



Hungarian Association for Persons with Intellectual Disabilities (ÉFOÉSZ)

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Supported decision-making or plenary guardianship? – Hungarian legal capacity reform came to a sudden stop

5 May 2010, Budapest, Hungary

On 9 November 2009 the Hungarian Parliament voted to pass Act CXX of 2009 on the Civil Code, while Act XV of 2010 on the entry into force and implementation of the Civil Code (Ptké) released in the Official Journal of Hungary on 2 March.

The Civil Code would have entered into force in two phases. Book One and Book Two of the Codex would have entered into force on 1 May 2010, while the rest of the law on 1 January 2011.

Beside the introductory provisions, Book Two (Persons) contains the legal capacity legislation affecting the fundamental rights of people with disabilities.

The new Codex has been prepared for almost 10 years and from summer of 2007 people with disabilities and their respective organisations also got opportunity to participate in the drafting of the reform of legal capacity rules.

The entry into force of the UN Convention on the Rights of Persons with Disabilities on 3 May 2008, which was ratified by Hungary secondly in the world, gave a spur to the preparation work. It also made evident for the legislators that on the basis of Article 12 of the Convention, the old-fashioned laws, being in force should be changed to a more differentiated system which enables people with disabilities to exercise their legal capacity.

Supported decision-making, the new paradigm which helps the person to exercise legal capacity, with the help of support networks around the him/her, would have been introduced, plenary guardianship and guardianship generally limiting legal capacity would have been eliminated from the Codex. The law would have introduced supported decision-making as alternative to guardianship, and would have transformed guardianship law into a system which respects autonomy of people with disabilities to the greatest possible extent and introduces the co-operation of the parties.

On 2 March 2010, a Member of Parliament, Mr Robert Repassy petitioned the Constitutional Court to declare the paragraph which would have made legal capacity rules enter into force on 1 May 2010,

unconstitutional. He argued that the preparation time for lawyers, judges was too short (only 105 paragraphs would have entered into force from the Codex's 1200 paragraphs) and the entry into force on different dates would cause confusion and the violation of legal certainty.

Initiated by ÉFOÉSZ and MDAC, altogether ten civil society and human rights organizations also submitted a petition to the Hungarian Constitutional Court on 9 April, proposing the rejection of the petition of the Member of Parliament, introducing the intense preparations, training programs and publications issued in the passed 5 months between the adoption of the law and its planned entry on 1 May 2010.

Furthermore, these organizations emphasized that the new laws concerning legal capacity contain rules which broaden the rights and mean positive changes in the civil law status of persons living with disabilities, aim their integration and return in the society, and on the other hand are in accordance with the international obligations coming from Article 12 of the UN Convention on Rights of Persons with Disabilities.

The Hungarian Constitutional Court accepted the petition and the arguments of the Member of Parliament and annulled the referred law in its decision made on 26 April, alluding that the time provided to preparations was too short and that different books entering into force on different dates would harm legal certainty.

With this decision the coming into force of the legal capacity laws of the new Civil Code have been postponed to an uncertain time.

For the Hungarian persons with disabilities – nearly 80000 persons under guardianship, mainly persons with intellectual disabilities – this means that the restrictive rules in force concerning free development of personality and self determination will be maintained.

At the same time with these occurrences, parliamentary elections were held. After the second round of the elections on 25 of April, the new Government will take up office in the first weeks of June. According the statement of the Member of Parliament who made the proposal, the new Civil Code can enter into force just after an extensive revision and a longer, at least one-year-long period of time devoted to preparations.

Hungarian NGOs which were shocked by the decision made only four days before the entry into force of the law, trust that the new Government will take the opinion of persons with disabilities into account during the extensive revision, just like the previous Government did.

As a member of the Hungarian National Council of Federations of People with Disabilities (FESZT), which represents 600 000 people with disabilities in Hungary, ÉFOÉSZ would like to request international organizations to express their concerns that Hungary stepped back for an uncertain period of time to make its laws compliant with one of the most important Articles of the UN Convention on the Rights of Persons with Disabilities

We would appreciate if you could contact via letter the following persons and express them the importance of the legal capacity reform:

Tibor Navracsics (expectant to post of Minister of Administration and Justice)

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We also ask the supportive organizations to inform EFOESZ about any actions taken:

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