

Lithuania

Prof. Inga Kudinavičiūtė-Michailovienė

1. Lithuania has ratified both the CRPD and its Optional Protocol in 2010. However, Lithuania has not yet ratified the Hague Convention (2000). After the above-mentioned ratification, Lithuania undertook to reform the then existing civil regulation of legal capacity which did not comply with the provisions of the Convention. This meant that draft laws on the amendment of the Civil Code and Civil Process Code of the Republic of Lithuania were initiated in order to improve the existing institutes of incapacity or limited capacity and to bring them closer to the norms of the Convention. But most importantly, they were meant to integrate the provisions and requirements of Article 12, related to the aid procedures, and to guarantee the availability of secondary legal state aid, among others, to persons subject to compulsory hospitalisation and treatment.

2. Lithuanian legislation provides no specific definition of a vulnerable adult, but the protection of vulnerable adults is comprehensively provided in the Third Book of the Civil Code “Family Law” Part VII under the title of “Guardianship and Curatorship” and the Civil Procedure Code (Chapter XXVIII and XXX). A specific set of norms is dedicated to guardianship and care of minors. The regime following incapacitation is the one of minor children (aged 0-14) and of adolescent children (14-18) respectively.

Guardianship implies almost a total lack of capacity (comparable to minority) and a representation by a guardian. Curatorship allows the person to act but under the control of the curator through authorization of the acts performed by the person under protection (assistance). The legal capacity to exercise some personal rights is restricted only for adults under guardianship.

In the event of a person’s loss of legal capacity, the guardian can be nominated only by the Court. Guardians and curators should be persons from the circle of close relatives of the incapacitated adult, also the spouse. Guardians/curators should live with and take care of the person under guardianship/curatorship, but they also may facilitate his/her placement in social institutions. Usually only one guardian is appointed for all matters. However, in cases where a legally incapable person or a person of limited active capacity is the owner of movable or **immovable** property that requires constant care (an enterprise, land, facility, etc.), the court shall issue an order for the appointment of an administrator of the property. The administrator may be the guardian/curator or any other person. (Article 3.245 of the Civil Code of the Lithuanian Republic)

Article 2.137(1) of the Civil Code of the Republic of Lithuania provides that a person may indicate the person whom he/she wants to be appointed as guardian in advance in case of future incapacity. This may be done in a notarised form and according to Article 2.137(2) section 1 of the Civil Code, such designations must be recorded in the Register of Legally Incapable Persons and Persons with Limited Legal Capacity. The request has legal effect to the court. The court must take into account the wishes of the person stated in the document when deciding on the conditions of the incapacity, including the person to be appointed as legal guardian (curator). Article 509 of the Code of Civil Procedure defines the procedure for the appointment of a guardian for a legally capable person, specifying that an application for the placement into care and appointment of a guardian for a legally capable person, who because of his/her health condition is not able to exercise his/her rights or perform responsibilities independently, shall be filed with a district court according to the place of residence of the person who needs care, and, where there is no such place, according to the place this person is staying.

3. In this context, a few cases should be mentioned wherein the European Court of Human Rights (ECHR) has identified violations:

D. D. v. Lithuania (no. 13469/06, 14 February 2012), wherein the ECHR stated that the court proceedings regarding the replacement of the guardian of the legally incapacitated plaintiff were held incorrectly since she was not provided with a lawyer, thus failing to ensure a contestable process. This resulted in a violation of paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereafter “the Convention”). During the court proceedings on the case it turned out that the plaintiff was not given an opportunity to seize a court since the woman was compulsorily placed in a care home. However, according to the CRPD, the plaintiff had a right of appeal against the unlimited term of her legal incapacitation. It should be noted that Lithuanian legislation does not provide a procedure which would entitle the courts to periodically reassess the legality of keeping a person in a care institution. Moreover, an incapacitated person has no possibility to appeal to the court with request to review the decision on their incapacitation. This decision was among the first that acknowledged shortcomings of the existing legal regulation wherein neither mandatory legal representation is provided, nor a lawyer is appointed for persons whose limitations of legal capacity are determined by court proceedings.

A. N. v. Lithuania (no. 17280/08, 31 May 2016) – the plaintiff (a person diagnosed with schizophrenia who has been living relatively independently) was not provided with opportunity to participate in the proceedings on his incapacitation in any contestable form (either in person or through appointed representatives, such as social workers who should have been meaningfully involved in the proceedings) (year 2007). The court which produced the decision relied exclusively on the statements of the plaintiff’s mother and a psychiatric report without summoning the medical expert who wrote it for questioning, also without inviting any other witnesses who could have provided more information about the health status of the plaintiff. Moreover, also in the *A. N.* case, the plaintiff was not given a clear and effective opportunity to place request for the restoration of his legal capacity.

4. It should be noted that the ratification of the CRPD and its Optional Protocol led to the reform of legislation related to legal capacity issues. The amendments that came into force as of 1 January 2016, changed the concept of limitation of a person’s legal capacity by emphasising that restriction of legal capacity is an extreme measure, whereas the aim should be to retain full legal capacity of the person while providing them with conditions to receive the necessary assistance for exercising their rights. One of the essential changes is that the previous legislation used to deprive an incapacitated person of any possibilities to act on his or her own behalf in all areas, while the modern legislation applies limitations only in specific areas. Two main groups of areas could be distinguished, those of proprietary and non-proprietary relations. The domain of proprietary relations includes the management of personal income and expenses, management of movable and immovable property, inheritance relations, etc. The domain of personal non-proprietary relations encompasses electoral rights, health care, self-management, family relations and some other areas.

Following the entrance into force of the new regulatory procedures, the Law on State-Guaranteed Legal Aid was supplemented by a provision which guarantees the right to getting legal aid in case of compulsory hospitalisation or treatment, regardless of the property or income of the affected person. Moreover, Article 446 of the Civil Process Code stipulates that the presence of a lawyer is mandatory in the cases where a natural person may be deprived of legal capacity in a particular area.

Yet another change is related with the duration of incapacitation. The old provisions did not define the duration of incapacitation. A person deprived of legal capacity would retain this status for life, or, in case of significant health improvement of such person, their legal guardian

would appeal to the court with request to abolish the deprivation or limitation of the person's legal capacity. The amendment that came into force in 2016 provides possibility to appeal for the abolishment of deprivation or limitation of legal capacity on the annual basis. The court or another competent authority involved in the annual revision of previous decisions in substance shall objectively assess the situation and adopt a decision. Besides, the new regulation allows for the person whose legal capacity was earlier deprived or limited to personally appeal for the abolishment thereof. The previous legislation did not provide for such a possibility. The affected person used to be completely dependent on the will of other persons and had to wait for them to initiate the proceedings.

From 1 January 2016 till 1 January 2018, a monitoring has been performed in order to assess the practical application of the new regulations. On the basis of the feedback from various institutions (the courts, the bar, municipalities, etc.), further amendments/improvements of the legal regulation are planned as of this year.

5. In the period between 1 January 2016 and 21 April 2017, the Register of Legally Incapable Persons and Persons with Limited Legal Capacity held the records on 943 individuals with acknowledged legal incapacity in certain areas and on 120 individuals with limited legal capacity in certain areas. It also contained information about the reviewed court decisions on restricting legal capacity of these persons in specified areas. According to the Register's data of 21 April 2017, 64 persons were deprived of legal capacity in the area of exercising their voting rights, 74 persons – in the area of electoral legal matters, 143 persons – in the area of exercising political rights, 67 persons – in the area of civil rights, 193 persons – in all areas, other persons – in other areas of proprietary and personal non-proprietary relations.

Unfortunately, no data is available yet on the numbers of lawyers appointed to represent the interests of persons with deprived or limited legal capacity, however, the research into this area is currently ongoing.

Legislation: (unfortunately not updated on the latest amendments) <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.404614?jfwid=-11k4dhfsm>