

## Russia

*Prof. Masha Antokolskaia*

### Recent developments and international obligations

1. The recent legislative developments in Russia have been triggered by its adhesion to the CRPD. Russia has signed the Convention already in 2008 and ratified it on 25 September 2012. Its Optional Protocol has not been ratified. In 2008 the ECtHR has ruled in *Shtukaturvov v. Russia* that Russian law on adult incapacity, in force at that time, violated art. 8 of the ECHR, as it left the Russian judge with only two options: declaring a person fully capable and fully incapable. Therefore Russian law ‘did not provide for any “borderline” situation other than for drug or alcohol addicts [and therefore ...] did not provide for a “tailor-made response”’.<sup>1</sup> On the 27 of June 2012 the Russian Constitutional Court in its judgment in *Delova* case has declared relevant legal provisions unconstitutional and ordered the Federal Legislature to amend them before 1 January 2013.<sup>2</sup> Required amendments have been introduced by the Federal Act of 30 December 2012.<sup>3</sup> The most notable innovation was introducing the possibility of declaring a person suffering from a mental illness partially incapable. At this moment there is a Private Bill in the Parliament aspiring improvement of the position of fully or partly legally incapable persons, who are placed in mental hospitals of other residential-care institutions. Under the current law such persons do not have their own guardian/curator but are placed under the institutional guardianships/curatorship of the institutions in question. The draftsmen of the Bill are concerned about an apparent conflict of interest between the (partly)incapable persons, in their capacity of the recipients of medical treatment and care, and the institutions, in their capacity of the providers of such treatment and care. The main purpose of the Bill is to place every (partly)incapable person under protection of his own guardian/curator (a private person or a charity)

### Statistics on measures of protection

2. Russian statistics on MoP is still on a very basic level. No data on total amount of persons under the MoP is available. The latest relevant data is from 2011. At that time 122.000 adults have been under the institutional guardianship of a mental hospital of another special institution. In the same year the total amount of adults with mental disability was about 1 606 420. However, it is not known how many of them have been placed under the legal guardianship. Court statistics shows that the number of the MoP remains more or less on the same level over the last years. In 2018 Russian population amounted to 146, 9 million.<sup>4</sup> According to the court statistics, in 2018 424 persons have been declared by court partially incapable and 30.770 –

---

<sup>1</sup> ECtHR Application no. 44009/05, 27/06/2008, 95

<sup>2</sup> Постановление Конституционного Суда Российской Федерации от 27 июня 2012 года по делу о проверке конституционности пунктов 1 и 2 статьи 29, пункта 2 статьи 31 и статьи 32 Гражданского кодекса Российской Федерации в связи с жалобой гражданки И. Б. Деловой.

<sup>3</sup> Федеральный закон от 30 декабря 2012 г. N 302-ФЗ "О внесении изменений в главы 1, 2, 3 и 4 части первой Гражданского кодекса Российской Федерации".

<sup>4</sup> Население России: численность, динамика, статистика 16.03.2019, [www.statdata.ru](http://www.statdata.ru) - Сайт о странах, городах, статистике населения и пр.

fully incapable. In 2012 the numbers were just slightly lower: 284 persons have been declared by court partially incapable and 26.734 – fully incapable. These amounts correspond to slightly lower number of population in 2012: 146, 3 million. It is worth noticing that the legal change in 2012 did not have any significant effect on the numbers of the MoP. A low relative number of adults under the MoP in Russia could be explained by low life expectancy in Russia. It is stated that in Russia people often die before reaching the age when age-related illnesses influence their mental capacity.<sup>5</sup>

### **Current legal system of MoP and underlying policy choices**

**3.** The legal protection of adults is regulated in the articles 29-41 Russian Civil Code (CC) and the Federal Law of 2008 on Guardianship and Curatorship (FAGC). The procedure of declaring adults (partially)incapable is laid down in the articles 281-286 of the Russian Civil Procedural Code. The particularity of the Russian system is the existence of a special administrative body: Guardianship and Curatorship Authority, charged with the task of child protection as well as with the adult protection measures. An adult is declared partly or fully incapable by civil court, but the corresponding measure of adult protection has to be applied by the Guardianship and Curatorship Authority within one month. The Authority is also charged with the supervision over guardians and curators; when required by law, approving transactions entered by them on behalf of the incapable adult; discharge and replacement of guardians and curators and other related tasks. Formally there are two basic measures of adult protection under the Russian law, but in fact there are three: guardianship and two form of curatorship. Guardianship is applied in case of full incapacity due to mental illness. Curatorship is applied in two situations: (1) when an adult causes financial hardship to his family due to addiction to gaming, drugs or substance abuse; (2) partial incapacity due to mental illness.

A person can be declared by court fully incapable if, due to a mental disorder, he is not able to understand the meaning of his actions and to control them (art. 29 CC). Once a person is declared fully legally incapable by civil court the Guardianship and Curatorship Authority is obliged to appoint him a guardian within one month. Fully incapable person is not entitled to enter into any civil transactions. The guardian not merely charged with legal representation, administration of property and taking decisions on personal matters on his behalf, but is also under an obligation to provide care to the incapable adult. Since 2012 article 29 CC contains a second part requiring that the guardian enters into civil transactions on behalf of the incapable adult taking into consideration the adult's opinion and, if such opinion cannot be obtained, the information about his preferences obtained from his parents, former guardian, or other persons previously involved in the care of the adult.

A person can be declared by court partially incapable if he causes financial hardship to his family due to addiction to gaming, drugs or substance abuse (art. 30 sub. 1 CC). This measure can only be applied to a person, who has a family suffering from financial implications of his addiction. A single person cannot be subjected to this measure. Once an addicted person is declared legally incapable by civil court the Guardianship and Curatorship Authority is obliged to appoint him a curator within one month. An adult declared partly incapable under this provision is only allowed to enter into small household transactions. However he is still fully responsible for torts. All other transactions require an approval of the curator.

---

<sup>5</sup> Надежда Петрова. «Коммерсантъ-Деньги», 22 июня 2015.

Since 2012 an adult can also be declared by court partially incapable due to a mental disorder, if he is able to understand the meaning of his actions and control them only with the assistance of other persons (art. 30 sub. 2 CC). Once a person is declared partially incapable by civil court the Guardianship and Curatorship Authority is obliged to appoint him a curator within one month. Partially incapable person is allowed to enter on his own into small household transactions, dispose of his wages and other incomes, dispose of self-created objects of intellectual property and open and administrate bank accounts. For all other transactions, including disposing of maintenance, pension and social benefits such persons need consent of his curator.

Fully or partially incapable person, placed into a mental hospital or another residential care institution, is not appointed an own guardian, but is placed under the institutional guardianship of the institution in question (art 35 sub 4 CC).

The Guardianship and Curatorship Authority appoints guardians and curators taking into consideration, among others, the relationship between them and the (partially) incapable adult and, if possible, the preferences of the adult (art 35 sub 4 CC). Family members are given preference by appointing guardians and curators.

One of the innovations of the Federal Act on Guardianship and Curatorship of 2008 was introducing of the possibility of contractual guardianship and curatorship, executed by guardian or curator for consideration (art. 14 FAGC). In cases when the interest of vulnerable adults required so, the Guardianship and Curatorship Authority appoints a guardian or a curator by an administrative act and simultaneously enters with him into a guardianship or curatorship agreement. The honorarium to the guardian or curator could be payed from the income or property of the vulnerable adult, means provided by third parties, of social benefits. The amount of honorarium is limited by law (art. 16 sub 2 FAGC). A guardian or curator executing its functions without consideration can be allowed by the Guardianship and Curatorship Authority to enjoy the use of the vulnerable adult property, e.g. a dwelling (art. 16 sub 3 FAGC).

#### **Other instruments/legal provisions offering protection**

4. If an (partially)incapable adult owns property that needs administration, the Guardianship and Curatorship Authority can put this property into a trust and appoint a trustee for administrating it on behalf of the adult - the beneficiary (art. 38 CC).

A fully capable vulnerable adult who due to his health conditions cannot personally execute and protect his rights and interests, can ask the Guardianship and Curatorship Authority to appoint him a personal assistant (art. 41 CC). The appointment entails an administrative act of the the Guardianship and Curatorship Authority and a written consent of the personal assistant and that of the vulnerable adult. The personal assistant further represents the vulnerable adult on the ground of the contract of mandate, trust or another contract. The Guardianship and Curatorship Authority supervises the action of the personal assistant and informs the vulnerable adult of eventual violations (art. 41 sub 4 CC).

#### **Assessment legal system in terms of empowerment and protection**

5. Russian legal system has already made some important steps towards empowerment and supporting decision-making on behalf of vulnerable adults. However, a lot more has to be done in order to meet the requirements of the CRPD. The law still provides for full legal incapacity,

and the court statistics shows that this measure is used by far most often. This constitutes a certain tension with the CRPD. Yet, the biggest problem at the moment in the precarious position of partly of fully incapable persons under the institutional guardianship or curatorship of the mental hospitals and residential-care institutions.

**6. Legislation:** there is no official translation of Russian Civil law.