

**Thematic report of the Resource centre for people with
mental disability “ZELDA”**

to the UN Human Rights Committee

**For consideration when compiling the List of Issues
on the Third Periodic Report of Republic of Latvia
under the International Covenant on Civil and Political
Rights**

Submitted on 22 August 2013

1. EXECUTIVE SUMMARY

Association Resource Centre for People with Mental Disability “ZELDA” works in Republic of Latvia since 2007. During our daily work we have consulted many hundreds of persons with mental disabilities and provided legal assistance on protection of their rights and interests. As can be seen from the Thematic Report, people with mental disabilities still face widespread discrimination, intolerance and disproportional restriction of basic human rights.

Persons with mental disabilities face procedures on placing restriction on legal capacity; they may be put in long-term social care institutions even without their knowledge; there are very few community-based services thus deinstitutionalization is very slow; the State continues to invest finances in long-term social care institutions but does not pay enough attention to the development of community-based services. Unlike other people, persons with mental disabilities may be placed involuntary in psychiatric hospitals and undergo forced treatment even without authorisation of the court.

Thus RC ZELDA finds it important that the State ensures that person with mental disabilities face the same opportunities and freedoms as any other person; right to liberty is restricted only by judgement of the court, but not by the guardian or the head of the long-term social care institution; and distinction is made between involuntary placement in psychiatric hospital and involuntary treatment of the person with psychotic drugs.

2. INTRODUCTION

NGO “Resource Centre for People with Mental Disability “ZELDA”” (RC ZELDA) works in Republic of Latvia since 2007 and its main aim is to promote de-institutionalisation and development of community-based mental health care services for people with mental disabilities (including persons with intellectual disabilities and persons with psychosocial disabilities) through research, monitoring of observance of human rights, legal advocacy and activities of informing and educating the public.¹

RC ZELDA would like to provide comments and more details on Third Periodic State Report of the Republic of Latvia (State Report) in relation to the rights of persons with mental disabilities, as these issues haven’t been properly addressed neither in previous State reports, nor in Concluding Observations of the UN Human Rights Committee (UN HRC). This is especially important as according to the 2012 statistics there are 79485 persons with mental disabilities in Latvia.² The Thematic Report will address each article of the International Covenant on Civil and Political Rights (ICCPR) in accordance with the State provided information.

During the reporting period from 2004 to 2008 (Reporting Period) the legislation of the Republic of Latvia (the State) provided plenary guardianship for persons with mental disabilities.³ No alternatives or less restrictive means of protection of rights of persons with mental disabilities were provided. Person whose legal capacity was under review was in fact legally incapacitated even before court proceedings as he/she was usually not invited to the court proceedings and although she/he had the right to appeal it was ineffective as the person was not informed also of the outcome of the proceedings. The main reason for deprivation of

¹ More details on RC ZELDA are available at: <www.zelda.org.lv/en/>

² Data of the Centre for Disease Prevention and Control - <www.spkc.gov.lv/veselibas-aprupes-statistika/>

³ Article 358 of the Civil Law of the Republic of Latvia (in force till 31 December 2011)

legal capacity was placement of the person in long-term social care institution.⁴ According to the regulation in force at the Reporting period legally incapacitated person could be placed in long-term social care institution based on the agreement signed between guardian and the head of the long-term social care institution. The person could not leave the institution without permission of the guardian. Additionally persons without legal capacity suffered from serious restriction on private life and could not participate in public life. The re-evaluation of the legal capacity could be initiated only either by the prosecutor or the Orphans' Court and was closely tight to the health condition of the incapacitated person and could be renewed only if the person could prove that he/she has recovered from the mental illness.⁵

RC ZELDA finds it important to stress that after the Report period the State has made significant amendments based on the ratification of the UN Convention on the Rights of Persons with Disabilities (in force since 31 March 2010) and the decision from 27 December 2010 in case no.2010-38-01 of the Constitutional Court of the Republic of Latvia⁶. According to the latest amendments there is no plenary guardianship; person has to be involved in all case proceedings; the court may appoint temporary guardian without restrictions on legal capacity; the court may determine legal capacity restrictions on material rights; personal non-material rights can no longer be restricted;⁷ and any person may issue advanced directives.⁸ Additionally the State has developed and initiated services of personal assistant to the persons with disabilities and is currently working on the development and introduction of supported decision making process that would serve as alternative to legal capacity restrictions.

3. SUBSTANTIVE PART

Article 2

RC ZELDA would like to point out to the Committee that in Latvia social integration is understood very narrowly attributing it only to the non-citizens and naturalization process, but it excludes integration of other marginalized groups. Thus there is no common policy paper on social integration and inclusion of all marginalized groups, for example, persons with mental disabilities, single parents etc.

Naturalization

The State mentions that certain groups enjoy privileges in passing the test specified in the Citizenship Law. "In particular, the privileges are granted to persons with disability group I, disability group II suffering from progressive mental illness [..]"⁹ The Cabinet of Ministers regulation no.353 of 29 May 2007 is no longer in force since 9 July 2011. Nonetheless the

⁴ According to statistics on 7 December 2010 there were 2204 persons without legal capacity, from these persons 1010 were placed in long-term social care institutions.

⁵ Article 364 of the Civil Law of the Republic of Latvia (in force till 31 December 2011)

⁶ Application was submitted by legal support provided by RC ZELDA. More details on the judgement see here - http://www.satv.tiesa.gov.lv/upload/judg_2010-38-01.htm

⁷ This has provided several challenges in practice that will be mentioned later in the Substantive Part of the Thematic Report.

⁸ For more detail see Press release of the RC ZELDA from 31 November 2012 'Modernizing the Institute of Legal Capacity, the Latvian Parliament Adopts Extensive Legislative Amendments' - zelda.org.lv/en/news/modernizing-the-institute-of-legal-capacity-the-latvian-parliament-adopts-extensive-legislative-amendments-1945

⁹ *Third periodic report of Latvia* to the Human Rights Committee, CCPR/C/LVA/3, para.17

previously mentioned privileges for disability group I and disability group II are kept in current Cabinet of Ministers regulation no.522 of 5 July 2011. The regulation states that persons with disability group I, disability group II suffering from progressive mental illness are exempted from requirements to pass language fluency test and the knowledge test. RC ZELDA would like to stress that persons with intellectual disabilities¹⁰ are not included and they are under obligation to pass language fluency test and the knowledge test at the same level and criteria as persons without intellectual disability.

If the person has sufficient knowledge of Latvian, she can take the language proficiency test. Nonetheless in practice persons who were declared legally incapable could not undergo naturalization procedure because they lacked legal capacity to sign legal documents and pass the test. Additionally the Office of Citizenship and Migration Affairs interpreted that passport is a property and only person who has full legal capacity has a right to receive a passport. Although as mentioned at the introduction, as from 1 January 2013 the court may put limitations only on personal material rights, right to have a passport and freely choose citizenship cannot be restricted. Nonetheless the problems still persist and persons with legal capacity restrictions cannot undergo naturalization and receive passport.

Client I.L. of RC ZELDA is a guardian of incapacitated person B., who is non-citizen. During 2011 B. expressed willingness to undergo naturalization and acquire citizenship of the Republic of Latvia. I.L. contacted the Office of Citizenship and Migration Affairs which explained that legally incapacitated person cannot undergo naturalization, but for further references to the law, I.L. had to research herself.

Articles 11 and 12 of the Citizenship Law do not prescribe that lack of legal capacity could be obstacle in obtaining citizenship; nonetheless the regional Office of Citizenship and Migration Affairs declared that legally incapacitated person has no right to sign any documents and hold property. Thus the person cannot undergo naturalization and acquire citizenship.

RC ZELDA client R.S. had to renew his passport in 2013, thus he applied to the regional Office of Citizenship and Migration Affairs. The clerk refused to renew passport as R.S. is person without legal capacity and thus only his guardian can acquire passport.

RC ZELDA provided legal assistance to the R.S. and made written application to the regional Office of Citizenship and Migration Affairs, explaining that according to the Civil Law and Civil Procedure Law¹¹, R.S. has a right to receive personally and hold a passport. When R.S. showed this written application to the regional Office of Citizenship and Migration Affairs, it renewed and handed out the passport.

Although the last case was solved positively, the previously described practice is very widespread and persons with legal capacity restriction cannot in practice undergo naturalization or acquire passport, notwithstanding that there are no such restrictions in law.

¹⁰ *Intellectual disability* means a significantly reduced ability to understand new or complex information and to learn and apply new skills (impaired intelligence). This results in a reduced ability to cope independently (impaired social functioning), and begins before adulthood, with a lasting effect on development – World Health Organization, <www.euro.who.int/en/what-we-do/health-topics/noncommunicable-diseases/mental-health/news/news/2010/15/childrens-right-to-family-life/definition-intellectual-disability>

¹¹ According to the Article 61 of the Transitional Provisions of the Civil Procedure Law persons who were deprived of legal capacity as of 1 January 2013 have to be considered as persons with restricted legal capacity without restrictions on personal nonmaterial rights.

Employment

In paragraph 36 of the State Report it is mentioned that Latvian language courses have also been organized for unemployed persons whose mother tongue is not Latvian, in order to promote employment.

RC ZELDA client K.S. has moderate intellectual disability and she is Russian speaking. K.S. wants to learn Latvian language as in her view it is essential for acquiring a job. For several times K.S. has attended classes organized by the State Employment Agency (the SEA), but as these courses are designed for persons without intellectual disabilities K.S. has severe problems to follow the information provided and she feels embarrassed and humiliated by other participants.

RC ZELDA applied to the SEA asking whether there are any courses designed for persons with intellectual disabilities. The SEA replied that there are no specific Latvian language courses because no education facility had expressed willingness to organize such courses. Considering that it is the duty of the SEA to organize such courses RC ZELDA applied to the Ministry of Welfare which replied, that if RC ZELDA considers this to be a problem, it should carry out research and determine how many persons could be interested in such courses, then RC ZELDA should submit this information to the Ministry of Welfare which will decide whether there is any necessity to organize Latvian language courses for persons with intellectual disabilities.

Prohibition of discrimination

In paragraph 55 of the State Report it is stated that Latvia has made several amendments in laws to implement elimination of discrimination based on several grounds and also disability. According to the Cabinet of Ministers regulation no.490 of 20 November 2001 (no longer in force since 4 September 2010) persons with mental disabilities may acquire education in special educational institution. Although the regulation does not specify the age limit, nonetheless in practice, persons with mental disabilities, who are older than 22 years, are not admitted.

RC ZELDA client K.S. has moderate intellectual disability and she is Russian speaking. She has acquired 5th grade primary school education, nonetheless she would like to learn some profession, but in order to do that, she needs to finish primary education. K.S. has received evaluation of special medical commission that states that she may acquire necessary education in specialized programme. Nonetheless the Commission did not point out any schools where this specific programme is offered.

With the help of RC ZELDA K.S. applied to Ministry of Education and Science to obtain more information on specialized schools and was given a reply which stated several schools where the specific educational programme is offered.

K.S. has visited all the specified schools, but none of them accepted K.S. stating that they offer primary education only to persons who haven't reach 22 years of age. K.S. is 33 years old and may not acquire primary education and thus state's provided professional education is inaccessible.

According to the information provided in the "Framework Document on the Development of Social Services for Period of 2014-2020" approximately 14 per cent of children with

intellectual disabilities have never attended school.¹² There are no data publicly available on how many adults with mental disabilities don't have primary education. The 1998 Periodic Report of the Republic of Latvia to the Committee on the Rights of the Child mentions that "in 1990 children with serious psychological disabilities began to attend specialised schools. Prior to this time, it was considered that such children were unable to learn"¹³. Thus issue of obtaining primary education could be very urgent as without proper education social integration of persons with mental disabilities is almost impossible. Keeping in mind standards of the UN Convention on the Rights of Persons with Disabilities, it is essential to ensure accessibility of inclusive educational programmes that would promote more successful integration in society.

Elimination of intolerance

The National Programme to Promote Tolerance 2005-2009, which was adopted by the Cabinet of Ministers on 24 August 2004 states that one of the aims of the programme is to reduce discrimination towards other social groups. Nonetheless the Programme does not specify what exactly is included in this term "other social groups" and basically it is concerned only with discrimination towards ethnic and religious minorities. Other marginalized groups are excluded, like sexual minorities, people with disabilities, poor people etc.

RC ZELDA clients M.C. and K.L. are two brothers who both have intellectual disability: K.L. has severe intellectual disability, but M.C. moderate intellectual disability. Both brothers live in small village where they are constantly attacked by one local inhabitant R.Z. He calls them in different insulting names like paedophiles, homos, idiots etc. For several times he has assaulted their home – broke windows and knocked out the doors. R.Z. attacks on both brothers only are based on their disability with awareness that brothers cannot defend themselves. Assaults started in 2010 and continue till this day. R.Z. stays in village during holidays. Knowing that, brothers stay at home in order not to provoke new assaults.

M.C. and K.L. have turned to local police officer who has refused to accept their complaints. The police haven't taken any steps to prevent assaults and no preventive measures have been taken. On contrary – police has acquired information on mental health of both brothers and used it to dismiss their complaints about R.Z.

Although Article 78 of the Criminal Law provides criminal liability for intolerance and triggering of hatred, it is applicable only towards national, ethnic and racial minorities. Additionally Article 204.¹⁷ of the Latvian Administrative Violations Code provides liability for violation of principle of prohibition of discrimination, but this prohibition has to be prescribed by law. Thus other marginalized groups, except for racial, ethnic and national minorities, cannot feel protected and principle of non-discrimination and tolerance is only formal.

Article 7

Access to information

¹² "Framework Document on Development of Social Services 2014-2020", p.25 - www.mk.gov.lv/lv/mk/tap/?pid=40294031

¹³ 'Initial reports of States parties due in 1994. Latvia' - CRC/C/11/Add.22, 22 March 2000, para.154 - tb.ohchr.org/default.aspx?Symbol=CRC/C/11/Add.22

Although persons placed in long-term social care institutions have the rights to object and complain on their conditions, in practice, these rights are ineffective. There is clear lack of information on different complaints' mechanisms and if the information is provided it is not presented in easy-to-read format that would be suitable for persons with mental disabilities and especially for persons with intellectual disabilities. Additionally NGOs that represent interests of persons with mental disabilities have very difficult access to residents of social care institutions. So far RC ZELDA has been able to visit institutions based on invitation from clients who has applied to RC ZELDA for legal assistance. If there are complaints to RC ZELDA from residents, they are more by accident rather than on regular basis.

Article 9

Determination of security measures of a medical nature

According to the Criminal Law (Articles 13 and 14), the court may determine security measure of a medical nature (SMMN) if the person has been found to lack mental capacity fully or partially. According to Article 68 of the Criminal Law, if the person who lacks mental capacity can be deemed to be dangerous to society because of his/her mental illness and nature of the committed offence, the court may determine:

- 1) out-patient medical treatment in a medical institution;
- 2) medical treatment of a general type in a psychiatric hospital (ward); and
- 3) medical treatment under guard in a specialised psychiatric hospital (ward).

If the person doesn't possess any danger to society, the court may place the person with his or her relatives or other persons who should care for the ill person, in the charge and under the supervision of a medical institution.

RC ZELDA client I.B. committed robbery. She stole some candies, bananas, pack of coffee and glasses. The total amount of stolen goods was less than EUR 13,00 (or USD 17,00). She was arrested immediately and returned all the goods to the store unspoiled. Although the shop owner didn't declare any damages, police continued the criminal procedure.

I.B. spent all the time till the verdict of the court in psychiatric hospital. Although she expressed willingness to leave the hospital, her application was dismissed because as doctors explained there was an on-going criminal investigation and SMMN will be determined.

I.B. was not invited to participate in court hearings on determination of SMMN. There was her brother who was appointed by prosecutor as the representative of her interests in procedure. No consent from I.B. was asked. I.B. also had a lawyer whom she had never met before and of whom she had no knowledge until she received decision of the court.

The court in its decision stated that this crime by its nature possesses danger to society and I.B. illness is on-going, thus she has to be placed in psychiatric institution. According to Article 606 §1 of the Criminal Procedure Law because I.B. did not participate in court hearings, she could not appeal against the court decision. Also representative and attorney of I.B. did not appeal against this decision.

I.B. could submit application on re-evaluation of SMMN only three months after the first decision entered into force. RC ZELDA provided attorney for I.B. who insisted on her participation in court hearing. The participation was refused. It turned out that the court and the hospital had no established practice on taking patients from hospital

to court hearings on SMMN. The court made a decision to release I.B. from the hospital and determined out-patient medical treatment in a medical institution. With assistance of RC ZELDA, I.B. has submitted application to the European Court of Human Rights. The case is under review.

This case represents several problematic issues. First, there are no clear cut criteria on how to determine whether nature of the committed offence possesses any danger to society. Thus any court may apply its own standards and criteria and there is no uniform practice. Secondly, persons without mental illness under the same circumstances would be released from criminal liability because the caused damage is minor. Nonetheless the person with mental disability will undergo the full criminal procedure and will be placed in psychiatric hospital for indefinite time. Thirdly, as mentioned before, there are no time limits for application of SMMN. Although the person has a right to appeal against SMMN after each three months and the court has to review the SMMN once a year, nonetheless access to legal representation for persons with mental disabilities, if they are placed in psychiatric institutions is very limited and courts do not observe time limits set by the Criminal Procedure Law and forget to review cases on application of SMMN once a year. Thus person may spend in psychiatric hospital indeterminate amount of time. Fourthly, it is not clear what kind of issues the court should re-evaluate: whether that includes only the state of mental illness or also the nature of the crime. Fifthly, if the person against whom procedure on SMMN has been initiated does not participate in court hearings, he/she does not have right to appeal. And last, state provided attorneys are not interested in such court hearings, they do not meet with their clients and the representation is formal.

Long-term social care institutions

Placement of person in long-term social care institution

The placement of person in long-term social care institution *a priori* is considered voluntary and the Law on Social Services and Social Assistance (LSSSA) does not provide any legal solution for involuntary placement.¹⁴ Nonetheless the passports are usually confiscated by the personnel and kept in safe; if person wants to leave institution shortly he/she needs to write application, which is reviewed by the head of the institution. The application may be dismissed.

RC ZELDA client R.P. has schizophrenia and he lived in long-term social care institution. He has full legal capacity and lives in social care institutions and psychiatric hospitals because he has no other place to stay. R.P. decided that he wants to leave institution for a short period to go to his relatives for Midsummer Night celebration. When R.P. was several kilometres away from the institution he was forcefully taken back by employees of the institution and placed in isolator and later taken to psychiatric hospital by police.

RC ZELDA client I.D. was placed in social care institution in 2012. Before placement in institution he was deprived of his legal capacity. After 1 January 2013 I.D. wanted to leave institution but his requests were dismissed as his guardian had not given consent. According to the new regulation on legal capacity that entered into force on 1

¹⁴ See also Report of 2007 visit of the Committee on the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, paras. 133-134 - <www.cpt.coe.int/en/states/lva.htm>

January 2013, no restrictions can be placed on freedom of movement and freedom of choosing place of residence. Nonetheless the institution refused to let I.D. leave the institution. After several months of constant conversations between the head of the institution, Ministry of Welfare and RC ZELDA I.D. was free to leave the institution.

Additionally the contracts provided to persons with mental disabilities are written in difficult and hard-to-understand legal language and no easy-to-read version or explanation is provided. So there are real doubts whether persons placed in long-term social care institutions fully understand the consequences on signing the contract and whether such admission can be considered voluntary.

Leaving long-term social care institution

Article 31 § 1 of the LSSSA provides that “in order to prevent the leaving of a person without supervision and to protect the rights and freedoms of other persons, the head of a long-term social care and social rehabilitation institution or his or her authorised person may take a decision regarding the necessity to restrict the rights of the person to move freely”. Thus in fact the head of the long-term social care institution may restrict person’s rights to freedom. This decision is not reviewed by court or by any other independent authority; person is simply informed of the decision, but no written decision is issued; this decision cannot be appealed. Aforementioned provision is used to place limitations on freedom of movement on persons with restricted legal capacity (as of 1 January 2013). The guardian issues a statement to the head of the institution that he/she does not allow free movement of person under his/her guardianship. If person wants to leave institution special permission is required from the guardian.

Until 1 January 2013 legally incapacitated persons were placed in institution without their knowledge and consent. Decision was made by local social services, guardian and head of the social care institution. The contract was sign by the Ministry of Welfare, guardian and head of the long-term social care institution. At no stage legally incapacitated person was involved in decision-making process. After 1 January 2013 when the new regulation on legal capacity entered into force, the Civil Procedure Law provides that all the persons who were declared legally incapable are now to be considered as persons with legal capacity restrictions. Until the court reviews the case person has restrictions on material rights, but no non-material right can be restricted. That includes also freedom to choose place of residence. Nonetheless RC ZELDA on several occasions has received information that persons with legal capacity restrictions are still kept in institutions and their freedom of movement is determined by the guardian.

RC ZELDA in July 2013 visited social care institution to talk to client G.K. who in August 2009 was deprived of legal capacity and in September 2009 was placed in long-term social care institution. By order of her guardian G.K. is not allowed to leave institution without permission of guardian. G.K. has been out of institution three times a year for period not exceeding 5 days. Also now G.K. is not allowed to leave institution on her own, but only with permission of her guardian.

Thus the practice of restricting freedom of movement still persists and no changes have been made even after amendments in the law. In fact legally incapacitated persons may not apply for other community-based social services. These persons also have very restricted access to justice as their possibility to visit any state, municipal or private organization is limited by permission of guardian to leave institution.

According to statistics provided by the Ministry of Welfare on situation in long-term social care institutions, there are several persons who don't have legal capacity, but no guardian is appointed.¹⁵ Thus for such persons there is no legal representative, they cannot make any decisions, they are not allowed to leave institutions, they have no access to their financial resources and have no access to justice. They are persons without rights and without any representation.

Year	Number of legally incapable persons	Number of appointed guardians	Difference
2004	378	354	-24
2005	525	472	-53
2006	672	615	-57
2007	731	716	-15
2008	824	815	-9
2009	905	914	+9
2010	1010	1010	0
2011	1230	1120	-110
2012	1119	1088	-31

Until 21 December 2012, the LSSSA provided that if person wanted to terminate his/her stay in long-term social care institution, he/she had to apply to the head of the social care institution who in turn contacted the social services of municipality where client had declared place of residence before placement in institution. Municipality could simply refuse provide any social services and person was forced to stay in institution.

RC ZELDA in 2012 carried out the research comparing costs of social services provided at community and costs of keeping persons in long-term social care institutions.¹⁶ In 2011 RC ZELDA requested information from 40 municipalities (where are more than 10.000 inhabitants) what social services are provided, what are the evaluation criteria etc. From 40 municipalities 38 provided answers: in 7 municipalities no community-based social services were provided for persons with mental disabilities, in 25 municipalities the main social service provided was arrangement of documents for placement of a person in long-term social care institutions. Although RC ZELDA asked to specify how needs assessment of person with mental disabilities is done, municipalities could not specify any principles or methods used, but simply pointed out that it is done in accordance with the LSSSA.¹⁷ Thus it is clear that basically there are no community-based social care services (except for some largest municipalities) for persons with mental disabilities and still the main service provided is the placement of a person in long-term social care institution.

Two RC ZELDA clients O.A. and N.A. lived in long-term social care institution. N.A. in December 2007 was moved to community-based group home that was located in municipality A. In April 2008 N.A. and O.A. got married and wanted to start to live together. Group apartments are provided by respective municipality where person was registered before placement in long-term social care institution. O.A. could not be placed in the same group home as before the placement in long-term social care institution she was registered at municipality B. Municipality B. in 2008 made the decision to grant the necessary social service, but because of lack of finance refused to

¹⁵ Statistical information of Ministry of Welfare <www.lm.gov.lv/text/1382>

¹⁶ The research finding have not been published yet.

¹⁷ The LSSSA also does not provide any criteria for assessment, but it provides only general rules of application.

pay for the service. Municipality B. also suggested as a solution that O.A. may visit her husband.

In 2009 there was territorial reform in Latvia and thus municipality B. claimed that they have no responsibility over O.A. as prior to placement in social care institution she has not been registered there, but in municipality C. Municipality C. also refused to pay for the service as municipality insisted that she has not been registered there either.

RC ZELDA provided necessary legal assistance to O.A. and represented her interests in Ministry of Welfare and the Ombudsman's office. After three years of marriage O.A. was reunited with her husband N.A. as municipality B. finally agreed to pay for the necessary community-based social service. Nonetheless for three years N.A. and O.A. could not live together because of conflict between municipalities and lack of willingness to provide necessary community-based social services. If O.A. didn't receive legal assistance from RC ZELDA she would never had a possibility to live together with her husband as she lacked capacity to represent her interests in state and municipal institutions.

Although on 22 December 2012 new amendments entered into force, stating that persons with mental disabilities may refuse from long-term institutional social care service and the local municipality has an obligation to provide community-based services, the situation hasn't improved.

RC ZELDA client T.L. lived in long-term social care institution. He felt that this service is not suited for him and he wanted to live outside institution. T.L. is capable of taking care of himself. He is intelligent and has nothing common with residents as they had severe mental disorders and intellectual disorders. Some years ago T.L. tried to solve the issue on his own, but without success. He was turned down by two municipalities where he previously lived because he had no proof of place of residence before placement in social care institution.

RC ZELDA provided necessary legal assistance to T.L. to acquire social apartment. The request was constantly refused although the LSSSA provided that municipality has an obligation to provide appropriate community-based social services. The municipality argued that T.L. has no status of low-income or needy person, thus no social apartment can be offered. Nonetheless the municipality without carrying out needs assessment offered T.L. to live in a group home for people with mental disabilities. RC ZELDA continued to insist, that T.L. is neither suitable for long-term social care institution for persons with mental disabilities, nor for group home. At the end T.L. agreed to take offer of municipality and move to social care home for elderly. This decision was based on the fact that it would take years for him to acquire social apartment, but possibility to move to social care home for elderly provided him instant and faster solution to move to more suitable social environment.

The previously mentioned cases are not the only ones. RC ZELDA provides legal representation to two clients who want to move from long-term social care institution to social apartment and from group home to social apartment. Apart from that there is clear lack of community-based social services that would be considered as alternatives to institutionalization.¹⁸ As mentioned before the municipalities do not consider this as

¹⁸ The mayor of Jaunjelgava and Vice Chairman of the Committee on Social and Health Issues of the Association of Local Municipalities during seminar on Deinstitutionalization (organized on 1 August 2013) was expressing his view on plans of deinstitutionalization and providing appropriate community-based social

important issue and don't want to invest any financial means in the development of community-based social services.

Involuntary psychiatric treatment

Distinction between placement and treatment

Article 68 of the Medical Treatment Law provides conditions under which procedure of involuntary psychiatric treatment can be provided. Nonetheless neither in the Law, nor in practice any distinction is made between involuntary placement and involuntary treatment. The treatment, i.e., involuntary use of strong psychotic drugs, commences at the time of placement of the person in psychiatric hospital, when no court order has been issued. Thus if the court does not approve decision of the council of doctors, the person has been treated for unjustified reasons.

RC ZELDA finds it absolutely necessary to distinguish in law and practice involuntary placement in psychiatric hospital and involuntary treatment with psychotic drugs, which could be started only after the court has made a respective decision.

Involuntary placement

According to the practice of other European Union countries approximately 14 per cent of all the patients in psychiatric hospitals are placed on involuntary basis. In Latvia from approximately 14.000 patients only approximately 60 are placed on involuntary basis that makes approximately 0,37 per cent of all the patients.¹⁹ Also the Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe in its 2007 report stated that at the time of their visit to Daugavpils psychiatric hospital only two persons were involuntary placed.

„All the other civil patients were classified by the hospital management as "voluntary". On admission to the hospital, most of such patients signed on a special stamp in their patient's file thereby consenting to hospitalisation and subsequent treatment. Nevertheless, many "voluntary" patients were cared for on closed wards and were not free to leave the hospital; in other words, they were *de facto* deprived of their liberty.

Further, it became clear from the information gathered that many patients had signed the above-mentioned stamp in such a mental state that they were unable to give a free and informed consent to their hospitalisation and treatment.

From discussions with staff, it became apparent that the hospital management initiated the involuntary placement procedure under Section 68 of the Law on Medical Treatment only in respect of those patients who actively resisted their hospitalisation. Consequently, all "non-protesting" patients, including those with chronic conditions, were considered to be voluntary and as such were deprived of the benefit of any of the safeguards which accompany the initial involuntary placement procedure.

In the CPT's view, all competent patients who are not able to give valid consent to their hospitalisation should be the subject of an involuntary placement procedure."²⁰

services: „Let's be honest – we don't need them [people with mental disabilities]. And we will not find any financial means for them." <www.lps.lv/Pasakumi/Videoieraksti/?task=view&article_id=3312>

¹⁹ Data based on information provided by hospitals to RC ZELDA in 2012.

²⁰ 2007 Report of the Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, paras.126-127, <www.cpt.coe.int/documents/lva/2009-35-inf-eng.pdf>

This information on several occasions has been approved also by RC ZELDA clients who have stated that they agree to placement in hospital only because otherwise they will be treated for longer period. Even if person during his stay in hospital expresses willingness to leave the hospital, the procedure prescribed by Article 68 of the Medical Treatment Law is not initiated and person is kept in psychiatric hospital in fact against his/her will.

Legal Representation

Article 68 of the Medical Treatment Law provides that during court proceedings the person is represented by attorney appointed by the Board of the Sworn Advocates. Nonetheless this representation is formal and ineffective. The Ombudsman has on several occasions written to the Board of the Sworn Advocates that the advocates do not meet with their clients and do not discuss any details of defence. There are also cases where the advocate during court hearing agrees not with the opinion of his/her client, but with opinion of the council of doctors thus completely going against rights and interests of his/her client. The Board of the Sworn Advocates stated that such situation is normal as, firstly, meeting person with mental disabilities can be dangerous and, secondly, the advocate cannot evaluate the medical opinion and conclusions of council of doctors. There has been no case where the Board of the Sworn Advocates would have punished or terminated the licence of the advocate based on the fact that he has not carried out his duties with due diligence and according to the normative acts.

M.D. was involuntary placed in psychiatric hospital for involuntary treatment. Although he had a representative appointed by the Board of Sworn Advocates, he had never met him except court hearing. M.D. did not agree with the decision of the court and wanted to appeal. He tried to reach his attorney on several occasions, but received no response. The M.D. had to appeal against the decision on his own. The M.D. submitted complaint to the Council of Sworn Advocates but his complaint was rejected because there were no proofs of misconduct from part of the appointed attorney. When M.D. applied for the second time and submitted the evidence – recorded phone conversations and e-mails – the Council of the Sworn Advocates refused to examine evidence as there were no proofs that they were legally obtained and of course no violation was found from part of attorney. Although RC ZELDA interviewed several legal professionals (judges and sworn advocates) it was not clear whether this decision can be appealed against and if it is possible, where appeal should be submitted.

Thus the representation of persons in cases on compulsory involuntary treatment is formal and no effective complaints mechanism exists.

Supervisory mechanism

Although the Health Inspection under Ministry of Health may review cases of medical treatment and determine whether there are no violations in medical treatment, as well the Ombudsman can review involuntary admission cases if the detained person has asked to do it, nonetheless there is no other mechanism that would regularly review cases of involuntary admission/treatment except the court in each particular case. Thus no efficient and regular supervision on implementation of mechanism exists.

Regulations of psychiatric hospitals

If in relation to social care institutions there are some regulations in the LSSSA on order in long-term social care institutions, then in relation to psychiatric hospitals there are no regulations at all. There is no uniform practice on rights or persons placed in psychiatric hospitals like regarding daily walks, rights to phone calls, censorship of correspondence, requirements on physical conditions in rooms, hygiene etc. Each psychiatric hospital has developed their own order on placement of persons in different wards (closed or open wards) without any clear criteria and rights of patients. Thus each hospital has their own system and internal regulations that diminishes rights and interests of patients.

4. CONCLUSIONS AND RECOMMENDATIONS

There are several human rights issues were persons with mental disabilities face discrimination in comparison to persons without mental disabilities. They do not have the same access to citizenship or possibilities to learn state language as any other person. They also face disproportional restrictions on right to private life, right to freedom and access to justice. As was mentioned by the leading legal psychiatric expert in one of the meetings of the Legal Affairs Committee of the Parliament of the Republic of Latvia all the people with mental disabilities should be declared as legally incapable. Thus persons with mental disabilities still face stigmatization and lack of tolerance.

Also when talking about deinstitutionalization of persons with mental disabilities, the mayor of Jaunjelgava and Vice Chairman of the Committee on Social and Health Issues of the Association of Local Municipalities of the Republic of Latvia has expressed a view that municipalities do not need people with mental disabilities and that municipalities are not ready to invest any resources in this group of society.²¹

RC ZELDA kindly asks the Committee on Human Rights to consider making the following recommendations to the Republic of Latvia:

1. Provide that naturalization procedure is available for all people and principle of non-discrimination is observed by providing that:
 - a. state language courses are suitable for persons with mental disabilities and especially persons with intellectual disabilities;
 - b. exemption from requirement to pass language fluency test and the knowledge test is attributed also to persons with intellectual disabilities.
2. State language courses organized by the State Employment Agency have to be accessible and suited for persons with mental disabilities especially persons with intellectual disabilities.
3. State has to provide that primary education is accessible to everybody irrespective of age and disability. The State should develop and provide inclusive special educational programmes that would be available for adults with mental disabilities (including mental illnesses and intellectual disabilities).
4. The State has to provide clear prohibition of hate crimes towards people with disabilities, people with different sexual orientation and other marginalized groups.
5. The State should re-evaluate system of determining security measures of a medical nature and provide that people with disabilities are not discriminated under this system.
6. The State should ensure that in any case where right to liberty is restricted it is done on the basis of decision of a court or any other independent legal body. Right to liberty cannot be restricted just based on legal capacity of person.

²¹ *Supra* note no.18

7. Freedom to choose ones place of residence cannot be restricted just based on full or partial lack of legal capacity or mental illness.
8. The state should move towards community-based services and deinstitutionalization to ensure full rights and freedoms to everyone.
9. The State has to make distinction between involuntary placement of person in psychiatric hospital and involuntary treatment. Both decisions have to be made by the judge, but involuntary treatment cannot be started before the decision of the court has entered into force.
10. Ensure that representation in cases of involuntary treatment is effective and according to standards of right to fair trial.
11. Introduce effective and accessible complaints mechanism on decisions of the Board of the Sworn Advocates.
12. Ensure that there are common and uniform regulations on the rights of persons placed in psychiatric hospitals that are attributable to all psychiatric hospitals.
13. Introduce effective and independent supervisory mechanism over psychiatric hospitals.

RC ZELDA, Director



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