



OPEN SOCIETY FOUNDATIONS
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REPORT

On the implementation of recommendations - concerning the sphere
of mental health - made by the Committee on the Rights of Persons
with Disabilities in the Concluding Observations on Armenia's Initial
Report

Vanadzor 2020

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The comments and opinions expressed in this report are those of HCA Vanadzor and do not necessarily reflect the views of the funding organization.

List of abbreviations

RA	Republic of Armenia
CRPD	Convention on the Rights of Persons with Disabilities
HCA Vanadzor	Helsinki Citizens' Assembly-Vanadzor
UN	United Nations
APHRP	Action Plan deriving from the National Strategy on Human Rights Protection
SNCO	State Non-Commercial Organization

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INTRODUCTION

On 22 October 2010, the Republic of Armenia (hereinafter referred to as RA) ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as CRPD)¹.

According to Article 35 of the CRPD, “Each State Party shall submit to the Committee, through the Secretary General of the United Nations (hereinafter referred to as UN), a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress -26 - made in that regard, within two years after the entry into force of the present Convention for the State Party concerned”.

According to Article 36 of the CRPD, “Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned...”.

The agenda² of the 17th session of the UN Committee on the Rights of Persons with Disabilities (hereinafter referred to as the Committee), dated 29-30 March 2017, included, inter alia, the presentation³ of the RA report on the implementation of the CRPD. On 7 April 2017, the Committee presented its concluding observations on the RA report⁴.

In the concluding observations, welcoming the State’s measures and efforts aimed at changes, the Committee, nevertheless, expressed its concerns on a number of yet unresolved issues, in particular, the fact that the State party had not yet ratified the Optional Protocol to the Convention, the fact that the law on legal equality had not been adopted, the insufficient level of access to justice, low rates of participation of persons with disabilities in political life, violation of the right to liberty and security and a number of other issues, which we will touch upon in a more detailed manner in this report.

¹ See Convention on the Rights of Persons with Disabilities, *UN, in effect since 3 May 2008* <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

² See “Representatives of Armenian NGOs presented the process of the implementation of the CRPD during the 17th session of the UN Committee on the Rights of Persons with Disabilities”, 7 April 2017 <http://archive.hcav.am/events/07-04-2017-009/>

³ See “Initial report of State party due in 2012, Armenia” presented to the Committee on the Rights of Persons with Disabilities on 21 January 2013 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2f1&Lang=en

⁴ See Concluding observations on the initial report of Armenia, adopted on 8 May 2017 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhspZQ2sppBOANJSxHHwrsEJbjcpUWkg%2BMkKIITZvw7JK%2BuYWfpBtdMIEVnF0fSZiwodb8OBMGU4q3E3dlH%2FYkMw%2Fe0juigiYWKOfVF6vzhs77>

The report sums up the implementation of the Committee's recommendations to the Republic of Armenia, with a focus on the rights of persons with psychosocial and intellectual disabilities.

The sources of the report are as follows: the RA report⁵ on the implementation of the CRPD, concluding observations⁶ of the Committee on Armenia's initial report, the alternative report⁷ by Helsinki Citizens' Assembly-Vanadzor office (hereinafter referred to as HCA Vanadzor) on the situation of the rights of persons with psychosocial and intellectual disabilities, RA legislative acts, mass media publications, information received from state bodies, conversations with employees of psychiatric institutions.

The report has the following structure: a summary of the developments recorded in connection with the issues reflected in the concluding observations, the Committee's more detailed observation regarding the relevant articles on securing the rights of persons with psychosocial and intellectual disabilities, description of the factual situation in Armenia and recommendations.

⁵ See reference 3

⁶ See reference 4

⁷ See the alternative report on the the Convention on the Rights of Persons with Disabilities/CRPD, HCA Vanadzor, 12 February 2015 <http://archive.hcav.am/publications/12-02-2015/>

BRIEF PRESENTATION

Below we briefly present the developments recored after 8 May 2017, when the Committee's concluding observations on the RA initial report were published.

According to the information provided by **the RA Ministry of Labor and Social Affairs**, the Optional Protocol to the Convention is currently undergoing domestic procedures of ratification.

On 15 July 2019, the **RA Ministry of Justice** put forward for discussion the RA Draft Law “On ensuring legal equality”. Nevertheless, three years after the concluding observations were presented, the Law has not been adopted yet.⁸ Moreover, civil society organizations' recommendations on the gaps of the draft law have not been accepted, including the recommendations on the formation and activity of a legal equality council, which is important for ensuring implementation of the law.

According to the **RA Minister of Health** order 3757-U of 28 December 2017, a public monitoring group⁹ was formed to implement monitoring in organizations providing medical aid and services that, in the frame of state support, deliver treatment and care services to persons with mental health problems. According to order N 112 U/1 given by the RA Minister of Labor and Social Affairs on 16 October 2018, a public monitoring group¹⁰ was formed to implement monitoring in state non-commercial organizations operating under the RA Ministry of Labor and Social Affairs and providing care services to children, the elderly and persons with disabilities. Monitoring groups aim to ensure society's oversight over the mentioned organizations, which can have an important role in the context of preventing violence, ill-treatment, abuse and exploitation in those institutions.

⁸ It should be mentioned that the adoption of the law is also an [action](http://moj.am/legal/view/article/921) in the EU budget support project, see <http://moj.am/legal/view/article/921>

⁹ See the RA Minister of Health order N 3757-U on forming a public monitoring group to conduct monitoring in organizations providing treatment and care services to persons with mental health problems in the frame of state support and approving the procedure of organizing the work, made on 28 December 2017, <http://www.moh.am/storage/legal-acts/November2019/JsFq7hwODEP31Gh85Vc5.pdf>

¹⁰ See the RA Minister of Labor and Social Affairs order N 112 U/1 on approving the procedure of forming and organizing the work of a public monitoring group to conduct monitoring in state non-commercial organizations operating under the RA Ministry of Labor and Social Affairs and providing care services to children, the elderly and persons with disabilities, *adopted on 16 October 2018*, http://www.mlsa.am/wp-content/uploads/2017/05/112-A-1-hraman.pdf?fbclid=IwAR1iQeQoPDDt5Q4OwJKWxNzRXy_UeEN7ljBLTdBzecreCK5qYhv4bBcLEfs

The draft criminal code criminalized forced sterilization.¹¹

On 30 January 2020, the **RA Constitutional Court** recognized as contradicting to the RA Constitution the provisions of a number of RA laws that do not guarantee proper participation and informed consent of minors and persons recognized incapacitated in the medical interventions implemented to themselves¹².

On 30 January 2020, during the **Government's session**, modern approaches to securing the rights of persons with psychosocial and intellectual disabilities were discussed, especially, in terms of the right to liberty and security. Nonetheless, regulations on involuntary hospitalization and treatment are still in force and included in the draft law regulating the sphere of psychiatric service.¹³

In the frame of the **deinstitutionalization policy**, new services are introduced, opportunities are created for the provision of services:

- In 2019, the RA Government's draft decision "On establishing the procedure for providing care and other social services in home conditions to persons with mental health and intellectual problems aged 18 or above" was developed. The Draft was to enter into force on 1 January 2020¹⁴, but it was not adopted because the law lacked a norm giving the Government the power to adopt such a legal act. According to the Ministry of Labor and Social Affairs, the draft is to be again presented to the Prime Minister's staff after the adoption of the draft law on making amendments and addenda to the Law "On Social Support".

¹¹ See RA Draft Criminal Code, *placed for public discussion for the time period of 19 November 2019 – 9 December 2019* <https://www.e-draft.am/projects/2115/about>

¹² Constitutional Court decision 1504, based on the application of the Human Rights Defender, on determining the compliance with the Constitution of the following: Article 7 part 3, Article 8 parts 3 and 4, Article 17 part 2, Article 19.3 part 1 clause 4 of the RA Law "On medical aid and service of the population"; Article 6 part 10, Article 9 parts 1 and 2, Articles 15 and 16, Article 19 parts 2,3 and 4, Article 22 part 1 of the RA Law "On psychiatric aid" and section 6 clause 4 paragraph 2 of the annex to the Law; Article 32 part 2 of the RA law "On child's rights" 30 January 2020, <http://www.concourt.am/armenian/decisions/common/index.htm>

¹³ See the RA Government's session, 30 January 2020, <https://www.e-gov.am/sessions/archive/2020/01/30/> and LIVE briefings in the government, 24News.am, <https://www.youtube.com/watch?v=cmNyUV9rq2k&t=1162s>

¹⁴ See the RA Government's decision "On establishing the procedure for providing care and other social services in home conditions to persons who have reached the age of 18 and have mental health and intellectual problems" <https://www.e-draft.am/projects/1872/about>

- Grant competitions have been announced that aim to provide 24-hour care services to persons with mental health and intellectual problems¹⁵.

At the same time, work is underway regarding long-term operation of the acting closed institutions: a number of psychiatric institutions are envisaged to undergo major repair and reconstruction. This means that there are two contradicting approaches in the sphere under discussion.

THE SITUATION OF THE RIGHTS OF PERSONS WITH PSYCHOSOCIAL AND INTELLECTUAL DISABILITIES IN ARMENIA

General principles and obligations (Articles 1-4)

The Committee expressed its concern over the condition that the Optional Protocol to the Convention had not been ratified yet.

According to the protocol decision made by the RA Government on 17 April 2014, the Republic of Armenia undertook the obligation to ratify the Optional Protocol to the Convention¹⁶ by involving in 2014-2019 Action Plan of the Strategy of Maintenance and Improvement of Mental Health in the Republic of Armenia the measure of initiating preparatory work aimed at the ratification of the Protocol. However, it should be noted that to date, it has not been ratified, and the same measure is envisaged under the RA Government's draft decision "On approving 2020 annual program and action plan of social inclusion of persons with disabilities".¹⁷ The same draft also envisages presentation of the RA

¹⁵ See the official website of the Ministry of Labor and Social Affairs, section of statements <http://www.mlsa.am/?cat=142&paged=2>

¹⁶ See the RA Government's Protocol decision N 15 of 17 April 2014, 2014-2019 Strategy of Maintenance and Improvement of Mental Health in the Republic of Armenia, *adopted on 17 April 2014*, <https://www.arlis.am/DocumentView.aspx?DocID=90364>

¹⁷ See the RA Government's draft decision on "Approving 2020 annual program on the social inclusion of persons with disabilities and the action plan", *placed for public discussion for the time period of August 18-28, 2019* <https://www.e-draft.am/projects/1855/about>

draft law “On the rights of persons with disabilities” to the Prime Minister’s staff. In February 2017, the RA Ministry of Foreign Affairs noted that the ratification of the Protocol is connected with the adoption of the RA Draft Law “On protection of the rights and social inclusion of persons with disabilities” and the relevant sublegislative acts, as well as the conditions necessary for the exercise of the rights of persons with disabilities and their social inclusion. Though the mentioned draft law was first presented to the National Assembly in 2013¹⁸, it has not been adopted so far. The revised version of the draft law was last put for public discussion on 6 August 2019¹⁹.

As mentioned above, according to the RA Ministry of Labor and Social Affairs, the Optional Protocol is currently undergoing domestic procedures of ratification.

Recommendation: *To accelerate ratification of the Optional Protocol.*

Women with disabilities (Article 6)

The Committee expressed its concern over the persistence of cases of neglect, violence, restraint and seclusion, as well as sexual abuse, of women with disabilities.

On 12 December 2017, the RA Law²⁰ “On preventing violence in the family, protecting persons subjected to violence in the family and restoring harmony in the family” was adopted. Nevertheless, the issue of violence against women, including women with psychosocial and intellectual disabilities, persists on the agenda. As studies show, “...at home or in the family, women with mental health problems and then women with cerebral palsy are most often subjected to violence. And domestic violence has various reasons, including incomplete work of social and legal institutes, the lack of awareness of one’s rights...”.²¹

¹⁸ See the RA NA official website, http://www.parliament.am/draft_history.php?id=6209&lang=arm

¹⁹ See the RA Draft Law “On the rights of persons with disabilities”, put for public discussion for the time period of August 6-28, 2019, <https://www.e-draft.am/projects/1849/about>

²⁰ See the RA Law on Preventing violence in the family, protecting persons subjected to violence in the family and restoring harmony in the family, adopted on 12 December 2017, <https://www.arlis.am/DocumentView.aspx?docID=118672>

²¹ See “From beating up to neglect: what types of violence are women with disabilities most often subjected to in the family”, “Agat” rights defense center for women with disabilities NGO, <http://agatengo.org/ճեծից-վիճի-սնտեստի-ընտանիքում-ստեղծված-վնասվածքներ/?lang=hy>

Persons with psychosocial and intellectual disabilities are also vulnerable in the context of sexual violence. They are subjected to violence twice as much as others.²²

Recommendations.

- ❖ *To ensure proper implementation of the RA Law “On preventing violence in the family, protecting persons subjected to violence in the family and restoring harmony in the family”.*
- ❖ *To ensure proper training, assessment of the relevant specialists (law enforcement bodies, representatives of shelters and support centers, doctors, etc.) and the application of their knowledge obtained.*
- ❖ *To develop and use awareness-raising manuals on violence, including domestic violence, sexual violence, sexual harassments and other topics in that context for persons with psychosocial and mental disabilities, to conduct campaigns using a language and a method comprehensible for them.*

Children with disabilities (Article 7)

The Committee is concerned by the lack of the necessary state support to children with disabilities and their families, as well as various forms of neglect, violence and abuse against children with disabilities.

The fact that the RA Ministry of Labor and Social Affairs circulates the procedure of providing care and other social services in home conditions to persons - aged 18 or above - with mental health and intellectual problems is welcome. However, today, factually, children in need of such services, as well as their families, are left out of the regulation. Whereas, the parents of children with disabilities may not always be able to provide their children with services relevant to their needs.

Besides, in the conditions of the lack of the relevant services, caregivers are deprived of the opportunity to work, which causes not only financial problems during the stage of providing care for the children, but also a problem of survival once they reach the pension age. According to the RA Law on State Pension, working experience also includes the time period when one of the parents (adopter, guardian) takes care of a child with a disability under the

²² See Sexual education and disability, 15 February 2019, <https://www.evnreport.com/hայկերեն/սեռական-դաստիարակություն-և-հաշմանդամություն>

age of 18 or the person recognized as a guardian takes care for a person with a disability of the first group, but **not more than ten years** (Article 29, clause 2.2). Moreover, this regulation acts only if the relevant person has employment history giving the right to labor pension.²³ As a result, if the person did not work before having a child, they are also deprived of the right to have those ten years calculated as employment history.

Children with psychosocial and intellectual disabilities continue to be subjected to violence, including sexual violence.

*“...Sasha A., 52, did violent actions of sexual nature against a minor, 15-year-old sick girl (with mental health problems) against her will, taking advantage of her helpless situation...”*²⁴

*“ In the Republican educational complex No. 1, a 14-year-old child, suffering from intellectual and a number of other problems, was subjected to sexual violence. The act of sexual violence was committed against the child by a fellow 16-year-old child of the same educational complex, who also has intellectual problems...”*²⁵

Cases of sexual violence against persons with psychosocial and intellectual disabilities may not even become known or they become known in case the child subjected to sexual violence gets pregnant. For example, the case of a 13-year-old girl with intellectual problems having been subjected to sexual violence in Armavir province Baghramyan community became known after the child got pregnant²⁶.

“...In Armavir province Baghramyan community, a 13-year-old child got pregnant. Her relatives claim that she was raped by her two classmates. The child’s mother found out that she was pregnant in 5 months, when she took the child to the hospital in Vagharshapat...”

²³ See the RA Law “On state pensions”, adopted on 22 December 2010 <https://www.arlis.am/DocumentView.aspx?docid=64540>

²⁴ See 52-year-old man from Abovyan raped his 15-year-old neighbor with intellectual problems, 20.11.2017, <https://www.1in.am/2248830.html>

²⁵ See Sexual violence victim and abuser both have intellectual disabilities, 12.06.2019, <https://www.iravunk.com/news/86595>

²⁶ See A 13-year-old child got pregnant in Baghramyan community, her relatives claim she was raped by her classmates 16.05.2019, <https://www.tert.am/am/news/2019/05/16/baghramyan/3000552>

It should be noted that according to the initial hypothesis, the girl was subjected to violence by her two classmates. However, the examination showed that the newborn's father is the minor girl's father.²⁷

A case of a boy with intellectual problems being subjected to sexual violence by adults of the same gender was also recorded.

"...taking advantage of the obvious level of intellectual and mental development of the boy under 14, i.e., his helpless state, he subjected the boy to sexual abuse. Besides, meeting the same boy, he offered to help him in repair works, and after finishing it, he took advantage of the obvious level of intellectual and mental development of the boy under 14, i.e., his helpless state, and subjected the boy to sexual abuse²⁸".

Thus, the following stereotype must be overcome: a person with psychosocial and intellectual disabilities will not have a sexual life, and, therefore, there is no need to talk to them about maintaining sexual health, sexual harassment, violence, sexual life. The right of children with psychosocial and intellectual disabilities to get information and be educated in terms of sexual life and sexual health should be guaranteed.

Recommendations

- ❖ *To introduce a system of services provided to persons, including children, with psychosocial and intellectual disabilities, which would also include a service of care in home conditions.*
- ❖ *In addition to the recommendations made in the previous article, to develop and use awareness-raising manuals on maintaining sexual health, sexual life, violence and other topics in this context for children with psychosocial and intellectual disabilities, to conduct campaigns using a language and a method comprehensible for them.*

²⁷ See The newborn's father is the minor girl's father. New details on the pregnancy of the 13-year-old child, 22.01.2020, <https://armeniasputnik.am/society/20200122/21791252/Noracni-hayrn-anchapahas-aghika-hayr-e-nor-manramasner-13-amy-a-aghjka-hghiutyan-masin.html>

²⁸ See The young man sexually abused minor boys, 25.05.2017, <https://168.am/2015/05/27/495443.html>

Accessibility (Article 9)/ Freedom of expression and opinion, and access to information (Article 21)

The Committee expressed its concern about the limited accessibility of information and communication for persons with disabilities.

For persons with psychosocial and intellectual disabilities, the problem is, particularly, the lack of easy-to-read formats of information and other methods of communication.

Materials prepared in a format comprehensible for persons with intellectual disabilities are rare, such as “2018 National Assembly Elections”²⁹ by “Disability and Inclusive Development” NGO, “What is happening to some children in Armenia?”³⁰ report by Human Rights Watch. Actually, persons with psychosocial and intellectual disabilities do not have access to easy-to-read formats of information on spheres important and necessary for their life activity and their rights. Unavailability and inaccessibility of information leads to the restriction of persons with psychosocial and intellectual disabilities in terms of forming and expressing an opinion.

Recommendation

- ❖ *To guarantee awareness of persons with psychosocial and intellectual disabilities by providing them with information in easy-to-read formats and comprehensible language.*

Equal recognition before the law (Article 12)

The Committee expressed its concern regarding the deprivation of legal capacity, the acting institute of guardianship and the lack of alternative mechanisms.

The Committee recommends that the State party repeal the discriminatory legal provisions in the Constitution, restore the full legal capacity of all persons with disabilities and

²⁹ See “2018 National Assembly Elections” easy-to-read manual for electors with intellectual disabilities, “Disability and Inclusive Development” NGO, 4 December 2018, https://issuu.com/didarmenia/docs/parliament_elections_2018_armenia_-

³⁰ See “What is happening to some children in Armenia?” report, Human Rights Watch, 22 February 2017, <https://www.hrw.org/hy/report/2017/02/22/300330>

introduce supported decision-making system. Nevertheless, the practice of recognizing persons with psychosocial and intellectual disabilities legally incapacitated continues, which, in its turn, leads to the violation of their other rights.

As a result of the study of 2019 judicial practice on recognizing a person as legally incapacitated, it was found out that a total of 253 judicial claims were made, 103 of which were upheld, 9 were rejected, 25 were discontinued as a result of the applicant repealing the application (2 of which happened as a result of the death of the relevant persons recognized as legally incapacitated), 3 were left without investigation. In 113 claims, the applications were returned due to shortcomings in the documents.³¹

Chart 1. Judicial cases on recognizing a person as legally incapacitated, 2019

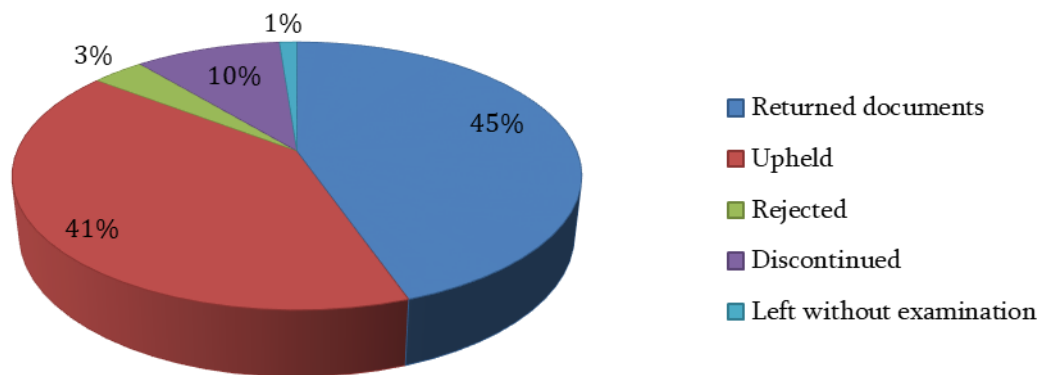
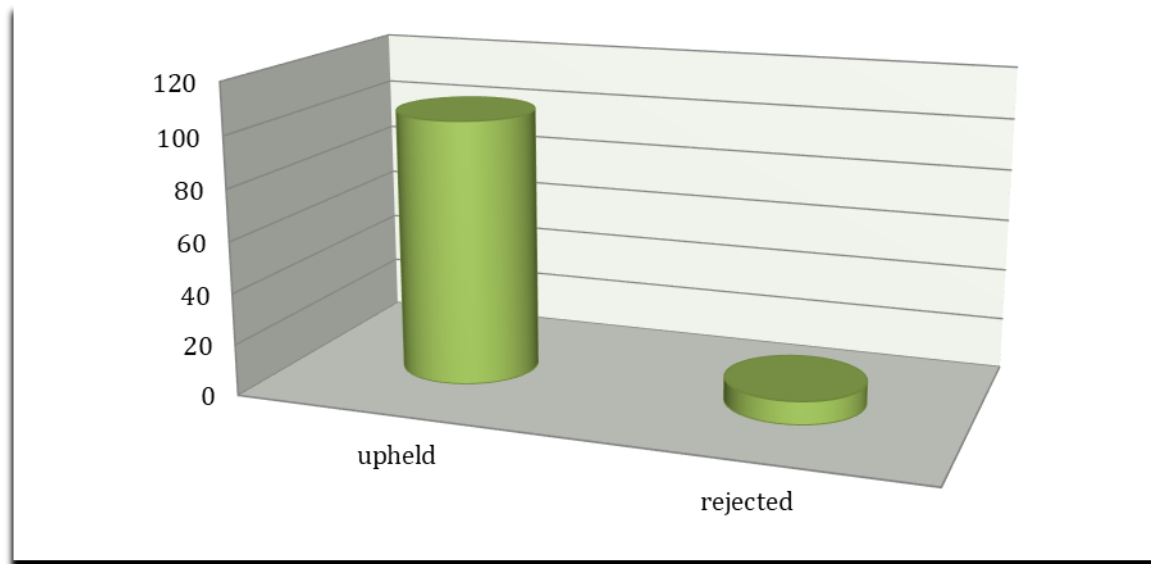


Chart 2. Upheld and rejected judicial cases on recognizing legal incapacity

If we leave out the returned applications, it turns out that out of 140 applications, 73.6% were upheld and only 6.4% were rejected.

³¹ See Judicial Informative System <http://datalex.am/>



It should be mentioned that on 26-27 July 2018, at the initiative of the RA Ministry of Justice, a discussion was held about the main problems in terms of introducing a supported decision-making system. EU expert on disability issues in Swedish National Board of Health Welfare Karin Fleicht shared the experience of a number of EU countries in this issue.³² However, this action of the RA Ministry of Justice has not yet led to a visible result. Moreover, the agenda of the Government's session of 30 January 2020 included the Draft Law "On making amendments to the RA Law "On psychiatric aid"", which still preserves provisions on legal incapacity.³³

Despite the negative consequences of recognizing a person legally incapacitated (the condition that the guardian places that person in an institution for a long time, deprivation of the property, etc.) and the Committee's above-mentioned concern and recommendation, for more than two years, no visible work has been conducted to introduce a supported decision-making system. Factually, there is no legislative draft aimed at the elimination of the system of recognizing a person legally incapacitated and decision-making by the person's guardian on their behalf, and the introduction of supported decision-making system. Understanding that the problem solution is difficult and the examination and introduction of the relevant mechanisms are time-consuming, we should still mention that there are no visible efforts aimed at the elimination of the institute of decision-making instead of the relevant person.

³² See Discussion dedicated to support to decision-making of persons with psychiatric and mental disabilities in Armenia, 26.07.2018, RA Ministry of Justice, <http://www.moj.am/article/2090>

³³ See reference 13

Recommendation

To develop and introduce a supported decision-making system instead of the system of recognizing a person legally incapacitated and having the guardian make decisions instead of the relevant person.

Access to justice (Article 13)

The Committee is concerned by the lack of legal safeguards to ensure the right to a fair trial due process and the safe and full participation of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, in all judicial proceedings. It is also concerned about the insufficient availability of accessible and affordable legal services for persons with disabilities.

According to the RA Code of Civil Procedure, “The Court of First Instance examines the application on recognizing a person legally incapacitated or partially capable with the compulsory participation of **the person being recognized legally incapacitated or partially capable, his/her advocate and the body of guardianship and trusteeship**” (Article 251).

Though the institute of recognizing a person legally incapacitated continues to act in the Republic of Armenia, the study of judicial acts shows that the court not always meets even the above-mentioned requirement of the law and not always has implemented the right of the person being recognized legally incapacitated to be heard. In particular, the description of the case does not contain any note whether the person being recognized legally incapacitated was properly notified, and in case the relevant person was properly notified and is not present, then what the reason is. The description of a judicial case mainly does not provide any justification as to why the person is not participating in the court session (for example, cases No. ՏՌ1/0021/02/19; ԼՂ/3979/02/18; ԵՂ/27047/02/18), and the judgments are, as a rule, based on conclusions of forensic psychiatric examination commissions. Thus, we can state that courts violate the right to a fair trial and law requirements are not met.

Though since 2015, the RA Civil Procedure Code has recognized the right to apply to court to restore one’s legal capacity (Article 255)³⁴, persons recognized as legally incapacitated, as a rule, do not file such claims with the Court.

³⁴ See RA Civil Procedure Code, adopted on 9 February 2018, <https://www.arlis.am/DocumentView.aspx?docid=120057>

In the Republic of Armenia, the institute of involuntary hospitalization and treatment is still in place, and though the Draft Law “On psychiatric aid” establishes the right to legal aid during a person’s stay in a psychiatric institution, including public protection envisaged by the RA Law “On advocacy” (Article 5, part 1, clause 17), according to the official website of the RA Judiciary, only 4 persons applied to the head of the institution to get legal aid in 2014-2015. The data provided by the RA psychiatric institutions also indicate that persons in psychiatric institutions rarely apply for legal aid. Thus, in 2019, in Gyumri Mental Health Center, Lori Regional Psycho-Neurological Dispensary and Armash Health Center, no-one applied to get legal aid. 1 person applied in Sevan Mental Health Center, 2 persons applied in Syunik Regional Neuro-Psychiatric Dispensary, 7 persons applied in National Centre for Mental Health Care (not all of the mentioned cases concern legal aid for involuntary treatment). It is welcome that at the initiative of the management of Syunik Regional Neuro-Psychiatric Dispensary and National Centre for Mental Health Care, the participation of public defender was ensured in reviewing involuntary treatment and enforced measures.

Taking into account the shortcomings of the judicial practice and the existence of the institute of guardianship, in all cases when a person is involuntarily brought to a psychiatric institution by a legal representative, police officer, doctor or someone else, irrespective of the application by that person or their representative, he/she should be provided with an advocate appointed by the Public Defender Office of the RA Chamber of Advocates.

The issue of involuntary treatment or the obligation of a person recognized legally incapacitated to pay duty for appealing the court’s judgment remains unresolved. In order to appeal, the person recognized legally incapacitated has to pay a state duty, whereas the person applying to court to recognize someone legally incapacitated or partially incapacitated is exempted from the obligation to pay state duty according to the RA Law on State Duty (Article 22).³⁵ HCA Vanadzor addressed this issue in the alternative report on CRPD. ³⁶

Recommendations:

- ❖ *To guarantee the right of persons with psychosocial and intellectual disabilities to fully participate and be heard in court sessions related to their interests.*

³⁵ See RA Law On State Duty, adopted on 27 December 1997, <https://www.arlis.am/DocumentView.aspx?docID=111452>

³⁶ See reference 7

- ❖ *Before the elimination of the institute of incapacity, to provide the relevant persons with free of charge legal aid by thus guaranteeing his/her right to apply to court to restore legal capacity.*
- ❖ *To ensure the person's right to get legal aid since the moment of the factual limitation of his/her freedom, irrespective of the existence of his/her or his/her legal representative's application.*
- ❖ *Before the elimination of the institutes of legal incapacity and involuntary hospitalization, to make an amendment to the RA Law "On State Duty" and give the privilege of exemption from state duty to citizens engaged in cases related to involuntary psychiatric inpatient treatment and recognizing persons legally incapacitated.*

Liberty and security of the person (Article 14)

The Committee is concerned about legal provisions allowing involuntary hospitalization and forced institutionalization of persons with psychosocial and intellectual disabilities for lengthy periods of time, and the lack of sufficient safeguards and legal assistance for persons with disabilities who are deprived of their liberty in institutions.

Despite the Convention requirements, involuntary hospitalization and treatment, as well as long-term isolation in care centers and psychiatric institutions of persons with psychosocial and intellectual disabilities, including persons recognized legally incapacitated, persist. There are gaps in both legislative regulation sphere and practice.

The RA Draft Law "On psychiatric aid and service" again enshrines treatment, as well as involuntary hospitalization and treatment based on the consent of the person's legal representative (including the guardian of the person recognized legally incapacitated). According to the RA Draft Law "On psychiatric aid and service", "Psychiatric aid and service is carried out in case of a **written informed consent (application)** of the person with mental health problem, **or his/her legal representative, if there is one**" (Article 17)³⁷. The Draft also enshrines involuntary hospitalization and psychiatric treatment, based on a decision by court, "with the view to prevent the damage posed by the person with a mental health problem (including the damage in terms of his or others' life or health).

³⁷ See "The RA Law On making Amendments to the Law on Psychiatric Aid", placed for public discussion for the time period of 27 June 2018 – 13 July 2018, <https://www.e-draft.am/projects/982/about>

According to Article 14 of the Convention, States Parties shall ensure that persons with disabilities, on an equal basis with others, enjoy the right to liberty and security, are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty³⁸. In the Guidelines on the Liberty and Security of persons with disabilities adopted during its 14th session in 2015, the Committee confirms that instances when "persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or others" are incompatible with Article 14 of the Convention.³⁹

In paragraph 41 of its general comment No. 1, the Committee stated that States parties have an obligation to require all health and medical professionals (including psychiatric professionals) to obtain the free and informed consent of persons with disabilities prior to any treatment. The Committee stated that, in conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision makers to provide consent on behalf of persons with disabilities"⁴⁰.

On 30 January 2020, the RA Constitutional Court recognized as contradicting to the RA Constitution a number of law provisions that do not guarantee the participation of minors and persons recognized legally incapacitated in the medical interventions implemented on them, as those provisions do not require their informed consent and do not secure those persons' right to access to medical information concerning themselves.⁴¹

This plays an important role but cannot fully regulate the issue and factually, issues related to involuntary hospitalization and treatment are left out.⁴²

It should also be stated that in practice, there is also a lack of a tendency to reduce and prevent involuntary treatment. According to the data of the RA judicial authority's official

³⁸ See reference 1

³⁹ Guidelines on the freedom and security of persons with disabilities, adopted during the 14th session of the Committee during August 17 – September 4, 2015, non-official translation
<https://drive.google.com/file/d/1bEllbkn6eNY6GJZ5391CIVWA3M4mV1CL/view>

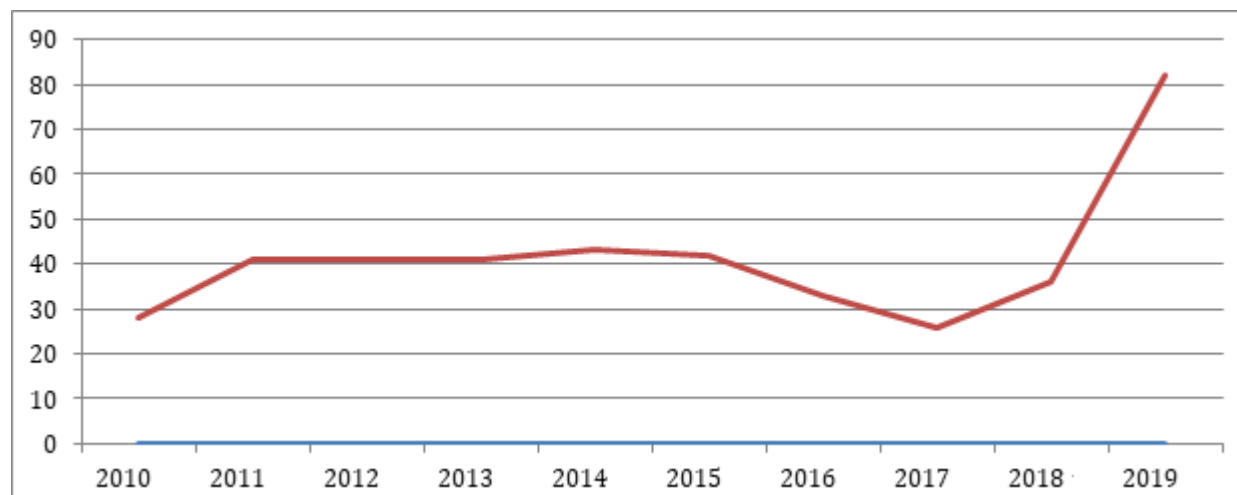
⁴⁰ See General comment No. 1 (2014), 19 May 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

⁴¹ See reference 12

⁴² HCA Vanadzor detailed substantiation of the right of persons with mental health and intellectual disabilities to freedom and security is available at <https://www.e-draft.am/en/projects/982/digest?page=2>

webpage, in 2010-2019, judgments were made on involuntary treatment at least in 26 and at most in 82 cases annually, and only 6 decisions were appealed in the RA Appeal Court. The maximum number of involuntary treatment cases were recorded in 2019, with this number being more than twice as big in comparison with 2018.

Chart 3. Judgments on involuntary treatment in 2010-2019



Moreover, in Armenia, the relevant person's willingness in this context is often of formal nature. This fact was also recorded by the RA Human Rights Defender Arman Tatoyan during his speech of 17 January 2020 (from the 14th minute of the video).⁴³ During the aforementioned speech, he spoke up about a case when “a person submitted a written appeal to the psychiatric institution to release him from the institution, to stop the treatment which was being implemented based on the so-called “consent”, but the institution continued the treatment”.

During the Organization's monitoring in psychiatric institutions, it was also found out that in cases of hospitalization based on a person's consent, there is also a compulsory element. Persons with psychosocial and intellectual disabilities often give their consent to treatment, as in that case, they have an opportunity to leave the psychiatric institution sooner. Besides, they give their consent as a result of the urge or compulsion of their relatives or the institution's personnel.

⁴³ The Human Rights Defender published legal standards of the sphere of prevention of torture and presented “Legal consultant of a person deprived of liberty” automated system in Armenian and English 17.01.2020, <https://ombuds.am/am/site/SpeechesView/336>

Moreover, there are also cases when a person is placed in a psychiatric institution for quite some time without any psychiatric intervention.⁴⁴

A person's hospitalization, including hospitalization of a person recognized legally incapacitated, is dictated not by his/her health condition, but rather, by the personal interest of that person's relative/caregiver.

Study of judicial acts shows that relatives apply with the claim to recognize a person incapacitated in order to solve their property-related issues (for example, case N ԵՂ/10197/02/19):

During the court session scheduled for 10.07.2019, the presiding judge asked the applicant why the latter had not applied to court to recognize her son legally incapacitated, given that, according to her, Hamlet Galstyan had serious mental health problems. The applicant answered that up to that moment, there had been no such need, because they had not faced the issue of dividing the flat, whereas at that moment, they had to face that problem, as her daughter had divorced and as she did not have any other residence place, she resided in the same flat with her, her son and his family, which caused household trouble.

She also stated that though her son was registered in the mental health center and they received the relevant medicine from the center, her son never took that medicine and at that time, she did not see her son's mental health problems. Based on the aforementioned, she asked to uphold the application and recognize H. as legally incapacitated.

Case N ԱՎՂ/2477/02/18`

The applicant cannot start the process of formalizing acceptance of inheritance, as his brother was mentally ill, did not have a possibility to present his rights in the notary office and other bodies of state authorities, as he did not understand the meaning of his actions and could not control them.

Being appointed as a caregiver is a pledge for the long-term placement of a person in a psychiatric institution.

⁴⁴ In 2018, for more than two months, the Organization's beneficiaries were in Sevan psychiatric hospital without informed consent, while, according to the institution's official information, they did not receive psychotropic medication as they did not need it.

As employees of psychiatric centers state, relatives of persons held in their centers “visit the center’s beneficiary once a month on the day of getting their pension, accompany them to get their pension, take the pension and appear in the center again a month later on the day of getting their pension”.

Employees also mention that most of those in their institutions want to leave the institution, but “they have nowhere to go, their relatives do not take them home”. This reality was also raised by the RA Labor and Social Affairs Minister Zaruhi Batoyan during the meeting with Head of the EU Delegation to Armenia, Ambassador Andrea Wiktorin on 2 March 2020.⁴⁵

Recommendations:

- ❖ *To make the legislation regulating the mental health field in line with international norms by prohibiting involuntary hospitalization and treatment.*
- ❖ *Before ensuring the implementation of legislative changes, a person’s (including persons recognized legally incapacitated) hospitalization and treatment must be carried out exclusively based on their informed and conscious consent.*
- ❖ *To ensure a person’s right to legal aid since the moment of factual deprivation of liberty, irrespective of the presence of an application by the relevant person or his/her legal representative.*

Freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 15)

The Committee expressed its concern about the inhuman and degrading treatment of persons with disabilities in institutions, including children with intellectual and/or psychosocial disabilities in specialized institutions, perpetrated by staff members, caregivers and other residents, as well as about neglect and the use of physical restraints as means of treatment and punishment. It is also concerned about the inefficiency and inadequacy of complaints systems and the lack of monitoring of institutions.

⁴⁵ “Persons with mental health problems often appear in institutions as they have nowhere else to go”, Zaruhi Batoyan, *meeting with Head of the EU Delegation, Ambassador Andrea Wiktorin, 2 March 2020*, <http://www.mlsa.am/?p=25200&fbclid=IwAR2YKMAP5oVveOYba8bpG3-2qxXRyCLCOKLmfJzneqL9uZDKtW4K9ZSAntA>

The initiative of the RA Minister of Labor and Social Affairs of 2018 to form a monitoring group, as well as the relevant order given in 2017 by the RA Minister of Health at the initiative of HCA Vanadzor is welcome.

At the same time, it should be noted that there are great risks of violations of rights of persons with psychosocial and intellectual disability in the institutions.

Inhuman and degrading treatment in psychiatric institutions continues to be worrisome. The minimum living space per person, the opportunity to keep and separate personal belongings, proper hygiene, and adequate rest conditions are not ensured.

With regards to penitentiary institutions, the RA Ministry of Justice simply collects digital data of persons with mental health problems (there were 2016 persons with mental health problems in RA psychiatric institutions in 2018; and 183 such persons during the first half of 2019)⁴⁶, while so far no study has been carried out regarding the needs of persons with disabilities who are deprived of liberty.

The attitude of competent organizations dealing with psychosocial and intellectual disabilities is problematic. As employees of psychiatric institutions mention, often police officers bring a person to the institution, saying *“he/she is your client”, “we don’t deal with them, they’re real trouble”* and other similar degrading expressions. Negative treatment is also manifested by the profile medical personnel. As employees of psychiatric institutions inform, even they are stigmatized in other medical institutions, as they provide services to persons with psychosocial and intellectual disabilities. Maybe that is the reason why employees of that profile sometimes avoid serving persons with psychosocial and intellectual disabilities and they “even do not want to touch those persons”.

The general public continues to consider persons with psychosocial and intellectual disabilities as dangerous and incapacitated, while comparison to those persons is considered an insult (from the 4th minute)⁴⁷. Moreover, such opinions are expressed during various

⁴⁶ “Main problems of recosizlization of persons deprived of liberty in the Republic of Armenia” study, page 82, Center for Legal Initiatives NGO, 2020 . , <https://drive.google.com/file/d/1cHRTnlopybmY8PG21NgjgvCGQ-3svF9m/view?fbclid=IwAR3OW7xXTPgZA0ydzDTRqOVg6Sk9Kne3VR9r-2UyajZ1wYBkHPoUORm5J7Y>

⁴⁷ “You, mentally ill, get out”, said the governor 25. 06. 2019, News.am, <https://www.youtube.com/watch?v=pbyysMuPH5s>

broadcasts by different public and political figures, which can definitely contribute to the strengthening of the negative attitude of the institutions' staff.

We find it important to highlight the state's positive obligation to secure the rights of persons with psychosocial and intellectual disabilities. In her Report on sexual and reproductive health and rights of girls and young women with disabilities (2017), Special Rapporteur on the Rights of Persons with Disabilities Catalina Devandas Aguilar spoke about the problem of forced sterilization of women with psychosocial and intellectual disabilities. UN bodies consider forced sterilization to be a form of torture and cruel, inhuman or degrading treatment or punishment. While, Article 23 of the Convention on the Rights of Persons with Disabilities enshrines the right of persons with disabilities to decide on the number of their children and to retain their fertility. In this context, criminalization of the state's compulsion of sterilization is welcome. However, it should be stated that the draft criminalizes compulsion and **not the commission of illegal sterilization** itself.

It should also be mentioned that in the general part of the new draft criminal code, the following is mentioned as conditions aggravating criminal responsibility or punishment: "*committing the crime against a pregnant woman, a person who is **helpless**, vulnerable or dependant on the criminal*" (Article 72.10). In its turn, a person in a helpless situation is defined as "a person who, **due to his/her physical or mental state, is not able to show resistance or control his/her action or realize the nature of the action committed to himself/herself**, as well as a person under twelve" (Article 1). Thus, if a crime is committed against a person with mental health and intellectual disabilities, these are circumstances aggravating the punishment. Nevertheless, it is not clear why in Chapter 27 (Crimes against a person's sexual freedom and sexual inviolability), an act committed against "*a person with a mental disorder*" is mentioned as a separate aggravating circumstance in the **Article on committing a lecherous act** (Article 200.3); however, for example, in other articles of the same Chapter (Article 197. **Forced actions of sexual nature**, Article 198. **Coercion of sexual acts**), commission of the prohibited action against these persons is not considered as a quality *corpus delicti*.⁴⁸

Recommendations:

⁴⁸ See reference 11

- ❖ *To introduce a mechanism of documenting torture and other cruel, inhuman or degrading treatment in line with Istanbul Protocol standards, and to develop the relevant specialists' capacities to use it.*
- ❖ *To develop and introduce mechanisms of respecting persons with psychosocial and intellectual disabilities and their dignity among the specialists directly dealing with such persons (medical workers, police officers, judges, etc.), and develop the relevant specialists' capacities to work with persons with psychosocial and intellectual disabilities.*
- ❖ *To amend Article 176 of the draft criminal code by criminalizing not only compulsion of sterilization but also committing illegal sterilization.*
- ❖ *To raise the level of awareness about the right of persons with psychosocial and intellectual disabilities to health (including sexual and reproductive health) and medical aid among persons with psychosocial and intellectual disabilities, as well as doctors, workers of psychiatric institutions and care centers and other interested persons.*

Freedom from exploitation, violence and abuse (Article 16)

The Committee expressed its concern about the high incidence of violence and abuse of persons with disabilities in institutions and recommended to organize training sessions for the staff of the institutions in order to prevent such violence, exploitation and abuse.

According to the information provided by the RA Ministry of Labor and Social Affairs, during April-November 2018, the department of continuous education and trainings of the National Institute of Labor and Social Research conducted a training on “Peculiarities of work with persons with mental health problems”. 42 employees of “Dzorak” SNCO and 62 employees of “Vardenis Psychoneurologic Boarding House” participated in the training. While in 2019, a total of 117 employees of Yerevan Boarding School, Vardenis Psychoneurologic Boarding House SNCOs and Baden-Wurttemberg Provincial Branch of German Red Cross participated in the same training. According to the information provided by the RA Ministry of Health, so far, no appropriate training has been conducted for the workers of the institutions.

With regard to violence, it should be stated that reports are continuously made on cases of human rights violations – including violence - in psychiatric institutions.

Recommendation: *To conduct regular trainings on human rights and particularly rights of persons with psychosocial and intellectual disabilities for specialists of mental health sphere.*

The right to live independently and be included in the community (Article 19)

The Committee expressed its concern about the slow progress of the deinstitutionalization process and the large number of children and adults with disabilities still living in residential institutions. The Committee recommended that persons with disabilities, through their representative organizations, be involved in all stages of the deinstitutionalization process (planning, implementation, evaluation and monitoring).

In recent years, the Republic of Armenia has taken steps aimed at deinstitutionalization. Before the revolution that took place in spring 2018, the RA Government approved the Concept of Providing Alternative Care and Social Services for persons with mental health problems and its Action Plan for 2013-2017, and 2014-2019 Strategy of Maintenance and Improvement of Mental Health in the Republic of Armenia and the relevant Action Plan. The main aim of the concept and the strategy was the implementation of the process of deinstitutionalization. However, those programs were not implemented within the established terms and in the relevant volumes.

After the revolution, the RA Ministry of Labor and Social Affairs manifested willingness and implemented work aimed at ensuring the right to live independently and be involved in the community. However, the lack of sufficient financial means and potential of providing services is an obstacle to visible indicators showing up faster. The Ministry developed a draft of providing alternative community services to persons under 18 with mental health and intellectual problems. In 2019, the RA Ministry of Labor and Social Affairs started the implementation of the program “24-hour care services for persons with mental health problems”, which aims at the social inclusion of persons -18 or above- with disabilities, by providing them with shelter and services of 24-hour care and social rehabilitation. The RA Ministry of Labor and Social Affairs aims to introduce the institute of a personal assistant by providing a human rights-based approach in the process of solving the problems persisting in the country. Whereas, along with it, the RA National Assembly adopted a draft – by the first reading – which provides benefits to caregivers of persons with disabilities, with the view to contributing to their normal life. The draft particularly mentions, “The following persons have the right to receive caregiving benefits: those registered in the system of caregiving

benefits and recognized as caregivers of minors under 14 or persons recognized as having disability with restriction of 3rd degree, or citizens recognized as legally incapacitated due to a mental disorder”⁴⁹. This approach does not stem from the vision of ensuring the rights of persons with psychosocial and mental disabilities, on the contrary, allocation of financial means to this project can hinder introduction of services necessary for persons with disabilities to live independently and be included in the community.

It should be mentioned that inclusion of persons with psychosocial and mental disabilities in the society, employment relations, as well as provision of therapies and social-psychological, healthcare, educational and other services are mainly ensured by non-governmental organizations. For example, funded by the European Union, the Armenian Caritas opened the first inclusive bakery-cafe “Aregak” in Gyumri, which employs persons with disabilities⁵⁰; “Arev Yerekhaner” NGO, which aims to contribute to the improvement of the quality of the life of children with Down syndrome and their families⁵¹; “Teach Me More” training and development center for children with autism and speech development delays⁵²; “Emili Aregak” center, which aims to include children, young persons with disabilities and their families in society and contribute to the formation of equal treatment towards them.⁵³

The following are the services introduced by the state for persons with psychosocial and mental disabilities: “Dzorak care center for persons with mental health problems” SNCO day care center of social services for persons with mental health problems, and Spitak Care House.

At the same time, it is noteworthy that the kind and volume of services necessary for persons with disabilities is not assessed. Therefore, it is difficult to assess to what degree state-

⁴⁹ *Draft* RA Law “On making addenda to the RA Law on State Benefits” , <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=54876>

⁵⁰ Armenian Gyumri becomes inclusive thanks to EU support: the prospects for the new bakery and coffee shop for people with disabilities, 29. 11. 2018, <https://www.euneighbours.eu/hy/east/eu-in-action/stories/evramiowtyan-ajaktsowtyamb-gyowmrin-darnowm-e-nerarakan-kagak-nor-srcaran>

⁵¹ “Arev-Yerekhaner” child health and development center, NGO webpage <http://downchildren.am/>

⁵² “Teach Me More” training and development center webpage, <http://tmm.am/>

⁵³ “Emili Aregak” support resource center for persons with disabilities, <http://emiliaregak.am/home.html>

introduced and state-subsidized community-based services satisfy the needs of persons with psychosocial and intellectual disabilities.

Though state structures declared deinstitutionalization as a guideline in mental health sphere, alongside, institutions under the RA Ministry of Health still continue to be even more institutionalized. This is evidenced not only by the uniting of “Nork” and “Nubarashen” psychiatric institutions by the decision N 1165-U of 22 September 2017 before the revolution (National Center for Mental Health Care has been operating in the territory of “Nubarashen” psychiatric clinic since January 2018)⁵⁴, but also programs of major renovation of psychiatric institutions after the revolution.⁵⁵ For example, it is planned to completely reconstruct the National Center for Mental Health Care, and introduce children’s departments in the same institution, as well as in “Avan” mental health center.

Recommendations:

- ❖ *To do assessment of the forms and number of community-based services necessary for persons with psychosocial and intellectual disabilities.*
- ❖ *To develop and expand the services necessary for the independent life and inclusion in the society of persons with disabilities by refraining from unpurposeful use of resources.*
- ❖ *To ensure the allocation of the necessary financial means for the introduction and expansion of community-based services.*
- ❖ *To ensure the legislative regulations necessary for the provision of community-based services.*
- ❖ *To ensure proper training of specialists necessary for the provision of community-based services.*

⁵⁴ RA Government’s decision N 1165-U on reorganizing Nork psychiatric center and Nubarashen psychiatric center closed joint-stock companies by merging them and establishing “National Center for Mental Health Care” closed joint-stock company, adopted on 22 September 2017 , <https://www.e-gov.am/gov-decrees/item/29256/>

⁵⁵ See National Center for Mental Health Care, Facebook page, <https://www.facebook.com/hapak.official/posts/2463691793883635>

- ❖ *To ensure the direct inclusion of persons with psychosocial and intellectual disabilities in all the above-mentioned processes of introducing community-based services.*

Respect for home and the family (Article 23)

The Committee expressed its concern about provisions in the Family Code that prevent persons with specific forms of impairments from adopting children and exercising parental rights and that prevent persons who have been deprived of their legal capacity from marrying.

No amendments have taken place in the RA Family Code that would be aimed at the solution of the problems mentioned by the Committee. There is also no draft of the relevant changes.

Recommendation: *To ensure implementation of the relevant legislative changes by guaranteeing the opportunity of persons with psychosocial and intellectual disabilities to make a family and have children.*

Participation in political and public life (Article 29)

The Committee is concerned that persons with disabilities do not participate in electoral processes on an equal basis with others, and recommends that the State party take the legal and other measures necessary to enable the political and public participation of all persons with disabilities, including with respect to their right to vote and stand for elections.

Over the past years, some steps have been taken to ensure participation of persons with physical disabilities in electoral processes, in particular, the possibility of persons with vision impairments to vote independently was ensured to some extent, accessibility of precincts was also ensured for persons with mobility problems to some extent, however, persons recognized legally incapacitated continue to be left out in the context of the electoral right both in the legislative sphere and in practice. In particular, the RA Constitution recognizes that “the Republic of Armenia citizens who have reached the age of 18 have the right to vote and participate in a referendum”, **except** citizens recognized legally incapacitated by a court’s judgment, as well as persons convicted to imprisonment for a grave crime committed

intentionally and serving their punishment, as per a judgment legally in force (Article 48)⁵⁶, while member states of CRPD must guarantee participation of persons with disabilities in political and public life on an equal basis with others.⁵⁷

Recommendations:

- ❖ *Before elimination of the institute of legal incapacity, to develop and introduce safeguards for the electoral right of persons recognized legally incapacitated.*
- ❖ *To guarantee participation of persons with psychosocial and intellectual disabilities in electoral processes on an equal basis with others.*

⁵⁶ See the RA Constitution, adopted on 6 December 2015 <https://www.arlis.am/DocumentView.aspx?docID=102510>

⁵⁷ See reference 1

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