

Steps toward the Support Model of Decision-Making in Hungary: The Impact of the Article 12 of the UN Convention on the Rights of Persons with Disabilities on the Hungarian National Legislation

Authors : Szilvia Halmos

Abstract : Hungary was one of the first countries to sign and ratify the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD). Consequently, Hungary assumed an obligation under international law to review the national law in the light of the Article 12 of the CRPD requiring the States parties to guarantee the equality of persons with disabilities in terms of legal capacity, and to replace the regimes of substitute decision-making by the instruments of supported decision-making. This article is often characterized as one of the key norms of the CRPD, since the legal autonomy of the persons with disabilities is an essential precondition of their participation in the social life on an equal basis with others, envisaged by the social paradigm of disability. This paper examines the impact of the CRPD on the relevant Hungarian national legal norms, with special focus on the relevant rules of the recently codified Civil Code. The employed research methodologies include (1) the specification of the implementation requirements imposed by the Article 12 of the CRPD, (2) the determination of the indicators of the appropriate implementation, (3) the critical analysis of compliance of the relevant Hungarian legal regulation with the indicators, (4) with respect to the relevant case law of the Hungarian Constitutional Court and ordinary courts, the European Court of Human Rights and the Committee of Rights of Persons with Disabilities and (5) to the available empirical figures on the functioning of substitute and supported decision-making regimes. It will be established that the new Civil Code has made large steps toward the equality of persons with disabilities in terms of legal capacity and the support model of decision-making by the introduction of some specific instruments of supported decision-making and the restriction of the application of guardianship. Nevertheless, the regulation currently in effect fails to represent some crucial principles of the Article 12 of the CRPD, such as the non-discrimination of persons with psycho-social disabilities, the support of the articulation of the will and preferences of the individual instead of his/her best interest in the course of decision-making. The changes in the practice of the substitute and the support model brought about by the new legal norms can also be assessed as significant, however, so far unsatisfactory. The number of registered supporters is rather low, and the preconditions of the effective functioning of the support (e.g. the proper training of the supporters) are not ensured.

Keywords : Article 12 of the UN CRPD, Hungarian law on legal capacity, persons with intellectual and psycho-social disabilities, supported decision-making

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