

## **Doctoral Dissertation Abstract**

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Subject:

*The influence of incapacitation on the constitutional area of freedoms and human rights*

The present doctoral dissertation is a trial of theoretical analysis of practical consequences of incapacitation.

Incapacitation is a civil law institution but it integrally affects a human's everyday life, especially his rights and freedoms guarded by the Constitution of the Republic of Poland. If, *a contrario*, we compare incapacitation with freedom and liberty of action, which are within the framework specified by the legal provisions and common sense, it appears that realisation of these freedoms and liberty actions may be significantly limited.

The preventive function of incapacitation – since the assumption of incapacitation is to serve the individual – should determine the conviction that it constitutes an instrument of reaction (and usage) in the situations that are unquestionable and necessary to help the individual in the matters he cannot evaluate properly. The process of adjudicating incapacitation requires specific diligence, accuracy and responsibility for the human whose right to freedom is interfered.

Invasiveness of limitation or the complete lack of capacity to perform legal actions is beyond all doubts. The correlate of incapacitation are the limitations of the ability to decide for oneself and upon one's matters. It is sufficient to mention that incapacitation affects the capability of entering into matrimony, execution of parental authority, ability to administer own assets, voting rights as well as the right to undergo medical treatment, it affects also criminal responsibility. Due to incapacitation it is difficult or almost impossible to perform everyday duties.

Still, procedures of incapacity adjudication raise doubts and questions. It is all the more significant due to the fact that not all legislator's actions appear to be fully justified, absolutely impartial and complementary.

The ongoing works on amendments of incapacitation regulations, which aim at elimination of partial incapacitation, gain numerous supporters. The necessity of introducing

amendments resulted from ratified by Poland in 2012 Convention on the Rights of Persons with Disabilities and it may be understood as a trial to meet the Convention's requirements imposed on Poland as well as the answer to the postulates of disabled persons and institutions acting on their behalf. However, undertaken actions as well as their justification may raise doubts. Thus, a situation in which an institution established for the sake of human welfare, whose aim is to help and protect human dignity, appears to be a stigma.