

For the First Time in the Republic of Moldova, Incapacitated Persons Will Have Free Access to Justice



In April 2016, Promo-LEX Association submitted a request to cancel the exception of unconstitutionality in order to check the constitutionality of Articles 57(2), 58(2¹), 170(1)(c), 267(b) and (a), 306(1) and 308(2) of the Code of

Civil Procedure of the Republic of Moldova. **On 17 November 2016, the Constitutional Court ruled that the provisions excessively limiting the rights of persons with disabilities were unconstitutional.**

The decision on excessively limiting of the rights of persons with disabilities consists of 2 parts: the first part refers to the right to access to justice, and the second part refers to the civil and legal capacity and establishment of guardianship. Until recently, any person suffering from a mental disability, even a minor one, could easily be declared incapacitated in a procedure that used to be rather perfunctory, and be totally deprived of the opportunity to exercise his/her rights. The person declared incapacitated could not appeal the decision declaring him/her incapacitated, and as a result, a guardian was assigned to take all the decisions on his/her behalf.

Promo-LEX lawyer, Dumitru Sliusarenco affirms that the **Court decision is one of the most important decisions of 2016 and this positive result was achieved after many years of joint**

efforts of Promo-LEX Association, Office of the Ombudsperson and several Non-Government Organisations. The lawyer also stated that regulatory provisions declared unconstitutional, although *de jure* they are meant to ensure an effective balance between protection and access to justice for the incapacitated persons, *de facto* they represent the biggest barrier, impeding these persons from exercising their right of access to justice.

The notification submitted by Promo-LEX Association to the Constitutional Court invoked several articles referring to two major aspects relating to incapacitated persons. First aspect – possibility of incapacitated persons to submit requests to courts of law, including to appeal court decisions and judgements. Second aspect – possibility of incapacitated persons to participate directly in lawsuits or to hire a lawyer. **Thus, an entire category of people, who were until now totally isolated from the society, will have the possibility to claim and defend their rights in courts of law.**

We want to remind you that about 250 persons from the Republic of Moldova are declared incapacitated and deprived from their fundamental rights, according to 2015 data provided by the Ministry of Health. Most persons deprived of their legal capacity are placed in health care facilities or in specialised residential institutions, without having the possibility to decide whether to be placed or to leave these institutions on their own, in most cases they are isolated for their entire life. At the same time, limiting the disabled persons' access to justice may lead to the following: loss of house or other goods, impossibility to participate in divorce proceedings or to initiate these actions, impossibility to submit criminal complaints and to benefit from efficient investigation, impossibility to participate in inheritance proceedings, etc. In 2015, 3267 persons from Moldova were deprived of legal capacity.

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