



Ensuring the right to equality before the law in Armenia

Factual situation

Under the RA legislation, a person is declared legally incapable by a court ruling. In such cases, citizens are deprived of the opportunity to:

- enter personally on their behalf into various civil and legal transactions;
- get employed, work;
- elect and be elected;
- enjoy protection by the guarantees of the right to liberty and security of person;
- receive information;
- live personal and family life to the full;
- to personally exercise and protect their rights and enjoy access to justice.

Persons declared legally incapable are deprived of the opportunity to make a decision on getting or stopping treatment at a psychiatric institution. It is their guardians who decide on their behalf.

According to the information provided by the RA Judicial Department, in January 1, 2010-June 2012, 447 people were declared legally incapable by the courts. In the same period, no applications were filed with the courts on declaring a person capable.

Despite the above data provided by a competent public body, there is no clear information on the number of persons declared legally incapable in the Republic of Armenia as the state keeps no statistics on the number of such persons. At the same time, there is no clear data on how many applications have been filed with the courts of law to restore a person's legal capacity and how many of them received positive solution.

In the Republic of Armenia, there is a state care home ('Vardenis Psycho-neurological Boarding House') for 450 persons which admits persons declared legally incapable only. Actually, the families of persons with psychosocial and intellectual disabilities sometimes apply to courts of law to declare their family member legally incapable only to ensure his/her care at the said facilities.

Steps taken by the State after ratifying the UN Convention on the Rights of Persons with Disabilities

To protect and secure human rights in the Republic of Armenia, the National Strategy for the Protection of Human Rights and its List of Actions were developed and approved in 2014 (the civil society was involved in drafting the strategy). One of the actions aimed at the implementation of the strategy read as follows: "specify the grounds for declaring legally incapable a person with mental health problems and/or mental disability and develop differentiated criteria to assess legal incapacity"; its implementation period was set for 2015. However, as of 2017, no significant measures were taken to carry out this action.

The RA Human Rights Defender's Office challenged before the RA Constitutional Court 2 RA Civil Code provisions on the legislative regulations on declaring a person legally incapable. The Ombudsman's Office found that the state should ensure the attendance of a person at the court hearing on declaring him/her legally incapable and a person should be entitled to apply to court to restore his/her legal capacity.

By its ruling SDO-1197 of April 7, 2015, the RA Constitutional Court recognized the person's right to seek with a court of law restoration of their legal capacity. Nevertheless, it is unclear to what extent the right to apply to court in person is secured in practice and whether since April 2015, any person declared legally incapable has ever sought restoration of their legal capacity as no such statistics is kept.

At the same time, in the said ruling the RA Constitutional Court expressed its position on reviewing the legal incapacity institute. The Court found that the current Civil Procedure Code has a legal regulation gap that calls for a systemic solution and may be filled only through adequate legislative changes. Whereas, no legislative changes have been drafted so far.

In 2015, the draft Law on Psychiatric Care and Service was developed and is currently under consideration of the National Assembly; the draft Law also covers provisions on persons declared legally incapable. According to the draft Law:

- Decision on getting treatment at psychiatric facilities on behalf of persons declared legally incapable shall be made by their guardians;
- Obligations for persons not declared legally incapable are laid down but do not apply to persons declared legally incapable.

Thus, as of February of 2017, there is no legislative draft on annulling the system of declaring a person absolutely incapable and decision-making by the guardian on behalf of the person declared incapable and on introducing a decision-making support system.

Proposals

- Annul the system of declaring a person absolutely incapable and decision-making by the guardian on behalf of the person declared incapable;
- Develop and introduce a system that would make it possible to provide persons with psychosocial and intellectual disabilities with accessible support for them to make decisions on all the potential issues based on their needs and preferences by mapping out defense mechanisms to be free from any abuses by other persons and competent public bodies and human rights violations;
- Keep separate statistics on the persons declared legally incapable and those with their legal capacity restored;
- Exclude the requirement for a court ruling on being declared legally incapable to be able to access any service or any institution in the Republic.

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