrence in the field of human rights protection.⁷ It does not create new rights⁸, but rather adapts the spectrum of existing rights to the context of disabilities.⁹

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¹ See: Committee on the Rights of Persons with Disabilities, General Comment No.1 – Article 12: Equal Recognition Before the Law (April 2014) UN Doc. No. CRPD/C/GC/1, adopted at the 11th Session.

² BVerfGE 99, 383 (389).

³ *Basedov I.*, Private Autonomy in European Civil Law, Private Autonomy as a Fundamental Principle of Private Law (Conference Proceedings), *Zarandia T., Kurzinski-Singeri E., Shatberashvili L.*, (ed.) Publishing House of Ivane Javakhishvili Tbilisi State University, 2020, 15 (In Georgian).

⁴ *Klumpp S.*, *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil, Vorbemerkung vor §§ 104 ff, Sellier-de Gruyter*, 2021, Rn. 7.

⁵ *Zoidze B.*, “Legal Subjectivity of a Person with Psychosocial Needs,” *Tsu Law Review*, #1, Tbilisi, 2016, 31 (In Georgian).

⁶ “Convention on the Rights of Persons with Disabilities”, United Nations, Treaty Series 2515, 2006, 3.

According to Article 12 of the Convention, all people are equal regardless of the presence of mental and intellectual problems, and persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Thus, a medical diagnosis is no longer a basis for declaring a person legally incapacitated. The Convention represents a **“paradigm shift” from traditional medical approaches to human rights-based approaches**. The starting point of this concept is the recognition that persons with disabilities, like others, have rights best summarized in the format of fundamental principles: independence, freedom of choice, full participation, equality, and human dignity.¹⁰

The legal regulation regarding the protection of the rights of persons with mental and intellectual disabilities¹¹ was deemed unconstitutional by the Constitutional Court of Georgia on October 8, 2014. Consequently, the Georgian Parliament was obligated to reform and adopt legislation that was in line with the human rights standards¹² set forth in the Constitution of Georgia and also complied with the requirements of the Convention.

Before the implementation of the reform, the judicial status of individuals with mental and intellectual disabilities could be described as “civil death.”¹³ However, with the reforms enacted in 2015, they were declared fully capable of acting, and the term “person with psychosocial disabilities” was introduced. This term encompasses individuals with various physical, mental/intellectual impairments, whose different disabilities might interfere with their full and effective participation in societal life, requiring support and assistance for the exercise of their right to independent decision-making and informed, reasoned decision-making within the judiciary. Thus, based on the fourth part of Article 12 of the Civil Code of Georgia, **a person with psychosocial needs has full legal capacity**.

In short, **if previously persons with disabilities were invisible to civil law, the changes recognized their civil legal capacity.**¹⁴ The model based on the rights of persons with disabilities

⁷ See: Eaton J., Carroll A., Scherer N., Daniel L., Njenga M., Sunkel Ch., Thompson K., Kingston D., Khanom G., Dryer S., Accountability for the Rights of People with Psychosocial Disabilities: An Assessment of Country Reports for the Convention on the Rights of Persons with Disabilities, Health and Human Rights Journal, Vol. 23 #1, 2021, 175.

⁸ See: Committee on the Rights of Persons with Disabilities, General Comment No.1 – Article 12: Equal Recognition Before the Law, UN Doc. No. CRPD/C/GC/1, adopted at the 11th Session, April 2014, 1, 1.1.

⁹ See: Degener T., de Castro M.G.C. Toward Inclusive Equality: Ten Years of the Human Rights Model of Disability in the Work of the UN Committee on the Rights of Persons with Disabilities. In: Felder F., Davy L., Kayess R. (eds.) Disability Law and Human Rights. Palgrave Studies in Disability and International Development, Palgrave Macmillan, 2022, Cham. 30.

¹⁰ “Human Rights: A Reality for All” Council of Europe Disability Strategy 2017-2023, Council of Europe, para. 11 (in Georgian).

¹¹ In accordance with international approaches, the terminology used prior to the legislative change for indicating mental and intellectual disabilities is not used in this paper.

¹² Explanatory note on “amendments on Georgian civil code”, parliament of Georgia, web page, <<https://info.parliament.ge/file/1/BillReviewContent/64346?>> [08.01.2024] (in Georgian).

¹³ See: Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities, Commissioner for Human Rights, 2012, 9.

¹⁴ See also: the decision of the Constitutional Court of Georgia on October 8, 2014, in the case of “Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze v. Parliament of Georgia” (#2/4/532,533), II, 10 (in Georgian).

involves a shift from the paradigm of substituted decision-making to a model of supported decision-making.¹⁵

Persons with intellectual and psychosocial disabilities are particularly restricted by the existence of substituted systems and the denial of their legal capacity. The UN Committee on the Rights of Persons with Disabilities has emphasized that **having the status of a person with disabilities or certain health problems (including physical or sensory impairments) cannot be grounds for denying their legal capacity and other rights.**¹⁶

It is interesting to evaluate to what extent, in the example of the Civil Code, the appointment of support in the part of everyday transactions aligns with international standards and the decision of the Constitutional Court of Georgia, and to what extent the private autonomy of persons with mental and intellectual disabilities is protected in this regard. Additionally, what problems accompany the implementation of international standards in national legislation in this specific example of legal capacity?

2. Generally About Contractual Capacity (*Geschäftsfähigkeit*)

The essential sign of a legal subject is capacity for rights and legal capacity.¹⁷ Legal capacity defines a subcategory of capability. **The term “Legal capacity” (*handlungsfähigkeit*) is not used in the German Civil Code, and in norms, legal capacity is the focus.**¹⁸ Contractual capacity should be defined as an ability of a person, granting an individual legal rights under their own name within the civil legal system.¹⁹ The subcategories of legal capacity include marriageability (*Ehefähigkeit*) and Testamentary capacity (*Testierfähigkeit*).

As noted at the beginning, the principle of private autonomy is manifested in the freedom of legal relations, but this freedom makes sense when a person can also take responsibility for their actions. Another subcategory of the ability to act is **delictual capacity** – the ability to independently bear civil legal responsibility. More specifically, this means a person's ability to be liable for the damage they cause.²⁰

In Georgian civil law, full legal capacity is linked to reaching the age of 18. There are two cases of limited legal capacity: a person aged 7-18 (Article 14, part one of the Civil Code)²¹ and an adult

¹⁵ See: Committee on the Rights of Persons with Disabilities, General Comment No.1 – Article 12: Equal Recognition Before the Law, UN Doc. No. CRPD/C/GC/1, adopted at the 11th Session, April 2014, 1.3.

¹⁶ See: Committee on the Rights of Persons with Disabilities, General Comment No.1 – Article 12: Equal Recognition Before the Law, UN Doc. No. CRPD/C/GC/1, adopted at the 11th Session, April 2014, 1.9.

¹⁷ *Khubua G.*, Theory of Law, “Meridiani” publishing house, Tbilisi, 2011, 202 (in Georgian).

¹⁸ *Palandt O., Ellenberger J.*, Bürgerliche Gesetzbuch Kommentare, 78. Auflage, C.H. Beck, München, 2019, §104, Rn. 1.

¹⁹ See: *Klumpp S.*, J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil, Vorbemerkung vor §§ 104 ff, Sellier-de Gruyter, 2021, Rn. 35.

²⁰ *Bitter G., Röder S.*, BGB, Allgemeiner Teil, 4., neu bearbeitete Auflage, Verlag Franz Vahlen München, 2018, 115, Rn. 1.

²¹ In accordance with the fifth part of Article 12 of the Civil Code, the court may also recognize a minor as a recipient of support within the scope where, according to legislation, the minor does not require the consent

who abuses alcohol or narcotic substances and, because of this, puts their family in a difficult material condition (Article 16, part one of the Civil Code).²² As for incapacity, only the case of minors (0-7 years) remains after the changes. A person with psychosocial needs is fully capable and is appointed support in the areas determined by the court.

3. The Issue of minor everyday Transactions According to §105a of the German Civil Code (GCC)

3.1. Legislative Innovation in the German Civil Code

With the legislative changes of July 23, 2002, amendments were made to the German Civil Code regarding the institution of contractual capacity. Specifically, a new norm was added concerning the making of everyday transactions. §105a was introduced into the Civil Code after a long-standing demand for a reform of legal incapacity in Germany.²³ One of the **objectives of these changes was the social emancipation of persons with mental and intellectual problems and the increase of their personal responsibility.**²⁴

The aim of the new standard was to provide opportunities for individuals with mental and intellectual health issues to ensure that they “conduct daily transactions independently and responsibly in situations of low financial means.”²⁵

The adoption of §105a also aimed to strengthen the legal rights of individuals with mental health problems to self-determination in personal matters.²⁶ It should also be noted that the current legislative grounds of the Civil Code (CC §104 II and §105 paragraphs) regarding the contractual capacity of adults have not been changed.

*Canaris*²⁷ proposed the thesis that the nullity of the expressed will of an incapacitated person, motivated by the protection of the person's interests, represented an excessive interference in private autonomy and contradicted the constitution. He suggested changing the existing norms using the analogy of §107 and subsequent paragraphs of the GCC. However, it should be noted that the proposed version might not be adequately justified.²⁸

of a legal representative for the exercise of their rights and duties. For more details, see: *Zoizde B., Kordzaia T.*, Commentary on the Civil Code, Book I, Tbilisi, 2017, 67-76 (in Georgian).

²² For more, see: *Chanturia L.*, General Part of Civil Law, 'Law' Publishing, Tbilisi, 2011, 180-184 (in Georgian).

²³ “Natürlichen Geschäftsunfähigkeit”.

²⁴ *Palandt O., Ellenberger J.*, Bürgerliche Gesetzbuch Kommentare, 78. Auflage, C.H. Beck, München, 2019, §105a Rn. 1.

²⁵ See: *Löhnig M., Schärftl Chr.*, Zur Dogmatik Des § 105a BGB” Archiv Für Die Civilistische Praxis 204, no. 1, 2004, 25–58.

²⁶ Deutscher Bundestag: BT- Drs. 14/9266, 43.

²⁷ See: *Canaris C.*, “Verstöße Gegen Das Verfassungsrechtliche Übermaßverbot Im Recht Der Geschäftsfähigkeit Und Im Schadensersatzrecht.” Juristen Zeitung 42, no. 21, 1987, 993–1004.

²⁸ *Casper M.*, Geschäfte des täglichen Lebens – kritische Anmerkung zum neuen § 105 a BGB, NJW 2002, 3429.

Therefore, despite the fact that paragraphs §104 and §105 of the Civil Code remain unchanged until today, it is noteworthy that the German Parliament has not yet declared a connection and mandatory harmonization between the norms of fairness and non-legal personality.²⁹

Later, guardianship and care regulations again underwent modernization with the aim of achieving compliance with the requirements of the Convention.³⁰

3.2. Preconditions

According to §105a of the GCC, if an adult incapacitated person makes an everyday transaction that can be executed with a small amount of money, then the contract made by them is considered valid concerning performance and, in the case of agreement, also regarding counter-performance as soon as the performance and counter-performance are executed. This rule does not apply in cases where there is a significant risk to the person's or the incapacitated person's property.

3.2.1. Subject

According to the German Civil Code, legal incapacity is considered in two cases: a person under the age of 7 **and a person (regardless of age) who is in a state of mental disorder that excludes the free expression of will if the condition is not temporary by its nature.** For example, drug intoxication or delirium (a disturbance of consciousness)³¹ are temporary disorders of mental activity by nature and are not included in the scope of §104 II of the GCC.³² Temporary mental disorders are regulated separately by civil codes.³³

Thus, from the record of the GCC, the only basis for a person's legal incapacity due to medical conditions is a pathological state of mental condition. It does not matter which case provided by the medical classification it belongs to.³⁴ According to the GCC, all diseases or disorders that exclude the free expression of will are important³⁵ and should be considered when determining legal incapacity.

²⁹ Deutscher Bundestag: BT-Drs. 11/4528, 137 f., see: *Brosey D./Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 104 Rn. 1.

³⁰ Deutscher Bundestag: BT-Drs. 19/27287.

³¹ Delirium is a mental/psychic state of a person in which the person is confused and unconscious. Delirium can also cause hallucinations and changes in attention, mood or behavior, judgment, muscle control, and sleep patterns. Symptoms of delirium usually appear suddenly and are short-lived. Delirium can be caused by infection, dehydration, medications, or a serious illness. see: NCI Dictionary of Cancer Terms, National Cancer Institute at the National Institutes of Health. see also: *Ramírez Echeverría MdL, Schoo C, Paul M.*, Delirium. [Updated 2022 Nov 19]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan, < <https://www.ncbi.nlm.nih.gov/books/NBK470399/> > [09.01.2024].

³² *Bitter G., Röder S.*, BGB, Allgemeiner Teil, 4., neu bearbeitete Auflage, Verlag Franz Vahlen, München, 2018, 117, Rn. 8.

³³ See: *Chanturia L.*, *Commentary on the Civil Code, Book I, Tbilisi, 2017, 336-341 (in Georgian) Article 58, Law of Georgia, Civil Code of Georgia, 24/07/1997.*

³⁴ Cf.: *Spickhoff A.*, *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, 8. Aufl. Verlag C.H.Beck, 2019, Rn. 10.

³⁵ *Brosey D., Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 104 Rn. 2.

The determining factor is not the mental/cognitive aspect of the person but the degree to which the expression of will is free.³⁶

According to the practice of the Federal Court of Germany, after analyzing all aspects, it should be assessed whether a person can make a free decision or, conversely, whether the formation of will should not be considered freely expressed if it results from “uncontrolled instincts and ideas.”³⁷

3.2.2. The Term “Everyday”

According to the doctrine, the term “everyday transactions” includes both remunerative and gratuitous transactions³⁸ that can be classified as “everyday/daily life.”³⁹ The qualification is determined by “public perception.”⁴⁰ It is not mandatory for the transaction to be made literally every day. For example, transactions of this type may include: purchasing everyday items such as food or products intended for immediate consumption that do not exceed the usual quantity, cosmetic items (e.g., toothpaste), press products (e.g., illustrated magazines), textiles, and simple services such as hair styling, sending letters, local public transportation services,⁴¹ making donations⁴², agreements related to telephone services. According to one view in German doctrine, gifting to a legally incapacitated person can also be considered an everyday transaction.⁴³

Remote (§ 312c) and “street agreements” do not fall within the scope of §105a.⁴⁴ Similarly, in medical services, the issue of capacity to consent is not covered by §105a. General rules apply in this case. Capacity to consent is not codified as a general legislative consent but must independently exist for each specific medical service.⁴⁵

³⁶ *Bitter G., Röder S.*, BGB, Allgemeiner Teil, 4., Aufl., Verlag Franz Vahlen, München, 2018, 117, Rn. 7.

³⁷ BGH, 05.12.1995 – XI ZR 70/95; NJW 1970, 1680, 1681.

³⁸ Deutscher Bundestag: BT-Drs. 14/9266, 43, *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 6, cf.: *Löhnig M., Schärtl Ch.*, “Zur Dogmatik Des § 105a BGB.” Archiv Für Die Civilistische Praxis 204, no. 1, 2004, 25.

³⁹ Deutscher Bundestag: BT-Drs. 14/9266, 43, *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 6.

⁴⁰ Deutscher Bundestag: BT-Drs. 14/9266, 43, see also: *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 6.

⁴¹ *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, §105a Rn. 6-8. See also: *Zweigert K., Kötz H.* An Introduction to Comparative Civil Law, Vol.II. (translated by: *Sumbatashvili E., Ninidze T.*, eds.) Publishing house “GCI” Tbilisi, 2001, 36 (in Georgian).

⁴² *Lipp F.*, Die neue Geschäftsfähigkeit Erwachsener in: Zeitschrift für das gesamte Familienrecht (FamRZ) 2003, (721 – 729), 727.

⁴³ See: *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 6. But cf. on gifting: *Löhnig M., Schärtl Chr.*, Zur Dogmatik Des §105a BGB” Archiv Für Die Civilistische Praxis 204, no. 1, 2004, 25.

⁴⁴ *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, §105a, Rn. 6.

⁴⁵ See: *Spickhoff A.* Medizinrecht, 4. Auflage, C.H.Beck, München, 2022, Rn. 8; See also: *Spickhoff*/Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. 2021, BGB § 105a Rn. 6.

3.2.3. Amount Required for a Transaction

For the qualification of minor transactions, the transaction must be of “small value.” The primary aspect of significance is this characteristic.⁴⁶ According to prevailing doctrine, this refers to minor transactions conducted in cash.⁴⁷ When determining the value, in cases involving the purchase of several items, the total value or overall price in case of installment payments should be assessed.⁴⁸ General price levels are also considered, and usually do not pertain to high-value items.⁴⁹ However, in assessing this, the general standard of income should also be taken into account. For example, the “small value” might be perceived differently by a millionaire compared to an average-income family.⁵⁰

3.3. Legal Consequence

An exception to the general rule of transaction nullity provided by § 105 of the Civil Code (GCC) is the conclusion of everyday transactions.⁵¹ The protective function of requiring the guardian's consent is not necessary for “minor matters of daily life” (§1825 III).⁵² This approach remains unchanged in recent legislative updates.⁵³ Therefore, if the subject of the contract is a minor transaction, it cannot be invalidated on the grounds that one party was incapable of contracting, and the nullity consequence provided by §105 second part does not apply.

Since daily life transactions are typically those where performance and payment occur simultaneously (e.g., purchasing an item and paying for it immediately at the checkout; buying a ticket that is used immediately, etc.), concluding the contract and delivering the service/item usually takes a short time.⁵⁴

Additionally, the risk to the assets of an incapable person is considered (§105a, second sentence). Specifically, the Civil Code considers cases of increased risk to this person's property. For example, when a person purchases several identical items that are objectively unnecessary, etc.⁵⁵ However, the qualification of something as a risk, in the context of free will, must be assessed on a case-by-case basis.

⁴⁶ See: *Adena S.*, *Rechtsgeschäfte des täglichen Lebens in Deutschland und Österreich*, 2009, 46 f.

⁴⁷ Deutscher Bundestag: BT-Drs. 14/9266, 43.

⁴⁸ Deutscher Bundestag: BT-Drs. 14/9266, 43; cf.: *Casper M.*, “Geschäfte des täglichen Lebens – kritische Anmerkungen zum neuen § 105a BGB”, *NJW* 2002, (3425-3430) 3425.

⁴⁹ *Brosey D., Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 105a Rn. 1-5.

⁵⁰ *Spickhoff A.*, *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 9-11.

⁵¹ See: *Kropholler, I.*, *Commentary on the German Civil Code (translated by T. Darjania and Z. Chechelashvili)*, §104, 2014, 2014 (in Georgian).

⁵² *Brosey D., Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 105a Rn. 1

⁵³ Compare the pre-2021 amendment version of §1903 III of the Civil Code.

⁵⁴ *Brosey D., Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 105a Rn. 4

⁵⁵ *Brosey D., Jürgens A.*, *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 105a, Rn. 5

It can be said that the legislator has safeguarded itself and retained the general provision of transaction nullity to protect this person's interests. The concept underlying §105 I gains significance in the context of legal policy.⁵⁶

3.4. Relation Between §105a of the Civil Code and Guardianship Norms

With the amendments of 2021, which have been in force since 2023, the regulations governing legal guardianship have been changed. The first innovation introduced by these changes is the **principle of “necessity.”** The new norm clearly stipulates that a guardian is appointed only when it is necessary (§1814 III). Necessity is not present if support can be received and is sufficient through other means. This includes factual assistance provided by family members, close friends, and social services. It is also clearly defined that a guardian should conduct their duties in such a manner that allows the person under guardianship to organize their own life according to their desires and will, as much as possible. This regulation was implemented to achieve compliance with the requirements of the convention.⁵⁷

If an adult, due to mental condition, is unable to manage their affairs entirely or partially, then the guardianship court appoints a guardian for them (§ 1814) for the matters that necessitate guardianship. The primary goal is that the guardian helps the person in exercising private autonomy, during which §§ 104 and other norms of the Civil Code simultaneously apply. The German legislator intended to ensure minimal interference in the rights of the ward.⁵⁸

To the extent necessary to prevent significant danger to the person or property of the individual under guardianship, the Guardianship Court determines that for any declaration of will concerning the scope of the guardian's duties, the consent of the guardian is required (**stipulation on the necessity of consent**). Consent is not required if the individual under guardianship derives legal benefits from the declaration of will. Unless the court decides otherwise, this also applies to declarations of will on less significant matters of everyday life.⁵⁹ In the doctrine, it is considered that since §105a is part of the transactions section, together with §104 and the following paragraphs, this contradicts those who claim⁶⁰ that §105a provides the legal basis for “pocket money.”⁶¹

The legal connection between §104, the subsequent paragraphs, and the guardianship norms is clear if we analyze and observe that the regulation on guardianship, which was adopted prior to the amendment of §105a, does not already consider the incapacity to transact as a mandatory prerequisite

⁵⁶ Casper M., *Geschäfte des täglichen Lebens – kritische Anmerkung zum neuen § 105 a BGB*, NJW 2002, 3429.

⁵⁷ Deutscher Bundestag: BT-Drs. 19/27287.

⁵⁸ Martin L., *Schärtl. Ch.*, “Zur Dogmatik Des § 105a BGB.” *Archiv Für Die Civilistische Praxis* 204, no. 1, 2004, 58.

⁵⁹ §1825, *Bürgerliches Gesetzbuch (BGB)*, 18.08.1896, BGBl. I S. 42, 2909; 2003 I S. 738, BGBl. 2023 I Nr. 411.

⁶⁰ Martin L., *Schärtl. Ch.*, “Zur Dogmatik Des § 105a BGB.” *Archiv Für Die Civilistische Praxis* 204, no. 1 2004, 30.

⁶¹ Cf.: §110, *Bürgerliches Gesetzbuch (BGB)*, 18.08.1896, BGBl. I S. 42, 2909; 2003 I S. 738, BGBl. 2023 I Nr. 411

for guardianship. Regardless of the presence of guardianship, if a person is in the condition stipulated by §104 II, they are considered incapable of transacting. The recognition of a person's incapacity to transact depends on the expert's conclusion.⁶² Thus, the implementation of legal guardianship with the necessity of the guardian's consent is consequently similar to the legal status of a minor with limited capacity.⁶³

4. Critique

When evaluating the content of §105a, several questions naturally arise: Can an adult incapable of transacting enter into unilateral agreements? Is their expressed will considered genuine? Is the will of a person incapable of transacting genuine concerning the determination of additional terms, as well as their will when exiting a contract? Can a person incapable of transacting demand performance within the scope of a contract, set deadlines, or withdraw from the contract if the service does not meet the conditions specified in the agreement?

Associations advocating for the rights of persons with disabilities point out that the legislator's goal cannot be achieved merely by excluding the possibility of return and that despite the existence of an obligation, property rights still do not arise.⁶⁴

When discussing “excessive” regulation in German civil legislation, §105a is often cited, as this norm does not fit into the overall legal system and also fails to meet the goals set during its adoption process. Despite the legislator's aim of integrating adults with mental health issues, this new rule does not fundamentally change reality. Specifically, according to §105a, an adult incapable of transacting enters into genuine everyday transactions only in terms of performance. This provision is seen as the legislator violating the previously clearly defined system. If initially, an adult incapable of transacting could not genuinely express their will to enter into a transaction, now this is possible for low-value items and services. This systemic disruption is justified by the following aspects: according to §105a, a transaction made by an adult incapable of transacting will be considered genuine upon performance or in other cases with the guardian's consent. In this respect, the primary significance of the regulation is that genuineness pertains only to performance and counter-performance. This is nothing but a partial fiction, on the basis of which the legislator has created a new legal possibility. §105a does not concern the contract itself. To confirm this, German doctrine considers the wording of the law (“performance and counter-performance”) as relevant.⁶⁵

It should not be considered unsubstantiated reasoning, which is concurrently developing in German doctrine, that the wording of §105a does not address either the capacity to contract or the genuineness of the declaration of intent. From a systematic perspective, this provision (regulated in such a manner) does not belong to the general part, transactions, or the capacity to contract. In fact,

⁶² *Seichter J.*, Einführung in das Betreuungsrecht Ein Leitfaden für Praktiker des Betreuungsrechts, Heilberufe und Angehörige von Betreuten, Springer-Verlag, Berlin, Heidelberg, New York, 2001, 60.

⁶³ *Palandt O., Ellenberger J.*, Bürgerliche Gesetzbuch Kommentare, 78. Auflage, C.H. Beck, München, 2019, §104, Rn. 2a.

⁶⁴ See: Deutscher Bundestag: BT-Drs. 14/9531, 6.

⁶⁵ See: *Joussen J.*, Überregulierung im zivilrecht und der verlust gesetzlicher systematik. *Rechtstheorie*, 36(4), 2005, 513-528.

§105a has additionally established a legal basis in the German Civil Code for the right of “retention” in exchange for services rendered to a person incapable of transacting. This issue is also related to the matter of unjust enrichment.⁶⁶

The primary agreement's continued invalidity is indicated by the first part of §105, which states that the will expressed by a person incapable of transacting is void. Therefore, the words “contract concluded by them” in the norm are considered paradoxical.⁶⁷ In fact, such an approach dogmatically creates a “contract beyond the contract.”⁶⁸

From the perspectives of legal policy and constitutional law, the broad interpretation of this norm is also criticized.⁶⁹

5. Constitutional Court's Approach to the Issue of Entering into Everyday Minor Transactions by Persons Receiving Support

The Constitutional Court of Georgia discussed the issue of making small everyday transactions and noted that “the presence of mental problems does not always mean that a person is incapable of making informed decisions in all areas of social life and carrying out actions with legal consequences, in particular, small things aimed at satisfying personal reasonable needs Household transactions that do not infringe on the legal rights and interests of others. Also, the experts noted that people with mild diseases are fully capable of expressing their will in an informed and free manner when making simple transactions.”⁷⁰

The court considered that in the case of a dynamically/long-term developing/ongoing disease, the complete limitation of capacity can be aimed at the complete exclusion of difficult or completely unpredictable negative consequences. In such a case, when the limiting disease of mental abilities proceeds dynamically, the restriction of independent conclusion of high-risk transactions can be considered as a proportionate measure of interference with the right. However, the regulation, which applies unconditionally to all types of civil transactions, including minor ones, is a disproportionate way of interfering with the right.⁷¹

⁶⁶ See: *Löhnig M., Schärtl Chr., Zur Dogmatik Des § 105a BGB* Archiv Für Die Civilistische Praxis 204, no. 1, 2004, 25–58.

⁶⁷ “Von ihm geschlossenen Vertrag”.

⁶⁸ “Vertragslosen Vertrages”, see: *Joussen J., “Überregulierung im Zivilrecht und der Verlust Gesetzlicher Systematik,”* Rechtstheorie 36, no. 4, 2005, 516.

⁶⁹ According to this view, a broad interpretation should not allow the possibility for a person incapable of transacting to enter into any transaction, regardless of the existence of legal or economic benefits. Unlike §107 of the German Civil Code, a gift to an adult incapable of transacting is valid only with the conditions of §105a being met. See also: *Lipp, F., “Die neue Geschäftsfähigkeit Erwachsener”* in *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2003, (721–729), 727; *Spickhoff, A., Münchener Kommentar zum Bürgerlichen Gesetzbuch*, 8th edition, Verlag C.H.Beck, 2019, § 105a Rn. 6-8; BGH NJW 1973, 1790; BGH NJW 1964, 1987 (1988 f.).

⁷⁰ See: the decision of the Constitutional Court of Georgia on October 8, 2014, in the case of “Citizens of Georgia – *Irakli Kemoklidze* and *Davit Kharadze* v. Parliament of Georgia” (N2/4/532,533), II, 10, II, 26 (in Georgian).

⁷¹ See: the decision of the Constitutional Court of Georgia on October 8, 2014, in the case of “Citizens of Georgia – *Irakli Kemoklidze* and *Davit Kharadze* v. Parliament of Georgia” (N2/4/532,533), II, 10, II, 30 (in Georgian).

Individuals with mental problems and other adults who do not have such impairments equally need to enter into every day, minor civil transactions in their daily lives. In terms of the civil transactions whose content and awareness can be comprehended by persons with disabilities, these individuals are essentially equal subjects compared to other competent adults.⁷²

Therefore, in the case of dynamically progressing diseases that limit mental abilities, the court's reasoning considered the unconditional restriction on independently entering into minor everyday transactions as a disproportionate means of interfering with rights.

6. Georgian Legislation on the Process of Appointing Support

6.1. Process of Appointing Support

Individuals with psychosocial needs can enter into transactions if the court has not appointed a supporter for them in this area. This process begins with the submission of an application, which must include evidence supporting the circumstances indicated by the applicant and the fact that the person has severe mental, intellectual, or cognitive impairments, the interaction with various barriers of which may hinder their full and effective participation in public life on an equal basis with others.

The Civil Procedure Code defines the areas in which a person can be appointed a supporter, including labor activities, minor transactions, entrepreneurial activities, management/disposal of real estate, determination of residence, expression of consent to treatment, prevention of harm to themselves, and other rights and duties as determined by the court based on individual assessment.⁷³

Procedural law also provides for the institution of temporary support when the applicant believes that the person for whom support is being considered may suffer irreversible harm.⁷⁴

During the court hearing on recognizing a person as a support recipient, the participation of this person and a representative of the guardianship and care agency is mandatory. If the person being considered for support cannot attend the court session due to health reasons, their participation must be ensured through electronic or other means of communication that allow direct contact with the judge. However, in practice, the implementation of this rule has been evaluated as challenging for persons with disabilities.⁷⁵

As the current civil procedural legislation demonstrates, the legislative basis for appointing support for minor transactions is considered within a specific list. This raises questions regarding compliance with both the convention and the decisions of the Constitutional Court of Georgia.⁷⁶

⁷² Cf: the decision of the Constitutional Court of Georgia on October 8, 2014, in the case of “Citizens of Georgia – *Irakli Kemoklidze* and *Davit Kharadze* v. Parliament of Georgia” (N2/4/532,533), II, 10, (in Georgian).

⁷³ The third part of Article 36315, Law of Georgia of March 20, 2015 on Amendments to the Civil Procedure Code of Georgia, No. 3340 – website, 31.03.2015.

⁷⁴ Article 36317, Law of Georgia of March 20, 2015 on Amendments to the Civil Procedure Code of Georgia, No. 3340 – website, 31.03.2015.

⁷⁵ See more *Gochiashvili N.*, The role of the body of guardianship and care in the process of implementation of capacity reform, Public Defender of Georgia, 2023, 27.

⁷⁶ On the same issue, see: Legal Capacity – legislative reform without implementation, Public Defender of Georgia, 2016.

6.2. Judicial Practice

The analysis of judicial practice is interesting in terms of assessing how thoroughly the court investigates and analyzes an individual's condition in specific cases, whether it considers the possibility of expressing will through a comprehensive approach (not just medical), the quality of expert opinions, the involvement of participants in the process, and, of course, whether support for minor transactions is appointed in a blanket manner.

According to judicial practice, support is primarily appointed in the following areas: pension case management and receiving pensions/assistance, expression of consent to treatment, **concluding minor transactions**, determining the place of residence, as well as inheritance, representation in court, and investigation agencies.⁷⁷

For example, the court has appointed support for minor transactions in cases where individuals had paranoid schizophrenia, intellectual disabilities, dementia, severe intellectual disabilities, and others.⁷⁸ The analysis of decisions raises the suspicion that the appointment of support for minor transactions is likely based on a blanket approach relying on medical diagnosis. For instance, a diagnosis of schizophrenia does not necessarily imply that a person cannot purchase food from a store. Unfortunately, these issues are not deeply justified in the decisions.

In the process of appointing support, the court must consider that **support means assisting in the process of expressing will, not substituting it. If there is no expression of will (neither objective nor subjective elements), then discussing any form of support is illogical.** In such cases, substituting the will requires an assessment of protecting the rights and interests of the person in question.

7. Conclusion

The approach of the Convention and the international standard is that individuals with psychosocial needs should be assisted in expressing their will and that legislation should not restrict their rights.

The analysis of minor transactions made by individuals with psychosocial needs in the examples of Georgia and Germany highlights the complexity of the problem. It is important to correctly balance the right to self-determination of the individual with the interests of civil circulation, ensuring that

⁷⁷ Decision of the Tbilisi Court of Appeal of September 19, 2016 on case No. 2b/370-16.

⁷⁸ Decision of Mtskheta District Court of March 26, 2020 on case No. 2/421-19; Decision of Mtskheta District Court of March 26, 2020 on case No. 2/744-19; Decision of Mtskheta District Court of March 26, 2020 on case No. 2/378-19; Decision of Mtskheta District Court of March 26, 2020 on case No. 2/448-19; Decision of Mtskheta District Court of March 26, 2020 on case No. 2/05-19; Decision of the Batumi District Court of March 10, 2020 on case No. 2-3416/2019; Decision of the Batumi District Court of March 10, 2020 on case No. 2-4398/2019; Decision of Batumi District Court of March 10, 2020 on case No. 2-3892/2019; Decision of Batumi District Court on case No. 2-4306/2019; Decision of Batumi District Court of March 10, 2020 on case No. 2/3799-2019; Decision of Batumi District Court of March 4, 2020 on case No. 2/3853-2019; Decision of the Batumi District Court of February 26, 2020 on case No. 2/2946-2019; Decision of the Batumi District Court of February 26, 2020 on case No. 2/2981-2019; Decision of Sachkheri District Court of April 24, 2020 in case No. 2/40-2020.

both constitutional postulates are protected. *An overly paternalistic approach, aiming to prevent individuals from making mistakes, is not appropriate within the framework of private autonomy, as risk and the right to make mistakes are inherent to a free person. Moreover, no one is immune to making mistakes.*

It is a fact that this issue provides a significant basis for discussion. The problem lies not only in the blanket approach to appointing support for minor transactions but also in whether these issues have been properly implemented within the existing legal institutions. Existing views⁷⁹ on recognizing these individuals as having limited legal capacity should be rejected *a priori* based on international legal standards.

Since legislation should reflect the interests of society and contemporary approaches, it is a developing entity that sometimes requires rethinking dogmatic approaches. In cases of mental and intellectual issues, a person's medical diagnosis should not be a basis for limiting their rights. A diagnosis of schizophrenia does not mean that a person cannot, for example, purchase food from a store. Furthermore, research shows that individuals diagnosed with schizophrenia and bipolar disorder can be as competent in making everyday life decisions regarding treatment as those without psychiatric diagnoses.⁸⁰ In this regard, conclusions often lack depth and general approaches deserve criticism. When discussing these issues, we should also remember that **people with disabilities have been marginalized for years and have faced inhumane treatment. Reform means not just terminological change but a conceptual shift in approaches.** Modern achievements and research, including in the medical field, are driving the transformation of civil legal capacity.

When the possibility of expressing will is present, interpreting the law on minor transactions to allow the appointment of support is neither consistent with international approaches nor the result of logical reasoning. Judicial approaches in this regard should be based on a high standard of justification. For example, if a person is in a terminal condition⁸¹ where there is no expression of will, neither objective nor subjective, discussing support for expressing will in transactions, including minor ones, is illogical. In such cases, it is effectively a substitution of will.

Thus, adults with psychosocial needs have the right to lead their lives independently and take on responsibilities, which cannot be achieved without amending and adapting the rules governing transactions for them.

Bibliography:

1. Law of Georgia on the Civil Code of Georgia, Parliament Gazette, 31, 24/07/1997 (in Georgian).
2. Law of Georgia of March 20, 2015, on Amendments to the Civil Procedure Code of Georgia, №3340 – Website, 31.03.2015 (in Georgian).

⁷⁹ Deutscher Bundestag, BT-Drs. 14/9531, 3.

⁸⁰ For more see: *Pons E. V., Salvador-Carulla L., Calcedo-Barba A., Paz S., Messer T., Pacciardi B., Zeller, S. L.* The capacity of schizophrenia and bipolar disorder individuals to make autonomous decisions about pharmacological treatments for their illness in real life: A scoping review. *Health Science Reports*, 3(3), 2020, e179.

⁸¹ The terminal stage of an incurable disease or condition, see: Law of Georgia on Health Care, Parliament Gazette, 47-48, 31/12/1997 (in Georgian).

3. Law of Georgia on Health Care, Parliament Gazette, 47-48, 31/12/1997 (in Georgian).
4. Human Rights: A Reality for All, Council of Europe's Disability Strategy 2017-2023, Council of Europe, Par. 11 (in Georgian).
5. Adena S., *Rechtsgeschäfte des täglichen Lebens in Deutschland und Österreich*, 2009, 46 f.
6. Basedow J., *Private Autonomy in European Civil Law, Private Autonomy as a Fundamental Principle of Private Law (Conference Materials)*, Zarandia, T., Kurzynski-Singer, E., Shatberashvili, L. (eds.), Ivane Javakhishvili Tbilisi State University Press, 2020, 15, (in Georgian)
7. Bitter G., Röder S., *BGB, Allgemeiner Teil*, 4., Aufl., Verlag Franz Vahlen, München, 2018, 117, Rn. 7. 115, Rn. 1. 117, Rn. 8.
8. Brosey D., Jürgens A., *Betreuungsrecht Kommentar*, 7., vollständig überarbeitete Auflage, C.H.Beck, München, 2023, § 104 Rn. 1. § 104 Rn. 2. § 105a Rn. 1-5. , § 105a Rn. 1§ 105a Rn. 4§ 105a, Rn. 5.
9. Canaris C., “Verstöße Gegen Das Verfassungsrechtliche Übermaßverbot Im Recht Der Geschäftsfähigkeit Und Im Schadensersatzrecht.” *Juristen Zeitung* 42, no. 21,1987, 993–1004.
10. Casper M., „Geschäfte des täglichen Lebens – kritische Anmerkungen zum neuen § 105a BGB”, *NJW* 2002, (3425-3430) 3425, 3429.
11. Chanturia L., *General Part of Civil Law, “Samartali” Publishing*, Tbilisi, 2011, 180-184 (in Georgian).
12. Committee on the Rights of Persons with Disabilities, *General Comment No.1 – Article 12: Equal Recognition Before the Law*, April 2014, UN Doc. No. CRPD/C/GC/1, adopted at the 11th Session. 1.1. 1.3. 1.9.
13. Degener T., de Castro, M.GC. *Toward Inclusive Equality: Ten Years of the Human Rights Model of Disability in the Work of the UN Committee on the Rights of Persons with Disabilities*. In: Felder, F., Davy, L., Kayess, R. (Eds.) *Disability Law and Human Rights*. Palgrave Studies in Disability and International Development, Palgrave Macmillan, 2022, Cham. 30.
14. Eaton J., Carroll A., Scherer N., Daniel L., Njenga M., Sunkel Ch., Thompson K., Kingston D., Khanom G., Dryer S., *Accountability for the Rights of People with Psychosocial Disabilities: An Assessment of Country Reports for the Convention on the Rights of Persons with Disabilities*, *Health and Human Rights Journal*, Vol. 23 #1, 2021,175.
15. Ellenberger J., *Bürgerliche Gesetzbuch Kommentare*, 78. Auflage, C.H. Beck, München, 2019, §104, Rn. 1.
16. Explanatory card on the draft law of Georgia “On Amendments to the Civil Code of Georgia”, Parliament of Georgia, website, <<https://info.parliament.ge/file/1/BillReviewContent/64346?>> [08.01.2024] (in Georgian).
17. Gochiashvili N., *The Role of Guardianship and Care Agency in the Process of Implementing Competence Reform*, Public Defender of Georgia, 2023, 27 (in Georgian).
18. Joussen J., *Überregulierung im zivilrecht und der verlust gesetzlicher systematik*. *Rechtstheorie*, 36(4), 2005, (513-528) 516.
19. Khubua, G., *Theory of Law, “Meridiani” Publishing*, Tbilisi, 2011, 202 (in Georgian).
20. Klumpp S., *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil, Vorbemerkung vor §§ 104 ff*, Sellier-de Gruyter, 2021, Rn. 7. n. 35.
21. Kropholler, I., *Commentary on the German Civil Code (translated by T. Darjania and Z. Chechelashvili)*, 2014, §104, Volume 1 (in Georgian).
22. *Legal Capacity – Legislative Reform without Implementation*, Public Defender of Georgia, 2016 (in Georgian).

23. *Lipp F.*, Die neue Geschäftsfähigkeit Erwachsener in: Zeitschrift für das gesamte Familienrecht (FamRZ) 2003, (721 – 729), 727.
24. *Löhnig M., Schärfl Ch.*, “Zur Dogmatik Des § 105a BGB.” Archiv Für Die Civilistische Praxis 204, no. 1, 2004, (25-28), 25.
25. *Martin L., Schärfl. Ch.*, “Zur Dogmatik Des § 105a BGB.” Archiv Für Die Civilistische Praxis 204, no. 1, 2004, 30, 58.
26. NCI Dictionary of Cancer Terms, National Cancer Institute at the National Institutes of Health. *Ramírez Echeverría MdL, Schoo C, Paul M.*, Delirium. [Updated 2022 Nov 19]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan, <<https://www.ncbi.nlm.nih.gov/books/NBK470399/>> [09.01.2024].
27. *Palandt O./Ellenberger J.*, Bürgerliche Gesetzbuch Kommentare, 78. Auflage, C.H. Beck, München, 2019, §105a Rn. 1. §104, Rn. 2a.
28. *Pons E. V., Salvador-Carulla L., Calcedo-Barba A., Paz S., Messer T., Pacciardi B., Zeller S. L.* The capacity of schizophrenia and bipolar disorder individuals to make autonomous decisions about pharmacological treatments for their illness in real life: A scoping review. Health Science Reports, 3(3), 2020, e179.
29. *Seichter J.*, Einführung in das Betreuungsrecht Ein Leitfaden für Praktiker des Betreuungsrechts, Heilberufe und Angehörige von Betreuten, Springer-Verlag, Berlin, Heidelberg, New York, 2001, 60.
30. *Spickhoff A.* Medizinrecht, 4. Auflage, C.H.Beck, München, 2022, Rn. 8.
31. *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 8. Aufl. Verlag C.H.Beck, 2019, Rn. 10. § 105a Rn. 6-8.
32. *Spickhoff A.*, Münchener Kommentar zum Bürgerlichen Gesetzbuch, 9. Aufl. Verlag C.H.Beck, 2021, § 105a Rn. 6. § 105a Rn. 9-11.
33. Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities, Commissioner for Human Rights, 2012, 9.
34. *Zoidze B., Korzaia T.*, Commentary on the Civil Code, Book I, Tbilisi, 2017, 67-76 (in Georgian).
35. *Zoidze B.*, Legal Personality of Persons with Psychosocial Needs, TSU Law Review #1, Tbilisi, 2016, 31 (in Georgian).
36. *Zweigert K., Kötz H.*, Introduction to Comparative Law in Private Law: Volume II. Foundations (Translated by *Sumbatashvili, E., Ninidze, T.*, eds.), GCI Publishing, Tbilisi, 2001, 36, (in Georgian)
37. Decision of the Constitutional Court of Georgia of October 8, 2014, in the case of “Citizens of Georgia – *Irakli Kemoklidze and Davit Kharadze* vs. Parliament of Georgia” (N2/4/532,533), II, 10. II, 26. II, 30. II, 100.
38. Decision of the Mtskheta District Court of March 26, 2020, in case №2/421-19. Decision of the Mtskheta District Court of March 26, 2020, in case №2/744-19.
39. Decision of the Mtskheta District Court of March 26, 2020, in case №2/378-19.
40. Decision of the Mtskheta District Court of March 26, 2020, in case №2/448-19.
41. Decision of the Mtskheta District Court of March 26, 2020, in case №2/05-19.
42. Decision of the Batumi District Court of March 10, 2020, in case №2-3416/2019.
43. Decision of the Batumi District Court of March 10, 2020, in case №2-4398/2019.
44. Decision of the Batumi District Court of March 10, 2020, in case №2-3892/2019.
45. Decision of the Batumi District Court in case №2-4306/2019.
46. Decision of the Batumi District Court of March 10, 2020, in case №2/3799-2019.

47. Decision of the Batumi District Court of March 4, 2020, in case №2/3853-2019.
48. Decision of the Batumi District Court of February 26, 2020, in case №2/2946-2019,
49. Decision of the Batumi District Court of February 26, 2020, in case №2/2981-2019.
50. Decision of the Sachkhere District Court of April 24, 2020, in case №2/40-2020.
51. Decision of the Tbilisi Court of Appeals of September 19, 2016, in case №2b/370-16.
52. “Convention on the Rights of Persons with Disabilities”, United Nations, Treaty Series 2515, 2006, 3.
53. Bürgerliches Gesetzbuch (BGB), 18.08.1896, BGBI. I S. 42, 2909; 2003 I S. 738, BGBI. 2023 I Nr. 411.
54. BVerfGE 99, 383 (389).
55. BGH, 05.12.1995 – XI ZR 70/95.
56. Neue Juristische Wochenschrift, 1973, 1790.
57. Neue Juristische Wochenschrift, 1964, 1987 (1988 f.).
58. Neue Juristische Wochenschrift, 1970, 1680, 1681.
59. Deutscher Bundestag, BT-Drs. 19/27287.
60. Deutscher Bundestag, BT- Drs. 14/9266, 43.
61. Deutscher Bundestag, BT-Drs. 11/4528, 137 f.
62. Deutscher Bundestag, BT-Drs. 14/9531, 3, 6.