



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

NEWS REPORT

Country: Cyprus
Title: Access to welfare for persons with intellectual or psychosocial disabilities
Date: 13 November 2015
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Update of flash report nr: 63-CY-ND

Context

Issue at stake: The welfare law that required an 'incapacity' court order as a condition for access to welfare is revised but practice remains problematic
Ground of discrimination: Disability

Source: Legislation, policy

Field: All fields

Applicable law: Law amending the law on minimum guaranteed income and generally on social provisions N. 118(I)/2015; 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

Law/policy reform: Following criticisms from the disability movement and the Equality Body,¹ the law on the minimum guaranteed income (MGI) which required applicants with intellectual disability to submit their applications only through a legally authorised representative² was amended to provide that applications could now be submitted through the applicant's representative, without providing a definition of such representative or a procedure for his or her appointment.³ The Ministry of Labour and

¹ Position of the independent authority for the promotion of the rights of persons with disabilities regarding the requirement of the Ministry of Labour, Welfare and Social Insurance to produce a court order of incapacity and appointment of an administrator in order to ensure access by adult persons with intellectual or psychosocial disabilities to the Minimum Guaranteed Income (*Τοποθέτηση Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων Ατόμων με Αναπηρίες σχετικά με την απαίτηση, από το Υπουργείο Εργασίας, Πρόνοιας και Κοινωνικών Ασφαλίσεων, να προσκομίζεται δικαστικό διάταγμα ανικανότητας και διορισμού διαχειριστή, προκειμένου να διασφαλιστεί η πρόσβαση ενήλικων ατόμων με νοητικές ή και ψυχοκοινωνικές αναπηρίες στο Ελάχιστο Εγγυημένο Εισόδημα*) Ref. Α/Ρ 2354/2014 et al, 7 April 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/\\$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement) , last accessed 13/11/2015.

² 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 , last accessed 13/11/2015.

³ Cyprus, Law amending the law on minimum guaranteed income and generally on social provisions (*Νόμος που τροποποιεί τον Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) 118(I)/2015, article 4(3). Available at http://www.cylaw.org/nomoi/enop/ind/2014_1_109/section-sce28b579e-7244-6231-357a-c03c23572dc4.html , last accessed 13/11/2015.

Social Insurance (for now on the ministry) issued instructions to the Social Welfare Services (SWS) to refrain from demanding 'incapacity' court orders in those cases where the applicant with intellectual disability had a joint bank account with another person.⁴ This policy measure did not address the situation of applicants without such a joint account.

The Committee for the Protection of Persons with Mental Handicap⁵ (for now on the committee) reported that, in spite of the legislative amendment, SWS continued to request court orders in order to pay the MGI to persons with intellectual disabilities who did not have a joint bank account with another person. The committee identified gaps which persisted in spite of the reforms, highlighting the fact that the SWS now required that a relative of that person or a member of the staff of the institution/home where the person resides be appointed by the court as administrators of that person's estate in order to collect the cheque. The committee also criticised the fact that banks refuse to open accounts for persons with intellectual disability residing with their families on the justification that they are not in a position to manage the bank account. The committee requested the ministry to resolve the issue by specifying the procedure for appointing a representative and for making the payments of the MGI either to the families or to the institutions or homes in the community where the applicant resides.

Meanwhile the Equality Body, in its capacity as independent authority for the promotion of the rights of persons with disabilities, published a report on the implementation of the CRPD, highlighting the gaps and weaknesses of the law on the administration of the property of incapable persons. The report concluded that this law contravenes article 12 of the CRPD and results in discrimination as it renders persons with disabilities particularly vulnerable to being declared 'incapable' by the court, which deprives them from equal enjoyment of rights. The report stressed that the law ratifying the CRPD ranks higher than the law on the administration of the property of 'incapable' persons and must be annulled and calls on stakeholders to assist in the process of developing structures and mechanisms and bringing those changes to the legislative framework that will render national law and practice compliant with the CRPD.⁶

The ministry issued another circular to the SWS⁷ instructing them to request persons representing applicants with intellectual disability to sign a statement assuming responsibility for handling the MGI payable to the beneficiary without a court order; following which, a cheque can be issued in favour of the first degree relative who has signed such a statement. Persons with disability without a first degree relative can be represented by another close relative or another person who signs the statement, provided that the SWS is satisfied this is in the interest of the beneficiary. The reasoning behind this procedure, as explained in this circular is to avoid having the applicant with intellectual disability sign any document whatsoever or deciding who will represent him or her because the legal capacity of such person is legally questionable.

Internet link source: See footnotes.

⁴ Ministry of Labour, Welfare and Social Insurance, Circular No. EEE-7/2016, 9 June 2015.

⁵ <http://www.cpmmental.com.cy/epnka/page.php?pageID=7&langID=0> , last accessed 13/11/2015.

⁶ Position of the Independent Authority for the Promotion of the Rights of Persons with Disability regarding the implementation of obligations under the ratified UN Convention on the Rights of Persons with Disabilities and in particular article 4 ("General Obligations") and article 12 ("Equal Recognition before the Law") [Τοποθέτηση της Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων ΑμεΑ αναφορικά με την υλοποίηση των υποχρεώσεων που απορρέουν από την κυρωθείσα⁶, από την Κυπριακή Δημοκρατία, Σύμβαση του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρίες και ειδικότερα τα Άρθρα 4 («Γενικές Υποχρεώσεις») και 12 («Ίση Αναγνώριση ενώπιον του Νόμου») αυτής], File No. ΑΥΤ.4/2015, 25 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/\\$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement), last accessed 13/11/2015.

⁷ Ministry of Labour, Welfare and Social Insurance, Circular No. EEE-12/2015, 25 September 2015.