



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Cyprus
Title:	Persons with intellectual or psychosocial disabilities are required to waive their legal capacity in order to claim welfare benefits.
Date:	11 June 2015
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	A new law imposes a precondition on persons with mental and psychosocial disability to have an 'incapacity' court order issued before they can apply for welfare benefits
Ground of discrimination:	Disability
Source:	Equality Body Position File No. A/P 2354/2014, A/P 162/2015, A/P 483/2015, 7 April 2015
Field:	All fields
Applicable law:	Law on persons with disabilities N.127(I)/2000 as amended; Law on minimum guaranteed income and generally on social provisions N.109(I)/2014; Law on the administration of the property of incompetent Persons of 1996 N. 23(I)/1996; UN Convention on the rights of persons with disability.

Content

Case: In 2014 a new law was adopted, introducing a comprehensive reform to the welfare system, replacing the public benefits until then available to various vulnerable groups with the 'minimum guaranteed income'¹ (hereinafter "the 2014 law"). Amongst other new conditions of eligibility introduced, persons with an intellectual disability were now required to present a court order under the law on the administration of the property of "incapable" persons² appointing a person as their legal representative for managing their property. Without such a court order, their applications for a minimum guaranteed income could not be examined. The Committee for the Protection of Intellectually Retarded Persons³ and several groups of parents of persons with intellectual disabilities complained to the Equality Body that this requirement formed an obstacle to equal access to the minimum guaranteed income on the ground of disability, because obtaining such a court order required considerable cost and time, and was forcing persons with intellectual disability to lose their legal capacity, thus abolishing their rights in a number of other fields. The Ministry of Labour, Welfare and Social Insurance

¹ Law on minimum guaranteed income and generally on social provisions (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N.109(I)/2014. Available at www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html

² Law on the administration of the property of incompetent Persons of 1996 (*Ο περί Διαχείρισης της Περιουσίας Ανίκανων Προσώπων Νόμος του 1996*) N. 23(I)/1996. Available at www.cylaw.org/nomoi/enop/non-ind/1996_1_23/full.html

³ www.cpmental.com.cy/epnka/page.php?pageID=186

(hereinafter “the ministry”), which is the competent ministry for the implementation of the 2014 law, informed the Equality Body that the purpose of this provision was to satisfy the concerns of banks who had raised an issue regarding the legality of depositing the welfare payments accruing to persons with intellectual disability into the bank accounts of other parties (e.g. their parents) who were not legally authorized to manage these funds. The ministry had sought the Attorney General’s opinion as regards this practice, who confirmed that persons representing persons with intellectual disability in any activity, including the managing of their property, must be duly authorized to do so through a court order.

Decision of the Equality Body: The Equality Body noted that the compatibility of this practice with the non-discrimination laws and the Convention on the Rights of Persons with Disabilities (hereinafter the CRPD) was not taken into consideration either by the ministry or by the Attorney General. The report also points out that states are, according to the CRPD, under a duty to provide support to persons with disability whenever they face difficulties in making decisions, enabling them to decide for themselves about issues affecting them, rather than resort to the unjustified deprivation of their legal capacity and to other measures of a custodial nature. The report added that the duty to provide support to persons with disability to exercise their legal capacity amounts to a duty to provide reasonable accommodation, a breach of which amounts to unlawful discrimination on the ground of disability. Support may be made available either by the public or the private sector or civil society or their families or friends, provided the persons’ autonomy and will are maintained and respected. By contrast, the court order which the ministry requires in order to examine an application for the minimum guaranteed income nullifies in an absolute and irrevocable manner the person’s legal capacity and right to equality before the law. In essence, persons with intellectual and psychosocial disabilities are forced to choose between the minimum guaranteed income, which has now replaced all other public benefits, and their legal capacity which is a prerequisite for their access to other fundamental rights and an important factor in their equal participation and social integration. The Equality Body describes this measure as “violent and massive which perpetuates obsolete stereotypes and prejudices against [persons with disabilities]”. In conclusion, the Equality Body asked for the revision of the 2014 law and meanwhile for a practical solution to be found to ensure access of all adult persons with intellectual or psychosocial disability to the minimum guaranteed income without the adverse consequences of the ‘incapacity’ court order and invited all stakeholders to a consultation.

Key points of analysis: The reform of the welfare system through the introduction of the minimum guaranteed income, one of the many austerity measures introduced by the current government, has adversely affected persons with disability in multiple ways. As regards persons with other types of disabilities (kinetic, sensory etc) newcomers to the system must pass the ‘functionality test’ of the International Classification of Functionality System⁴ to be entitled to this grant. The more severe measure of the ‘incapacity’ court order, which is required of persons with intellectual-psychosocial disabilities, demonstrates the special vulnerability of this group and the inability of the state to provide the support necessary in order to promote their equality.

Internet link source:

[www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7918AF6088679015C2257E3B002AD964/\\$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7918AF6088679015C2257E3B002AD964/$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement)

⁴ Implementation of new system of assessing disability and functionality (Εφαρμογή ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας). Available at http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsidp06_gr/dsidp06_gr?OpenDocument.